

COUNCIL ASSESSMENT REPORT

Panel Reference	2016NTH020
DA Number	10.2016.399.1
LGA	Byron Shire Council
Proposed Development	Hospital (medical consulting rooms, day theatre, pharmacy, specialist consulting rooms, twelve accommodation units, café/restaurant, basement and ground level parking) Removal of trees, Earthworks and Demolition of existing dwelling
Street Address	15 McGettigans Lane, Ewingsdale
Applicant/Owner	Brunsmmed Pty Ltd
Date of DA lodgement	27 June 2016
Number of Submissions	Ten (10)
Recommendation	Pursuant to Section 80 of the EP&A Act 1979, Development Application 10.2016.399.1 be refused for the reasons detailed in Section 6 of the report.
Regional Development Criteria (Schedule 4A of the EP&A Act)	EP&A Act Schedule 4A – No.6 Development that has a Capital Investment Value of more than \$5 million for the purposes of health services facilities.
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> • relevant environmental planning instruments <i>State Environmental Planning Policy No.55 - Remediation of Land</i> <i>State Environmental Planning Policy (Infrastructure) 2007</i> <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i> <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i> <i>Byron Local Environmental Plan 2014</i> • proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority <i>Draft State Environmental Planning Policy (Coastal Management) 2016</i> • relevant development control plan <i>Byron Shire Development Control Plan 2014</i> • relevant planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F <i>The applicant has offered to enter into a Voluntary Planning Agreement to pay a small percentage (originally 1.83% before being increased to 3.97%) of the cost of the upgrade works for the intersection of McGettigans Lane and Ewingsdale Road.</i> • coastal zone management plan <i>Not applicable (A draft CZMP Byron Bay Embayment has been prepared and sent to the Minister. Council is awaiting the Ministers response and does not currently have an adopted CZMP).</i> • relevant regulations e.g. Regs 92, 93, 94, 94A, 288 <i>Demolition of Building AS 2601</i>

List all documents submitted with this report for the Panel's consideration	Attachment 1 Written request from applicant for a contravention to a development standard (clause 4.6 of the LEP) Attachment 2 Proposed Architectural Plans Attachment 3 Proposed Statement of Landscape Intent
Report prepared by	Paul Mills Senior Planner Byron Shire Council
Report date	28 September 2017

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **Not Applicable**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **No**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

DEVELOPMENT APPLICATION EVALUATION REPORT

DA No:	10.2016.399.1
Proposal:	Hospital (medical consulting rooms, day theatre, pharmacy, specialist consulting rooms, twelve accommodation units, café/restaurant and basement and ground level parking) Removal of trees, Earthworks and Demolition of existing dwelling
Property description:	LOT: 2 DP: 118960 15 McGettigans Lane EWINGSDALE
Parcel No/s:	114310
Applicant:	Brunsmmed Pty Ltd
Owner:	Brunsmmed Pty Ltd
Zoning:	R5 Large Lot Residential Zone
Date received:	27 June 2016
Integrated Development:	No
Public notification or exhibition:	<ul style="list-style-type: none"> – Level 1 advertising under DCP 2014 Part A14 - Public Notification and Exhibition of Development Applications – Exhibition period: 14 July 2016 to 27 July 2016 – Submissions: Ten (10)
Other approvals (S68/138):	Not applicable
Planning Review Committee:	Not applicable
Delegation to determination:	The Northern Joint Regional Planning Panel in accordance with EP&A Act Schedule 4A – No.6, Development that has a Capital Investment Value of more than \$5 million for the purposes of health services facilities.
Issue summary:	<ul style="list-style-type: none"> • SEPP (Infrastructure) 2007, Clause 101 Development with frontage to a classified road, the proposal has not demonstrated the safety, efficiency and ongoing operation of a classified road (Ewingsdale Road) will not be adversely affected by the development. • The proposal has not demonstrated that suitable vehicular access is available, or that adequate arrangements have been made to make it available, contrary to Byron LEP 2014 Clause 6.6 Essential Services. • The main hospital building (three levels) has a maximum height of approximately 9.97metres contrary to Byron LEP 2014 Clause 4.3 Height of Buildings. The applicant has submitted a Clause 4.6 request for variation to the 9 metre height standard, however it is considered there is insufficient grounds to vary the development standard. • The proposed development does not satisfy the matters for consideration within Byron DCP 2014 relating to traffic generation, car parking, setbacks, design detail and appearance.

	<ul style="list-style-type: none"> • The subject site is in an elevated and visually prominent position and the proposed height, bulk, scale, massing, character and setbacks of the development are likely to detract from the built environment. • Subject site is located within the R5 Large Lot Residential Zone, concerns regarding the visual impact of the proposal on the rural setting and scenic quality of the area. • A total of ten (10) submissions were received. The matters raised in the submissions include increased traffic, insufficient on-site car parking, overdevelopment, setbacks, height, bulk and scale of the proposal being inappropriate in the R5 Large lot Residential Zone.
Recommendation:	<p>Pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application no. 10.2016.399.1 for a Hospital (including medical consulting rooms, day theatre, pharmacy, specialist consulting rooms, twelve accommodation units, café/restaurant and basement and ground level parking), Removal of trees, Earthworks and Demolition of existing dwelling, be refused consent for the reasons detailed in Section 6 of this report.</p>

1. Executive Summary

Byron Shire Council received a Development Application (DA) from Brunsmmed Pty Ltd for demolition of the existing single-storey dwelling house and erection of private hospital facility at 15 McGettigans Lane, Ewingsdale. The proposal incorporates a day surgery, GP and specialist consulting rooms, accommodation units for patients and staff, a café/restaurant with indoor and outdoor dining areas, pharmacy and parking for a total of 75 vehicles (including basement parking for 23 vehicles).

The proposed development constitutes 'regional development' requiring referral to the Northern Joint Regional Planning Panel (JRPP) for determination as it has a Capital Investment Value of more than \$5 million for the purposes of Health Services Facilities (Schedule 4A –No.6 Private infrastructure and community facilities). The JRPP is the consent authority.

The subject site is zoned R5 Large Lot Residential under Byron Local Environmental Plan (BLEP) 2014. The proposed 'hospital' (including accommodation units for patients and staff, a café/restaurant and pharmacy) is permissible with development consent. The proposal although predominantly two storey in height, includes a Clause 4.6 request for variation to the 9.0 metre maximum height standard. The proposal exceeds the maximum height limit by approximately 1 metre which is not supported as detailed in Section 3.2.1 of this report.

Access to the site is proposed from Quarry Lane via McGettigans Lane, McGettigans Lane then intersects with Ewingsdale Road. This intersection is not capable of accommodating the additional traffic loading from the development without significant intersection upgrades. Following a review of funding sources it is anticipated that these upgrades can not be achieved until after the year 2023. The applicant has offered to enter into a Voluntary Planning Agreement to pay a small percentage (Originally 1.83% increased to 3.97%) of the upgrade works. However this will not resolve the funding shortfall for the failing intersection nor will it bring its reconstruction forward in terms of timing to any significant degree, with traffic impacts associated with the development remaining unacceptable.

Council is not satisfied that essential intersection upgrade works will be completed when required to service the development. To accord with Clause 6.6 of BLEP 2014 consent must not be granted to development unless the consent authority is satisfied that services essential for the development are available or adequate arrangements to make them available have been made.

The proposal has been assessed against relevant clauses within applicable Environmental Planning Instruments. The development is not considered to satisfy Clause 101 of State Environmental Planning Policy (Infrastructure) 2007. The consent authority must not grant consent to development on land that has a frontage to a classified road (Ewingsdale Road) unless it is satisfied that the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development.

A detailed assessment has been completed against the provisions of Byron Development Control Plan (BDGP) 2014 and the proposal is considered to be inconsistent with the relevant controls relating to traffic generation, car parking, setbacks, design detail and appearance. This is discussed in greater detail within body of the report under Section 3.3.

The DA was notified to adjoining and nearby property owners for the period 14 July 2016 to 27 July 2016. A total of ten (10) submissions were received. The matters raised in the submissions include increased traffic, insufficient on-site car parking, overdevelopment, setbacks, height, bulk and scale of the proposal being inappropriate in the R5 Large lot Residential Zone.

Overall the development is considered to be an unsatisfactory response to the site and its surroundings with regards to traffic generation, car parking, setbacks, built form (height, bulk, massing and scale) and visual impact. It is considered these matters are unable to be overcome via

conditions of consent. The development has been assessed against the relevant matters for considerations pursuant to Section 79C of the *Environmental Planning and Assessment Act 1979* including public interest and suitability of the site, and is unable to be supported.

It is recommended that the proposed development be refused for the reasons detailed in the Section 6 of this report.

