

JRPP No:	2009NTH009
DA No:	10.2009.433.1
PROPOSED DEVELOPMENT:	Alterations/Additions to the existing aged care facility and proposed new self-care units designed under the provisions of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, Lot 3 DP 862033, Lot 2 DP 617652, 192-202 Broken Head Road Suffolk Park, 184-190 Broken Head Road Suffolk Park
APPLICANT:	TSA Management/ Nigel Head
REPORT BY:	Paddy Dawson, Consultant Planner

Assessment Report and Recommendation

DEVELOPMENT APPLICATION EVALUATION REPORT

Parcel No/s:	211330, 3870
Owner:	RSL Lifecare Limited
Zoning:	PART Zone No. 1(d) - Investigation Zone/PART Zone No. 2(a) – Residential Zone.
Date received:	23 September 2009
Integrated Development	Section 100B Rural Fires Act – Bush Fire Safety Authority Section 91(2) Water Management Act 2000 - Controlled Activity Approval
Public notification or exhibition:	Level 3 advertising under DCP 17 – Public Notification and Exhibition of Development Applications Exhibition period: 8/10/09 to 28/10/09 (4 submissions) Re-exhibited 20/05/2010 to 3/06/2010 (1 submission)
Delegation to determination:	Joint Regional Panel
Issues:	<ul style="list-style-type: none"> • LEP clause 24 - Flooding impacts • Ecological impacts • Bush fire safety • Residential amenity
Summary:	<p><u>The site</u> The site comprises Lot 2 DP 617652 of an area of 0.8093 ha and located in the Zone 2(a) and adjacent Lot 3 DP 862033 of an area of 1.007 ha and located in the Zone 1(d). Both lots have eastern frontage to Broken Head Road, Suffolk Park. Lot 3 also has southern frontage to Beech Drive.</p> <p>The roadway of the Beech Drive/Broken Head Road roundabout encroaches on the south-eastern corner of Lot 3 and the eastern boundary of the lot incorporates a kink that extends 10m into the lot at a point. The landowner and the Council have agreed to a boundary adjustment to resolve these matters.</p> <p>The site is bush fire prone, contains flood prone land and, particularly in regard to the southern Lot 3, contains scattered areas of coastal cypress forest which is classified as an endangered ecological community.</p>

Lot 2 DP 617652 contains an existing Residential Aged Care Facility (RACF). Lot 3 DP 862033 is vacant.

The proposal

An expansion and a comprehensive refurbishment is proposed to the existing RACF on Lot 2 that will increase the accommodation from 61 beds comprising 7 x 1 bed rooms, 5 x 2 bed rooms and 11 x 4 bed rooms to 70 beds comprising 54 x single bed rooms and 8 x 2 bed rooms.

New serviced self care dwellings/apartments are proposed for Lot 3 comprising 31 x 2 bedroom units.

The development is proposed in two stages with the RACF refurbishment to occur first. Stage 2, the self care units, will require that the boundary adjustment referred to above has been completed and therefore will need to be the subject of a deferred consent condition.

The expansion of the RACF will extend the existing building footprint and will create a more controlled vehicle/bus entry and building access.

The initial plans for the units proposed a building layout on Lot 3 that required vehicles to undertake a 180 degree turn to exit the site and proposed "additional and retained" coastal cypress areas that included along the eastern boundary and around and between buildings.

Amended units design

The applicant was advised of a number of concerns that included the internal access design and the circumstance that the proposed coastal cypress plantings close to buildings were incompatible with bush fire safety, solar access and general amenity. The applicant was also advised that the proposed development failed clause 24 of the Byron LEP in regard to flooding impact on adjacent lands.

An on-site meeting was held and amended plans/documents were submitted and publicly exhibited. The amended plans/documents incorporate the following elements in regard to the self-care units:

- Internal loop road
- Deletion of compensatory coastal cypress planting except for an increased area along the eastern boundary
- Skylights for all unit central living areas

Permissibility

The Byron LEP zoning table permits the proposed development the Zone 2(a) but prohibits the development in the Zone 1(d) in which zone Lot 3 is located. However, pursuant to clause 25(4)(a) of SEPP (Housing for Seniors or People with a Disability) 2004, a Site Compatibility Certificate has been issued by the Director-General and this certificate establishes the permissibility of the development pursuant to clause 4(1) of the SEPP.

Flooding

The site is located in the Tallows Creek catchment and contains flood prone land.

The applicant has undertaken flood modelling as requested by Council. This shows that the development will generate minor off-site impacts. These are detailed in section 3.2 of this report. Clause 24(3)(a)(ii) of the Byron LEP requires that *the development would not increase the level of flooding on other land in the vicinity*. The proposed development is not strictly compliant with this provision.

It is open to reason that the proposed development generally complies with the objective of the provision which is that development on flood prone land not impact on the development potential or amenity of other land in the vicinity and therefore complies with clause 24(3)(a)(ii). However Council has generally taken the view that the application of the clause requires its literal application, i.e. that the terms of the provision do not allow for consideration of the degree of any increase in flood levels on other land. For this reason, it is concluded that the proposed development fails clause 24(3)(a)(iii) and cannot be supported

Ecological Impacts

The development will require the removal of Coastal Cyprus trees. This is discussed in detail in section 3.4 of this report. The general thrust of this discussion is that the area for "retained and additional" coastal cypress initially proposed for Lot 3, was unrealistic having regard to bush fire safety and general amenity for residents. Further, that if seniors living is to be undertaken on the site this would necessitate considerable vegetation removal and that the retention of existing coastal cypress on the eastern side of Lot 2 and the dedication of an area of circa 85m x 8.5m along the eastern boundary of Lot 3 for coastal cypress enhancement/protection will provide an adequate and substantive ecological outcome that will also contribute to the existing Broken Head Road streetscape.

Further information is expected from the applicant prior to the meeting of the JRPP

State Environmental Planning Policy(Housing for Seniors or People with a Disability) 2004

The application has been assessed against the requirements of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 and it is concluded that the proposal is generally consistent with all relevant requirements.

Bush Fire Safety

The Rural Fire Service (RFS) issued a bush fire safety authority under section 100B of the Rural Fires Act for the initial application. The amended application was referred to the RFS who have verbally advised that an alternate emergency access is required for the units development located away from the fire threat, i.e. an emergency access in the north-eastern corner of the units site. This advice was received just prior to the deadline for the completion of this report and the applicant has not had the

	<p>opportunity to amend the application. Formal advice from the RFS is anticipated prior to the JRPP meeting. An appropriate amendment is feasible and this matter could be the subject of a deferred consent condition.</p> <p><u>Exchange of land</u></p> <p>The site of the proposed self-care units, Lot 3 DP 862033, is encroached upon by the Broken Head Road/Beech Drive intersection roundabout and which encroachment incorporates an entire traffic lane and part of the roundabout centre. Council and the applicant have agreed to a boundary adjustment This would be in the public interest and would resolve an evidently untenable circumstance. A condition requiring that this boundary adjustment be completed prior to the commencement of Stage 2 of the development would resolve this matter.</p> <p><u>Public Submissions</u></p> <p>4 public submissions were received from the initial public exhibition period. 1 submission was received from the re-advertising of the application. 1 submissions opposed the development, the remainder raised specific issues.</p> <p><u>Summary</u></p> <p>The proposed development would serve an evident public interest.</p> <p>The development maximises the use of the site in regard to built development with consequent limitations of the capacity to retain vegetation and with trade-offs in regard to the amenity of residents of the facility, particularly those of the self-care units. However, the proposal generally satisfies the provisions of the Seniors Living SEPP and of other relevant planning provisions.</p> <p>Apart from the matter of flood impacts, the proposed development is generally supported. However, having regard to comments in this report that relate to clause 24(a)(ii) of the Byron LEP, the application is not recommended for approval.</p> <p>As the Joint Regional Planning Panel is the consent authority for the application and it cannot be assumed that it will support the recommendation of this assessment report, a full set of conditions is listed at the end of this report.</p>
<p>Recommendation:</p>	<p>It is recommended that:</p> <p>Pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application No. 10.2009.433.1, for staged development - Stage 1 to comprise Alterations/Additions to an existing Residential Aged Care Facility and Stage 2 to comprise 31 serviced self-care units - under the provisions of the State Environmental Planning Policy (housing for Seniors or people with a disability) 2004, be refused for the following reason:</p> <p>The proposed development does not comply with clause 24(3)(a)(iii) of the Byron Local Environmental Plan 1988</p>

	having regard to the predicted increase in flood levels on other lands in the vicinity of the development that will be generated by the development.
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1. INTRODUCTION

1.1 History/Background

LOT: 2 DP: 617652

BA 6.1982.2029 approved a Nursing Home. Later development approvals consented to various additions/alterations to the nursing home

DA 10.1999.430.1 approved additions to the existing nursing home. These comprised a 580 m² addition in the north-western part of the site.

Council advised the landowner in correspondence of 3 January 2007 that this consent has not lapsed.

LOT: 3 DP: 862033

DA 10.2000.394.1 approved a replacement dwelling and two sheds. This development has not proceeded

1.2 Description of the site

Lot 2 DP 617652 has an area of 8093 m², is located in the Zone 2(a) and contains a single storey brick and tile residential aged care facility (RACF) and general infrastructure including sheds, access and parking. Lot 2 contained a tick dip site that ceased operation in 1975

Lot 3 DP 862033 has an area of 1.007 ha, is located in the Zone 1(d) and is vacant. The south-eastern corner of the lot is encroached upon by a part of the central median to the Beech Road/Broken Head Road roundabout and a section of the entire traffic lane including kerb and gutter and road verge. The encroachment comprises an area of 211 m². The eastern boundary of the lot contains a kink formed by the alignment of the boundary into the lot to a point approximately midway along its north-south axis and then back to the east.

The site is constrained in regard to the following:

Bush fire – The site contains land classified as bush fire prone

Acid sulfate soils – The land is identified on Council's Acid Sulfate Soils planing map as containing Class 3 acid sulfate soils

Flood prone land - The site contains flood prone land

Vegetation - Lot 2 contains substantive vegetation in its north-eastern corner and on the south-eastern boundaries. The dominant species in these parts of the lot is coastal cypress (*Callitris columellaris*) which is an endangered ecological community (EEC) pursuant to Schedule 1 of the NSW threatened Species Conservation Act 1995

Lot 3 contains scattered clumps of Coastal Cypress Endangered Ecological Community (EEC) across the southern part of the lot, grassland that includes opportunistic weed species and scattered paddock trees including paperbarks.

1.3 Description of the proposed development

Stage 1 (Lot 2 DP 617652)

Comprehensive refurbishment is proposed to the existing RACF on Lot 2 that will significantly increase the building footprint and increase the accommodation from 61 beds (7 x 1 bed rooms, 5 x 2 bed rooms, 11 x 4 bed rooms) to 70 beds comprising 54 x single bed rooms and 8 x 2 bed rooms. Each room to have en-suite, air conditioning and living space. The building will contain 4 courtyards

and pedestrian access will be enabled on all sides of the building. Vegetation removal and retention is proposed.

Access will continue from Broken Head Road, however the ingress and egress will be separated. Parking will be located in the front setback.

Stage 2 (Lot 3 DP 862033)

To construct 31 serviced self care dwellings/apartments comprising 31 x 2 bedroom units.
New access to be constructed from Beech Drive. Individual unit parking
Medical/nursing/catering/cleaning services to be provided from the adjacent RACF.

Filling of Land

It is proposed to introduce landfill for the roadways and the central building to the self care units facility. This will bring road levels to that of adjacent unit floor levels. Floor levels vary from 6.2m AHD to 6.8m. This will require fill levels from circa 0.8m to circa 1.6m.

Fencing

1.8m fencing around RACF site.

Signage

Signage set on 2 curved brick walls located close to the RACF ingress and egress and signage on a curved wall on the Broken Head Road/Beech Drive corner are proposed.

Vegetation Management

Dedicated coastal cypress area to be located in the north-eastern, central eastern and south eastern parts of the RACF site and along the entire eastern part of the self-care units site.

Landscaping

Landscaping Plan submitted. These plans include the dedicated coastal cypress area, however these areas are to be deleted from the Landscaping Plans and are to be the subject of separate Ecological Management Plans required in the event that consent is granted to the application.

Boundary adjustment/Exchange of land

It is also proposed that an area of 211 m², being that area in the south-eastern part of the site encroached upon by the public road system, be taken over by Council and that an area of 332.7 m², being that area contained by the kink on the eastern boundary (see description above), be taken over by the applicant.

Council has resolved to proceed with the boundary adjustment per (confidential) Council resolution 09-576

Other approvals

The application includes referral fees to the Rural Fire Service and the Department of Environment, Climate Change and Water.

Application is not made for approvals under Section 68 of the Local Government Act or under the Roads Act.

1.4 Submitted Drawings & Documents

The design of the development has been amended on two occasions.

The drawings and documents relied upon for this report are as follows:

Drawings

Drawings of the RACF and the Self-Care Units are each in a series numbered DA0 to DA10 and DA0 to DA11 respectively. Drawings of the RACF are distinguished by the Drawing Number 2009.20 and drawings of the Self-Care Units are distinguished by the Drawing Number 2009.25

RACF (Drawings numbered 2009.20)

DA0 Rev C: Development Data & Notes, dated 04/05/2010
DA1 Rev C: Master Plan & Site Analysis Plan, dated 04/05/2010
DA2 Rev C: Existing Site Plan & Ground Floor Plan, dated 04/05/2010
DA3 Rev C: Sub Floor Site Plan, dated 04/05/2010
DA4 Rev C: Ground Floor Site Plan, dated 04/05/2010
DA5 Rev C: Ground Floor Plan, dated 04/05/2010
DA6 rev C: Roof Plan, dated 04/05/2010
DA7 Rev C: Fire Compartmentation Plan, dated 04/05/2010
DA8 Rev C: Elevations & Sections, dated 04/05/2010
DA9 Rev C: Typical Hostel Floor Plans, dated 04/05/2010
DA10 Rev C: Signage Plan, dated 04/05/2010

Self-Care Units (Drawings numbered 2009.25)

DA0 Rev C: Development Data & Notes, dated 07-05-2010
DA1 Rev C: Master Plan & Site Analysis Plan, dated 07-05-2010
DA2 Rev C: Existing Site Plan, dated 07-05-2010
DA0 Rev C: Development Data & Notes, dated 07-05-2010
DA3 Rev C: Sub Floor Site Plan, dated 07-05-2010
DA4 Rev C: Ground Floor Site Plan, dated 07-05-2010
DA5 Rev C: Elevations & Sections, dated 07-05-2010
DA6 Rev C: Type 'A' 2 Bed Apartment, dated 07-05-2010
DA7 Rev C: Type 'A1' 2 Bed Apartment, dated 07-05-2010
DA8 Rev C: Type 'B' 2 Bed Apartment, dated 07-05-2010
DA9 Rev C: South East Corner Apartments 2 Bed Apartment, dated 07-05-2010
DA10 Rev C: Community Building, dated 07-05-2010
DA11 Rev C: Signage Plan, dated 07-05-2010

NB: The drawings depicting apartment designs do not clearly enable

Stormwater

DA01 Rev C: Hostel Concept Stormwater Plan and Details, dated 11/08/09, prepared by C & M
DA02 Rev D: Independent Living Units – 1 of 2 Concept Stormwater Plan and Details, dated 11/08/09, prepared by C & M
DA03 rev D: Independent Living Units – 2 of 2 Concept Stormwater Plan and Details dated 11/08/09, prepared by C & M

Site Survey (including tree plot)

Plan showing Detail Survey, 3 sheets, prepared by Chris Abbott, dated 24 January 2008

Landscape/Vegetation Plans

569.01 Rev F: Retained and removed vegetation [self care units], prepared by tramonte Jensen, dated 05.05.2010

569.02 Rev F: Retained and removed vegetation [RACV], prepared by tramonte Jensen, dated 05.05.2010

569.06 & 569.08 Rev F: independent living units Landscape Plan, prepared by tramonte Jensen, dated 05.05.2010

569.07 & 569.09 Rev F: hostel Landscape Plan, prepared by tramonte Jensen, dated 05.05.2010

[NB These replace plans dated 04.01.2010 including the following:

Independent living units Landscape Plan showing retained + additional areas of Coastal Cypress Community Forest: 569.03 Issue C, prepared by tramonte jensen, dated 04.01.10

Hostel Landscape Plan showing retained + additional areas of Coastal Cypress Community Forest: 569.04 Issue C, prepared by tramonte jensen, dated 04.01.10]

1.5 Staging of the development

The application has two distinct seniors living elements, located on separate existing land parcels, and includes a land swap between Council and landowner to result in a realignment of the eastern and southern boundaries to the southern (self care units) lot.

The application proposes that the distinct seniors living elements be undertaken in separate stages. The SEE notes that the land swap process is in progress, that it may take longer than the period for the assessment of the application and that the re-development of the RACF is “required to be completed as a matter of some urgency and is not expressly reliant on the construction operation of the self-care dwellings.” [SEE p.19]

The SEE further states that “it may be appropriate for deferred commencement consent to be granted pursuant to Section 80(3) of the Act in respect of Stage 2 (if necessary).”

The merits of Stage 2 are critically reliant on the undertaking of vegetation management arrangements that are explained in comments in regard to the natural environment in section 3.4 of this report. These arrangement critically rely upon the boundary realignment that is the subject of the land swap. It is in the public interest that these vegetation management arrangements be undertaken from the time of the commencement of Stage 2 generally. This is because there will be significant vegetation removal required for Stage 2 and it is appropriate the required vegetation management of the eastern side of the site, including of the land to be transferred to council, not be delayed.

The terms of section 80(3) of the EP & A Act do not appear to enable the deferral under that section of a Stage of a development when that stage is consequent to the commencement of the development. However, a de facto deferral can be obtained by a condition requiring that the land swap be completed prior to the issue of a construction certificate for Stage 2.

1.6 Prior discussions with Council officers

Proposals relating to the site have been taken to Council's Development Advisory Panel (DAP) on four occasions since February 2007. In each case a report of the meeting was prepared by Council staff and sent to the participants.

A proposal for alterations and additions to the existing RACF, including a 2 storey wing, was discussed on 6 February 2007.

A proposal for alterations and additions to the existing facility on Lot 2 and for a new residential care facility on Lot 3 was discussed on 4 March 2008.

Additions and alterations to the existing RACF were discussed on 6 May 2009

A self care units proposal on Lot 3 was discussed on 29 May 2009.

2. SUMMARY OF GOVERNMENT/EXTERNAL REFERRALS

	Summary of Issues
Rural Fire Service	Requirement for bush fire safety authority pursuant to s100B of Rural Fires Act 1997
Dept of Environment. Climate Change and Water	Requirement for Controlled Activity Approval under s91(2) of the Water Management Act 2000 for works within 40m of a river/lake/estuary

Rural Fire Service

The proposed development comprises a special fire protection purposes as defined in section 100B(6)(c) of the Rural Fires Act 1997 and therefore requires that a bush fire safety authority be issued under section 100B of that Act.

The initial application was referred to the Rural Fire Service. This plan incorporated an emergency access to/from Broken Head Road in the north eastern part of Lot 3.

A bush fire safety authority was issued subject to the following conditions:

Asset Protection Zone

At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within Appendices 2 & 5 of *Planning for Bushfire Protection 2006* and the NSW Rural Fire Service's document 'Standards for Asset Protection Zones'.

Water and Utilities

Water, electricity and gas are to comply with sections 4.1.3 and 4.2.7 of *Planning for Bushfire Protection 2006*

Access

Internal roads shall comply with section 4.2.7 of *Planning for Bushfire Protection 2006*;

Evacuation and Emergency Management

Arrangements for emergency and evacuation (and relocation) arrangements for occupants are to comply with section 4.2.7 of *Planning for Bushfire Protection 2006*

Design and Construction

- Existing building on Lot 2 DP 617652 – The north and west elevations shall comply with *Australian Standard AS3959-1999 'Construction of buildings in Bush Fire prone areas'* Level 3.
- Existing building on Lot 2 DP 617652 – The east and south elevations shall comply with *Australian Standard AS3959-1999 'Construction of buildings in Bush Fire prone areas'* Level 2.
- Lot 3 DP 862033 – Proposed units 1 to 16 (within 100 metres of the bushfire hazard) shall comply with *Australian Standard AS3959-1999 'Construction of buildings in Bush Fire prone areas'* Level 1.