1.1 History/Background

- BA 167/79** Building Application was approved on 18 September 1979 for construction of a dwelling on the site.
- 10.1999.166.1** Development Application for additions to a dwelling approved on 22 June 1999.
- 10.2004.626.1** Development Application originally sought a change of use from a dwelling to general store, restaurant and dwelling, and was subsequently amended to a restaurant and dwelling. The application was withdrawn 31 November 2005.
- 10.2007.52.1** Development Application for change the use of an existing dwelling to a restaurant and a one bedroom dwelling was approved by the Land and Environment Court (11087 of 2008) on the 6 July 2009.
- 10.2007.52.2** Section 96 Application to modify development consent 10.2007.52.1 to seek a reduction in car parking, application refused 12 April 2012.
- 10.2007.52.3** Section 96 Application to modify development consent 10.2007.52.1 to increase trading hours, seating numbers, car parking, and to modify fencing, toilets, kitchen, carport and seat areas refused by Council on 12 April 2013. Following the submission of amended plans approved by the Land and Environment Court (10707 of 2013) on 7 May 2014.

1.2 Description of the site

The subject site comprises a triangular shaped lot bounded by McGettigans Lane, Ewingsdale Road and Quarry Lane. The site is described as Lot 2 in DP 118960, street address 15 McGettigans Lane, Ewingsdale.

The site has a frontage of approximately 123 metres to McGettigans Lane, 75 metres to Ewingsdale Road, and 160 metres to Quarry Lane. The lot has a total area of 5497m² and is elevated above the adjacent roadways of McGettigans Lane and Ewingsdale Road. Ewingsdale Road is a classified road linking the Pacific Highway (M1) and the township of Byron Bay.

The level of the site has a mild fall towards the north and west. As can be seen in **Figure 1** vegetation consists primarily of scattered trees and lawn. Existing on site is a single storey dwelling house including four bedrooms, verandahs on three sides located towards the western boundary of the site. Presently no vehicular access exists from McGettigans Lane or Ewingsdale Road, and all traffic access to the site is via Quarry Lane.

Three Rous Water easements exist over the site including a Rous water main which passes centrally through the site.

The locality is characterised predominantly by grazing land and large lot residential properties. The nearest residence is located approximately 26 metres from the site on the eastern side of Quarry Lane. To the west, opposite the site on McGettigans Lane is a rural property containing a heritage listed dwelling house. Further to the west, is the site of an Ambulance Station and Byron Central

Hospital. The rural residential area of Ewingsdale is located to the south with an approved rural-residential subdivision to the east, on the opposite side of Quarry Lane. To the north of the site on the opposite side of Ewingsdale road development is generally characterised by characterised by rural dwellings located on primary production land.



Figure 1 - Aerial photograph of subject site

1.3 Description of the proposed development

The application seeks development consent for the **d**emolition of the existing single storey Dwelling house and erection of private hospital facility including day surgery, GP and specialist consulting rooms, accommodation units for patients and staff, a café/restaurant with indoor and outdoor dining areas, pharmacy and parking for a total of 75 vehicles (including basement parking for 23 vehicles).

Demolition

The subject site is currently contains an existing single storey dwelling house. It is proposed this dwelling is demolished to facilitate

Tree removal

The proposal seeks to clear the site of existing vegetation and has identified the following trees for removal:

- Cinnamomum camphora x2
- Dysozylum mollissimum subsp. Molle x 2
- Grevillea robusta x1

- Ficus benamina x1
- Archontophoenix cunninghamiana x 3
- Lagunaria Patersonia x1
- Ravenala madegascariensis x 10
- Dypsis decaryi x1
- Ficus lyrata x1
- Phoenix canaiensis x2
- Bamboo copse x1
- Jacaranda mimosifolia x1

Earthworks

The proposed development includes the use of a basement parking level. The development also includes some land forming over the site for appropriate drainage and stormwater management. The applicant has advised the development incorporates a total cut amount of 2386m² and a total fill level of 1096m². Overall this is a balance of 1290m² of cut. Low level (up to 1 metre high) earth mounds are proposed adjacent to both the Ewingsdale Road and McGettigans Lane frontages of the site for landscaping purposes.

Main Hospital building

The proposed development seeks to provide health services including day surgery procedures that are considered to be more diagnostic type surgery such as gastroscopy, arthroscopy, endoscopy, colonoscopy. The applicant considers the proposed development will support the larger facilities (eg public hospitals) in the area which cater for major surgery.

The applicant has stated all health services are provided in a large building located at the north-eastern corner of the site. This three (3) level building contains the following facilities;

- General practitioner consulting rooms x 14
- Specialists consulting rooms x 6
- Day theatre
- Integrated Pharmacy
- Minor treatment procedure room
- Reception and waiting area
- Staff room facilities
- Basement car park

The health services building has a total Gross Floor Area (GFA) of 1560m². The proposed operating hours for the development are 24 hours, seven (7) days per week for hospital and outpatient accommodation and cafe / pharmacy to operate from 6am to 6pm. In response to traffic issues the applicant subsequently has proposed close the clinic and pharmacy between the hours of 2:00pm and 4:00pm.

Accommodation units

The proposed hospital includes 12 individual accommodation units to provide accommodation for health care workers such as visiting specialists and for patients receiving health care treatment. These 12 accommodation units each have a total GFA of 45m² or 50m² each with a single bedroom, lounge room, bathroom and kitchenette and small balcony/verandah.

Proposed Units 1-4 are within a single two-storey building, Units 5-10 are single storey (attached or semi-detached) and Units 11 & 12 are within a detached two-storey building (located in the southern corner of the site).

Café/restaurant

The proposed Cafe has been incorporated into the hospital development to provide food services for patients and staff. The Café/restaurant is located centrally within the development including both indoor and covered outdoor dining areas located towards the Ewingsdale Road frontage of the site. It is proposed the Cafe will not operate separately from the hospital.

Access and Parking

The site is currently accessed via Quarry Lane off McGettigans Lane. The development proposes to upgrade Quarry Lane in accordance with the Northern Rivers Local Government – Geometric Road Design (Urban and Rural) standards. This laneway will result in a 7m carriageway with a 3.5m verge.

The intersection of Quarry Lane and McGettigans Lane is proposed to be upgraded with vegetation clearing within the road reserve seeking to achieve sufficient sightlines.

Proposed access to the site is provided by two crossovers onto Quarry Lane. The southern access provided is a two way access at 6.7m wide, and the northern access is an exit only access which is 4.4m wide.

The proposed development has provided a total of 75 parking bays. Parking onsite has been provided in two locations, at grade parking and a basement parking level. The basement level is provided for staff only and provides a maximum of 23 parking spaces. The outdoor parking area provides 51 parking spaces, two of which are accessible spaces.

The proposed design is to allow vehicles to enter and exit the site in forward gear. The development also provides a drop-off/pick-up bay for visitors and staff. This is located at the closest point to the health care building. The applicant has advised the proposal has catered for small rigid vehicles to safely manoeuvre onsite for delivery services and waste collection.

Landscape works

The applicant has submitted a Statement of Landscape Intent identifying earth mounds and tree, shrub and grass plantings adjacent to both the Ewingsdale Road and McGettigans Land frontages. Tree plantings are also proposed within the proposed ground level car park and adjacent to Quarry Lane.

Services

The proposed development involves upgrades to existing infrastructure to adequately service the proposed hospital. This development will extend the sewer line which ends at the Byron Central Hospital. This sewer line will run along Ewingsdale Road providing the connection to the West Byron Treatment Facility.

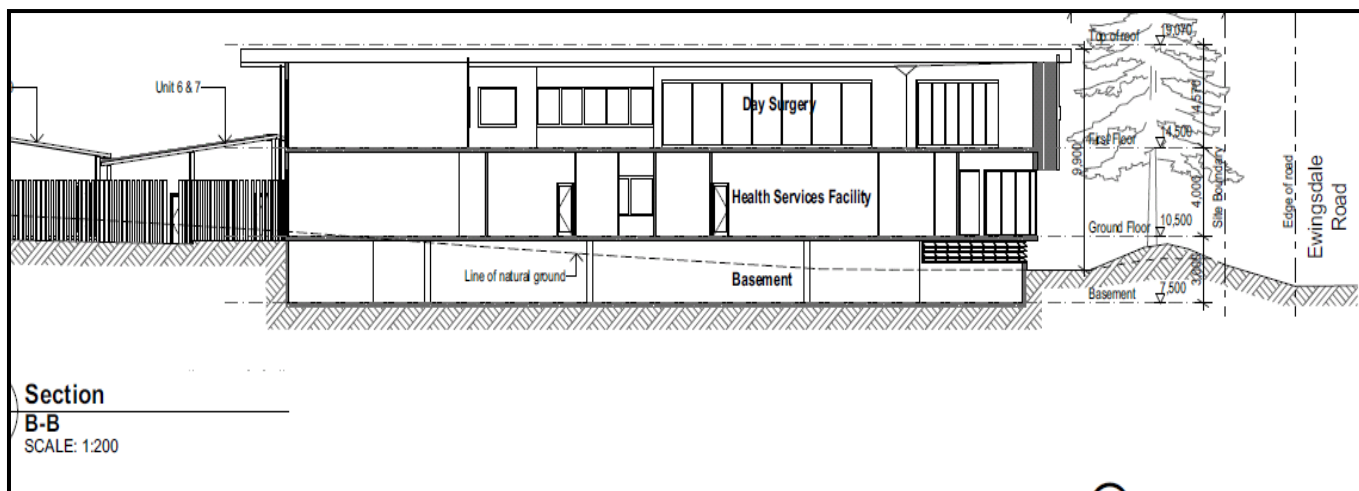


Figure 2 – Section drawing showing proposed three storey component and earth mound adjacent to Ewingsdale Road

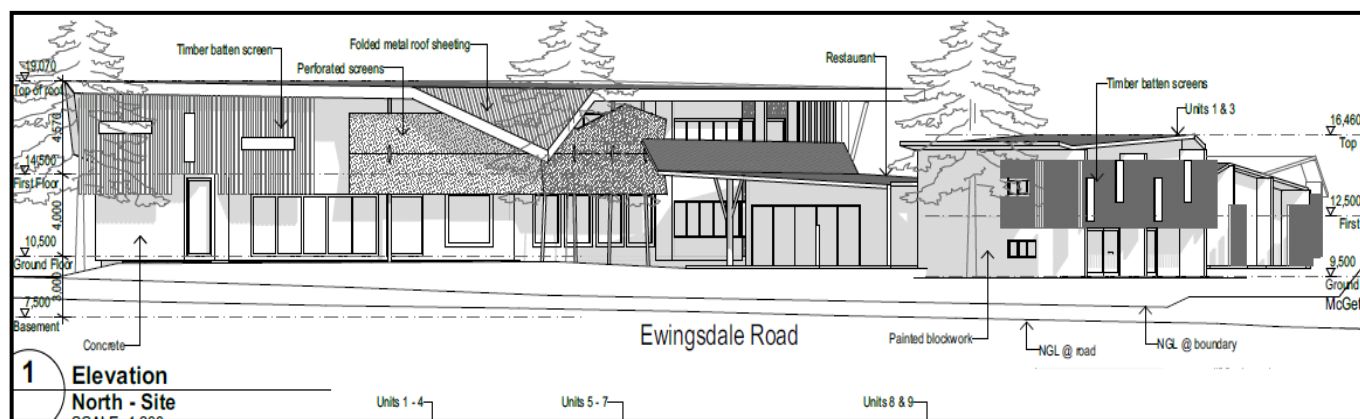


Figure 3 – Proposed Ewingsdale Road elevation





Figure 4 – Perspective drawings (artist impressions)

2. SUMMARY OF EXTERNAL REFERRALS

	Summary of Issues
Heritage Advisor	Impact of the proposal on the setting of the Heritage Item Higgins house I107 which holds aesthetic significance. No objection to the proposal in terms of heritage impacts.
Local Traffic Committee	<p>As per Res 16-649, following are the Local Traffic Committee's comments relating to 10.2016.399.1 Byron Central Health & Wellness Hub from meeting held 9 November 2016:</p> <p>Committee Comments: Traffic Impact Assessment to be reviewed, including the following items:</p> <ul style="list-style-type: none"> • Traffic volumes for McGettigans Lane and Ewingsdale Road. • Proposed trip generation. • Justification for the intersection design at Quarry Lane/McGettigans Lane.

2.1 Section 5AA - Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994

On the 25 August 2017 the Act was amended to repeal Section 5A and introduced Section 5AA. Section 5AA has effect subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994 that relate to the operation of this Act in connection with the terrestrial and aquatic environment.

It is noted that **Biodiversity Conservation (Savings and Transitional) Regulation 2017** Clause 28 states:

28 *Former planning provisions continue to apply to pending or interim planning applications*

- (1) The former planning provisions continue to apply (and Part 7 of the new Act does not apply) to the determination of a pending or interim planning application.
- (2) However, Part 7 of the new Act applies to the determination of a pending or interim planning application referred to in paragraph (b), (c) or (d) of the definition of pending or interim planning application in clause 27 (1) if the applicant or proponent and the planning approval body for the application agree in writing that Part 7 of the new Act is to apply to the determination of the application instead of the former planning provisions.

In accordance with Clause 28 the former planning provisions continue to apply and form the basis for the assessment for this application.

2.2 Section 5A - Significant effect on threatened species, populations or ecological communities, or their habitats

The submitted Basic Terrestrial Flora and Fauna Assessment prepared by Planit Consulting identifies existing vegetation on the site as follows:

This vegetation association occupies the entire site and has been highly modified/cleared as a result of the current residential use of the property and includes a single dwelling, sheds, carparking/driveway areas, septic tank, powerlines and garden beds.

The canopy layer is largely absent and is limited to scattered trees within the 12-15m height range. Canopy trees remaining includes both exotic and native species such as Camphor Laurel (*Cinnamomum camphora*), Silky Oak (*Grevillea robusta*), Weeping Fig (*Ficus benjamina*), Blue Gum (*Eucalyptus tereticornis*), Cocos Palm (*Syagrus romanzoffiana*), Bangalow Palm (*Archontophoenix cunninghamiana*), Tuckeroo (*Cupaniopsis anacardioides*), Red Bean (*Dysoxylum mollissimum* subsp. Molle), Umbrella Tree (*Schefflera actinophylla*), Slash Pine (*Pinus elliotii*), Cow Itch Tree (*Lagunaria patersonia*).

The mid and lower strata layers consist primarily of ornamental plantings and garden bed species which have been previously planted over the duration of the site. Species observed during site inspection include Rubber Fig (*Ficus elastica*), Jacaranda (*Jacaranda mimosifolia*), Triangle Palm (*Dypsis decaryi*), Traveller's Palm (*Ravenala madagascariensis*), Canary Island Date Palm (*Phoenix canariensis*), Bamboo (*Bambusa spp.*), Coast Wattle (*Acacia longifolia* subsp. *Sophorae*), Dwarf Canary Island Date Palm (*Phoenix roebelenii*), Frangipani (*Plumeria spp.*), Cabbage Tree Palm (*Livistona australis*), Macaranga (*Macaranga tanarius*), Fiddle Leaf Fig (*Ficus Lyrata*), Easter Heliconia (*Heliconia wagneriana*), Tree Philodendron (*Philodendron bipinnatifidum*), Giant White Bird of Paradise (*Strelitzia nicolai*) and Indian Spurge Tree (*Euphorbia tirucalli*), Scurvy Weed (*Commelina cyanea*), Lily of the Nile (*Agapanthus spp.*), Sago Palm (*Cycas revoluta*) and Soft Bracken (*Calochlaena dubia*).

The proposed development is considered unlikely to have a significant impact on a threatened species, populations or ecological communities, or their habitats.

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

Policy and summary of requirement	Proposed	Complies
State Environmental Planning Policy No.55 –	Sufficient information has been	Yes

<p>Remediation of Land</p> <p>Clause 7(1) A consent authority must not consent to the carrying out of any development on land unless:</p> <p>(a) it has considered whether the land is contaminated, and</p> <p>(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and</p> <p>(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.</p>	<p>submitted by the applicant to demonstrate that the subject site to be suitable for proposed development having specific regard to Clause 7 of the SEPP.</p>	
<p>State Environmental Planning Policy (Infrastructure) 2007</p> <p><u>Clause 101 Development with frontage to a classified road</u></p> <p>(2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:</p> <p>(a) where practicable, vehicular access to the land is provided by a road other than the classified road, and</p> <p>(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:</p> <p>(i) the design of the vehicular access to the land, or</p> <p>(ii) the emission of smoke or dust from the development, or</p> <p>(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and</p> <p>(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.</p> <p><u>Clause 102 Impact of road noise or vibration on non-road development</u></p> <p>Note: Clause 102 is not applicable in this instance as the daily traffic volume of Ewingsdale Road is below 40000 vehicles.</p>	<p>Ewingsdale Road is a Classified Road.</p> <p>The proposed site access location via Quarry Lane is considered to be consistent with Clause 101 subsection 2(a).</p> <p>Concerns have been raised by Council's Development Engineer regarding adverse affects on safety, efficiency and ongoing operation of Ewingsdale Road as a result of the volume and frequency of vehicles using Ewingsdale Road, and therefore consent is not recommended to be granted pursuant to Clause 101(2).</p> <p>It is noted Ewingsdale Road is the main through-fare from the Pacific Hwy into Byron Bay. The road often experiences heavy traffic volumes with traffic queuing out onto the highway.</p> <p>The applicant was requested to submit a Noise Impact Assessment from a suitably qualified consultant to ensure that:</p> <ul style="list-style-type: none"> • future patients and staff at the proposed hospital are not subject to unacceptable road traffic noise; • noise from activities associated with the development do not adversely impact sensitive 	<p>No</p>

	receptors; and <ul style="list-style-type: none"> to include the provision of appropriate noise mitigation measures where necessary. The NIA recommended acoustic treatments to address road traffic impacts and onsite activities.	
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 BASIX Certificate required for each proposed unit capable of being used for the purposes of a dwelling.	BASIX Certificate for Multi Dwellings submitted. Should the application have been supported a condition to require compliance with the Certificate would have been recommended.	Yes
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 This Policy applies to vegetation in any non-rural area of the State that is declared by a development control plan to be vegetation to which this Part applies.	Reference is made to Clause 26 General savings and transitional provisions. An assessment has been made against Byron DCP 2014 Chapter B2 (Section 3.3 of this report) which was in force immediately before the commencement of the SEPP.	Yes
NSW Coastal Policy 1997 Development within the Coastal Zone must be consistent with the Aims, Objectives and Strategic Actions of the Coastal Policy.	The subject site is located outside of the area of the NSW Coastal Policy.	N/A
Demolition works Demolition of a building to be in accordance with the provisions of AS 2601.	Should the application have been supported an appropriate condition would have been included to require compliance with AS 2601.	Yes