Landscaping

Landscaping to the site to comply with the principles of Appendix 5 of *Planning for Bushfire Protection 2006*

These conditions have been incorporated into the recommended consent

Amended Application

The above bush fire safety authority relates to the RFS assessment of the initial application. This included an emergency access to Broken Head Road in the north-eastern part of Lot 3. Such access does not form a part of the amended application. The amended application was referred to the RFS. The RFS has advised in a verbal communication that an emergency access route is required and that this could comprise the availability of vehicle access to the RACF site via the visitor parking space located in the north-western part of the self-care units' site. Confirmation of this advice is anticipated prior to the meeting of the meeting of the JRPP

It is apparent from the submitted plans that an emergency vehicular connection between Lots 2 and 3 is feasible at the location of the north-eastern parking space on Lot 3. An alternate solution would be the deletion of, say, unit 30. In either event the RFS requirement for a northern emergency access can be the subject of a deferred consent condition.

Department of Environment Climate Change and Water

The self-care units development site is situated adjacent to a Council drainage reserve and within 40m of a pond located on land on the southern side of Beech Drive.

The SEE states that: the proposed works are situated within 40m of a drain which the DECCW has advised comprises a river having regard to the Water Management Act 2000 definition being "...any watercourse, whether perennial or intermittent and whether comprising a natural channel or a natural channel artificially improved." As a consequence, a Controlled Activity Approval under Part 3, Chapter 3 of the Water Management Act 2000 is required to be obtained from the NSW Office of Water.

Section 91A(3) of the EP & A Act states: *A consent granted by the consent authority must be consistent with the general terms of any approval proposed to be granted by the approval body in relation to the development and of which the consent authority is informed. For the purposes of this Part, the consent authority is taken to have power under this Act to impose any condition that the approval body could impose as a condition of its approval*

The Department has issued proposed General Terms of Approval (GTA). These relied upon the plans as initially lodged. The amended plans have been forwarded to the Licensing Officer for the NSW Office of Water – Licensing North who issued the GTA and who has advised that no amendment to the GTA's issued on 12 November 2009 is required.

These can be incorporated into a consent to the application as it relates to Stage 2 – self care units. The Department advises that the General Terms of Approval as provided do not comprise a controlled activity approval and that such approval will need to be obtained by the applicant in the event that the application is granted development consent.

3. SECTION 79C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

Having regard for the matters for consideration detailed in Section 79C(1) of the Environmental Planning & Assessment Act 1979, the following is a summary of the evaluation of the issues.

3.1. STATE/REGIONAL PLANNING POLICIES AND INSTRUMENTS

Requirement	Requirement	Proposed	Complies
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004	10 Seniors Housing is residential accommodation consisting of (a) a residential care facility (b) serviced self-care housing	Residential care facility Serviced self-care housing	Yes

Requirement	Requirement	Proposed	Complies
	18 Restrictions on occupation of seniors housing allowed under this Chapter	Section 88E instrument under Conveyancing Act 1919 required to limit accommodation to seniors, persons with disability, people who live in same households as these and to employed staff. Condition recommended	Yes
	24 - Site compatibility certificates required for certain development applications	Site Compatibility Certificate provided	Yes* (see comments below)
	25(50(b) – Criteria to be applied for issue of site compatibility certificate	Site compatibility certificate identifies these criteria as having been considered	Yes* (see comments below)
	26 Location and access to facilities	250-300m to Suffolk Park Shopping Centre including post office, GP, chemist, hairdresser, supermarket, tavern, video over level ground	Yes
	Max 400m to retail/commercial/general practitioner by suitable pathway of max average gradient of 1:14		
	27 Bush Fire Prone Land	Bush fire safety authority pursuant to s100B of rural Fires Act issued	Yes
	Must consult with NSW Rural Fire Service and have regard to its comments		
	28 Water and Sewer	Development can connect to Council's reticulated water and sewerage systems	Yes* (see comment re clause 45 of Byron LEP)
	Must connect to reticulate water and have adequate facilities for removal/disposal of sewage	Certificate not required for RACF additions/alterations. These criteria are considered in this assessment	Yes
	29 Where site compatibility certificate not required, Council must consider criteria provided in clause 25(5)		
	30 Site analysis	The submitted information is sufficient to enable assessment of the application	Yes
	Site analysis required. Clause 30 specifies a wide range of information required in the site analysis.	N/A	

Requirement	Requirement	Proposed	Complies
	31 Design of in-fill self-care housing		
	33 Neighbourhood amenity and streetscape	Large setback to Broken Head Road will enable vegetation management that will maintain/enhance the characteristic streetscape in the locality which relies on coastal cypress trees in front setbacks. Low bulk of buildings along Beech Drive will ensure that existing amenity and character are maintained	Yes* (See comment below)
	Development to contribute to quality and identity of area Maintain reasonable neighbourhood amenity and appropriate residential character by attention to setbacks, bulk, tree retention and vegetation planting		
	34 Visual and Acoustic privacy Consider visual and acoustic privacy of residents and neighbours by attention to window/balcony location and design, screening devices and landscaping, locate bedrooms away from vehicle areas and paths	Consideration of these matters leads to the conclusion that the likely impacts are acceptable subject to appropriate conditions	Yes* (see comments below)
	35 Solar access and design for climate (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space,	Adequate daylight/solar access to internal and external areas	Yes* (see comments below)
	36 Stormwater (a)...finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and (b)... include, where practical, on-site stormwater detention...	Onsite detention is proposed with extensive landscaped/vegetated areas	Yes
	37 Crime Prevention	See comments re clause A6 of DCP 2002	Yes
	38 Accessibility a) ...safe pedestrian links...provide access to	Safe pedestrian links from the site to bus stop and shopping centre	Yes

Requirement	Requirement	Proposed	Complies
	public transport, local facilities, and (b) provide...safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.	The internal and external access arrangements are both safe and convenient. See comments re Access in section 3.5 of this report	Yes
	39 Waste Management The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	<u>RACV & Units</u> Use of Council waste collection service utilising separation of recyclables	Yes
	40. Development Standards		
	(2) Min lot size: 1,000 m2	Lot sizes: 0.8093 ha & 1.007 ha	Yes
	(3) Min frontage: 20m	Min frontage: 70m	Yes
	(4) On land where residential flat buildings are prohibited, i.e. Lot 3 (Zone 1d): Max height: 8m 1-storey only in rear 25% of site	Max height: 6m 1 storey	Yes
	41 Standards for self-contained dwellings Compliance with Schedule 3	Design of dwellings is such that they are capable of compliance. Condition imposed to require construction details of compliance prior to issue of Construction Certificate	Yes
	42 Serviced self care housing on land adjoining land zoned primarily for urban purposes Residents to have reasonable access to meals, personal care and housework assistance	The applicant has advised that home-delivered meals, personal care, home nursing and housework assistance will be available to units from the RACF	Yes
	43 Transport services to local centres for serviced self-care housing 1) consent authority (must be) satisfied that a bus capable of carrying at least 10 passengers will be	Local bus services along Beech Drive	Yes

Requirement	Requirement	Proposed	Complies
	provided to the residents of the proposed development		
	44 Availability of facilities and services ..any facility or service provided as a part of a proposed development.. will be available to residents when the housing is ready for occupation	RACF will be upgraded as stage 1. Condition can be imposed to require services required under clause 42 are to be available before occupation certificate for units is issued	Yes
	48 Standards for Residential Care Facilities that cannot be used to refuse consent (b) density and scale: if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less, (c) landscaped area: if a minimum of 25 square metres of landscaped area per residential care facility bed is provided, (d) parking for residents and visitors: if at least the following is provided: (i) 1 parking space for each 10 beds in the residential care facility (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia), and (ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and (iii) 1 parking space suitable for an ambulance.	Floor space ratio: 0.47:1 Landscaped area of approximately 2,800 m2 (minimum 1750 m2 required) No of beds/staff: 15 dementia beds/55 ordinary beds/13 staff at any one time Parking required: 13 spaces Parking provided: 13 spaces + disabled space	Yes Yes Yes
	50 Standards for Self-contained dwellings that cannot be used to refuse consent: (b) density and scale: if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less, (c) landscaped area: a	Adequate space for ambulance Floor space ratio approximately 0.33:1 Landscaped area approximately 33%	Yes Yes Yes

Requirement	Requirement	Proposed	Complies
	<p>minimum of 30% of the area of the site is to be landscaped,</p> <p>(d) Deep soil zones: there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the area of the site (the <i>deep soil zone</i>). Two-thirds of the deep soil zone should preferably be located at the rear of the site</p> <p>(e) solar access: if living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,</p> <p>(h) parking: (i) 0.5 car spaces for each bedroom where the development application is made by a person other than a social housing provider,</p>	<p>Deep soil zones comprise 85m length of 13m deep front setback, 3.5m to 6m deep southern setbacks and land adjacent to community building: >30% of site. Mostly located in front setback in order to achieve good ecological outcome re coastal cypress protection and streetscape.</p> <p>10 north facing units 15 east/west facing 6 south facing Skylights to lounge rooms Setback to eastern coastal cypress</p> <p>62 bedrooms, 31 spaces provided and 3 visitor spaces</p>	<p>Yes</p> <p>Yes* (see comment below re clause 35)</p> <p>Yes</p>
State Environmental Planning Policy No 55—Remediation of Land	<p>Council must:</p> <p>(a) consider whether the land is contaminated, and</p> <p>(b) if the land is contaminated, if the land is suitable in its contaminated state or after remediation, and</p> <p>(c) be satisfied the land will be remediated before the land is used.</p>	<p>The submitted <i>Site Audit Report 0103 – 0409 Former Cattle Dip Broken Head Road Suffolk Park</i> concludes that the site is suitable for “residential with accessible soil, including garden (minimal home-grown produce contributing less than 10% fruit and vegetable intake) excluding poultry.”</p> <p>The submitted <i>Detailed Contaminated Site Investigation</i> incorporates groundwater sampling which revealed elevated levels of some metals</p> <p>Further groundwater sampling has been provided including from land on the opposite side of Broken Head Road.</p> <p>Conditions relating to groundwater monitoring are recommended. These conditions are as for those</p>	Yes

Requirement	Requirement	Proposed	Complies
		imposed on DA 10.2007.705.1, approved 25/02/2010, for medium density development on the opposite site. A condition limiting excavation to a maximum of 1.5m is also recommended so as not to intersect with groundwater.	
State Environmental Planning Policy No. 71 - Coastal Protection	Council must have regard for the matters of consideration under Parts 2 and 4 of SEPP No. 71 when assessing development within the coastal zone. These matters include: <ul style="list-style-type: none"> – retention of existing public access to the coastal Foreshore – impact of effluent disposal on water quality – development must not discharge untreated stormwater into a coastal water body 	The proposed development is consistent with the provisions of Parts 2 and 8 of SEPP 71	Yes
North Coast Regional Environmental Plan	43 Development control—residential development (1) The council shall not grant consent to development for residential purposes unless: (a) it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,	Unit development makes maximum use of site area for dwelling yield	Yes
Building Code of Australia	Compliance with BCA	Condition imposed	Yes
Demolition	Compliance with relevant standards and procedures	Refurbishment of existing RACF: Condition imposed re dangerous materials	Yes

State/Regional Planning Policies and instruments - Issues

SEPP (Housing for Seniors or People with a Disability) 2004

13 Self-contained dwellings

The application describes the units element of the proposal as *serviced self-care housing (self contained dwellings)*. Serviced self care housing is defined as a form of self contained dwellings in

which specified services –e.g. meals, nursing – are available on site, which is the case for the proposed development

24 - Site compatibility certificates required for certain development applications

Clause 4 of the SEPP states that the Policy applies to land zoned primarily for urban purposes and to land adjacent to land zoned primarily for urban purposes but only if development for specified purposes, which includes that of “dwelling-houses”, is permitted on the land. Dwelling-house development is permissible on land in the zones 2(a) and 1(d) which comprise the subject site.

Clause 24 provides that if development to which the Policy applies is proposed on land that adjoins land zoned primarily for urban purposes, which is the case for Lot 3 DP 862033 located in the Zone 1(d)(Investigation Zone), a Site Compatibility Certificate issued by the Director-General is required.

Clause 25(5)(b) requires that a site compatibility certificate must not be issued unless the Director-General is of the opinion that the proposed development is compatible with the surrounding land uses having regard to (at least) the following criteria:

- (i) the natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development*
- (ii) the impact that the proposed development is likely to have on the uses that, in the opinion of the Director-General, are likely to be the future uses of that land,*
- (iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision,*

A Site Compatibility Certificate has been provided with the application. The Site Compatibility Certificate states that it is issued on the basis that the site...*is suitable for more intensive development and that development for the purposes of seniors housing of the kind proposed in the application is compatible with the surrounding environment, having regard to the criteria specified in clause 25(5)(b)*

Clause 24(3) provides, in the circumstance that a Certificate has been issued, as follows:

(3) Nothing in this clause:

(a) prevents a consent authority from:

(i) granting consent to a development application to which this clause applies to carry out development that is on a smaller (but not larger) scale than the kind of development in respect of which a site compatibility certificate was issued,

(ii) refusing to grant consent to a development application to which this clause applies by reference to the consent authority's own assessment of the compatibility of the proposed development with the surrounding environment,

(b) otherwise limits the matters to which a consent authority may or must have regard (or of which a consent authority must be satisfied under another provision of this Policy) in determining a development application to which this clause applies.

Note. *Nothing in this clause affects a consent authority's duty to give effect to non-discretionary standards set out in this Policy. See, for example, clauses 48, 49 and 50.*

33 Neighbourhood amenity and streetscape

The existing character of the neighbourhood is mixed and includes an approved (DA 10.2007.735.1) medium density development on the opposite side of Broken Head Road; a service station on the

eastern side of the Beech Road and Broken Head Road intersection; the Suffolk Park Hotel-Motel located about 25m to the south of the service station; a pond and surrounding vegetation located on the south-western corner of the intersection; a drainage reserve and residential development on the western side of the site.

The RACV comprises a single storey building with a Broken Head Road setback of 22m and a car parking setback of 10m. The building is setback a minimum 4.5m from the rear (western) boundary which abuts developed residential land and a minimum of 3.5m from the side (northern) boundary which boundary also abuts residential land. An existing access point of a width of 15m will be replaced by a separate ingress and egress. Existing vegetation in the north-eastern and south-eastern parts of the site to be maintained with vegetation between the ingress and egress.

The units comprise 5 single storey buildings with floor levels variously elevated from 0.4m to 1.7m above existing ground levels. Each unit includes an elevated deck that is 2.5m deep and extends for 1m beyond the building elevations towards the lot boundaries.

The eastern building will be generally setback (excluding decks) 14m from Broken Head Road which reduces to a minimum of 5m at the Broken Head Road/Beech Drive intersection. The depth of this setback provides scope for coastal cypress plantings which is a prominent species in front setbacks along this stretch of Broken Head Road.

The southern building will be setback between 4.5m and 5.5m from Beech Drive (reduced by 1m to 1.5m for decks)

The western building will be setback 0.9m at its southern end where the majority of the western boundary abuts a Council drainage reserve and increases to around 3m for the majority of this setback.

In these circumstances, the proposed development will be consistent with the existing local character. In particular, the Broken Head Road setbacks will be suitably vegetated thus maintaining the prominence of vegetation along this road. The Beech Drive setback is somewhat more limited but given that the building height is circa 4m-4.5m at its Beech Drive elevation, rising into the site to 7m at the roof ridge and given the scope for the preservation of existing road reserve trees and on-site landscaping, the general amenity of the locality will be preserved.

34 Visual and Acoustic privacy

RACV - Visual privacy

The RACV is of a single storey design. Developed residential land is located on the western and northern boundaries.

Western boundary:

The proposed RACF development will include a verandah and balconies at a western setback of 5-8m, a pathway in this setback and large living/dining room area at each end of the western elevation. Such development has the potential to generate privacy impacts greater than those generally characteristic of a residential environment

It is relevant to note that residences to the west of the existing RACF have constructed crude fence extensions to a height of up to 2.5-2.8m. This is the evidently the height considered by residents to be required for a desired level of visual privacy. A public submission from the occupant of adjacent western land has sought a fence of a height of 2.4m between that land and the RACF.

A fence of a height of 2.2m is supported. It is noted that this is a non-conforming fence height in regard to clause C 3.6 of Byron DCP 2002. This is discussed in comments in this report in regard to C 3.6 of the Byron DCP 2002.

As discussed below, an acoustic design to the fence is supported and a fence of such a dimension will also provide for privacy for RACF residents.

Northern boundary

The northern elevation comprises a 13m verandah at a setback of from 4m to 5m, private balconies of a total length of 22m at setbacks of from 3.5m to 5m and enclosed building of a length of 38m at setbacks of from 4.5m to 8m. A pathway is to be located in the setback. The existing floor level which is close to the existing ground level will be maintained and the ground level of the adjacent northern land is generally as for the subject site. The driveways to the medium density units on the adjacent northern site are situated between the adjacent units and the RACF site. In these circumstances a 1.8m fence as proposed is supported. The fence design should not however allow for sightlines and a timber fence is recommended.

Southern boundary

The elements of the RACF close to the southern boundary comprise the verandah to the dementia dining/living area at the western end of the RACF building, the internal dementia area, both at a 1.5m setback to the southern boundary, and verandahs to single RACF rooms setback 2m from the southern boundary

Self care units 15-20 will be setback 2m from the common boundary with the RACF with decks setback 1m.

The decks will generally be 1m above ground level.

A 1.8m high "Pool fence" is proposed for the boundary between the RACF and the units.

Submitted Landscape Plan 569.07 depicts a "concrete path" in the RACF setback and a garden with no specified landscaping. Landscape Plan 569.08 depicts specified vegetation planting in the units setback.

The unit deck floor levels will variously be at 6.2m, 6.3m and 6.4m and the RACV floor level will be at approx 6m or 6.1m. The ground level in this part of the site ranges from 5.2m AHD to 5.6m AHD.

In this context, the degree of visual privacy is limited. To ensure that a minimal acceptable level of privacy is obtained, the concrete path for that part of the setback in front of RACF rooms 33-34 and 37-39 should be deleted and suitable landscaping required. A fence height of 2m would also be of more utility for the protection of privacy.

RACV - Acoustic impacts

On-site impacts: An Acoustic Assessment was submitted with the application and this assessment proposes acoustic treatment to ceilings and windows. A consent can be conditioned accordingly.

Off-site impacts: The submitted Acoustic Assessment notes the location of the air conditioning plant away from residential boundaries and the location of kitchens in the building interior with consequent compliance of the development with relevant standards

It is however considered that the general level of activity of the RACF has the potential to be of a different order to that of housing development - e.g. the common areas may contain a television set to a high volume and the incidence of overnight activity by residents and staff in relation to residents' needs. For this reason it is prudent to require that the western fence has an acoustic barrier capacity.

The issue of noise during construction is discussed in section 3.4 of this report and conditions are recommended for each stage of the development

Units – Visual privacy

Off-site impacts:

All western units, apart from unit 15 which is located in the north-western corner of the site, are setback from a 20m wide Council drainage reserve.

In this context, there are no significant privacy impacts on adjacent land where that land comprises the Council reserve.

Unit 15 is setback 3m from the western boundary. The deck to unit 15 is elevated by 0.5m and faces north with its 2.5m width at the 3m (western) setback. Unit 15 has a single window on its western elevation. There will be limited but clear sightlines between the Unit 15 deck and the adjacent land. It is recommended in this report in comments in relation to clause C 3.6 – Fences of DCP 2002 that a fence of a height of 1.5m should be located on the boundary between the site and the Council reserve for the purpose of territorial separation. This should rise to a height of 2m for that part of the western boundary that abuts residential land for the purpose of visual privacy.