3.2. BYRON LOCAL ENVIRONMENTAL PLAN 2014

Zone: R5 Large Lot Residential Zone

Definition: Hospital

LEP - Summary of Requirement	Proposed	Complies
Objectives of the R5 Large Lot Residential Zone <ul style="list-style-type: none"> To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality. To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future. To ensure that development in the area does not unreasonably increase the demand for public services or public facilities. To minimise conflict between land uses within this 	The proposal does not provide for residential housing in a rural setting while preserving, and minimising impacts on environmentally sensitive locations and scenic quality. The proposal seeks to increase the demand for public facilities associated with road infrastructure.	No

LEP - Summary of Requirement	Proposed	Complies
zone and land uses within adjoining zones.	Although a permitted land use the development is not consistent with the bulk and scale of rural residential development as constructed in the Ewingsdale Area.	
<p>Permissibility A 'hospital' is a permissible land use within the R5 Large Lot Residential Zone.</p> <p>hospital means a building or place used for the purpose of providing professional health care services (such as preventative or convalescent care, diagnosis, medical or surgical treatment, psychiatric care or care for people with disabilities, or counselling services provided by health care professionals) to people admitted as in-patients (whether or not out-patients are also cared for or treated there), and includes ancillary facilities for (or that consist of) any of the following:</p> <ul style="list-style-type: none"> (a) day surgery, day procedures or health consulting rooms, (b) accommodation for nurses or other health care workers, (c) accommodation for persons receiving health care or for their visitors, (d) shops, kiosks, restaurants or cafes or take away food and drink premises, (e) patient transport facilities, including helipads, ambulance facilities and car parking, (f) educational purposes or any other health-related use, (g) research purposes (whether or not carried out by hospital staff or health care workers or for commercial purposes), (h) chapels, (i) hospices, (j) mortuaries. <p>Clause 2.7 Demolition requires development consent The demolition of a building or work may be carried out only with development consent.</p>	<p>The applicant has sought development consent for a Hospital and for demolition of the existing Dwelling house.</p> <p>After the completion of the public exhibition period the applicant provided the following additional information regarding the proposed land use.</p> <p>Based on the information provided by the applicant the proposed use is considered to most appropriately fall within the LEP 2014 land use category of Hospital.</p>	Yes
<p>Clause 4.3 - Height of buildings Maximum height limit as shown on the Height of Buildings Map is 9.0 metres.</p>	The maximum height of the proposed building is approximately 9.97 metres and exceeds the 9 metre height limit (RL 19.07 – RL 9.1)	No* (*see Section 3.2.1 of this report)
<p>Clause 4.4 Floor space ratio Maximum floor space ratio for a building on the subject site is not to exceed the FSR as shown on the Floor Space Ratio Map.</p>	The subject site does not have a maximum Floor Space Ratio nominated on the Floor Space Ratio Map.	N/A

LEP - Summary of Requirement	Proposed	Complies
<p>Clause 5.10 Heritage Conservation</p> <p>(4) Effect of proposed development on heritage significance</p> <p>The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).</p> <p>(5) Heritage assessment</p> <p>The consent authority may, before granting consent to any development:</p> <p>(a) on land on which a heritage item is located, or</p> <p>(b) on land that is within a heritage conservation area, or</p> <p>(c) on land that is within the vicinity of land referred to in paragraph (a) or (b),</p> <p>require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.</p>	<p>The subject site is located opposite the a heritage listed homestead - Higgins house 1107 under Byron LEP 2014. In accordance with Clause 5.10 the proposed development has been considered having regard to the setting of this Heritage Item.</p> <p>It is considered the development will not adversely impact on the significance of the heritage item.</p>	<p>Yes</p>
<p>Clause 6.2 Earthworks</p> <p>(3) In deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:</p> <p>(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,</p> <p>(b) the effect of the development on the likely future use or redevelopment of the land,</p> <p>(c) the quality of the fill or the soil to be excavated, or both,</p> <p>(d) the effect of the development on the existing and likely amenity of adjoining properties,</p> <p>(e) the source of any fill material and the destination of any excavated material,</p> <p>(f) the likelihood of disturbing relics,</p> <p>(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,</p> <p>(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p>	<p>The proposed development involves extensive earthworks to a depth of excavation is 3.56m and the maximum depth of fill is 1.82 metres. The proposed earthworks are considered to be acceptable having regard to the matters for consideration in Clause 6.2.</p>	<p>Yes</p>
<p>Clause 6.6 Essential services</p> <p>Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate</p>	<p>Access to the site is proposed from Quarry Lane via McGettigans Lane, McGettigans Lane then intersects with Ewingsdale</p>	<p>No</p>

LEP - Summary of Requirement	Proposed	Complies
arrangements have been made to make them available when required: (a) the supply of water, (b) the supply of electricity, (c) the disposal and management of sewage, (d) stormwater drainage or on-site conservation, (e) suitable vehicular access.	Road. This intersection is not capable of accommodating the additional traffic loading from the development without significant intersection upgrade works. Council is not satisfied that essential intersection upgrade works will be completed when required for this development.	

* Non-complying issues discussed below

3.2.1 Byron Local Environmental Plan 2014 – Exceptions to development standards Clause 4.6 Assessment

1. Non-compliance with Clause 4.3 Height of buildings (Clause 4.6 assessment)

Clause 4.6(3) specifies:

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

Assessment: A written request has been submitted by the applicant seeking to justify a maximum building height of RL 19.07 on the subject site. The maximum height of the proposed building is calculated to 9.97 metres. The proposed building is approximately 0.97m higher than the 9.0m height control (a non-compliance of approximately 11%).

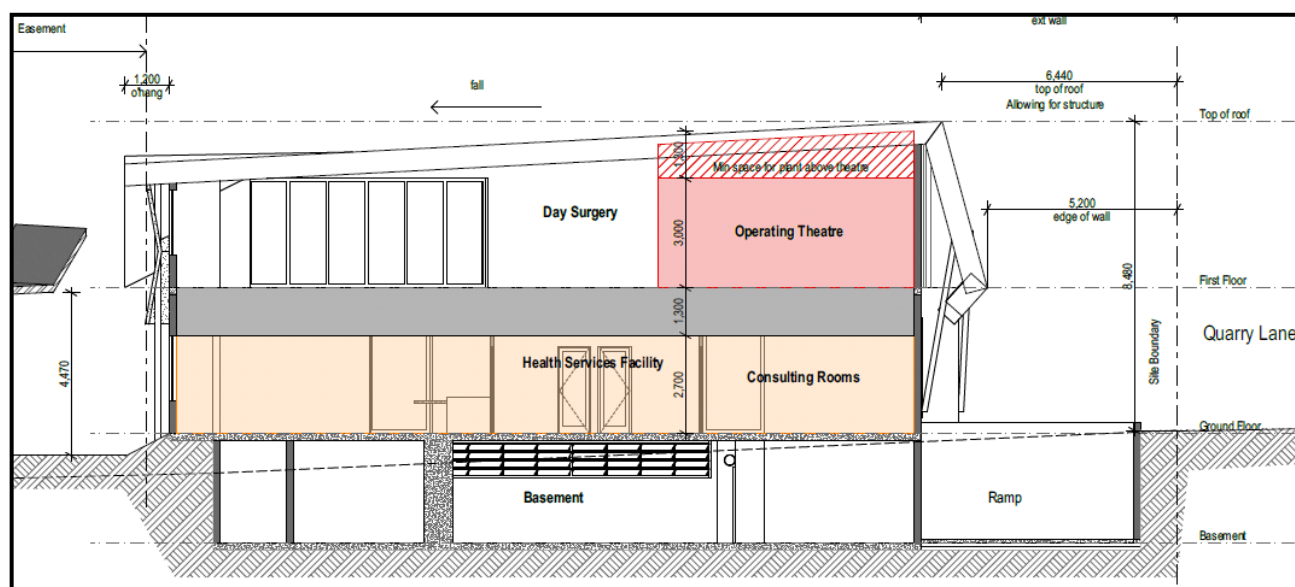


Figure 5 – Section drawing showing 1.3m area above both ground floor consulting rooms and first floor operating theatre

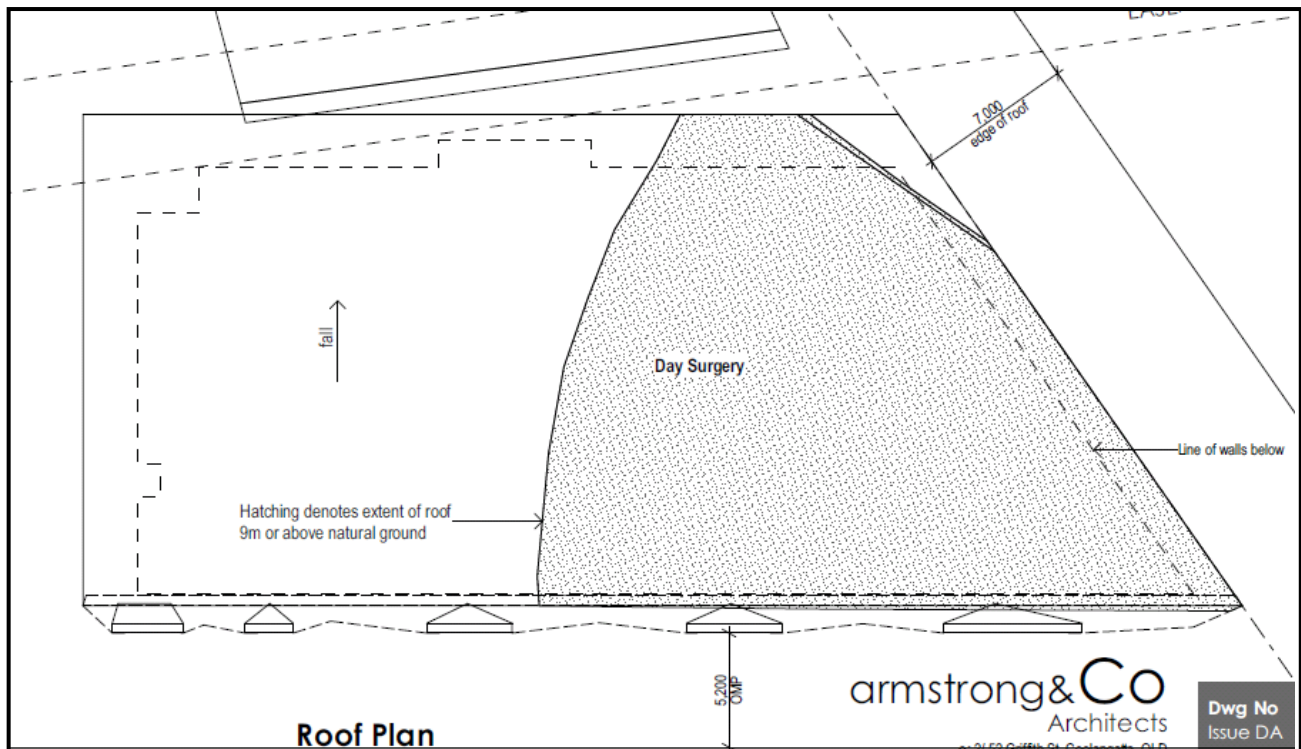


Figure 6 – Roof Plan prepared by applicant with hatched/shaded area exceeding 9.0 metres in height

It is considered that the submitted Clause 4.6 request for variation has not demonstrated the development standard (height of buildings) is either unreasonable or unnecessary in the circumstances of this case. It is considered the submitted Clause 4.6 request for variation has not demonstrated there are sufficient environmental planning grounds to justify the contravention. Following are dot point summaries of the matters provided to justify the proposed variation and an assessment:

- The National Construction Code and Australasian Health Facility Guidelines requirements for floor to ceiling heights for medical treatment rooms. This extended floor to ceiling height will permit essential ceiling mounted equipment such as radiology equipment, lights, air conditioning ducting and 500mm of concrete beams. Without this essential the use of the operating theatres would be drastically restricted and limit the services provided.

Assessment: Whilst it is acknowledged additional floor to ceiling height is likely to be required the applicant not provided details of the required floor to ceiling heights specified by the National Construction Code. An additional 1.3 metres has been proposed not only for the first floor 'day surgery' but also the ground floor. The proposed three (3) storey design is considered to be the primary reason for the proposal exceeds the maximum height standard (see **Figure 5**).

- In view of the natural slope of the land, only a small portion of one of the buildings proposed on site is located above the 9m maximum building height. The encroachment is only a small portion of the corner of the main medical building.

Assessment: As can be seen in **Figure 6** almost half the roof area of the main building exceeds 9 metres in height. It has been estimated using the site contours provided on the Existing Conditions Layout Plan that approximately 50% of the roof area of the proposed main building exceeds the 9.0m maximum height standard. This area is not considered to be a small portion of the corner as stated by the applicant.

- The encroachment will not generate any significant overshadowing.

Assessment: The submitted shadow diagrams prepared by Armstrong & Co Architects (Dwg No.A11) for the winter solstice indicate that the shadow cast by the main building should result in only minor overshadowing after 2:00pm for the property at No.17 McGettigans Lane.

- The bulk and scale of the development is appropriate for the site and is consistent with the existing and future intended large lot residential development in the area.

Assessment: The proposed bulk and scale of the development is not considered to be appropriate or compatible with existing or future large lot residential development in Ewingsdale. Existing residential buildings within the R5 Zone along McGettigans Lane have significantly greater setbacks to McGettigans Lane, have reduced bulk and are smaller in scale. Whilst it is acknowledged this is a corner site, the proposed size and massing of buildings when viewed from vantage points on both Ewingsdale Road and McGettigans Lane will appear excessive and incompatible with the character of the immediate area.

- All required car parking and landscaping areas can be appropriately accommodated on site.

Assessment: The need to provide basement car parking is not considered to be a matter relevant to varying the height standard. It is considered the need to provide basement parking may represent an overdevelopment of the subject site rather than a reasonable justification that the height standard is unreasonable or unnecessary.

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

(a) the consent authority is satisfied that:

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

Assessment: It is considered that the applicant's written request has inadequately addressed the matters required to be demonstrated in subclause 3.

- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

Assessment: The objectives of Clause 4.3 (height of buildings) are as follows:

- (a) to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,*
(b) to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,
(c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.

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

It is considered the proposed height of the building does not satisfy the objectives 'a', 'b' & 'c' of Clause 4.3. The proposed building height is considered to be excessive in the immediate location and the broader rural residential area of Ewingsdale and will likely detract from the

character of the area. Further the proposed earth mound adjacent to Ewingsdale Road (see **Figure 7**) will not adequately reduce the visual impact of the proposal.

The subject site is adjoined by road reserves on all three sides. The submitted shadow diagrams prepared by Armstrong & Co Architects (Dwg No.A11) for the winter solstice indicate that the shadow cast by the main building should result in only minor overshadowing after 2:00pm for the property at No.17 McGettigans Lane. The proposed development should not result in any unacceptable loss of privacy to any neighbouring property. No written objection from a neighbouring property has been received relating to the loss of views or view sharing. The proposal is not considered likely to result in any significant loss of views by neighbouring properties.

The proposed development is considered to be inconsistent with the objectives of the R5 Large Lot Residential Zone.

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*
- *To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*
- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

The height, bulk and scale of the proposed building is not considered to minimise impacts on the rural setting and/or scenic quality of the immediate area. The proposal is considered to hinder the proper and orderly development of the area in the future.

(b) the concurrence of the Director-General has been obtained.

Assessment: Concurrence of the Director-General is able to be assumed for non-compliances with Clauses 4.3 (pursuant to NSW Planning System Circular 08-003).

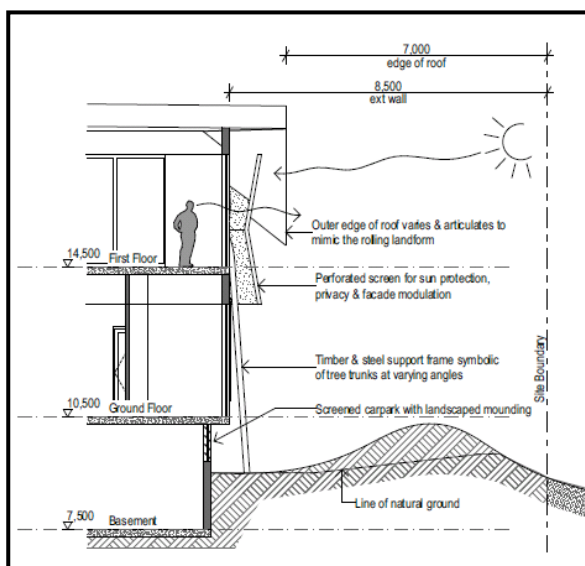


Figure 7 – Proposed earth mound adjacent to Ewingsdale Road

3.2.2 Section 79C(1)(a)(iia) Consideration of any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F.

The proposed development and/or subject site is not known to have an existing planning agreement entered into under Section 93F.

The applicant has proposed to enter into a Voluntary Planning Agreement (VPA) which is required to be considered in accordance with Section 79C(1)(a)(iia). The public purpose of the planning agreement proposed by the developer is to pay a contribution toward the provision of a public amenity, being the intersection upgrade of McGettigans Lane / Ewingsdale Road. The developer originally offered to enter into a VPA for 1.83% of the cost of the intersection upgrade this later increased to 3.97% of the cost.

A planning agreement is discretionary in that Council or a delegated officer of Council cannot be compelled to enter into an agreement. A planning agreement is between the developer and the “*planning authority*”.