On-site impacts:

South: Units 1-4 are situated west of the access driveway and are setback 5.5m from the southern (Beech Drive) boundary with their decks setback 3.5m. The deck to Unit 1 is also located 0.5m from the access driveway. Units 29-31 are situated east of the access driveway at setbacks of 5m and 5.5m with decks setback 3.5m. The deck to unit 31 is also located 1m from the access driveway. A concrete pathway is proposed within this setback. This creates the potential for adverse privacy impacts from Beech Drive on residents. The application states, in its discussion of solar access to these units, that: *The orientation...to the south is to maximise their view opportunities to the front of the dwellings over Beech Drive and the water body and vegetation to the south.* This latter point is recognised and can be considered a reasonable justification for the sightlines enabled between Beech Drive and these units. Residents of the southern units would anyway have the option of attaching some form of screening to the decks and a number of mature trees are located in the road reserve adjacent to the subject site.

Units Acoustic impacts

On-site impacts

The submitted Acoustic Assessment related to the initial units design. This recommended acoustic treatment to units close to the two road frontages. A further acoustic report that addresses impacts from the nearby service station concluded that the already recommended treatments were adequate.

The recommended treatments vary according to the unit or units specified. These treatments can be carried over to the amended design for the majority of affected units as these are located in identical circumstances as for the initial layout and a relevant condition can be imposed. However in regard to proposed units 28 and 29, located close to the Broken Head Road/Beech Drive roundabout the required treatment is not evident. In this circumstance it is proposed that a condition be imposed for an acoustic assessment in regard to units 28 and 29 be prepared prior to the issue of a construction certificate and for the recommendations of that assessment to be incorporated into the units' design.

Off- site impacts

A public submission has raised the matter of noise from the proposed air conditioning systems to the western units.

Houses on eastern side of Tamarind Court are separated from Lot 3 by a 20m wide drainage reserve. One residential property (on Pepperbush St) abuts the western boundary of Lot 3.

The applicant's Acoustic Assessment addressed the noise impacts of air-conditioning systems for units near the western boundary and concluded that these are comply with relevant standards. Council's Environmental Officer has not indicated this as a potential source of land use conflict. Air conditioning to dwellings is normal for residential areas.

The issue of noise during construction is discussed in section 3.4 of this report and conditions are recommended for each stage of the development

35 Solar access and design for climate

RACV

The upgraded RACV will contain 4 four internal courtyards, garden area incorporating a pathway in the 5m-8m wide western setback, a pathway and vegetation in the 3m – 8m wide northern setback and a pathway and vegetation in the eastern part of the southern setback. Balconies or verandahs are located along the majority of the north, west and south elevations. The front, eastern setback will incorporate parking, access and forested areas containing pathways.

Clause 48(c) of this SEPP sets a minimum of 25 m² of landscaped area per bed as a “standard that cannot be used to refuse consent.” The SEE cites an area of 2891 m² which is greater than that required by clause 48(c) or $70 \times 25 = 1750 \text{ m}^2$.

This design of both internal and external areas provides for a substantial scale of sunlight to both internal and external parts of the RACV.

The proposed RACV design will not impact on solar access to neighbouring land.

Units

The minimum requirement for solar access to self-contained dwellings is specified in clause 50(e) as follows: **solar access:** *if living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,*

The units design complies with clause 50(e) having regard to the following:

10 north facing units

15 east/west facing

6 south facing

Decks to all units

Skylights to lounge rooms

Setback to eastern coastal cypress

Communal external recreation area around community centre

The proposed units design will not result in any loss of solar access to neighbouring land.

3.2. BYRON LOCAL ENVIRONMENTAL PLAN 1988

Zone: Zone No. 1(d) - Investigation Zone/Zone No. 2(a)(Residential Zone)

Definition: Seniors Living

LEP Requirement	Summary of Requirement	Proposed	Complies
2A Implementation of aim, objectives and guiding principles	(2) Before determining a development application, the council shall have regard to the information, guidelines and recommendations in the following strategies, policies and studies adopted by the council: a) Byron Biodiversity Conservation Strategy (BBCS),	The BBCS recommends the develop of a no-net loss vegetation policy that would have regard to a tree replacement program of 1:1 for trees of low ecological/heritage/aesthetic value to 1:10 for those of a high value. This recommendation is not adopted, however as it is a recommendation in a document that is required to be considered, failure to take up the recommendation does not	Yes* (see comments in section 3.4 of report)

LEP Requirement	Summary of Requirement	Proposed	Complies
		<p>of itself demonstrate non-compliance with clause 2A</p> <p>See comments in regard to impacts on the natural environment in section 3.4 of this report.</p>	
<p>Meets Zone No. 2(a) Objectives</p> <p>Meets Zone No. 1(d) Objectives</p>	<ul style="list-style-type: none"> encourage a range of housing types: and ensure non residential uses have a domestic scale and character. identify land suitable for rezoning for more intensive development; ensure development is compatible with the anticipated future development; and maintain the existing character and requirements for services. 	<p>Single storey RACF</p> <p>Proposed self care units are permissible by virtue of the Site Compatibility Certificate</p>	<p>Yes</p> <p>Yes</p>
Permissible use	<p>Zone 2(a): Seniors housing comprising a residential care facility</p> <p>Zone 1(d) Dwelling-houses</p>	<p>Seniors housing comprising a residential care facility</p> <p>The Zone 1(d) zoning table permits "dwelling-houses" but no other form of residential accommodation with the consequence that under the zoning table the proposed Seniors housing comprising self contained dwellings/self-care apartments is prohibited. However, pursuant to clause 25(4)(a) of SEPP (Housing for Seniors or People with a Disability) 2004, a Site Compatibility Certificate has been issued by the Director-General and which certificate establishes the permissibility of the development pursuant to clause 4(1) of the SEPP.</p>	<p>Yes</p> <p>Yes</p>
24 Development of flood liable land	<p>3(a) Council must be satisfied that:</p> <p>(i) the development would not restrict the flow characteristics of flood</p>	<p>Units elevated on piers, culverts under parts of the internal driveways/carpark</p>	<p>Yes</p>

LEP Requirement	Summary of Requirement	Proposed	Complies
	<p>waters; flow characteristics of flood waters are not restricted;</p> <p>(ii) the development would not increase the level of flooding on other land in the vicinity;</p> <p>(iii) the structural characteristics of any building or work the subject of the application are capable of withstanding flooding</p> <p>(iv) the building is adequately flood proofed; and</p> <p>(v) adequate arrangements are made for access to the building or work during a flood</p>	<p>to facilitate water flow, and enhancing of the profile of the flow paths of flood waters through the site</p> <p>Flood modelling indicates that strict compliance is not achieved in regard to flood levels on adjacent land,</p> <p>Suitable building design and appropriate conditions imposed</p> <p>Floor levels are satisfactory</p> <p>Satisfactory access</p>	<p>No*(see comments below)</p> <p>Yes* (see comment below)</p> <p>Yes</p> <p>Yes</p>
40 Height of buildings	Maximum height 9.0 metres	Max height 7m	Yes
45 Provision of Services	Prior adequate arrangements required for the provision of sewerage, drainage and water services to the land.	<p>Council's reticulated water and sewerage services can be provided to the development subject to the payment of contributions for water and sewerage of 27.5 ET and for bulk water of 10.1 ET</p> <p>Proposed drainage arrangements are discussed in this report in comments in regard to Part N of DCP 2002.</p>	Yes*(see details below)
63 Development on acid sulfate soils	<p>Development consent required for:</p> <p>Works beyond 1 metre below the natural ground surface</p> <p>Works by which the watertable is likely to be lowered beyond 1 metre below the natural ground surface,</p> <p>on land shown as being Class 3 on the Acid Sulfate Soils Planning Map</p>	<p>Works on class 3 land.</p> <p>Condition required</p>	Yes* (see comment below)
64 Signage	Clause 64 allows signage on land to which the sign relates with prohibitions on	Identification signs are permissible. Development controls provided in Part L	Yes

LEP Requirement	Summary of Requirement	Proposed	Complies
	neon signs, signs >6m in height, signs that affect road safety etc	of DCP 2002.	

* Non-complying issues discussed below

Byron Local Environmental Plan 1988- Issues

24 Development of flood liable land

The site contains land that is identified as flood prone in Council's GIS data base. This applies to the western part of Lot 2 and to all of Lot 3 apart from a n area in its central western part.

Incorporation of Climate Change parameters

Council's Climate Change Strategic Planning Policy 09/010, adopted 12 November 2009, specifies Climate Change parameters relating to sea level, rainfall, temperature and cyclone character to be applied for a 100 year planning period and directs that these parameters be incorporated into the assessment of flood impacts of large, new developments.

The initially submitted Flood Study dated September 2009 did not consider these Climate Change Parameters.

This report relies upon the Amended Flood Study received by Council on 3 June 2010.

It is noted that on-site impacts are generally small, with a maximum increase in flood level (on site) of 70mm for the current Climate Change Scenario and of a maximum of 100mm for the 2100 Climate Change Scenario . The flood increase of up to 100mm. is restricted and confined to a small area of the site between the buildings along the common east-west boundary of the two Lots, which also is along a flood flow path. This increase does not raise flood levels above any floor level, and does not impact on access to the dwellings/units and does not impact on flood evacuation procedures.

3(a)(ii) the development would not increase the level of flooding on other land in the vicinity;

In summary, the amended Flood Study concludes:

Developed Site, current Climate Change Scenario.

- Off-site impacts in Pepperbush Street and the open Drainage Channel have a maximum increase in flood level of 20mm.
- Off-site impacts on one adjacent Residential Lot has a maximum increase in flood level of 15mm. (ie. 12mm. to 15mm.)

Developed Site, 2100 Climate Change Scenario.

- Off-site impacts in the open Drainage Channel have a maximum increase increase in flood level of 50mm. (Report implies that the flood level increase in Pepperbush Street remains at 20mm.).
- Off-site impacts on one adjacent Residential Lot has a maximum increase in flood level 45mm. (ie. 42mm. to 45mm.). The flood impacted (area on this Lot) is limited *to approximately 60m2. and generally lies within 5m. of the western boundary of the site.*

Council's Development Engineer advises that:

- The flood increase off the site, in the adjacent open Drainage Channel of up to 50mm. is generally restricted and confined to a small area of the drain on the upstream side of and adjacent to Beech Drive culverts. This increase does not impact on the road system nor any other property and does not impact on access to properties nor any flood evacuation procedure.

- The flood increase off the site, on one Residential Lot of up to 45mm. is restricted to and confined to a relatively small area of 60m²., approximately 5m. wide in the rear corner of the Lot. This increase does not raise flood levels above any floor level, and does not impact on access to the dwelling and does not impact on flood evacuation procedures. Whilst allowable, it is unlikely that a residential building would be constructed in this back corner of the Lot.
- The flood increase off the site in Pepperbush Street of up to 20mm. is also restricted to and confined to a relatively small area. Again, this increase does not raise flood levels above any floor level, and does not impact on access to the dwelling and does not impact on flood evacuation procedures.

From an engineering perspective and having regard to the management of the flood characteristics attributable to this development, the flood increases are generally confined to a small area and pockets of the flood area, which result in negligible adverse impacts on:

- flood increases above floor levels
- access to and use of residential dwellings
- flood evacuation procedures
- the road system
- the drainage infrastructure

These Engineering and flooding issues are considered relatively minor, with minimal impacts, which can be satisfactorily managed in this case. In respect to a practical and pragmatic Engineering perspective, this development could and can be supported with sound Engineering design and management practices.

Comment

At issue is whether in these circumstances and given that there is not a strict numerical compliance with the provision, the proposed development can reasonably and properly be said to comply with clause 24(ii).

It is reasonable to consider that the underlying objective of the provision is that development on flood prone land not impact on the development potential or amenity of other land in the vicinity either by the impact of the subject development of itself or as a contributor to a cumulative impact from it and other developments in the subject catchment. In this context, it may be posited that the subject development is not likely to impact on the development potential or amenity of the adjacent residential lot. Further, that given the particularities of the subject proposal, which include the character of the proposed development, the large land area of the development site and the circumstance that no downstream impacts are predicted, the undertaking of the development will not contribute to or generate any likely cumulative impact.

On this basis it can be argued that the objective of clause 24(3)(a)(ii) is not compromised by the proposed development and concluded that the proposed development complies with clause 24(3)(a)(ii).

However, Council has generally taken the view that the application of the clause requires its literal application, i.e. strict compliance. Effectively, this view means that the terms of the provision do not allow for consideration of the degree of any increase in flood levels on other land. For this reason, it is concluded that the proposed development fails clause 24(3)(a)(iii) and cannot be supported.

(iv) the building is adequately flood proofed

The Flood Planning Level adopted for this development is in accordance with the adopted Tallow Creek Flood Risk Management Study, which encompasses climate change parameters and effects. This FPL is 6.1m. AHD. for this site.

The new floor levels proposed for this development are all at or above this FPL for the independent living units on the southern Lot 3.

The extensions to the nursing/dementia home on the northern Lot 2 are required to have a minimum floor level of 6.1m. as detailed in the SEE. The existing buildings have a floor level slightly below this level, at RL 5.97m. AHD, but being consistent with the then consent and flood data/levels applicable at that time. The current consent allows for similar such extensions at RL 5.97m. AHD.

There are some practical and physical constraints limiting the ability to achieve the 130mm higher floor level and to match in with the existing floor levels, as follows:

- The existing aged care facility will be retained, with modifications and renovations. The floor level will remain as exists.
- Differences in internal floor levels are problematic from an OH&S perspective and from an accessibility, safety, amenity and well-being perspective of the residents, (most of whom have access and mobility issues. Changes in floor grade result in access issues and exacerbate the potential for falls, trips and injury.
- An active consent exists for the alterations and similar extensions to this aged care facility building at previous floor levels.

Accordingly, it is recommended in this case, that a workable and practical and safe outcome is to allow these revised extensions to be at the same floor level as the existing building, which is 130mm. below the recently adopted Flood Planning Level for the Tallow Creek catchment.

45 Provision of Services

The water, sewerage and bulk water entitlement for the subject properties are:

Development	Number	ET Rate	ET
192-202 Broken head Rd - 3 bedroom house	1	1 ET / house	1
184-190 Broken Head Road – Aged Care Facility	59 beds	0.5 ET / bed	29.5
Total			30.5 ET

STAGE 1 The load from stage 1 of the proposed development (DA 10.2009.433.1) is:

Water and Sewerage

Development	Number	ET Rate	ET
Aged Care Facility	70 beds	0.5	35

The proposed development generates additional water and sewerage and bulk water load of 35-30.5 = **4.5 ET**. Water, bulk water and sewerage services can be provided to the proposed development on payment of contributions.

A schedule requiring payment of **\$73,948** has been included in the recommended consent

STAGE 2 The load from stage 2 of the proposed development (DA 10.2009.433.1) is:

Water and Sewerage

Development	Number	ET Rate	ET
Serviced apartments – 2 bedroom	31	0.75	23.25=23.3

The proposed development generates additional water and sewerage and bulk water load of 35-30.5 = **23.3 ET**. Water, bulk water and sewerage services can be provided to the proposed development on payment of contributions.

A schedule requiring payment of **\$382,888** has been included in the recommended consent

63 Development on acid sulfate soils

Council's GIS data base identifies the entire development site as likely to contain class 3 acid sulfate soils.

The Statement of Environmental Effects incorporated a *Geotechnical Investigation* prepared by Coffey Geotechnics P/L dated 18 December 2008 and a *Detailed Contaminated Site Investigation* prepared by Ardill Payne & partners dated September 2009.

An *Acid Sulfate Soil Assessment* by Coffey Geotechnics P/L dated 22 January 2010 was later submitted.

The December 2008 report states that four boreholes were sampled (BH1, BH4, BH8 and BH9) to a depth of 2.0 m and analysis confirmed the presence of potential ASS at two of the boreholes (BH4 and BH8).

The report states that groundwater was intercepted at depths of 1.2 m to 2.5 m below ground (see section 4.2) and recommends measures for ASS management based on these findings. The report also states that the final choice of construction method (eg engineered fill pads or piled footings) could affect the groundwater table (see page 9). However, the report titled '*Detailed Contaminated Site Investigation. Proposed Self Care Housing Development & Alterations and Additions of Bayside @ Byron. For TSA Management P/L. Ardill Payne and Partners. September 2009*' (section 12 of the SEE) confirms that groundwater was intercepted at 0.6 m (at their location BH2).

The Coffey report also mentions the possibility of dewatering (pages 9-10). Given the potential for high environmental impact, including mobilisation of contaminated groundwater, dewatering is not recommended at this site.

Given the limited number of samples collected (four) and concerns regarding the depth of the groundwater across the property, additional information was requested in regard to the collection of additional samples for ASS analysis from Lot 3 and provision of details of groundwater depth at these same locations.

The later report states that while no ASS were identified from testing undertaken at 10 boreholes, the Geotechnical investigation dated 18 December 2008 indicated the presence of ASS at one sample. The report states: *an acid sulphate soil management plan is not considered necessary for the broader site works. However, based on the results from the 2008 geotechnical investigation, it is considered prudent that any soils excavated or otherwise disturbed in the vicinity of the OSD Tank #2, be treated with lime to neutralise any potential acidity.* The report prescribes a liming dose rate. Conditions can be imposed incorporating the recommendations of the investigation.

A condition is also recommended to limit excavation to a maximum of 1.5m. Information provided by the applicant indicates that this will not cause conflict with the proposed construction works as they have advised a maximum 1.5m excavation for civil engineering works.

3.3 DEVELOPMENT CONTROL PLANS

Development Control Plan 2002

Requirement	Requirement	Proposed	Complies
A6 Planning for Crime Protection	Consider <i>Crime Prevention Through Environmental Design</i> (CPTED) principles: <ul style="list-style-type: none">• surveillance• access control• territorial reinforcement	A 'Crime Prevention Through Environmental Design' assessment submitted. This demonstrates that CPTED principles are satisfactorily	Yes

	<ul style="list-style-type: none"> space management. 	applied	
C 2.5 Building Height Plane	Compliance on all boundaries	<p>RACF</p> <p>Compliance on all boundaries</p> <p>Units</p> <p>Compliance on all boundaries with the exception of Unit 4 which has a minor degree of non-compliance on the western boundary which abuts a Council drainage reserve and which non-compliance will not compromise the Objectives for clause C 2.5 as specified in DCP 2002 clause C 2.5.</p>	<p>Yes</p> <p>Yes</p>
C 2.6 Setbacks	<p>Classified road (Broken Head Road): 10m minimum</p> <p>Local road (Beech Drive): minimum 6.5m</p> <p>Sides/Rear: to comply with Building Height Plane and Building Code of Australia</p> <p>Corner allotment on local or secondary roads – setbacks may be reduced to 3m on one frontage</p> <p>Local roads – a variation to 4.5m may be sought for single dwelling buildings of a height less than 3.6m</p>	<p><u>RACF</u></p> <p>Front setback of 23m</p> <p>Side (northern) – minimum 5m</p> <p>Side (southern) – An 11m section of the south-western corner of the building will be setback 1.5 with the eave extending to 0.7m from southern boundary.</p> <p>Rear – minimum 6.5m</p> <p>Units</p> <p>Broken Head Rd: 12m</p> <p>Beech Drive: 4.5m (decks 3.5m) -</p> <p>Northern: 2m (decks 1m)</p> <p>Western: 0.9m (Unit 4)</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>No* (see comment below)</p> <p>Yes</p> <p>Yes</p>
C 2.7 Earthworks	No cut/fill over 1m	<p><u>RACF</u></p> <p>max cut of 1.5m for civil works</p> <p>Less than 1m of fill to be placed on four small parts of the site Limited filling of under 1m</p> <p><u>Units</u></p> <p>Fill is to be located on all internal roads and the</p>	<p>Yes</p> <p>No* (see comments below)</p>

		central building footprint. Fill depths up to 1.6m	
C 3.6 Fences	Front: 1.2m high Side/rear: 1.8m high	1.8m fence around RACF. Conditions as to height, design and alignment of fences are recommended.	No* (see comments below)
Part H Landscaping	Provide landscaping to promote residential amenity, enhance local character and protect biodiversity	Landscaping Plan submitted for each stage. These include areas for costal cypress plantings. The coastal cypress areas are to be the subject of a separate Ecological Management Plan and are excluded from Landscape Plans. Conditions can be imposed that address particularities required to be addressed in plans.	Yes
Part L Signs	Commercial/business identification sign; Outline to fit into rectangular figure 1.2m in length and 0.6m in height	3 sets of signage on 3 separate curved masonry walls. Each set to comprise: areas of 2.6m x 0.2m + 1.9m x 0.2m + 2 circles of diameter of 0.5m	No* (see comment below)
Part N Stormwater	Satisfactory stormwater management	Submitted Stormwater Management Plan proposes water quality management and On Site Detention. The consent can be conditioned accordingly.	Yes

Development Control Plan 2002 -Issues

C 2.6 Setbacks

Broken Head Road

The building close to Beech Drive will be setback 4.5m, which reduces to 3.5m for decks with building eaves approximately 4m setback. The building has a maximum height of 7m with a height of 4m at its southern eave that rises to the 7m height at a setback of 11m.