As per section 23G (2) (a) of the Act the JRPP has the function of a Council as a consent authority. Section 23G (5) confirms that the JRPP is a statutory body representing the Crown. The JRPP is not a planning authority for the purposes of entering into a planning agreement that would bind the Council.

The roundabout at McGettigans Lane is essential for this development to proceed. As Council cannot afford to fund these works in the next 5-8 years these works would have to be funded by the developer if the development is to proceed. The developer may offer up a VPA where they forward fund the roundabout and Council reimburses them from the s94 income after the internal loans are repaid. However the offer of the VPA is not for the construction and reimbursement, it is to pay a minor percentage of the cost of the roundabout to Council.

As Council does not have the funds to pay for the roundabout until after 2023 it has not entered into a planning agreement in the terms offered by the developer.

The peer review by Roadnet of the updated Bitzios traffic study confirms that the intersection fails at 2018. This is also confirmed by the draft Review of MR545 Traffic Studies prepared by Cardno on behalf of Council.

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

Draft SEPP (Coastal Management) 2016

The Draft Coastal Management State Environmental Planning Policy (SEPP) proposes to establish a new, strategic land use planning framework for coastal management. It is intended to support the implementation of the management objectives set out in the Coastal Management Act 2016.

Once adopted, the Coastal Management SEPP will be the single land use planning policy for coastal development and will bring together and modernise provisions from SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforests) and SEPP 71 (Coastal Protection).

The aim of the Draft SEPP is to promote an integrated and co-ordinated approach to planning in the ‘Coastal Zone’, identifying four coastal management areas:

- coastal wetlands and littoral rainforests area
- coastal environment area;
- coastal use area; and

- coastal vulnerability area.

The subject site is mapped within the 'coastal use area'. The draft provisions for consideration of development within this area generally reflect the existing matters for consideration currently outlined in SEPP 71.

The subject site does not fall within a 'coastal vulnerability area' as it is not identified within the 'Coastal Erosion Hazard Area' on the Byron Bay Coastal Hazards Map (Byron DCP 2014). The proposal is considered to be acceptable having regard to the provisions of the Draft SEPP particularly Divisions No.2, 4 & 5. The proposed development does not contain a wetland, littoral rainforest, or coastal environment area.

3.3 DEVELOPMENT CONTROL PLAN 2014

Part B: Chapter B2 - Preservation of Trees and Other Vegetation

The proposal seeks to clear the site of existing vegetation and has identified the following trees for removal:

- Cinnamomum camphora x2
- Dysoxylum mollissimum subsp. Molle x 2
- Grevillea robusta x1
- Ficus benjamina x1
- Archontophoenix cunninghamiana x 3
- Lagunaria Patersonia x1
- Ravenala madagascariensis x 10
- Dypsis decaryi x1
- Ficus lyrata x1
- Phoenix canaiensis x2
- Bamboo copse x1
- Jacaranda mimosifolia x1

Should the proposal have been assessed favourably the proposed removal of trees and vegetation from the site is considered to be satisfactory subject to approval of a detailed landscape plan.

Part B: Chapter B3 - Services

Water

Rous Water provides reticulated bulk water supply to residential properties within the local area and currently provides water supply to the existing dwelling. It is proposed to service the development from the same water main subject to Rous Water approval.

Sewer

No sewer reticulation is currently available within the vicinity of the subject site. It is proposed that a sewer rising main be constructed connecting into the existing sewer pump station at the Hospital on Ewingsdale Road.

Stormwater

The submitted concept stormwater management plan which includes bioretention swales is considered satisfactory.

Electricity & Telecommunications

Electricity is available via the overhead line network on Quarry Lane or Ewingsdale Road. Telstra service is available via the existing network and connection point in Quarry Lane.

Part B: Chapter B4 - Traffic Planning, Vehicle Parking, Circulation and Access

Traffic Impacts

The proposed traffic impacts of the proposal are considered to be contrary to the first Aim of Chapter B4 (specified in Section B4.1.2) which states:

1. *To ensure that all relevant traffic impacts relating to development are identified, assessed and mitigated.*

The proposed development has not proposed to mitigate the relevant traffic impacts of the development having only proposed to enter into a Voluntary Planning Agreement to pay a small percentage of the cost of the upgrade works.

The McGettigans Lane / Ewingsdale Road intersection is not capable of accommodating the additional traffic loading without significant intersection upgrades. These upgrades can not be achieved, until after the year 2023. The proposed VPA is inadequate to enable the Intersection to be upgraded simultaneously with the development coming on line. Traffic impacts can not be adequately managed.

Parking Spaces Required

- General practitioner consulting rooms x 16 = 32 spaces (2 spaces / consulting room)
- Specialists consulting rooms x 6 = 12 spaces (" " " ")
- Doctors (assume 1 per consulting room) = 22 spaces (1 space per practitioner)

- Day theatre (considered ancillary) = 0 spaces (no additional visitors)
= 2 spaces (assume 2 staff)

Note: While no visitor additional spaces are added, it is expected the Day Theatre will result in several spaces having a slow turnover.

- Pharmacy (Business Premises, 150m²) = 20 spaces (1 space / 7.5m² GFA)
= 7.5 spaces (1 space / 20m² GFA)

Note: While Pharmacy is typically ancillary to medical centre it is realistic to expect it will be used by Ewingsdale locals who will typically have a higher turn over rate, therefore adopt the lower rate and apply a small discount.
= Adopt 4 spaces

- Minor treatment room (considered ancillary) = 0 spaces (assume no additional visitors)
= 3 spaces (assume 3 staff)

- Reception and waiting area = 0 spaces (no additional visitors)

Note: Assume staff numbers included in Medical Centre rate of 2 spaces / consulting room)

- Accommodation (12 x 1 bed units) = 12 spaces (1 space / unit)
= Adopt 10

- Café (150m² GFA, ancillary) = 7.5 spaces
(adopt 1 space / 20m² given the Café is predominately ancillary)

Total required spaces = 109 spaces
= Adopt 90 spaces (following dispensations)

Spaces Proposed = 75 spaces

The proposed development provides insufficient on-site parking to accord with the provisions of DCP 2014 Section B4.2.5 and is not supported. The proposed development is also considered to be contrary to the following Aim of Chapter B4:

2. *To ensure that traffic generating developments make adequate provision for off-street car parking, such that the needs of occupants, users, visitors, employees, service and delivery vehicles are met;*

When liberally attributed car parking dispensations the proposal is considered to have insufficient on-site parking for the size and nature of the development. In view of the scale and design of the development additional on-site spaces are not able to be provided at ground level.

Part B: Chapter B8 - Waste Minimisation and Management

A preliminary Waste Minimisation and Management Plan aimed at addressing the provisions of DCP 2014 Chapter B8 was submitted with the application material. It was proposed by the applicant that Council include a condition that prior to release of a construction certificate. The proposed plans make provision for a screened waste enclosure setback approximately 1.5m from the McGettigans Lane property boundary. Larger waste items are proposed to be stored temporarily in the services room of the hospital building.

Should the application have been supported conditions would have been included regard the management of medical waste, food waste and demolition waste.

Part B: Chapter B9 - Landscaping

A Statement of Landscape Intent was submitted with the application material. The Statement provides conceptual details of screen plantings and earth mounds within the setbacks to McGettigans Lane and Ewingsdale Road, along with tree plantings within the open carpark and adjacent to Quarry Lane. The proposal does not seek to provide tall screen plantings adjacent to the eastern elevation of the main hospital building. The applicant has advised that more than 10% of the site comprises landscaping.

Overall the landscape concept is considered to be acceptable. However should the application have been supported a condition would have been included to require the submission/approval of a detailed Landscape Plan to satisfy Chapter B9. This conditions would have required additional screen plantings adjacent to the eastern and northern boundaries of the site.

Part B: Chapter B11 - Planning for Crime Prevention

The proposed hospital development is further defined as a Health Service Facility which under Section B11.1.1 requires the preparation and submission of a Crime Risk Assessment with a development application of this nature. A Crime Risk Assessment has not been submitted for the development and it is considered that proposal has not demonstrated detailed consideration of the principles of Crime Prevention through Environmental Design (CPTED).

Concerns were raised with the applicant regarding the distant and isolated location of proposed accommodation Units No's 11 & 12. Additional information submitted by letter dated 22 August 2016, gave consideration to CPTED principles only in relation to the proposed location of these units.

Should the application have been supported conditions would have been included to require the submission of a Security Management Plan. In view of the nature and operation of the hospital use this Plan would likely need to make arrangements for 24 hour on-site security.

Part B: Chapter B13 - Access and Mobility

Should the application have been supported a condition would have been included to require that design and access be provided in accordance with AS1428.1 – Design for Access and Mobility – General Requirements for Access – New Buildings, to and within all the areas or facilities of the development where there is a reasonable expectation of access by any owner, occupier, employee or visitor.