Clause C 2.6 envisages a reduced setback of 3m on one frontage for a corner allotment on local or secondary roads and/or a variation to 4.5m on local roads single dwelling buildings of a height less than 3.6m.

More generally, Clause C 2.6 provides that:

In considering applications for setback variation, council will have regard to:

- a) *the visual impact of the variation on the streetscape;*
- b) *the impact of the variation on the amenity, privacy, views and access of surrounding properties;*
- c) *the existing and future status of the road; and*

d) *compliance with the Building Code of Australia.*

In the context of the above provisions and having regard to the generally low bulk of the building on the Beech Drive frontage, the capacity for on-site landscaping and existing trees on the adjacent road reserve, the proposed Beech Drive setbacks are acceptable.

C 2.7 Earthworks

Fill is proposed for the internal roads and the central building containing units and the community building. Other buildings will be on piers. This will achieve floors at the flood planning level and generally equalise road levels and floor levels to enable ease of access for residents.

The Objectives to clause C 2.7 provide as follows:

- *To minimise environmental impact.*
- *To blend new development into the landscape.*
- *Minimise the disturbance to the natural landform.*
- *Minimise the risk of soil erosion and sedimentation.*
- *Encourage landowners to design dwellings that are in keeping with the natural landform.*

From Beech Drive the development will comprise a building elevated above the existing ground level by 0.4m to 1.4m high piers. All fill is contained in the internal parts of the site and does not extend under the four buildings that are situated close to the four site boundaries.

The proposed fill will be of a minimal environmental impact and will not compromise the above Objectives and can be supported.

C 3.6 Fences

SEE refers to a “1.8m high open style pool fence to the perimeter of the RACF” and notes that it will provide security and safety for residents and by being open not impair sightlines and not detract from the streetscape.

Submitted drawings depict a “Painted timber boundary fence 1.8m high” along shared RACF/Units boundary and a 1.8m ‘Metal fence” between accessways on the eastern boundary.

Given the character of the proposed development, the particularities of the site and adjacent lands and the various interactions within the site and between the site and adjacent lands, greater attention to suitable fencing is required.

RACF

Western boundary

It is relevant to note that residences to the west of the existing RACF have constructed crude fence extensions to a height of up to 2.5-2.8m. This is the evidently the height considered by residents to be required. A public submission has sought a fence of a height of 2.4m between his residence and the RACF. The proposed RACF development will include a verandah and balconies at a western setback of 5-8m, a pathway in this setback and large living/dining room area at each end of the western elevation. This is likely to generate noise impacts measurably greater than the current circumstance and greater than those generally characteristic of a residential environment. For example, the lounge/living rooms may contain a television set to a high volume, as may the private rooms on this side of the building. There may also be an incidence of overnight activity by residents and staff in relation to residents’ needs.

In this circumstance it is appropriate for the applicant to be required to provide a suitable acoustic fence of a height of 2.2m along the rear boundary where that boundary abuts residential land. A fence of such a dimension will also provide for privacy for RACF residents.

Northern boundary

Proposed 1.8m fence. This fence should be designed such that sightlines are not enabled between the adjacent lots.

Eastern boundary

Proposed 1.8m fence.

Southern boundary

A 1.8m fence is proposed. Given the limited setbacks for the RACF and Units' developments that will be separated by this fence and the height above ground level of the units, a 2m fence is recommended.

Units

Eastern boundary

The eastern boundary to the units will comprise an 8+m deep vegetated area which will serve to provide the same function of territorial separation as fencing.

Southern boundary

Fencing along the southern boundary to demonstrate territorial separation is appropriate and can be satisfied by a 1.5m high timber paling fence.

Western boundary

Fencing along the western boundary is necessary to provide territorial separation from the adjacent Council drainage reserve and, to be consistent with the recommended southern fence, should be a timber paling fence of a height of 1.5m. However, this height should rise to a height of 2m at the northern end of the adjacent drainage reserve to provide visual protection for the adjacent house and residents of the units.

Northern boundary

A 1.8m fence is recommended – see comments above re fencing for RACF southern boundary

Part L Signs

RACF

Two identical curved masonry walls, facing respectively north-east and south-east, approximately 6m in length and 1.4m to 1.6m in height to be located close to the ingress and egress to the facility and to contain signage.

The signage, in each case, to comprise the phrase 'Bayside@Byron' in letters 200mm in height to be located in the central part of the wall with the phrase: 'RSL LifeCare' below in letters generally 200mm in height. The higher end parts of the wall to contain the RSL Lifecare logo in a circle of a diameter of 0.5m. The element of the signage that incorporates the name "Bayside @Byron" comprises an area of 2.6m x 0.2m and the element of the signage that incorporates the name 'RSL LifeCare' comprises an area of 1.9m x 0.2m.

The proposed signage does not comply with Part L in that there are multiple signs and in that the main signs exceed the prescribed envelope area.

However, the signs are considered acceptable having regard to the following:

They relate to a large site with a road frontage of 75m and will not therefore be a dominant feature of the locality;
They will be located on well designed curved walls which will minimise the intensity of their visual impact
They will be located in a vegetated area
They will face different directions
They will be considerably less intrusive than other existing signage in the locality

Units

A sign with the words "Bayside @ Byron Apartments" in letter 200mm high to be set on a curved 1.4m to 1.6m high brick wall of a length of 6m located at the front of the site adjacent to the Broken Head Road/Beech Drive intersection. Logos of the operator, RSL Lifecare, of 0.5m diameter are proposed at each end of the wall.

A second, like, sign was initially proposed on the eastern boundary at the northern end of the site but was deleted at Council's request. The proposed sign does not strictly comply with the size prescriptions of part L but has merit in regard to its design and its context and is supported.

Development Control Plan No.9 Suffolk Park

Maps contained in DCP No. 9 indicate the subject sites as intended for residential use, i.e. Zone 2(a)

Clause 4.4 Tree preservation provides inter alia:

To protect the remnant plant communities which were once characteristic of Suffolk Park.
To retain vegetated areas of a size and shape which will enable the existing plant and animal communities to survive in the long term.
To protect habitats for native flora and fauna.
To protect and provide wildlife corridors and vegetation links with other nearby vegetated areas.
To protect site vegetation as a natural stabiliser of the soil surface.
To protect the site vegetation for its scenic values and to help retain the unique visual identity of the landscape.

As discussed above, the proposed dedication for vegetation of substantial areas along the eastern boundary of the site will enable the development to comply with clause 4.4

Development Control Plan No.21 Social Impact Assessment

This application was lodged with Council on 23 September 2009.
DCP No. 21 was adopted by Council on 22 October 2009 to take effect from 12 November 2009.
The application does not incorporate a Social Impact Assessment (SIA) as provided for in DCP No. 21. No such assessment has been requested.

Clause B1 When is an SIA required

Clause B1 - When is a SIA Required, specifies a Seniors development as requiring an SIA.

The Table included in Clause B1 specifies 'Elements for Consideration' and comprise 'Transport', 'Safety' and 'Diversity.'

The provision of transport to the development is addressed in comments in relation to clauses 38 and 43 of the Seniors Living SEPP in section 3.1 of this report.

The issue of safety is addressed in comments in relation to clause A6 - Planning for Crime Prevention in section 3.2 of this report.

Clause B1 nominates the outcome of the maintenance of “housing affordability to ensure community diversity” as that to be achieved in regard to ‘Diversity.’ The proposed development will increase the provision of range of seniors accommodation and will thereby achieve this outcome.

The proposed development is supportive of the objectives of DCP No.21.

These Objectives are as follows:

- *To assist in achieving cohesive, sustainable and resilient communities within the Shire;*
- *To enhance consistency, certainty and transparency in Council’s assessment of the positive and negative social impacts of proposed development;*
- *To maximise the positive social impacts of development such as improved access, amenity, affordable housing provision, employment opportunity and safety; and*
- *To minimise the negative social impacts of development such as increased traffic congestion, restriction of access to facilities, services and transport, loss of employment opportunity, loss of existing affordable housing stock, loss of public safety or perceived public safety.*

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

Natural environment

The site contains Coastal Cypress (*Callitris columellaris*) Pine Forest (CCPF) which is an endangered ecological community (EEC) pursuant to Schedule 1 of the NSW threatened Species Conservation Act 1995

Lot 2 is already substantially developed. Coastal cypress species are located in the north-eastern corner and on the eastern boundary. Lot 3 is vacant and contains by far the majority of coastal cypress trees. A site survey indicating tree location, species and dimensions was submitted with the application.

The Statement of Environmental Effects incorporates a Flora and Fauna Assessment dated September 2009. Figure 2 in the Flora and Fauna Assessment depicts a number of cypress forest clumps in the middle part, eastern part and northern part of Lot 2 with 6 clumps of areas ranging from 140 m2 to 350 m2 and 8 smaller clumps of areas of around 20 m2.

Council’s ecologist has advised that: *Mature specimens of Coastal Cypress Pine are present on both Lots and there is evidence of episodic regeneration over time (ie plants of different ages). Weeds recorded on the site are likely to be impeding regeneration of CCPF EEC. Regeneration potential is evident.*

At a meeting of Council’s Development Advisory Panel (DAP) of 4 March 2008, attended by the applicant’s consultant’s in regard to the development on Lots 2 and 3, the applicant was advised that “the applicant to meet the 10 to 1 offset ratio as specified in Byron Biodiversity Conservation Strategy”. At a meeting of DAP on 2 April 2008, the applicant was advised that an application should include a Biodiversity Conservation Management Plan and that vegetation loss should be compensated for in accordance with the 10 to 1 offset ratio.

The initial application included a site plan for Lot 2 that depicts “retained + additional areas of Coastal Cypress Community Forest” [see drawing no. 569.04, dated 07.09.09] and a site plan for Lot 3 [see drawing no. 569.03, dated 07.09.09] that depicts likewise. These plans are annotated to state an area of 835 m2 of Coastal Cypress Community Forest is to be removed with 960 m2 of same to be retained and an additional area of 1670 m2 proposed. That is, an existing area of 1795 m2 and a proposed area of 2630 m2

For Lot 2 these areas comprise the north-eastern and south-eastern parts of the site and a 35m x 2m strip along the southern boundary.

For Lot 3 these “retained and additional” areas include the 3m to 8m northern reduced by 2m for decks, the 6m rear setback which reduces for decks, all areas between the central units and the community building and in the southern 45m of the 12m wide eastern (front) front setback reduced to 10m with decks. Note that these areas related to the unamended proposal.

The Flora and Fauna Assessment states that: *Coast cypress dominated the tree canopy of the woodland forest associations (Plate 1 and 3 on page 15). This species extended north into the adjoining landholdings and is well represented along Broken Head road. Understorey vegetation was comprised predominantly of grassland with minor occurrences of exotic species.*

The Flora and Fauna Assessment states that *The development of the site will require “clearing” with respect to the removal of a small area of coast cypress woodland to forest. However, compensatory or offset strategies have been identified which will ultimately result in a better ecological outcome to that which now exists.*

Compensatory plantings at a ratio of 10:1 have been adopted in accordance with the BBCS [Byron Biodiversity Conservation Strategy] and are illustrated in Fig 5.

The Flora and Fauna Assessment summarises as follows: *No threatened plant species was recorded. However, the Endangered Ecological Community (EEC) Coastal Cypress Pine Forest in the NSW North Coast Bioregion occurs at the site in a number of small clumps.*

A small area of this EEC will be removed. However compensation plantings will offset this loss. Its is proposed that twice the area removed will be reinstated and that 10 times as many trees as removed will be planted...

there would be no significant effect on threatened species, populations or ecological communities or their habitats.

Council correspondence to the applicant dated 12 October 2009 requested further information in regard to a range of matters including Flora and Fauna impacts. The correspondence drew attention to perceived deficiencies in the submitted Flora and Fauna Assessment and requested that a *Biodiversity Conservation Management Plan (BCMP) that integrates restoration with landscaping is submitted to Council. When undertaking this work it is requested that you revise the landscape plan considering the above issues.*

The applicant's ecology consultant responded to advise that *Considerable weight has been given to the preservation and enhancement of the EEC.....It is proposed that a Biodiversity Conservation Management Plan be prepared following development consent.*

The submitted Flora and Fauna Assessment states that: *A discussion of threatened fauna species known from the vicinity of the site is included in this report. This discussion addresses the likelihood of threatened species occurring at the site and contains a statutory assessment pursuant to section 5A of the Environmental Planning and Assessment Act, 1979...The section 5A assessment concludes that proposal is unlikely to have an adverse effect on the life cycle of fauna species.*

The applicant was advised in correspondence of 12 October 2009 that: *Though [the applicant's consultant] draws upon his extensive local field experience in regard to threatened species records, this limits the thoroughness of the data review...it is requested that a Biodiversity Conservation Management Plan that integrates restoration with landscaping is submitted.* The applicant's ecology consultant responded to advise that a Biodiversity Conservation Management Plan be prepared following the development consent.

Council ecologists have since reported, though such comment has not been communicated with the applicant, that:

Overall the description of the site was sufficient to understanding the context of the proposal. However, the study area should be expanded to encompass species known or likely to occur in the wildlife corridor adjacent to the site, and areas of habitat adjacent to the site for the purpose of considering the species (in particular the threatened Mitchell's Rainforest Snail, Common Planigale Bush Hen, Koala and Wallum Froglet) in those areas that are also likely to traverse or use the site temporarily or opportunistically....

The survey and assessment guidelines (DEC 2004, DECC 2007 and DEC & DPI 2005, DEH 2006) are not considered to have been adequately considered or applied in the design and planning of the survey and subsequent assessments...

The proposal appears inconsistent with a range of the above statutory consideration required to be considered and addressed by Council. In particular there is no assessment of significance under the EPA Act for several species recorded in the locality and likely to utilise-traverse the site, in particular the Greater Broad-nosed Bat and Eastern Long-eared Bat.

The importance of the Coastal Cypress Pine Forest was not contextualised in terms of its rarity, biological limitations (ineffective pollination and dispersal, relying on wind). The value of plants other than trees >3m have not been considered, other than to note their presence in the species list...

The assumption that CCPF is well represented along Broken Head Road is unsubstantiated. CCPF is restricted to relatively small areas in Queensland and northern NSW. The CCPF in Byron Bay is mostly restricted to the Broken Head Road and surrounds. The cumulative loss of the CCPF through local development has resulted in the decline of the EEC in the locality. While many small patches have been retained their long-term viability is uncertain due to a range of impacts

Council's ecologists also advised that Insufficient area allocated for proposed compensatory measures to reach offset capability –trees live about 200 years, grow large and for bushfire management should not be planted so close to buildings. Also likely to require trimming and on-going maintenance to avoid overhanging branches

E-mail correspondence to the applicant of 14 April 2010 advised inter alia:

Much of the proposed Retained and/or Additional coastal cypress vegetation areas is located, particularly in regard to the unit development, in the side and rear setbacks and between buildings. The Rural Fire Service has issued a S100B authority for the development subject to the entire site being maintained as an Inner Protection Area. Much of the proposed retained/additional forested areas are not evidently compatible with this requirement and the proximity to buildings also generates a likely problem in regard to roots, branch fall and solar access. It is likely that in the ordinary course of events, little if any coastal cypress retention/planting will occur or endure as the requirements of bush fire safety etc come into play.

It makes sense to delete the proposed "retained/additional forest" area that are generally incompatible with the safe and amenable operation of the facility and to maximise forested area in the eastern part of the site. Such deletion would assist with design modifications [e.g. internal loop road] that could address the concerns specified above and minimise any effect of such redesign on the provision of beds/units.

Delete EEC veg requirements around community building

Internal unit access road to form a loop with alignment on eastern side of the more southern units to provide for separation from EEC vegetation.

Increase front setback, delete unit 31, Relocate building containing proposed units 1-6 - further from Broken Head Road and from Beech Drive [eastern units re-numbered 26-31 in amended plans.]

Detail of the bush fire safety requirements and their consequence for the design of the development is provided below under the heading "Bush fire safety."

Following this correspondence, an on-site meeting was held with the applicant and consultants on 19 April 2010. A roughly drawn amended design was brought to this meeting and this amended design was later formally lodged with Council. The amended design increases the number of east facing units from 5 to 10 and increases the building setback from 12m (less 2m for decks) to 14m (less 1m for decks). A 1m path is proposed adjacent to the east facing decks. Space in the central part of the site near the community centre is proposed for recreational use whereas such an area was initially proposed for “retained and additional” coastal cypress

In determining the merits of the amended application in regard to ecological impacts the following matters are of relevance:

- There remains some professional disagreement between the applicant’s ecologist and Council’s ecologist as to whether the information and methodology contained in the applicant’s Flora and Fauna Assessment is adequate
- Whatever design is proposed it can be expected that the requirement of a S100B bush fire safety authority for the management of the site as an inner protection area will persist.
- Comprehensive protection of coastal cypress on the site is not compatible with the development of the site for seniors living
- A Site Compatibility Certificate has been provided with the application and states it is issued on the basis that the site...*is suitable for more intensive development and that development for the purposes of seniors housing of the kind proposed in the application is compatible with the surrounding environment, having regard to the criteria specified in clause 25(5)(b) [of the Seniors SEPP].* The criteria contained in clause 25(5)(b) include (i) *the natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development*
- The dedication of a an area of, say, 90m x 8m on Lot 2 for coastal cypress vegetation through appropriate management may represent a successful means of maintaining the representation of CCPF along Broken Head Road and would be a feature of the streetscape. The streetscape also contains Littoral Rainforest, also an EEC, and which it would also be appropriate to generate in the dedicated area

To concentrate coastal cypress protection/enhancement along the Broken Head Road boundary is the most achievable method of enabling the development on the site for seniors living to be compatible with reasonable requirements for ecological protection.

It still needs to be considered whether the eastern setback is of sufficient depth to enable an adequate dedicated coastal cypress area while avoiding the concerns that made previously proposed areas close to buildings impractical due to bush fire requirements, overshadowing and general amenity.

The walls to the eastern units are setback 14m and the decks setback 13m. A 1m path is proposed adjacent to the eastern decks. There needs to be a buffer of say, 3-4m between the managed coastal cypress area and the buildings. This would result in a managed area of a width of 9+m over the 85m north to south length of setback on Lot 3. For amenity reasons, the proposed path could be located say, 2.5m from the buildings. This eastern vegetated area on Lot 3 would be in addition to the areas available on Lot 2 – approx 200 m² in the north-east corner, approx 150m² between the entry and exit and approx 250 m² in the south-eastern corner.

Given all the above circumstances, the proposed (amended) arrangements in regard to coastal cypress management are supported subject to a condition requiring details of such management.

Further information is expected from the applicant's ecology consultant but which has not been submitted at the time of writing.

Council's ecologist has advised that tree #150 as specified on the submitted site survey is a White Laceflower (*Archidendron hendersonii*) which is listed in Schedule two of the NSW Threatened Species Conservation Act. This species is situated within 1m of the eastern elevation to Unit 25 and between the decks to units 25 and 26. The applicant has been informed and has responded to advise that the retention of the tree is supported and states that *the unit can be modified such that there will be a 2500mm clearance from the trunk of the tree to the wall of the unit and there will be a minimum clearance of 3500mm to the footings of the building* [e-mail from Ardill Payne of 1/06/2010]

To achieve the separation distance proposed, modification to the location of the eastern wall to units 25 and 26 will be required. A consent can be conditioned accordingly.

Bush fire safety

The Section 100B bush fire safety authority from the NSW Rural Fire Service requires that: *At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within Appendices 2 & 5 of Planning for Bushfire Protection 2006 and the NSW Rural Fire Service's document 'Standards for Asset Protection Zones'.*

Appendix 2 of *Planning for Bushfire Protection 2006* states "an IPA should provide a tree canopy of less than 15% and should be located greater than 2 metres from any part of the roofline of a dwelling. Garden beds of flammable shrubs are not to be located under trees and should be no closer than 10 metres from an exposed window or door. Trees should have lower limbs removed up to a height of 2 metres above the ground."

'Standards for Asset Protection Zones' states: Separate tree crowns from 2 to 5 metres. A canopy should not overhang between 2 and 5 metres for a dwelling. Native trees and clumps should be retained as clumps and should maintain a covering of no more than 20% of the area...When choosing plants for removal the following basic rules should be followed...remove flammable species such as those with rough, flaky or stringy bark...Remove or thin understorey plants, trees shrubs less than three metres in height."

This raised the question of whether the initially proposed vegetation management and building layout (see drawings 569.03 and 569.04) were compatible with bush fire requirements. It seems evident that the areas proposed as "retained + additional EEC" that lie along the southern boundary of Lot 2, between buildings and the western boundary of Lot 3, between buildings and the northern boundary of Lot 3, around the community building and on the southern boundary of Lot 2 cannot be regarded as such. Such trees in these locations would also significantly affect residential amenity by way of solar access loss, leaf fall and potential branch fall. These concerns are significantly mitigated for vegetated areas in the north-east and south-east corners of Lot 2 and along the eastern boundary of Lot 3.

Vehicle lights impacts

The matter of car headlights adversely impacting upon residents of the development was raised by Council. The applicant responded in a report titled '*Response to issues raised in item 11(b) of Byron Shire Council's letter dated 12 October 2009 (traffic and street lighting)*'. Ardill Payne and Partners. 21 December 2009' and which report states that:

- :
- '... car headlights will not create any amenity issues for the future residents of the development for the following reasons:*
- *a 10-12m vegetated landscaping corridor is proposed along the full Broken head Road frontage of the site and to the Broken head Road/Beech Drive intersection (exclusive of driveways) which will contain a mixture of groundcovers, shrubs and trees and will block and filter any headlights*

- *a 1.6 m masonry wall (property identification information structure) is proposed on the corner of Lot 3 adjacent to the roundabout which will block headlights of vehicles entering and leaving the roundabout*
- *all independent living units and residential care facility rooms will be provided with appropriate soft window furnishings (particularly to bedrooms) such that external light sources can be precluded from entering the rooms'.*

The proposed masonry wall and landscaping corridor will not adequately protect units close to the road intersection/roundabout from significant impact from vehicle lights. Lights from northbound vehicles will affect units 29-31 from sightlines between the roadway and these units to the south of the masonry wall. Each of these units has a bedroom on its roadside elevation. The deck to unit 29 is setback 12.5m from the roadway and the decks to units 29-31 are setback 3.5m from the proposed boundary to the road reserve. The masonry wall will provide only limited protection and the scope for the depth of landscaping in that part of the site adjacent to the intersection is limited.

It is necessary that particular attention be paid to the landscaping of this section of the site. Conditions are recommended.

Noise during construction

Noise impacts on and off site during the operation of the development are discussed in this report in comment relating to clause 34 of the Seniors Living SEPP.

Given the large scale of this development (in terms of property size and duration of construction) and proximity to sensitive receptors (ie residential dwellings), there is the potential for the construction of this development to create noise impacts. The construction of Stage 2 will also have the potential to impact on the RACF.

NSW Department of Climate Change and Water's 'Interim Construction Noise Guidelines' sets out ways to deal with the impacts of construction noise on residences and other sensitive land uses. Approaches are tailored to the scale of the construction project.

Council has required applicants to prepare a noise management strategy to identify noise sources during construction and nominate mitigation measures for similar large-scale construction projects (eg Sunseeker Motel Bangalow Road Byron Bay). A similar condition will be attached requiring this applicant to prepare a noise management strategy prior to CC.

Section 13 of the SEE consists of a report titled '*Geotechnical Investigation: Extensions to RSL Lifecare Nursing Home at Suffolk Park. Coffey Geotechnics Pty Ltd. GEOTALST03228AA-AC. 18 December 2008*'. Page 12 of the report states that 'should the anticipated loads be in excess piles may be considered for foundation support'. Given the applicant is yet to confirm if piling will be undertaken (or the method of piling) at this stage of the DA process, requiring the preparation of a noise management strategy prior to CC will ensure the applicant addresses all aspects of protecting neighbourhood amenity if piling is to be undertaken.

Building safety

The applicant has not submitted an assessment in regard to any necessary upgrading of the existing building as may be required to satisfy section 94 of the EPA Regulations. Condition imposed.

3.5 The suitability of the site for the development

External Access

There is an existing driveway that services the northern Lot 2, being the existing Aged Care Nursing/Dementia facilities. This driveway will remain in generally the same location. It will be

reconfigured to have separate entry and exit driveways and also be designed/aligned to encourage Left In and Left Out only onto Broken Head Road.

A new driveway is proposed off Beech Drive to service the southern Lot 3, being the proposed Seniors Independent Living Units. The location and design of this driveway is satisfactory and can comply with the current Australian Standards.

Internal Access

The internal access/driveway arrangements for the existing Nursing Home facilities on the northern Lot 2 are generally to remain the same, however, upgraded with some minor reconfiguration. The proposed arrangements are satisfactory.

The proposed internal access road/driveways for the proposed seniors independent living units, southern Lot 3, have been modified to address concerns raised by Council in October 2009 regarding Engineering Design issues and non compliance with the current Australian Standards. The revised layout plans submitted for the units on the southern Lot, generally resolve all the issues previously raised. All units have a garage, the internal driveway is now a loop, promoting one way circulation. This provides a better and safer circulation. The proposed layout is now satisfactory.

There also needs to be suitable connectivity between the two elements of the development in order to satisfy the servicing requirements from the RACV on which the operation of the units will rely. This is apparently provided by the "concrete path" to the eastern side of the visitor parking space close to unit 21.

Traffic/Roadworks

Roadworks Broken Head Road:

The existing road formation has a mixture of kerb & gutter and gravel shoulders for the full frontage of the site (Lots 2 & 3). The footpath is generally grassed and unformed. It is a consistent and standard requirement that the road formation be upgraded for the full frontage of the site to provide kerb & gutter, pavement widening, drainage infrastructure and adjustments to services and footpath as/where required.

Apart from the new driveway, there are no further works required in Beech Drive.

The consent can be conditioned accordingly.

3.6 Submissions made in accordance with this Act or the regulations

4 submissions were received in response to the initial public exhibition. One submission was received in response to the public exhibition of the amended proposal Four raised concerns and/or proposed amendments to the proposal and one opposed the development.

Issue	Comment
Concern in regard to downstream flood impacts	No flood impacts below the subject site
Concern at increased flooding of drainage reserve at rear of houses on Tamarind Court	No adverse flooding impacts on residential land on Tamarind Court
Noise impacts from traffic on residence at rear of Lot 2. Noise from Broken Head Road has increased since trees removed from the development site, increased traffic noise from cars to/from the	Construction of the units likely to serve as an acoustic barrier for traffic noise from Broken Head Road and for traffic accessing the development site.

Issue	Comment
development and increased early morning waste pick-ups	
Purchased house at rear of units' site as expected that the only development on Lot 3 would be that from an existing approval for a dwelling-house	The proposed development is a permissible use of the site
Split system air conditioning to units on western boundary will impact on house on Tamarind Court adjoining owners- from 17 Tamarind St. Requested that units be enclosed in sound proofing	Houses on eastern side of Tamarind Court are separated from Lot 3 by a 20m wide drainage reserve. One residential property (on Pepperbush St) abuts the western boundary of Lot 3. The applicant's Acoustic Assessment addressed the noise impacts of air-conditioning systems for units near the western boundary and concluded that these comply with relevant standards. Council's Environmental Officer has not indicated this as a potential source of land use conflict. Air conditioning to dwellings is normal for residential areas.
Loss of amenity for RACF residents: Dementia ward should be located in north-eastern corner of building to allow access to the north-eastern garden area;	The relative location of the various RACF areas is a matter for determination by the facility management and is not within the purview of this assessment report.
No emergency power generation proposed	This is an internal management matter
No or inadequate detail as to how existing RACF residents will be accommodated and managed during construction;	This is an internal management matter
Construction of units should not commence until completion of RACF in order to minimise disruption to RACF residents	The management of disruption to RACF residents is a matter in regard to which trust and reliance needs to be placed upon the facility management.

3.7 Public interest

There is an evident public interest in the provision of seniors accommodation. Given demographic trends, the public interest is the better served by increased provision.

However, the public interest is diminished in regard to the loss of biodiversity and to the extent that the design of a seniors living development compromises on-site and/or off-site residential amenity in order to maximise the supply of accommodation.

The RACF will have increased bed numbers, will impact on the coastal cypress community on the site, will place both common and private resident areas close to boundaries and will be of only one storey. The details of this range of factors is discussed in the report. In the event that these are the only merit issues that relate to the development, the application could be supported.

However, the development would cause an increase in the flooding of adjacent land and therefore is not compliant with clause (3)(a)(iii) of the Byron LEP. The public interest requires compliance with LEP provisions and therefore the proposed development cannot be considered as in the public interest.

4. DEVELOPER CONTRIBUTIONS

4.1 Water & Sewer Levies

Stage 1

The proposed development generates additional water and sewerage and bulk water load of 35-30.5 = **4.5 ET**. Water, bulk water and sewerage services can be provided to the proposed development on payment of contributions.

A schedule requiring payment of **\$73,948** has been included in the recommended consent

Stage 2

The proposed development generates additional water and sewerage and bulk water load of 35-30.5 = **23.3 ET**. Water, bulk water and sewerage services can be provided to the proposed development on payment of contributions.

A schedule requiring payment of **\$382,888** has been included in the recommended consent

4.2 Section 94 Contributions

New Independent Living Units - southern Lot 3.

There are 31 new units proposed, consisting of 30 two bedroom units and 1 one bedroom unit. This equates to a total of 20.15 SDU.

Extension to Nursing/Dementia Home – northern Lot 2.

There are 4 new single bed bedrooms proposed in the new extensions and floor layout of the aged care/dementia nursing home.

This equates to 1 person per room. The proposed 4 additional bedrooms, in this case, generate a demand of 1.54 SDU (4 x 1.0 / 2.6).

However, given the character of the development, it is appropriate for Council to consider the validity of a nexus between the facility and the need to provide for additional community services and facilities.

A nexus assessment is provided as follows:

- Community & Cultural Facilities – These facilities include children's services & facilities, youth services & facilities, senior services & facilities, community halls/centres and library services and facilities. The Contributions Plan states that the contribution will be sought for residential development of all types and that the levy will be imposed according to occupancy rates. Part 2 Clause 12 of State Environmental Planning Policy No. 5 – Housing for Older People or People with a Disability, requires that residents of the proposed development have access to community services and recreation facilities. Accordingly, there is a nexus for this component of the Contribution Plan.
- Open Space and Leisure Facilities – These facilities include local open space (playgrounds & informal open space), district/structured open space (sports grounds, basketball courts, tennis courts, & environmental open space/bushland). Table 4.12 of the Contributions Plan advises that Seniors (60+) generate a need for walking paths, areas for informal sporting activities (tennis, swimming, bowling & golf) and large natural & parkland areas. The Contributions Plan states that the contribution will be sought for residential development of all types and that the levy will be imposed according to occupancy rates. Part 2 Clause 12 of State Environmental Planning Policy No. 5 – Housing for Older People or People with a Disability, requires that residents of the proposed development have access to community services and recreation facilities. Accordingly, there is a nexus for this component of the Contribution Plan.
- Traffic, Parking & Movement Systems (Roads)– The contributions are for improvement or upgrading of the road system including traffic management measures, lighting and pedestrian facilities. The Contributions Plan states that the contribution will be sought for residential

- Cycleways – This contribution is for improved walkways and bikeways. The Contributions Plan states that the contribution will be sought for residential development of all types and that the levy will be imposed according to occupancy rates. Part 2 Clause 25(f) of State Environmental Planning Policy No. 5 – Housing for Older People or People with a Disability, requires that the proposed development should have convenient, obvious & safe pedestrian & bicycle links from the site that provides access to public transport services and local facilities. Accordingly, there is a nexus for this component of the Contribution Plan.
- Civic & Urban Improvements – Civic improvements covers a variety of facilities, including public toilets, walkways/footpaths, landscaping & urban design improvements, street furniture (seating rubbish bins, bike racks, notice boards & signage), fencing & public safety facilities, and street lighting. The Contributions Plan states that the contribution will be sought for residential development of all types and that the levy will be imposed according to occupancy rates. Part 2 Clause 25(f) of State Environmental Planning Policy No. 5 – Housing for Older People or People with a Disability, requires that the proposed development should have convenient, obvious & safe pedestrian & bicycle links from the site that provides access to public transport services and local facilities. Accordingly, there is a nexus for this component of the Contribution Plan.
- Shire Support Facilities (Surf Lifesaving) – Surf lifesaving facilities are provided at the main beaches near coastal urban zones. The Contributions Plan states that the contribution will be sought for residential development of all types and that the levy will be imposed according to occupancy rates. State Environmental Planning Policy No. 5 – Housing for Older People or People with a Disability, does not require access to beaches. The aged proposed to be occupied within this development will have varying forms of dementia and are unlikely to use any of these facilities. There is no nexus for this component of the Contribution Plan.
- Administration – The Contributions Plan advises *“The preparation and ongoing administration of the Contributions plan requires the provision of additional resources to ensure that the plan is effective and achieves the intended purpose”* and *“It is appropriate that Council recoups this cost”*. The Contributions Plan states that the contribution will be sought for residential development of all types and that the levy will be imposed according to occupancy rates. Given that there is a nexus for other contributions, there is a nexus for this component of the Contribution Plan.

Given the above comments, it is recommended that the schedule of contributions be amended by deleting the contributions for Surf Lifesaving and reducing the contributions for Roads to 0.44 SDU.

Section 94 Contributions – Independent Living Units, Lot 3.

Plan	=	B.S.C. Development Contributions Plan 2005 dated June 2005
Catchment	=	Suffolk Park.
Credit	=	1.0 SDU (Vacant Lot).
Use/Type	=	Residential.
Demand	=	31 @ 1.5 persons/unit @ 46.5 persons @ 17.88 SDU
Contribution	=	16.88 SDU

A Schedule for payment of **\$289,985.55** has been included in the Stage 2 conditions of the recommended consent

Section 94 Contributions – Nursing Home, Lot 2.

Plan = B.S.C. Development Contributions Plan 2005 dated June 2005
Catchment = Suffolk Park.
Credit = Nil.
Use/Type = Residential.
Contribution = 1.54 SDU & 0.44 SDU only for reduced Roads contributions.

NOTE: Delete Surf Lifesaving contribution.

A Schedule for payment of **\$25,756,28** has been included in the Stage 1 conditions of the recommended consent

5. CONCLUSION

The proposed development comprises a substantial redevelopment of an existing facility and a substantial development of a vacant site. Pursuant to the Byron LEP, the proposed units are a prohibited use, however pursuant to the issue of a Site Compatibility Certificate, the proposed use is permissible. This Certificate provides an assessment as to the suitability of the development for the site based upon consideration of the natural environmental values of the site and of the use of land in the locality. It is nevertheless open to the consent authority to refuse to grant consent to the application.

As discussed in this report, the proposed development has significant public interest merit, however it fails to comply with a Local Environmental Plan provision and cannot therefore be supported.

6. RECOMMENDATION

It is recommended that:

Pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application No. 10.2009.433.1, for staged development - Stage 1 to comprise Alterations/Additions to an existing Residential Aged Care Facility and Stage 2 to comprise 31 serviced self-care units - under the provisions of the State Environmental Planning Policy (housing for Seniors or people with a disability) 2004, be refused for the following reasons.

REASON FOR REFUSAL

The proposed development does not comply with clause 24(3)(a)(iii) of the Byron Local Environmental Plan 1988 having regard to the predicted increase in flood levels on other lands in the vicinity of the development that will be generated by the development.

CONDITIONS OF CONSENT: STAGE 1

BCA Classification - Class

Parameters of this Consent

- 1) Development is to be in accordance with approved plans**
The development is to be in accordance with plans listed below:

Stage 1: Residential Aged care Facility [Drawings also numbered 2009.20]

Plan No.	Description	Prepared by	Dated:
DA2 Rev C	Existing Site Plan & Ground Floor	Humel	04-05-2010

	Plan		
DA3 Rev C	Sub Floor Site Plan	Humel	04-05-2010
DA4 Rev C	Ground Floor Site Plan	Humel	04-05-2010
DA6 rev C	Roof Plan	Humel	04-05-2010
DA7 Rev C	Fire Compartmentation Plan	Humel	04-05-2010
DA8 Rev C	Elevations & Sections	Humel	04-05-2010
DA9 Rev C	Typical Hostel Floor Plans	Humel	04-05-2010
DA10 Rev C	Signage Plan	Humel	04-05-2010
569.09 Issue F	Landscape Plan (hostel) as amended by condition 10 of this consent	Tramonte jensen	05.05.2010

The development is also to be in accordance with any changes shown in red ink on the approved plans or conditions of consent.

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

2) **STAGE 1: Integrated Development: Bush Fire Safety Authority - Terms of Approval.**

The NSW Rural Fire Service has issued a Bush Fire Safety Authority for the development as required under section 100B of the NSW Rural Fires Act. This Authority has been issued with conditions that are specified in Addendum 1A that is located in this consent at the end of the Stage 1 Conditions and Notes. The approved development must comply with these conditions.

- 3) **Existing building/s to be brought into compliance with fire safety provisions – Stage 1**
In accordance with Clause 94 of Environmental Planning & Assessment Regulation 2000, the existing building is to be brought into compliance with the fire protection and structural provisions of the Building Code of Australia.

STAGE 1: The following conditions are to be complied with prior to issue of a Construction Certificate

4) **Construction of buildings in bushfire-prone areas - further details required**

The application for a Construction Certificate is to include details indicating the construction of the building to the standard as specified below:

- (a) Existing building on Lot 2 DP 617652 – The north and west elevations shall comply with *Australian Standard AS3959-1999 'Construction of buildings in Bush Fire prone areas'* Level 3
- (b) Existing building on Lot 2 DP 617652 – The east and south elevations shall comply with *Australian Standard AS3959-1999 'Construction of buildings in Bush Fire prone areas'* Level 2.

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

5) **Construction of RACF – Acoustic control**

The application for the Construction Certificate is to include details to demonstrate that the building will incorporate the following elements:

Renovated Hostel Units:

Install ceiling installation – Soundscreen acoustic batts or equivalent

Upgrade bedroom window system to have minimum Rw30

New lounge/Dining Room (East Side)

Upgrade ceiling insulation to Soundscreen acoustic batts or equivalent

Upgrade glazing systems to acoustic frames and acoustic seals with minimum Rw36

6) Water and Sewerage - Section 68 approval required

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

7) Trade Waste - Section 68 approval required

An **approval** under Section 68 of the Local Government Act 1993 to discharge trade waste into Council's sewer must be obtained.

8) Noise Management Plan.