Part B: Chapter B14 - Excavation and Fill

Unless otherwise stated in the Chapter, excavation and filling must be limited to a depth of 1 metre, and generally a maximum depth of excavation for a basement car parking is 2.0m. The applicant has advised the maximum depth of excavation is 3.56m and the maximum depth of fill is 1.82 metres. Whilst it is acknowledged the proposed earthworks exceed the prescriptive measures of Chapter B14 the proposed earthworks are considered to satisfy the following objective:

- 1. To control the extent, character, bulk and scale of earthworks so that both individual and cumulative earthworks over time do not detract from the existing and desired future character of their immediate locality, and the surrounding area.*

The Earthworks as proposed are considered satisfactory.

Part C: Chapter C1 - Non-Indigenous Heritage

The subject site is located opposite the site heritage listed homestead Higgins house I107 which holds aesthetic significance. In accordance with Clause 5.10 the proposed development has been considered having regard to the setting of this Heritage Item.

A Heritage assessment prepared by Council's Consultant concludes that the proposal would not impact adversely upon the significance of the heritage item.

Part D: Chapter D4 - Commercial and Retail Development

The proposed development is considered to be contrary to the Performance Criteria of Section D4.2.5 Street Setbacks which state, in part:

Commercial/ retail type premises in the RU5 and R2, R3 and R5 Zones to have regards to the setbacks of adjoining and surrounding development.

It is considered the proposed building setback of 1.5m - 3.0m to the McGettigans Lane road reserve is not compatible with the setbacks of existing buildings within the R5 Zone which also have a frontage McGettigans Lane. Whilst it is acknowledged the site is a corner allotment the massing, bulk and scale of the proposed development warrant a setback compatible with existing development within the same zone.

The proposed development is considered to be contrary to following Objective and Performance Criteria of Section D4.2.2 Design Detail and Appearance.

Objectives

To ensure that development is compatible with the design and amenity of development in the locality.

Performance Criteria

- 1. The design of new buildings must reflect and enhance the existing character of the precinct. The design, scale, bulk, design and operation of business, commercial and*

retail development must be compatible with the streetscape and with the aesthetics, function and amenity of development in the locality.

2. *Building design, roof profile, detailing, colours, materials and the like that are visible from the street and from adjoining properties must be compatible with any dominant design themes in the surrounding locality.*

It is considered the proposed development is incompatible with the design of development in the locality. The proposed design, setbacks, massing, bulk, scale, height of the proposed development does not reflect and enhance the existing character of the Ewingsdale large lot residential precinct. The elevated position of the proposed development will be highly visible from Ewingsdale Road, McGettigans Lane and other positions in the locality. The development does not satisfy this element of the DCP.

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

Built environment

The proposed design, setbacks, massing of buildings, bulk, scale, height and operation of the proposed development does not reflect and enhance the existing character of the large lot rural residential precinct of Ewingsdale.

Intersection of McGettigans Lane and Ewingsdale Road

The McGettigans Lane / Ewingsdale Road intersection is not capable of accommodating the additional traffic loading without significant intersection upgrades. These upgrades can not be achieved in a best case scenario until after the year 2023.

Existing Rous Water Main

An existing Rous Water 200mm main passes through the centre of the subject lot in a north-south direction. The 'Existing Conditions Layout Plan' indicates there is an existing easement for the main however notes that the location of the main needs to be confirmed on site. The applicant has acknowledged the existence of the pipeline on the site and stated that the proposed development will be outside the easement.

An additional easement in favour of Rous Water is also located on the site, it understood that the water mains located in this easement have been decommissioned.

Natural environment

The proposed development is considered unlikely to have any unacceptable impacts on the natural environment.

Social and economic impacts in the locality

It is considered the proposal is unlikely to have any significant social or economic impacts in the locality.

3.5 The suitability of the site for the development

The subject site is not considered to be suitable for the proposed development as the intersection of McGettigans Land and Ewingsdale Road is not capable of accommodating additional traffic loading without significant intersection upgrades. These upgrades can not be achieved within the foreseeable future.

Further the development is considered to be an overdevelopment of the site as evidenced in variations being sought to height controls, setbacks and off street car parking. The site as such is not suitable for the development as proposed. A smaller development would be more appropriate, or alternatively the development would be better suited to a larger parcel of land.

3.6 Submissions made in accordance with this Act or the regulations

The application was notified in accordance with the Level 1 procedure specified within DCP 2014. Council's records identify a total of ten (10) submissions were received. The following table contains a summary of the issues raised in the submissions and an assessment comment.

Issue	Comment
<p>Increased Traffic – Concerns regarding the increase in traffic entering and leaving McGettigans Lane. Concerns regarding the safety, problems have already resulted in accidents and traffic concerns should be addressed before approving this DA.</p> <p>A roundabout would be required at the intersection of McGettigans Lane and Ewingsdale Road. Two such roundabouts in such close proximity to each other (including the existing roundabout at the hospital entrance) would increase the bottleneck effect further delaying traffic into and out of Byron Bay.</p> <p>The development towards the highway end of Ewingsdale Road will cause a slowing affect on traffic and create ongoing traffic jams. This puts additional pressure on local residents, visitors and businesses owners. There is no other convenient alternative route for traffic and will make Byron Bay a less desirable destination for visitors and residents.</p>	<p>Concerns regarding the impact of traffic generated by the proposal are acknowledged and form a recommended ground for refusal.</p>
<p>Overdevelopment of the site and parking on-site is severely inadequate.</p> <p>The proposal fails to comply with the parking standards specified within Byron DCP 2014.</p> <p>The plans suggest 14 GP Consulting rooms, 6 specialist consulting suits as well as treatment room and nursing station and offices. If Council's requirement for parking is 2 spaces per consulting room and 1 additional space per staff member the majority of parking is already taken with the consulting room burden alone. This leaves nothing left for café patrons, residential occupants (12 units), nursing staff, day surgery theatre staff, day surgery patients and anyone else who would have reason to attend the facility (administration, cleaning, laundry and catering staff, professionals associated with radiology and pathology departments).</p> <p>Only 5 parking spaces have been provided for the first floor level of the building, noted on the plans to be a as a day theatre and specialist rooms. This is also considered to be insufficient.</p>	<p>See assessment of DCP 2014 car parking requirements detailed in Section 3.3 of this report. Insufficient on-site car parking is acknowledged and forms a recommended ground for refusal.</p>
<p>Ability to construct the future McGettigans Lane/ Ewingsdale Road Dual Lane Roundabout. The proposed</p>	<p>Noted - Detailed Engineering drawings for the design a</p>

Issue	Comment
plans indicate the proposed facility will be setback 7 metres from the Ewingsdale Road frontage with excavation projecting inside the 7 metre setback. The Council will need to resume land at the Ewingsdale frontage of both Lot 101 and 15 McGettigans Lane to accommodate the road geometry of the McGettigans Lane dual lane roundabout.	roundabout at the intersection of McGettigans Lane and Ewingsdale Road have not been prepared.
<p>The proposed development is not a 'hospital', as the proposed documentation for the DA shows clearly that the Proposed Development is a 'day surgery' for out-patients, with accommodation facilities.</p> <p>Given the proposal is not a hospital, the proposed accommodation is not permissible.</p>	<p>Following the exhibition of the application the applicant submitted further information to support the categorisation of the development as a 'hospital'.</p> <p>The proposed development is considered to be permissible with the consent.</p>
Height, bulk and scale of the proposed development is excessive. The subject site is located within the R5 Large Lot Residential Zone in which the zone objectives are focused on rural residential development. The scale of the proposal does not respect the character of the Ewingsdale area including the proposed 3.0m setback to McGettigans Lane. The proposal is not sympathetic to the objectives of the R5 Large Lot Residential Zone.	The proposed design, setbacks, massing of buildings, bulk, scale, height and operation of the proposed development does not reflect and enhance the existing character of the large lot residential precinct.
<p>Café – Objection to the proposed Café on the following grounds:</p> <ul style="list-style-type: none"> • It will be impossible to stop the general public from utilising the Café; • The Café would otherwise be prohibited in the R5 Zone; • The Café is not designed in a manner which clearly defines the cafes relationship to the hospital when regard is made to the size of the café, its orientation to Ewingsdale Road and its freestanding design. • The retail café use is not deemed to be consistent with the zone objectives. 	The proposed café use is an ancillary use permissible as part of a hospital development.
<p>Pharmacy – The Bitzios Report highlights that the Pharmacy is not clearly for the Hospital use however attributed to the medical centre. The report states the pharmacy will act more like a dispensary to the medical centre with a high turnover trip generator. Accordingly the pharmacy is not providing its core function to the hospital rather it is servicing the medical centre. In this regard the definition of medical centre does not include and as such the provision of a pharmacy is prohibited within the R5 Zone.</p>	The proposed pharmacy is considered to be an ancillary health related use permissible when part of a hospital development.
<p>Accommodation – The proposed visitor accommodation is not considered to be ancillary to the primary function of a hospital. Byron has significant stocks of accommodation for specialists and in the regard the use of accommodation on the subject land should purely be for the purposes of rehabilitation. That is</p>	The accommodation component is considered to be permissible as part of a hospital use for the accommodation of nurses or other health care workers, and