A Noise Management Plan must be submitted to Council for approval prior to the issue of the construction certificate for building works. The Noise Management Plan must detail the methods that will be implemented for the whole project to minimise construction noise. Information should include:

- a) identification of nearby residences and other sensitive land uses;
- b) assessment of expected noise impacts;
- c) detailed examination of feasible and reasonable work practices that will be implemented to minimise noise impacts;
- d) strategies to promptly deal with and address noise complaints;
- e) details of performance evaluating procedures (for example, noise monitoring or checking work practices and equipment);
- f) procedures for notifying nearby residents of forthcoming works that are likely to produce noise impacts; and
- g) reference to relevant consent conditions.

9) Ecological Management and Restoration Plan required

The application for a Construction Certificate is to include an **Ecological Management and Restoration Plan** that has been submitted to and approved by Council. The restoration plan is to apply to those parts of Lot 2 DP 617652 along the eastern boundary that are hatched on drawing 569.09 Issue F - Landscape Plan (hostel), prepared by tramonte jensen, dated 05.05.2010. The objective of this plan is to maintain and/or establish and/or enhance the circumstance that these parts be predominantly characterised by Coastal Cypress Pine Forest

10) Landscaping plan required

The submitted Landscape Plan No. 569.09 Issue F, titled Landscape Plan (hostel), prepared by Tramonte Jensen and dated 05.05.2010 is to be amended as follows:

Those areas that are indicated as 'EEC zone' are excluded from this plan and are to be the subject of a separate Ecological Management Plan as required by a condition of this consent.

The Landscape Plan is to be amended to delete the "concrete path" in front of rooms 33-34 and 37-39

Plantings along the southern boundary are to provide a thick line of vegetation at a height of at least 3m above ground.

The Landscaping Plan is to comply with any relevant requirements of the required Ecological Management Plan.

No weed species as specified in Part H of Byron Development Control Plan 2002 are to be planted.

11) Sediment and Erosion Control Management Plan required

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

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

NOTE: The plans must be in compliance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".

12) On-site stormwater detention - Section 68 approval required

An approval under Section 68 of the Local Government Act 1993 to carry out on-site detention drainage system and connection to a Council approved drainage system.

Note: The plans must be in compliance with Council's Development Control Plan 2002, Part N and Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings". Refer to Council's website for copies of these documents.

13) Consent required for works within the road reserve

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

Such plans are to be in accordance with Council's Specification for Engineering Works and are to provide for the following works:

Driveways

Driveways in accordance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings". This applies to the two single driveways (entry and exit only) to Lot 2 off Broken Head Road. The driveways to Lot 2 are to be designed and constructed to promote "Left In " & "Left Out" only.

Footpath embellishment

Grading, trimming, topsoiling and turfing of the unpaved footpath area.

Adjustment of Services

Footpath works are to include the adjustment and/or relocation of services as necessary to the requirements of the appropriate service authorities and to ensure that the services are constructed flush with the finished surface levels.

Kerb & gutter, road pavement and drainage

Kerb and gutter, road pavement widening and associated drainage construction, footpath formation including any necessary relocation of services, for the full frontage of the site (Lot 2) along Broken Head Road.

NOTE: The plans must be in compliance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".

14) Traffic Management Plan

Consent from Council must be obtained for a Traffic Management Plan pursuant to Section 138 of the Roads Act 1993. The plans and specifications are to include the measures to be

employed to control traffic (inclusive of construction vehicles) during construction of the development. The traffic control plan is to be designed in accordance with the requirements of the Roads and Traffic Authority's Manual, Traffic Control at Work Sites Version 2, and the current Australian Standards, Manual of Uniform Traffic Control Devices Part 3, 'Traffic Control Devices for Works on Roads'.

"The plan shall incorporate measures to ensure that motorists using road adjacent to the development, residents and pedestrians in the vicinity of the development are subjected to minimal time delays due to construction on the site or adjacent to the site".

The traffic control plan must be prepared by a suitably qualified and RTA accredited Work Site Traffic Controller.

15) Car parking layout, Internal Driveways, vehicle circulation and access plans required.

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

The access, parking and manoeuvring for the site is to comply with the requirements of Council's DCP 2002, AS 2890.1-2004: Parking facilities, Part 1: Off-street car parking and AS 2890.2 – 2002 - Parking facilities, Part 2: Off-street commercial vehicle facilities. Plans are to include, but not be limited to, the following items:

- a) pavement description;
- b) site conditions affecting the access;
- c) existing and design levels;
- d) cross sections;
- e) drainage (pipes, pits, on-site detention, etc.);
- f) turning paths;
- g) linemarking and signage;
- h) visitor and residential car parking.

The engineering plans and specifications are to be designed by a qualified practising Civil Engineer. The Civil Engineer is to be a corporate member of the Institution of Engineers Australia or is to be eligible to become a corporate member and have appropriate experience and competence in the related field.

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

NOTE: The plans must be in compliance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".

16) Flood Planning Level for existing buildings – Nursing/Aged Care Home, Lot 2.

The flood planning level for this development is **R.L. 5.97m A.H.D.**

The plans and specifications to accompany the construction certificate application are to indicate the use of flood compatible materials, fixtures and power outlets where used in the building below the flood planning level. The flood compatible materials, fixtures and power outlets must be those components listed as "suitable" in *Table 10 - Flood Proofing Code* of Part K – Flood Liable Lands of Development Control Plan 2002.

17) Fencing - further detail required

The application for a Construction Certificate is to include details of the following fencing that is required:

Western boundary - 2.2m high fence to provide a visual barrier and acoustic barrier

Northern boundary - 1.8m high fence to provide a visual barrier and acoustic barrier

Southern boundary - a 2m high fence to provide a visual and acoustic barrier for the western 75m of the southern boundary

18) Groundwater Contact Prevention Management Plan

The applicant must submit a management plan to demonstrate measures to protect workers from exposure to potentially contaminated groundwater during all stages of excavations and construction.

19) Groundwater contamination monitoring program

- a) The applicant must submit a report, prepared by a suitably qualified person, detailing a groundwater monitoring program.
- b) The aim of this monitoring program is to protect human and environmental health by determining the spatial and temporal extent of contamination; changes over time; and formalise detection and notification procedures.
- c) The monitoring program must comply with the requirements of NSW DEC (2007) 'Guidelines for the Assessment and Management of Groundwater Contamination' and any other relevant guidelines.
- d) This report must include, but not be limited to, the following:
 - i. Locations and depths of all boreholes within and down-gradient of the contamination - both existing and additional;
 - ii. Sampling frequency;
 - iii. Sampling methodologies;
 - iv. Sampling duration;
 - v. Analytes (must include, but not be limited to, total petroleum hydrocarbons, benzene, toluene, ethyl benzene and xylene);
 - vi. Nominated assessment criteria, guideline or investigation levels;
 - vii. Notification procedures of Council, landowner, Department of Environment, Climate Change and Water and any other relevant authorities when levels reported are above the relevant guidelines or present a significant risk of harm to human health or any other aspect of the environment.
 - viii. Timeframe for reporting.
- e) Groundwater monitoring must be undertaken every two months for six months, from the date of determination. If concentrations are detected which exceed potential risk of harm then this frequency must be increased. If concentrations do not exceed such levels then monitoring must occur every six months thereafter until concentrations have been shown to be decreasing at all sampling locations.
- f) This monitoring program must be approved by Council's Environmental Officer prior to the issue of a Construction Certificate.

20) Acid Sulfate Soils Management Plan

Application for a construction certificate is to include an Acid Sulfate Soils (ASS) Management Plan which is consistent with the recommendations of the report titled '*Acid Sulfate Soil Assessment: RSL Lifecare Limited – Suffolk Park Nursing Home. TSA Management Pty Ltd. Report GEOTALST03220AC-AB. Coffey Geotechnics Pty Ltd. 22 January 2010*'.

The Plan must include the following:

- a) Description of the site, including maps;
- b) Area of the site and area(s) of disturbance;
- c) Site attributes including site landform and geology, depth to watertable;
- d) Maximum depth of excavation and level in AHD, volume of soil to be excavated, timing of works;

- e) Plan showing locations of all boreholes, details of all sampling equipment, evidence of good materials handling procedures and laboratory certification;
- f) Full details of calculations used to determine the liming rate or any other ameliorant;
- g) Details of all measures to avoid/minimise any disturbance of ASS;
- h) Details of measures to minimise the oxidation exposure times of all ASS excavations and stockpiles;
- i) Details of measures to segregate, stockpile, treat and dispose of ASS and acid drainage waters, including the provision of associated leachate and sediment control measures and procedures;
- j) Details of measures to ensure that acid drainage waters are not discharged to Council's stormwater system nor any watercourse or drainage channel;
- k) Details of measures to ensure that management of ASS will be undertaken in accordance with the *Acid Sulfate Soil Manual* (ASSMAC, 1998);
- l) Details of measures to ensure that any off-site disposal of ASS will be in accordance with the 'NSW DECC (2008) *Waste Classification Guidelines*';
- m) Details of validation testing to confirm that sufficient ameliorant has been incorporated into the ASS to prevent any future acidification;
- n) Names and contact details of persons responsible;
- o) Monitoring strategy; and
- p) Contingency procedures.

The Plan must be prepared by a suitably qualified Environmental / Soil Scientist and in accordance with the Acid Sulfate Soil Manual (ASSMAC 1998) and must be approved as part of the construction certificate.

21) Flood evacuation/contingency plan required

The application for a Construction Certificate is to include an appropriate flood evacuation/contingency plan for the proposed development in accordance with Part K – Flood Liable Lands of Development Control Plan 2002.

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

22) Developer Contributions to be paid

Contributions set out in the attached Schedule are to be paid to Council. Contributions are levied in accordance with the Byron Shire Council Section 94 Development Contribution Plan 2005 dated June 2005 and Byron Shire Council Section 94 Development Contribution Plan 2005 Amendment No. 1 dated 20 July 2005 for Community Facilities, Open Space, Roads, Car Parking, Cycleways, Civic & Urban Improvements, Shire Support Facilities and Administration. The Plan may be viewed during office hours at the Council Offices located at Station Street, Mullumbimby.

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

PAYMENTS WILL ONLY BE ACCEPTED BY CASH OR BANK CHEQUE.

23) Bond required to guarantee against damage to public land

A bond of **\$5,000** is to be paid to Council as guarantee against damage to surrounding public land and infrastructure during construction of the proposed development. Evidence is to be provided to Council indicating the pre development condition of the surrounding public land and infrastructure. Such evidence must include photographs. The proponent will be held responsible for the repair of any damage to roads, kerb and gutters, footpaths, driveway crossovers or other assets.

Such bond will be held until Council is satisfied that the infrastructure is maintained/repaired to pre development conditions and that no further work is to be carried out that may result in damage to Council's roads, footpaths etc.

24) Long Service Levy to be paid

A Long Service Levy must be paid to the Long Service Payments Corporation. This is a State Government Levy and is subject to change.

These payments may be made online at www.lspc.nsw.gov.au or at Council's Administration Office, Station Street, Mullumbimby. Where paying to Council, cheques are to be made payable to 'Byron Shire Council'.

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

The following conditions are to be complied with prior to commencement of building works

25) Traffic Management Plan

The approved traffic management plan is to be implemented.

26) Public safety requirements

All care is to be taken to ensure the safety of the public in general, road users, pedestrians and adjoining property. The public liability insurance cover, for a minimum of \$10 million, is to be maintained for the duration of the construction of the development. Council is not held responsible for any negligence caused by the undertaking of the works.

27) Groundwater contamination monitoring

All measures must be in place to enable implementation of the approved groundwater monitoring program.

28) Demolition work

Demolition work, including the removal of asbestos and lead-contaminated wastes, must be carried out in accordance with Australian Standard 2601 – 2001 *Demolition of Structures*, NSW Work cover Authority requirements and NSW DECC Waste Classification Guidelines (2008)'. The applicant/owner is to produce documentary evidence that this condition has been met.

Council requires 48 hours notice prior to disposal of any asbestos and lead-contaminated waste at Council's waste depot.

29) Acid sulfate soils management

Acid sulfate soil controls must be in place in accordance with the approved ASS Management Plan

30) Erosion and Sediment Control Management Plan required

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

Sediment and erosion control measures in accordance with the approved Erosion and Sedimentation Control plan/s must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.

Any such measures that are deemed to be necessary because of the local conditions must be maintained at all times until the site is made stable (i.e. by permanent vegetation cover or hard surface).

Note: Council may impose on-the-spot fines for non-compliance with this condition.

31) Trees to be protected

Trees to be retained are to be protected by a fence so as to minimise disturbance to existing ground conditions within the dripline of the trees. The fence is to be constructed:

- a) with a minimum height of 1.2 metres,
- b) outside the dripline of the tree,
- c) of steel star pickets at a maximum distance of 2metres between pickets,
- d) using a minimum of 3 strands of steel wire,
- e) to enclose the tree, and

- f) with orange barrier mesh, or similar, attached to the outside of the fence and continuing around its perimeter

The fence is to be maintained for the duration of the site clearing, preparation and construction works.

The following conditions are to be complied with during construction

32) Plumbing Standards and requirements.

All Plumbing, Water Supply and Sewerage Works shall be installed and operated in accordance with the Local Government Act 1993, the NSW Code of Practice for Plumbing and Drainage and AS/NZS 3500 Parts 0-5, the approved plans (any notations on those plans) and the approved specifications.

Your Plumber must obtain a **Plumbing Permit** at least **two (2) working days prior to commencing work**. Please forward the **enclosed** Application for a Plumbing Permit to your plumber to complete and to return to Council prior to commencement of work or Refer to http://www.byron.nsw.gov.au/files/Forms/Plumbing_Drainage_Permit.pdf.

The following INSPECTIONS are required:

- a) Internal Drainage;
- b) External Drainage;
- c) Water Rough In;
- d) Stackwork; (where applicable);
- e) Final.

33) Construction times

Construction works must not unreasonably interfere with the amenity of the neighbourhood. In particular construction noise, when audible from adjoining residential premises, can only occur:

- a) Monday to Friday, from 7 am to 6 pm.
- b) Saturday, from 8 am to 1 pm.

No construction work to take place on Saturdays and Sundays adjacent to Public Holidays and Public Holidays and the Construction Industry Awarded Rostered Days Off (RDO) adjacent to Public Holidays.

Note: Council may impose on-the-spot fines for non-compliance with this condition.

34) Construction Noise

Construction noise is to be limited as follows:

- a) For construction periods of four (4) weeks and under, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 20 dB(A).
- b) For construction periods greater than four (4) weeks and not exceeding twenty-six (26) weeks, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 10 dB(A)

Note: Council may impose on-the-spot fines for non-compliance with this condition.

35) Signs to be erected on building and demolition sites

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

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

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

36) Builders rubbish to be contained on site

All builders rubbish is to be contained on the site in a 'Builders Skips' or an enclosure. Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

37) Maintenance of fencing to protect trees

Fencing required to protect trees to be retained is to be maintained for the duration of the site clearing, preparation and construction works. During site works and construction all measures are to be taken to prevent damage to trees and other vegetation (including root systems) to be retained.

No building materials or other items are to be placed or stored within the fenced off areas.

A qualified arborist experienced in tree management must be present on a full or part-time basis to advise on the maintenance of the trees for their protection for the duration of the project.

38) Maximum depth of excavation

No excavation greater than 1.5m

39) Care to be taken when placing services near trees

All care is to be taken to manually excavate around or under any lateral structural support roots of any tree so as to minimise root disturbance where services are to be laid within the dripline of a tree.

40) No filling around trees

No soil or fill material is to be placed within the dripline of a tree so as to cause changes in surface level by more than 50mm from the existing level and such soil is not to be compacted. Such soil fill must not be finer than that being covered in situ, e.g. clay must not be placed over loam soil.

41) Prevention of water pollution

Only clean and unpolluted water is to be discharged to Council's stormwater drainage system or any watercourse to ensure compliance with the Protection of Environment Operations Act.

Note: Council may impose on-the-spot fines for non-compliance with this condition.

42) Wiring in flood prone buildings

All wiring, power outlets, switches, etc., must to the maximum extent possible, be located above the flood planning level. All electrical wiring installed below the flood planning level must be suitable for continuous submergence in water and must contain no fibrous components. Only submersible-type splices are to be used below flood planning level. All conduits located below flood planning level are to be so installed that they will be self-draining if subjected to flooding.

43) Groundwater contamination monitoring

All measures must be maintained to enable implementation of the approved groundwater monitoring program.

44) Acid sulfate soils management

All soil disturbance and excavation works must be carried out as per the approved Acid Sulfate Soils Management Plan. All acid sulfate soils must be managed and disposed of in accordance with the approved ASS Management Plan.

45) No dewatering

No dewatering at any time.

46) Maximum depth of excavation

No excavation beyond 1.5 m below the existing ground level

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

47) Works to be completed prior to issue of a Final Occupation Certificate

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

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

48) Sewer and water to be connected

A Certificate of Compliance under Section 307 of the Water Management Act 2000 is to be obtained from Byron Shire Council prior to the issue of an Occupation Certificate for works on water and/or sewer mains.

Application forms are available from Council's administration building or online at http://www.byron.nsw.gov.au/files/Forms/Section_305_Certificate.pdf to be submitted for a Certificate of Compliance.

49) Car parking areas, Internal Driveways - to be completed and signs to be provided.

The car parking areas and internal driveways, are to be constructed in accordance with the approved plans. Signs are to be erected clearly indicating the availability of off-street parking and the location of entry/exit points, visible from both the street and the subject site.

50) External Driveways and Roadworks - completed in accordance approved plans

The external driveways and Roadworks are to be constructed in accordance with the approved plans.

51) Stormwater disposal

Stormwater must be collected and disposed of in a controlled manner such that stormwater flows are:

- a) Clear of buildings and infrastructure,
- b) Not concentrated so as to cause soil erosion,
- c) Not directly to a watercourse, and
- d) Not onto adjoining land.

52) Land Fill and Floor Levels

Prior to the issue of an occupation certificate the owner/builder of a development is to confirm in writing to Council the as-built levels are as per the approved designs (ie the heights are confirmed by a registered surveyor). The heights which should be provided would be habitable floor, non-habitable or garage floor, high ground and low ground.

53) Groundwater monitoring

The applicant must submit a report summarising all groundwater monitoring to date, including recommendations for future monitoring and management. This report must be prepared by a suitably qualified person.

54) Acid sulfate soils

The works engineer must certify to the Principal Certifying Authority that all works have been carried out in accordance with the approved Acid Sulfate Soils and Water Management Plan.

55) Works as executed drawings are required.

The submission of works as executed drawings for the storm water prior to a final plumbing inspection.

The following conditions are to be complied with at all times

56) Car Parking spaces are to be available for the approved use

The car parking spaces, together with all necessary access driveways and turning areas, are to be provided and maintained and accessible at all times.

57) Vehicles to enter/leave in a forward direction

Vehicles using any off-street loading/unloading and/or parking area must enter and leave in a forward direction. All driveways and turning areas must be kept clear of obstructions that prevent compliance with this condition.

58) Flood Evacuation Plan

A copy of the approved flood evacuation plan is to be laminated in clear plastic and displayed in a prominent location within the development (e.g. Kitchen, office).

59) Maximum depth of excavation

No excavation beyond 1.5 m below the existing ground level

60) No access to or extraction of groundwater

No access to or extraction of groundwater.

61) Notification of Council of exceedances of groundwater contamination levels

The applicant must notify Council, landowner, Department of Environment, Climate Change and Water and any other relevant authorities when groundwater contamination levels reported are above the relevant guidelines or present a significant risk of harm to human health or any other aspect of the environment.

62) Noise levels measured at the boundary

Noise emissions from the development measured at the boundary must comply with the requirements of the NSW EPA's Industrial Noise Policy, or similar.

63) Provision of service to adjacent seniors living self care units

The Residential Aged Care Facility is to make available the following services to the adjacent Seniors Living self care units:

- Home delivered meals
- Personal care
- Home nursing
- Housework assistance

Notes

Principal Certifying Authority:

Work must not commence until the applicant has:-

appointed a Principal Certifying Authority (if the Council is not the PCA); and

given the Council at least two days notice of their intention to commence the erection of the building. Notice must be given by using the prescribed 'Form 7'.

notified the Principal Certifying Authority of the Compliance with Part 6 of the Home Building Act 1989.

Construction Certificate required:

This development consent is issued under the Environmental Planning and Assessment Act 1979 and does not relate to structural aspects or specifications of the building under the Building Code of Australia. All buildings and alterations require the issue of a Construction Certificate prior to works commencing. Application forms are available from the customer services counter or Council's website

www.byron.nsw.gov.au

Occupation Certificate required:

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

Protection of the Environment Operations Act 1997:

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

Schedule of Development Contributions

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

RESIDENTIAL DEVELOPMENT

SCHEDULE OF CONTRIBUTIONS PURSUANT TO SECTION 94 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

(Office Use Only)

Community and Cultural Facilities	(CF-SP)	1.54	SDU @	\$1,089.95	=	\$1,678.53
" - Shire Wide	(CF-SW)	1.54	SDU @	\$575.95	=	\$886.96
Open Space	(OS-SP)	1.54	SDU @	\$6,859.06	=	\$10,562.96
" - Shire Wide	(OS-SW)	1.54	SDU @	\$2,901.59	=	\$4,468.44
Roads	(R-SP)	4.00	trips @	\$785.64	=	\$3,142.57
Cycleways	(CW-SP)	1.54	SDU @	\$740.37	=	\$1,140.17
Civic & Urban Improvements	(IM-SP)	1.54	SDU @	\$1,735.16	=	\$2,672.14
Rural Fire Service	-				=	
Administration	(OF-SW)	1.54	SDU @	\$782.15	=	\$1,204.52
		Total			=	\$25,756.28

Certificate of Compliance – Water Management Act 2000

A Certificate of Compliance will be issued on completion of construction of water management works to serve the development and/or on payment of developer charges for water and sewer as calculated in accordance with Byron Shire Council and Rous Water Development Servicing Plans.

Note: Copies of the application forms for Certificates of Compliance are available on Council's website www.byron.nsw.gov.au or from Council's Administration Office. Copies of Byron Shire Council's Development Servicing Plans are available at Council's Administration Office.

The following charges are indicative only. Developer charges will be calculated in accordance with the Development Servicing Plan applicable at the date of payment. A check must be made with Council to ascertain the current rates.

STAGE 1 INDICATIVE CHARGES PURSUANT TO THE WATER MANAGEMENT ACT, 2000

Water	(S64W Other)	4.50	ET @	\$1,190.00	=	\$5,355.00
Bulk Water	(BW-SP)	4.50	ET @	\$6,222.00	=	\$27,999.00
Sewer	(S64S Other)	4.50	ET @	\$9,021.00	=	\$40,594.50
		Total			=	\$73,948.50

Civil Works

The civil works shall be designed and constructed in accordance with Council's Engineering Standard current at the time of submission of Engineering Plans for approval by Council. Approval of Engineering Plans will be current for a period of two years after which time Council may require the alteration to the Engineering Design to comply with standard current at that date.

Addendum 1A

Integrated Development - Bush Fire Safety Authority - Conditions

(i) Asset Protection Zone

At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within Appendices 2 & 5 of *Planning for Bushfire Protection 2006* and the NSW Rural Fire Service's document 'Standards for Asset Protection Zones'.

(ii) Water and Utilities

Water, electricity and gas are to comply with sections 4.1.3 and 4.2.7 of *Planning for Bushfire Protection 2006*

(iii) Access

Internal roads shall comply with section 4.2.7 of *Planning for Bushfire Protection 2006*;

(iv) Evacuation and Emergency Management

Arrangements for emergency and evacuation (and relocation) arrangements for occupants are to comply with section 4.2.7 of *Planning for Bushfire Protection 2006*

(v) Design and Construction

- Existing building on Lot 2 DP 617652 – The north and west elevations shall comply with *Australian Standard AS3959-1999 'Construction of buildings in Bush Fire prone areas'* Level 3.
- Existing building on Lot 2 DP 617652 – The east and south elevations shall comply with *Australian Standard AS3959-1999 'Construction of buildings in Bush Fire prone areas'* Level 2.

(vi) Landscaping

Landscaping to the site to comply with the principles of Appendix 5 of *Planning for Bushfire Protection 2006*

CONDITIONS OF CONSENT: STAGE 2

Parameters of this Consent

64) Development is to be in accordance with approved plans

The development is to be in accordance with plans listed below:

Stage 2 - Self-Care Units [Drawings also numbered 2009.25]

Plan No.	Description	Prepared by	Dated:
DA2 Rev C	Existing Site Plan	Humel	07-05-2010
DA3 Rev C	Sub Floor Site Plan	Humel	07-05-2010
DA4 Rev C	Ground Floor Site Plan	Humel	07-05-2010
DA5 Rev C	Elevations & Sections	Humel	07-05-2010
DA6 Rev C	Type 'A' 2 Bed Apartment	Humel	07-05-2010
DA7 Rev C	Type 'A1' 2 Bed Apartment	Humel	07-05-2010
DA8 Rev C	Type 'B' 2 Bed Apartment	Humel	07-05-2010
DA9 Rev C	South East Corner Apartments 2 Bed Apartment	Humel	07-05-2010
DA10 Rev C	Community Building	Humel	07-05-2010
DA11 Rev C	Signage Plan	Humel	07-05-2010
569.06 issue F	Landscape Plan (independent living units) as modified by conditions of consent	Tramonte jensen	05.05.2010
DA02 Rev D	Independent Living Units – 1 of 2. Concept Stormwater Plan and Details	TLB Engineers	11/08/09
Sheets 1, 2 and 3 of 3	Plan Showing Detail Survey Over Lot 2 DP 617652 and Lot 3 DP 862033	Chris Abbott Surveying	24 January 2008

The development is also to be in accordance with any changes shown in red ink on the approved plans or conditions of consent.

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

65) Integrated Development: Bush Fire Safety Authority - Terms of Approval.

A Bush Fire Safety Authority issued under section 100B of the Rural Fires Act has been issued for the development. The Terms of Approval of this authority are specified in Addendum 2A located at the end of the conditions and notes for Stage 2 of this consent.

66) Integrated Development: Controlled Activity Approval pursuant to NSW Water Management Act - Terms of Approval.

The NSW Office of Water has issued General terms of Approval for works that require a Controlled Activity Approval (CAA) under the Water Management Act. These Terms are specified in Addendum 2B located at the end of the conditions and notes for Stage 2 of this consent.

Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from

the NSW Office of Water. Waterfront land for the purposes of this DA is land and material within 40m of the top of the bank or shore of the river identified.

67) Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

- (1) For the purposes of section 80A (11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:
 - (a) that the work must be carried out in accordance with the requirements of the Building Code of Australia ,
 - (b) in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
- (2) This clause does not apply:
 - (a) to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4), or
 - (b) to the erection of a temporary building.
- (3) In this clause, a reference to the Building Code of Australia is a reference to that Code as in force on the date the application for the relevant construction certificate is made.

68) Erection of signs

- (1) For the purposes of section 80A (11) of the Act, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- (2) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the work site is prohibited.
- (3) Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (4) This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- (5) This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.
- (6) This clause applies to a development consent granted before 1 July 2004 only if the building work, subdivision work or demolition work involved had not been commenced by that date.

Note: Principal certifying authorities and principal contractors must also ensure that signs required by this clause are erected and maintained (see clause 227A which currently imposes a maximum penalty of \$1,100).

STAGE 2: The following conditions are to be complied with prior to issue of a Construction Certificate

69) Registration of Boundary Adjustment

Council is to be satisfied that the (Subdivision) Boundary Adjustment between Lot 3 and the Public Road Reserve, as agreed between Council and the landowner, has been registered at the Land Titles Office.

To satisfy Council in this matter, the applicant must submit to Council a documentary evidence of the registered Plan Of Subdivision.

70) Controlled Activity Approval Required

Prior to the issue of a Construction Certificate a Controlled Activity Approval is to be obtained from the NSW Department of Environment, Climate Change and Water.

71) Compliance with Schedule 3 of State Environmental Planning Policy(Housing for Seniors or People with a Disability) 2004

The application for a Construction Certificate is to include plans and specifications that demonstrate compliance with Schedule 3 of *State Environmental Planning Policy(Housing for Seniors or People with a Disability) 2004*

72) Construction of units – Acoustic controls - further information required

The application for the Construction Certificate is to incorporate an Acoustic Assessment prepared by a suitably qualified person that addresses acoustic impacts from traffic on proposed units 28 and 29 and the plans and specifications for units 28 and 29 are to include any recommendations of this assessment.

73) Construction of Units – Acoustic control

The application for the Construction Certificate is to include details to demonstrate that the buildings will incorporate the following elements:

Units 1-4:

- i) Upgrade Living room glass door system to acoustic frames and acoustic seals to have minimum Rw 30
- ii) Upgrade Bedroom 1 window to acoustic frames and acoustic seals windows to have minimum Rw 35

Units 21-27, 30-31

- i) Upgrade insulation in roof to Soundscreen Acoustic Batts or equivalent
- ii) Upgrade Living room glass door to acoustic frames and acoustic seals windows to have minimum Rw 33
- iii) Upgrade Bedroom 1 window to acoustic frames and acoustic seals windows to have minimum Rw 38
- iv) Upgrade Study window to acoustic frames and acoustic seals windows to have minimum Rw 30

74) Construction of Units – Protection of Archidendron Hendersonii

The application for the Construction Certificate is to demonstrate that the design of units 25 and 26 has been amended so that there is a minimum 2500mm clearance from the trunk of tree #150 as specified on Sheet 3 of 3 of *Plan Showing Detail Survey* by Chris Abbott Surveying dated 24 January 2008 and a minimum clearance of 3500mm from the footings to

the building. During construction the tree is to be protected by the means prescribed in Stage 2 Condition 99

75) Fencing Requirements - further details required

The application for a Construction Certificate is to include plans for the following fencing:

Southern boundary – 1.5m high timber paling fence

Western boundary – 1.5m high timber paling fence 1.5m that rises to a height of 2m at the northern end of the adjacent drainage reserve.

76) Water and Sewerage - Section 68 approval required

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

77) Noise Management Plan – Construction.

A Noise Management Plan must be submitted to Council for approval prior to the issue of the construction certificate for building works. The Noise Management Plan must detail the methods that will be implemented for the whole project to minimise construction noise. Information should include:

- h) identification of nearby residences and other sensitive land uses;
- i) assessment of expected noise impacts;
- j) detailed examination of feasible and reasonable work practices that will be implemented to minimise noise impacts;
- k) strategies to promptly deal with and address noise complaints;
- l) details of performance evaluating procedures (for example, noise monitoring or checking work practices and equipment);
- m) procedures for notifying nearby residents of forthcoming works that are likely to produce noise impacts; and
- n) reference to relevant consent conditions.

78) Ecological Restoration and Management Plan required

The application for a Construction Certificate is to include an **Ecological Restoration Plan** that has been submitted to and approved by Council. The restoration plan is to apply to the part of Lot 3 DP 862033 situated along the eastern boundary that is hatched and indicated as 'EEC Zone' on drawing 569.06 issue F Landscape Plan (independent living units), prepared by tramonte jensen, dated 05.05.2010. The objective of this plan is to maintain and/or establish and/or enhance the circumstance that this part of the site be predominantly characterised by Coastal Cypress Pine Forest and must include the following elements:

- i) Detailed plan indicating existing trees
- ii) Detailed plan indicating proposed tree plantings
- iii) Full and comprehensive details and explanation of the ongoing management of the area

79) Landscaping plan required

The submitted Landscape Plan No. 569.08 Issue F, titled Landscape Plan (independent living units), prepared by Tramonte Jensen and dated 05.05.2010 is to be amended as follows:

Those areas that are indicated as 'EEC zone' are excluded from this plan and are to be the subject of a separate Ecological Management Plan as required by a condition of this consent.

The Landscape Plan is to be amended to delete the "concrete path" in front of units 21-31.

Plantings along the southern boundary are to provide a thick line of vegetation at a height of at least 3m above ground.

Plantings in the front setback to Units 29-31 are to provide an effective visual barrier to prevent car headlight impacts on these units and will require the planting of mature/semi mature vegetation.

Plantings are to include locally sourced coastal Cyprus trees

Vegetation located to the south of the masonry wall at the Broken Head Road/Beech Drive intersection is to effectively screen Units 29-31 from vehicle lights and may require the planting of mature/semi mature vegetation.

The Landscaping Plan is to comply with any relevant requirements of the required Ecological Management Plan

Species to be planted must be consistent with the requirements of Part H of Byron Development Control Plan 2002.

80) Sediment and Erosion Control Management Plan required

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

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

NOTE: The plans must be in compliance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".

81) On-site stormwater detention - Section 68 approval required

An approval under Section 68 of the Local Government Act 1993 to carry out on-site detention drainage system and connection to a Council approved drainage system.

Note: The plans must be in compliance with Council's Development Control Plan 2002, Part N and Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings". Refer to Council's website for copies of these documents.

82) Consent required for works within the road reserve

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

Such plans are to be in accordance with Council's Specification for Engineering Works and are to provide for the following works:

Driveways

Driveways in accordance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".
This applies to the double driveway to Lot 3 off Beech Drive.

Footpath embellishment

Grading, trimming, topsoiling and turfing of the unpaved footpath area.

Adjustment of Services

Footpath works are to include the adjustment and/or relocation of services as necessary to the requirements of the

appropriate service authorities and to ensure that the services are constructed flush with the finished surface levels.

Kerb & gutter, road pavement and drainage

Kerb and gutter, road pavement widening and associated drainage construction, footpath formation including any necessary relocation of services, for the full frontage of the site (Lot 3) along Broken Head Road.

Bus Shelter

A tapered bus bay and shelter at the frontage of the site on Broken Head Road. The bus shelter must be in accordance with Council's standards. The shelter must be provided at no cost to Council.

NOTE: The plans must be in compliance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".

83) Traffic Management Plan

Consent from Council must be obtained for a Traffic Management Plan pursuant to Section 138 of the Roads Act 1993. The plans and specifications are to include the measures to be employed to control traffic (inclusive of construction vehicles) during construction of the development. The traffic control plan is to be designed in accordance with the requirements of the Roads and Traffic Authority's Manual, Traffic Control at Work Sites Version 2, and the current Australian Standards, Manual of Uniform Traffic Control Devices Part 3, 'Traffic Control Devices for Works on Roads'.

"The plan shall incorporate measures to ensure that motorists using road adjacent to the development, residents and pedestrians in the vicinity of the development are subjected to minimal time delays due to construction on the site or adjacent to the site".

The traffic control plan must be prepared by a suitably qualified and RTA accredited Work Site Traffic Controller.

84) Car parking layout, Internal Driveways, vehicle circulation and access plans required.

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

The access, parking and manoeuvring for the site is to comply with the requirements of Council's DCP 2002, AS 2890.1-2004: Parking facilities, Part 1: Off-street car parking and AS 2890.2 – 2002 - Parking facilities, Part 2: Off-street commercial vehicle facilities. Plans are to include, but not be limited to, the following items:

- i) pavement description;
- j) site conditions affecting the access;
- k) existing and design levels;
- l) cross sections;
- m) drainage (pipes, pits, on-site detention, etc.);
- n) turning paths;
- o) linemarking and signage;
- p) visitor and residential car parking.

The engineering plans and specifications are to be designed by a qualified practising Civil Engineer. The Civil Engineer is to be a corporate member of the Institution of Engineers Australia or is to be eligible to become a corporate member and have appropriate experience and competence in the related field.

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

NOTE: The plans must be in compliance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".

85) Flood Planning Level for new buildings – Independent Living Units, Lot 3.

The flood planning level for this development is **R.L. 6.1m A.H.D.**

The plans and specifications to accompany the construction certificate application are to indicate a minimum floor level that is above the flood planning level.

The plans and specifications to accompany the construction certificate application are also to indicate the use of flood compatible materials, fixtures and power outlets where used in the building below the flood planning level. The flood compatible materials, fixtures and power outlets must be those components listed as "suitable" in *Table 10 - Flood Proofing Code* of Part K – Flood Liable Lands of Development Control Plan 2002.

86) Groundwater Contact Prevention Management Plan

The applicant must submit a management plan to demonstrate measures to protect workers from exposure to potentially contaminated groundwater during all stages of excavations and construction.

87) Groundwater contamination monitoring program

- a) The applicant must submit a report, prepared by a suitably qualified person, detailing a groundwater monitoring program.
- b) The aim of this monitoring program is to protect human and environmental health by determining the spatial and temporal extent of contamination; changes over time; and formalise detection and notification procedures.
- c) The monitoring program must comply with the requirements of NSW DEC (2007) 'Guidelines for the Assessment and Management of Groundwater Contamination' and any other relevant guidelines.
- d) This report must include, but not be limited to, the following:

- i. Locations and depths of all boreholes within and down-gradient of the contamination - both existing and additional;
 - ii. Sampling frequency;
 - iii. Sampling methodologies;
 - iv. Sampling duration;
 - v. Analytes (must include, but not be limited to, total petroleum hydrocarbons, benzene, toluene, ethyl benzene and xylene);
 - vi. Nominated assessment criteria, guideline or investigation levels;
 - vii. Notification procedures of Council, landowner, Department of Environment, Climate Change and Water and any other relevant authorities when levels reported are above the relevant guidelines or present a significant risk of harm to human health or any other aspect of the environment.
 - viii. Timeframe for reporting.
- e) Groundwater monitoring must be undertaken every two months for six months, from the date of determination. If concentrations are detected which exceed potential risk of harm then this frequency must be increased. If concentrations do not exceed such levels then monitoring must occur every six months thereafter until concentrations have been shown to be decreasing at all sampling locations.
 - f) This monitoring program must be approved by Council's Environmental Officer prior to the issue of a Construction Certificate.

88) Acid Sulfate Soils Management Plan

Application for a construction certificate is to include an Acid Sulfate Soils (ASS) Management Plan which is consistent with the recommendations of the report titled '*Acid Sulfate Soil Assessment: RSL Lifecare Limited – Suffolk Park Nursing Home. TSA Management Pty Ltd. Report GEOTALST03220AC-AB. Coffey Geotechnics Pty Ltd. 22 January 2010*'.

The Plan must include the following:

- a) Description of the site, including maps;
- b) Area of the site and area(s) of disturbance
- c) Site attributes including site landform and geology, depth to watertable;
- d) Maximum depth of excavation and level in AHD, volume of soil to be excavated, timing of works;
- e) Plan showing locations of all boreholes, details of all sampling equipment, evidence of good materials handling procedures and laboratory certification;
- f) Full details of calculations used to determine the liming rate or any other ameliorant;
- g) Details of all measures to avoid/minimise any disturbance of ASS;
- h) Details of measures to minimise the oxidation exposure times of all ASS excavations and stockpiles;
- i) Details of measures to segregate, stockpile, treat and dispose of ASS and acid drainage waters, including the provision of associated leachate and sediment control measures and procedures;
- j) Details of measures to ensure that acid drainage waters are not discharged to Council's stormwater system nor any watercourse or drainage channel;
- k) Details of measures to ensure that management of ASS will be undertaken in accordance with the *Acid Sulfate Soil Manual* (ASSMAC, 1998);
- l) Details of measures to ensure that any off-site disposal of ASS will be in accordance with the 'NSW DECC (2008) *Waste Classification Guidelines*';
- m) Details of validation testing to confirm that sufficient ameliorant has been incorporated into the ASS to prevent any future acidification;
- n) Names and contact details of persons responsible;
- o) Monitoring strategy; and

- p) Contingency procedures.

The Plan must be prepared by a suitably qualified Environmental / Soil Scientist and in accordance with the Acid Sulfate Soil Manual (ASSMAC 1998) and must be approved as part of the construction certificate.

89) Flood evacuation/contingency plan required

The application for a Construction Certificate is to include an appropriate flood evacuation/contingency plan for the proposed development in accordance with Part K – Flood Liable Lands of Development Control Plan 2002.