Issue	Comment
<p>accommodation be provided with a direct nexus to the use of the site as a hospital and therefore for admitted patients.</p> <p>The floor plans of the accommodation units should reflect the need rehabilitation needs of in-patients. The proposed development does not provide in-patient services.</p>	<p>accommodation for persons receiving health care or for their visitors.</p> <p>The applicant has specified, in part: <i>For Inpatient Accommodation, we confirm that these facilities will be in accordance with the Private Health Facilities Regulation 2010 requirements</i>".</p> <p>Should the application have been supported a condition to require the accommodation facilities comply with the Health Facilities Regulation 2010 would have been included.</p>
<p>Noise – Concerns regarding 24 hour traffic noise from the operation of the facility and use of accommodation units, noise also from air conditioning units and other plant equipment. The impacts of this noise on existing dwellings in close proximity of the site. The existing dwelling opposite the site on Quarry Lane is located approximately 26 metres from property boundary of subject site. This adjacent property has also been granted Development Consent (Council reference 10.2001.424.1) for a Rural Residential Subdivision comprising 23 lots. This subdivision will also facilitate other dwellings being located in very close proximity of the proposed development.</p> <p>Concerns regarding noise travelling at night detracting from the amenity of neighbouring dwellings including the dwellings at No.17 McGettigans Lane & No.10 Quarry Lane.</p> <p>The waste report proposes the collection of waste will be undertaken more than daily. This sounds like garbage trucks will enter the site more than once a day.</p>	<p>Following the exhibition of the application the applicant submitted an Environmental Noise Impact Report, prepared by CRG Acoustics, 25 October 2016. Section 6.0 of this Report recommends various measures to maintain the amenity of the nearest residential dwellings.</p> <p>Should the application have been recommended for approval appropriate conditions would have been drafted to ensure the development complies the mitigation measures recommended in the Report.</p>
<p>The application does not provide a detailed crime prevention assessment addressing Chapter B11 of the Development Control Plan.</p> <p>To state the overall design will deter any anti-social behaviour without documenting an assessment in no way demonstrates consistency with the core principles for crime prevention through environmental design. Proposed design has concealment locations and the disconnect of the staff units adds issues for staff accessing the units late at night. No lighting details are provided to satisfy AS4282.</p>	<p>It is acknowledged that a Crime Risk Assessment has not been submitted for the development and it is considered that the proposal has not demonstrated detailed consideration of the principles of Crime Prevention through Environmental Design (CPTED).</p> <p>Should the application have been supported conditions would have been included to require the submission of a Security</p>

Issue	Comment
	Management Plan. In view of the nature and operation of the hospital use this Plan would likely need to make arrangements for 24 hour on-site security.
The WGM Engineering Report that accompanies the DA states that the proposal will utilise the Byron Shire Hospital sewer pumping station . The WGM Report does not provide any documentary evidence to confirm that the pumping station has the capacity to accommodate the proposed development.	The development can be adequately serviced with water and sewer infrastructure.
<p>Failure to present a Hospital Operating Plan. The proposal has not addressed design and logistical considerations that are fundamental to the operation of a hospital, these include:</p> <ul style="list-style-type: none"> • Incorporation of an ambulance bay zone, loading doc facility, details about the storage and handling of medicalwaste and glass. • No detail of various internal rooms including the operating theatre. 	<p>Following the public exhibition of the application the applicant submitted plan details for the proposed operating theatre and consult rooms.</p> <p>It is acknowledged the proposal does not provide for an ambulance bay, the proposal does include a designated vehicle drop off area. Should the application been assessed favourably condition regarding waste management would have been recommended.</p>
Inadequate justification provided for the non-compliance with the 9 metre height standard . There is no detail provided on the proposed plans or specialist reports to identify how the Health Services Facility will operate.	<p>The proposed request for variation to the 9.0 metre height standard of Byron LEP 2014 has not been supported as detailed in Section 3.2.1 of this report.</p> <p>Following the public exhibition of the application the applicant submitted further details regard the nature of the proposed use.</p>
Quarry Lane Road Widening – It appears that this widening will require the acquisition of the property at No.17 McGettigans Lane or bring the road closer to the dwelling on that property.	The proposed plans do not indicate that the proposed road widening for Quarry Lane will require acquisition of any land from the adjacent property at No.17 McGettigans Lane.
There is already land set aside for a similar facility on the current Byron Central Hospital site.	This is not considered to be a matter relevant to the assessment of this proposal.
Byron Bay is over serviced with GPs and a clinic with 14 GP Consulting rooms is not viable . A clinic of this size would struggle to gain enough patients and would have a negative impact on other GP practices in the area that are staffed by	No evidence has been submitted to demonstrate that Byron Bay is over serviced with GPs. Competition and need are not

Issue	Comment
local doctors.	specified as matters for consideration in Section 79C of the EP&A Act 1979.
Concerns regarding noise and dust being created during demolition, earthworks and construction.	Should the application have been supported, noise and dust issues during construction are regulated under the NSW Protection of the Environment Operations Act 1997.
Support for the concept of a medical facility on the site with a number of concerns. It is believed this medical facility has the potential to enhance the services already available at Byron Central Hospital by providing surgical services. Trust that this facility will be offering services to non-private patients as well as private patients.	Noted.

3.7 Public interest

In view of the capacity of the intersection of McGettigans Lane and Ewingsdale Road, the increase in traffic associated with the proposal, and its impact on the local road network is considered to be contrary to the public interest.

4. DEVELOPER CONTRIBUTIONS

4.1 Water & Sewer Levies

Calculation of Additional Water & Sewer ET Load

	Water	Bulk Water	Sewer
Existing ET Entitlements (Table 1)	N/A	1.20	0
Proposed Development ET loading (Table 2)	N/A	26.18	38.35
Additional ET loading	N/A	24.98	38.35

This development generates an additional load onto Councils Bulk Water and Sewer System

Should the application have been assessed favourably Council would require Payment of Developer Servicing Charges (prior to issue of a construction certificate) of:

- **24.98 ET** Bulk Water; and
- **38.35 ET** for Sewer.

4.2 Section 94

In the event that the proposed development was to be approved a S94A levy would be applicable in accordance with Byron Developer Contributions Plan 2012.

5. CONCLUSION

Overall the development is considered to be unsatisfactory with regard to key issues including traffic generation, car parking, setbacks, built form (height, bulk, massing and scale) and visual impact. It is considered these matters are unable to be overcome via conditions of consent. The development has been assessed against the relevant matters for considerations pursuant to Section 79C of the *Environmental Planning and Assessment Act 1979* including public interest and suitability of the site, and is unable to be supported.

It is recommended that the proposed development be refused for the reasons detailed in the Section 6 of this report.

6. RECOMMENDATION

It is recommended that:

Pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application no. 10.2016.399.1 for a Hospital (including medical consulting rooms, day theatre, pharmacy, specialist consulting rooms, twelve accommodation units, café/restaurant and basement and ground level parking), Removal of trees, Earthworks and Demolition of existing dwelling, be refused consent for the following reasons:

1. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal has not satisfied the matters within State Environmental Planning Policy (Infrastructure) 2007, Clause 101 Development with Frontage to a Classified Road. The proposal fails to demonstrate that the safety, efficiency and ongoing operation of a classified road (Ewingsdale Road) will not be adversely affected by the development.
2. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal has not demonstrated that suitable vehicular access is available or that adequate arrangements have been made to make it available, contrary to Clause 6.6 Essential Services of Byron Local Environmental Plan 2014.
3. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal has not satisfied the Objectives not complied with the 9 metre height limit for the land as specified within Clause 4.3 Height of Buildings of Byron Local Environmental Plan 2014.
4. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not provide for a development at a scale consistent with the rural residential housing in the area, and fails to preserve the scenic quality of the landscape in relation to the objectives of the R5 Large Lot Residential Zone of Byron Local Environmental Plan 2014.
5. Pursuant to Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not satisfy the matters for consideration within Byron Shire Development Control Plan 2014 Section B4.2.5 Car Parking Requirements in relation to the provision of on-site car parking.
6. Pursuant to Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not satisfy the matters for consideration within Byron Shire Development Control Plan 2014 Section D4.2.5 Street Setbacks and Section D4.2.2 Design Detail and Appearance. The proposed setback of the development to McGettigans Lane is inconsistent with the setbacks existing development to McGettigans Lane and Ewingsdale, whilst the proposed building design, scale, bulk, setbacks, massing, and height of the

development does not reflect and enhance the existing character of the Ewingsdale large lot residential precinct.

7. Pursuant to Section 79C(1)(b) of the *Environmental Planning and Assessment Act 1979*, the subject site is in an elevated and visually prominent position and the proposed height, bulk, scale, massing, character and setbacks of the development are likely to detract from the built environment.
8. Pursuant to Section 79C(1)(c) of the *Environmental Planning and Assessment Act 1979*, the site is not considered to be suitable for the proposed development in view of the traffic generation impacts (imminent failure of the intersection of McGettigans Lane and Ewingsdale Road), visual impact and incompatible built form.
9. Pursuant to Section 79C(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed traffic generation impacts (imminent failure of the intersection of McGettigans Lane and Ewingsdale Road), inadequate on-site car parking, visual impact and incompatible built form of the development are considered to be contrary to the public interest.

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

Provide Disclosure Statement register details here: Nil.