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

90) Developer Contributions to be paid

Contributions set out in the attached Schedule are to be paid to Council. Contributions are levied in accordance with the Byron Shire Council Section 94 Development Contribution Plan 2005 dated June 2005 and Byron Shire Council Section 94 Development Contribution Plan 2005 Amendment No. 1 dated 20 July 2005 for Community Facilities, Open Space, Roads, Car Parking, Cycleways, Civic & Urban Improvements, Shire Support Facilities and Administration. The Plan may be viewed during office hours at the Council Offices located at Station Street, Mullumbimby.

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

PAYMENTS WILL ONLY BE ACCEPTED BY CASH OR BANK CHEQUE.

91) Bond required to guarantee against damage to public land

A bond of **\$5,000** is to be paid to Council as guarantee against damage to surrounding public land and infrastructure during construction of the proposed development. Evidence is to be provided to Council indicating the pre development condition of the surrounding public land and infrastructure. Such evidence must include photographs. The proponent will be held responsible for the repair of any damage to roads, kerb and gutters, footpaths, driveway crossovers or other assets.

Such bond will be held until Council is satisfied that the infrastructure is maintained/repaired to pre development conditions and that no further work is to be carried out that may result in damage to Council's roads, footpaths etc.

92) Long Service Levy to be paid

A Long Service Levy must be paid to the Long Service Payments Corporation. This is a State Government Levy and is subject to change.

These payments may be made online at www.lspc.nsw.gov.au or at Council's Administration Office, Station Street, Mullumbimby. Where paying to Council, cheques are to be made payable to 'Byron Shire Council'.

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

93) Bond for landscaping

A bond or bank guarantee of **\$5,000** to be lodged with Council to ensure the landscaping is carried out in accordance with the approved landscaping plan.

Half of the bond or bank guarantee will be refunded after the issuing of a compliance certificate that works have been carried out in accordance with the approved landscaping plan.

The remaining bond or bank guarantee will be refunded by Council upon Council's Director of Local Approvals and Compliance Services been satisfied that 95% of the plants have survived a period of 12 months from the issuing of the above compliance certificate

The following conditions are to be complied with prior to commencement of building works

94) Traffic Management Plan

The approved traffic management plan is to be implemented.

95) Public safety requirements

All care is to be taken to ensure the safety of the public in general, road users, pedestrians and adjoining property. The public liability insurance cover, for a minimum of \$10 million, is to be maintained for the duration of the construction of the development. Council is not held responsible for any negligence caused by the undertaking of the works.

96) Groundwater contamination monitoring

All measures must be in place to enable implementation of the approved groundwater monitoring program.

97) Acid sulfate soils management

Acid sulfate soil controls must be in place in accordance with the approved ASS Management Plan

98) Erosion and Sediment Control Management Plan required

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

Sediment and erosion control measures in accordance with the approved Erosion and Sedimentation Control plan/s must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.

Any such measures that are deemed to be necessary because of the local conditions must be maintained at all times until the site is made stable (i.e. by permanent vegetation cover or hard surface).

Note: Council may impose on-the-spot fines for non-compliance with this condition.

99) Trees to be protected

Trees to be retained are to be protected by a fence so as to minimise disturbance to existing ground conditions within the dripline of the trees. The fence is to be constructed:

- g) with a minimum height of 1.2 metres,
- h) outside the dripline of the tree,
- i) of steel star pickets at a maximum distance of 2metres between pickets,
- j) using a minimum of 3 strands of steel wire,
- k) to enclose the tree, and
- l) with orange barrier mesh, or similar, attached to the outside of the fence and continuing around its perimeter

The fence is to be maintained for the duration of the site clearing, preparation and construction works.

The following conditions are to be complied with during construction

100) Plumbing Standards and requirements.

All Plumbing, Water Supply and Sewerage Works shall be installed and operated in accordance with the Local Government Act 1993, the NSW Code of Practice for Plumbing and Drainage and AS/NZS 3500 Parts 0-5, the approved plans (any notations on those plans) and the approved specifications.

Your Plumber must obtain a **Plumbing Permit** at least **two (2) working days prior to commencing work**. Please forward the **enclosed** Application for a Plumbing Permit to your plumber to complete and to return to Council prior to commencement of work or Refer to http://www.byron.nsw.gov.au/files/Forms/Plumbing_Drainage_Permit.pdf.

The following INSPECTIONS are required:

- f) Internal Drainage;
- g) External Drainage;
- h) Water Rough In;
- i) Stackwork; (where applicable);
- j) Final.

101) Construction times

Construction works must not unreasonably interfere with the amenity of the neighbourhood. In particular construction noise, when audible from adjoining residential premises, can only occur:

- c) Monday to Friday, from 7 am to 6 pm.
- d) Saturday, from 8 am to 1 pm.

No construction work to take place on Saturdays and Sundays adjacent to Public Holidays and Public Holidays and the Construction Industry Awarded Rostered Days Off (RDO) adjacent to Public Holidays.

Note: Council may impose on-the-spot fines for non-compliance with this condition.

102) Construction Noise

Construction noise is to be limited as follows:

- c) For construction periods of four (4) weeks and under, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 20 dB(A).
- d) For construction periods greater than four (4) weeks and not exceeding twenty-six (26) weeks, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 10 dB(A)

Note: Council may impose on-the-spot fines for non-compliance with this condition.

103) Signs to be erected on building and demolition sites

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

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

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

104) Builders rubbish to be contained on site

All builders rubbish is to be contained on the site in a 'Builders Skips' or an enclosure. Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

105) Maintenance of fencing to protect trees

Fencing required to protect trees to be retained is to be maintained for the duration of the site clearing, preparation and construction works. During site works and construction all measures are to be taken to prevent damage to trees and other vegetation (including root systems) to be retained.

No building materials or other items are to be placed or stored within the fenced off areas.
A qualified arborist experienced in tree management must be present on a full or part-time basis to advise on the maintenance of the trees for their protection for the duration of the project.

106) Care to be taken when placing services near trees

All care is to be taken to manually excavate around or under any lateral structural support roots of any tree so as to minimise root disturbance where services are to be laid within the dripline of a tree.

107) No filling around trees

No soil or fill material is to be placed within the dripline of a tree so as to cause changes in surface level by more than 50mm from the existing level and such soil is not to be compacted. Such soil fill must not be finer than that being covered in situ, e.g. clay must not be placed over loam soil.

108) Prevention of water pollution

Only clean and unpolluted water is to be discharged to Council's stormwater drainage system or any watercourse to ensure compliance with the Protection of Environment Operations Act.

Note: Council may impose on-the-spot fines for non-compliance with this condition.

109) Wiring in flood prone buildings

All wiring, power outlets, switches, etc., must to the maximum extent possible, be located above the flood planning level. All electrical wiring installed below the flood planning level must be suitable for continuous submergence in water and must contain no fibrous components. Only submersible-type splices are to be used below flood planning level. All conduits located below flood planning level are to be so installed that they will be self-draining if subjected to flooding.

110) Groundwater contamination monitoring

All measures must be maintained to enable implementation of the approved groundwater monitoring program.

111) Acid sulfate soils management

All soil disturbance and excavation works must be carried out as per the approved Acid Sulfate Soils Management Plan. All acid sulfate soils must be managed and disposed of in accordance with the approved ASS Management Plan.

112) No dewatering

No dewatering at any time.

113) Maximum depth of excavation

No excavation beyond 1.5 m below the existing ground level at Lot 2 DP 617652 or Lot 3 DP 862033.

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

114) Works to be completed prior to issue of a Final Occupation Certificate

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

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

115) Sewer and water to be connected

A Certificate of Compliance under Section 307 of the Water Management Act 2000 is to be obtained from Byron Shire Council prior to the issue of an Occupation Certificate for works on water and/or sewer mains.

Application forms are available from Council's administration building or online at http://www.byron.nsw.gov.au/files/Forms/Section_305_Certificate.pdf to be submitted for a Certificate of Compliance.

116) Light intrusion mitigation measures

Implementation of all light intrusion mitigation measures described in the report titled '*Response to issues raised in item 11(b) of Byron Shire Council's letter dated 12 October 2009 (traffic and street lighting)*'. Ardill Payne and Partners. 21 December 2009', or similar, to protect the amenity of the residents. These measures include, but not are restricted to, the following:

- a) a 10-12m vegetated landscaping corridor is proposed along the full Broken Head Road frontage of the site and to the Broken head Road/Beech Drive intersection (exclusive of driveways) which will contain a mixture of groundcovers, shrubs and trees and will block and filter any headlights; Particular attention must be paid to the utility of vegetation located to the south of the masonry wall at the Broken Head Road/Beech Drive intersection for the purpose of the mitigation of light intrusion.
- b) a 1.6 m masonry wall (property identification information structure) is proposed on the corner of Lot 3 adjacent to the roundabout which will block headlights of vehicles entering and leaving the roundabout; and
- c) all independent living units and residential care facility rooms will be provided with appropriate soft window furnishings (particularly to bedrooms) such that external light sources can be precluded from entering the rooms.

117) Car parking areas, Internal Driveways - to be completed and signs to be provided.

The car parking areas and internal driveways, are to be constructed in accordance with the approved plans. Signs are to be erected clearly indicating the availability of off-street parking and the location of entry/exit points, visible from both the street and the subject site.

118) External Driveways and Roadworks - completed in accordance approved plans

The external driveways and Roadworks are to be constructed in accordance with the approved plans.

119) Services to be available

Prior to occupation, the adjacent Residential Aged Care Facility is to be capable of providing all necessary services to the units, including meals and nursing availability

120) Stormwater disposal

Stormwater must be collected and disposed of in a controlled manner such that stormwater flows are:

- g) Clear of buildings and infrastructure,
- h) Not concentrated so as to cause soil erosion,
- i) Not directly to a watercourse, and
- j) Not onto adjoining land.

121) Land Fill and Floor Levels

Prior to the issue of an occupation certificate the owner/builder of a development is to confirm in writing to Council the as-built levels are as per the approved designs (ie the heights are confirmed by a registered surveyor). The heights which should be provided would be habitable floor, non-habitable or garage floor, high ground and low ground.

122) Groundwater monitoring

The applicant must submit a report summarising all groundwater monitoring to date, including recommendations for future monitoring and management. This report must be prepared by a suitably qualified person.

123) Acid sulfate soils

The works engineer must certify to the Principal Certifying Authority that all works have been carried out in accordance with the approved Acid Sulfate Soils and Water Management Plan.

124) Works as executed drawings are required.

The submission of works as executed drawings for the storm water prior to a final plumbing inspection.

The following conditions are to be complied with at all times

125) Car Parking spaces are to be available for the approved use

The car parking spaces, together with all necessary access driveways and turning areas, are to be provided and maintained and accessible at all times.

126) Vehicles to enter/leave in a forward direction

Vehicles using any off-street loading/unloading and/or parking area must enter and leave in a forward direction. All driveways and turning areas must be kept clear of obstructions that prevent compliance with this condition.

127) Flood Evacuation Plan

A copy of the approved flood evacuation plan is to be laminated in clear plastic and displayed in a prominent location within the development (e.g. Kitchen, office).

128) Maximum depth of excavation

No excavation beyond 1.5 m below the existing ground level at Lot 2 DP 617652 or Lot 3 DP 862033.

129) No access to or extraction of groundwater

No access to or extraction of groundwater.

130) Notification of Council of exceedances of groundwater contamination levels

The applicant must notify Council, landowner, Department of Environment, Climate Change and Water and any other relevant authorities when groundwater contamination levels reported are above the relevant guidelines or present a significant risk of harm to human health or any other aspect of the environment.

131) Noise levels measured at the boundary

Noise emissions from the development measured at the boundary must comply with the requirements of the NSW EPA's Industrial Noise Policy, or similar.

NOTES

Construction Certificate required:

This development consent is issued under the Environmental Planning and Assessment Act 1979 and does not relate to structural aspects or specifications of the building under the Building Code of Australia. All buildings and alterations require the issue of a Construction Certificate prior to works commencing. Application forms are available from the customer services counter or Council's website www.byron.nsw.gov.au

Principal Certifying Authority:

Work must not commence until the applicant has:-

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

Occupation Certificate required:

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

Protection of the Environment Operations Act 1997:

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

Schedule of Development Contributions

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

RESIDENTIAL DEVELOPMENT

SCHEDULE OF CONTRIBUTIONS PURSUANT TO SECTION 94 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

(Office Use Only)

Community and Cultural Facilities	(CF-SP)	16.88	SDU @	\$1,089.95	=	\$18,398.41
" - Shire Wide	(CF-SW)	16.88	SDU @	\$575.95	=	\$9,721.97
Open Space	(OS-SP)	16.88	SDU @	\$6,859.06	=	\$115,780.97
" - Shire Wide	(OS-SW)	16.88	SDU @	\$2,901.59	=	\$48,978.77
Roads	(R-SP)	53.00	trips @	\$785.64	=	\$41,639.04
Cycleways	(CW-SP)	16.88	SDU @	\$740.37	=	\$12,497.45
Civic & Urban Improvements	(IM-SP)	16.88	SDU @	\$1,735.16	=	\$29,289.43
Rural Fire Service	-				=	
Surf Lifesaving	(SL-SP)	16.88	SDU @	\$28.24	=	\$476.74
Administration	(OF-SW)	16.88	SDU @	\$782.15	=	\$13,202.77
		Total		=	\$289,985.55	

Certificate of Compliance – Water Management Act 2000

A Certificate of Compliance will be issued on completion of construction of water management works to serve the development and/or on payment of developer charges for water and sewer as calculated in accordance with Byron Shire Council and Rous Water Development Servicing Plans.

Note: Copies of the application forms for Certificates of Compliance are available on Council's website www.byron.nsw.gov.au or from Council's Administration Office. Copies of Byron Shire Council's Development Servicing Plans are available at Council's Administration Office.

The following charges are indicative only. Developer charges will be calculated in accordance with the Development Servicing Plan applicable at the date of payment. A check must be made with Council to ascertain the current rates.

STAGE 2 INDICATIVE CHARGES PURSUANT TO THE WATER MANAGEMENT ACT, 2000

Water	(S64W Other)	23.30	ET @	\$1,190.00	=	\$27,727.00
Bulk Water	(BW-SP)	23.30	ET @	\$6,222.00	=	\$144,972.60
Sewer	(S64S Other)	23.30	ET @	\$9,021.00	=	\$210,189.30
Total					=	\$382,888.90

Civil Works

The civil works shall be designed and constructed in accordance with Council's Engineering Standard current at the time of submission of Engineering Plans for approval by Council. Approval of Engineering Plans will be current for a period of two years after which time Council may require the alteration to the Engineering Design to comply with standard current at that date.

Addendum 2A

Integrated Development - General Terms of Approval - Bush Fire Safety Authority

(i) Asset Protection Zone

At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within Appendices 2 & 5 of *Planning for Bushfire Protection 2006* and the NSW Rural Fire Service's document 'Standards for Asset Protection Zones'.

(ii) Water and Utilities

Water, electricity and gas are to comply with sections 4.1.3 and 4.2.7 of *Planning for Bushfire Protection 2006*

(iii) Access

Internal roads shall comply with section 4.2.7 of *Planning for Bushfire Protection 2006*;

(iv) Evacuation and Emergency Management

Arrangements for emergency and evacuation (and relocation) arrangements for occupants are to comply with section 4.2.7 of *Planning for Bushfire Protection 2006*

(v) Design and Construction

- Lot 3 DP 862033 – **Proposed units 1 to 16** (within 100 metres of the bushfire hazard) shall comply with *Australian Standard AS3959-1999 'Construction of buildings in Bush Fire prone areas' Level 1.*

Landscaping

Landscaping to the site to comply with the principles of Appendix 5 of *Planning for Bushfire Protection 2006*

Addendum 2B

Integrated Development - General Terms of Approval – Controlled Activity Approval

Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from the NSW Office of Water. Waterfront land for the purposes of this DA is land and material within 40m of the top of the bank or shore of the river identified.

ATTACH DOCUMENT

7. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

8. ENDORSEMENT

Assessment Officer (s): Name: Mr P Dawson Consultant Planner)

Signature:

Date: 16 June 2010



Office
of Water

ADDENDUM 2B
DEVELOPMENT APPLICATION
10-2009.433.1

General Terms of Approval – for works requiring a Controlled Activity Approval under the Water Management Act 2000

Our Reference		30 ERM2009/1050	File No:	9052649-1
Site Address		Lot 3 DP 862033, Lot 2 DP 617652, 184-202 Broken Head Road, Suffolk Park.		
DA Number		10.2009.433.1		
LGA		Byron Shire Council		
Number	Condition			
Plans, standards and guidelines				
1	These General Terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation relating to 10.2009.433.1 and provided by Council. Any amendments or modifications to the proposed controlled activities may render these GTA invalid. If the proposed controlled activities are amended or modified the NSW Office of Water must be notified to determine if any variations to these GTA will be required.			
2	Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from the NSW Office of Water. Waterfront land for the purposes of this DA is land and material in or within 40 metres of the top of the bank or shore of the river identified.			
3	The consent holder must prepare or commission the preparation of: (i) Vegetation Management Plan (ii) Erosion and Sediment Control Plan (iii) Soil and Water Management Plan			
4	All plans must be prepared by a suitably qualified person and submitted to the NSW Office of Water for approval prior to any controlled activity commencing. The plans must be prepared in accordance with the NSW Office of Water guidelines located at www.dwe.nsw.gov.au/water_trade/rights_controlled.shtml (i) Vegetation Management Plans (ii) Riparian Corridors (iii) Outlet structures			
5	The consent holder must (i) carry out any controlled activity in accordance with approved plans and (ii) construct and/or implement any controlled activity by or under the direct supervision of a suitably qualified professional and (iii) when required, provide a certificate of completion to the NSW Office of Water.			
Rehabilitation and maintenance				
6	The consent holder must carry out a maintenance period of two (2) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the NSW Office of Water.			
7	The consent holder must reinstate waterfront land affected by the carrying out of any controlled activity in accordance with a plan or design approved by the NSW Office of Water.			

Our Reference	30 ERM2009/1050	File No:	9052649-1
Site Address	Lot 3 DP 862033, Lot 2 DP 617652, 184-202 Broken Head Road, Suffolk Park.		
DA Number	10.2009.433.1		
LGA	Byron Shire Council		
Number	Condition		
Reporting requirements			
8	N/A		
Security deposits			
9	N/A		
Access-ways			
10	N/A		
11	N/A		
Bridge, causeway, culverts, and crossing			
12	N/A		
13	N/A		
Culvert			
14	The consent holder must ensure that no materials or cleared vegetation that may obstruct flow, wash into the water body or cause damage to river banks are left on waterfront land other than in accordance with a plan approved by the NSW Office of Water.		
Drainage and Stormwater			
15	The consent holder is to ensure that all drainage works (i) capture and convey runoffs, discharges and flood flows to low flow water level in accordance with a plan approved by the NSW Office of Water; and (ii) do not obstruct the flow of water other than in accordance with a plan approved by the NSW Office of Water.		
16	N/A		
Erosion control			
17	The consent holder must establish all erosion and sediment control works and water diversion structures in accordance with a plan approved by the NSW Office of Water. These works and structures must be inspected and maintained throughout the working period and must not be removed until the site has been fully stabilised.		
Excavation			
18	The consent holder must ensure that no excavation is undertaken on waterfront land other than in accordance with a plan approved by the NSW Office of Water.		
19	N/A		
Maintaining river			
20	The consent holder must ensure that (i) river diversion, realignment or alteration does not result from any controlled activity work and (ii) bank control or protection works maintain the existing river hydraulic and geomorphic functions, and (iii) bed control structures do not result in river degradation other than in accordance with a plan approved by the NSW Office of Water.		
21	N/A		
River bed and bank protection			

Our Reference		30 ERM2009/1050	File No:	9052649-1
Site Address		Lot 3 DP 862033, Lot 2 DP 617652, 184-202 Broken Head Road, Suffolk Park.		
DA Number		10.2009.433.1		
LGA		Byron Shire Council		
Number	Condition			
22	N/A			
23	The consent holder must establish a riparian corridor along the unnamed water course in accordance with a plan approved by the NSW Office of Water.			
Plans, standards and guidelines				
24	N/A			
25	N/A			
26	N/A			
27	N/A			
END OF CONDITIONS				