

DEVELOPMENT APPLICATION EVALUATION REPORT

Doc No. #A2017/25302

Panel Reference	2017NTH028
DA No	10.2017.510.1
Proposal development	Mixed use development comprising demolition of all existing structures, removal of vegetation and construction of commercial premises, cafe, child care centre, shop top housing, serviced apartments and associated basement car parking and landscaping.
Street address	137 Jonson Street BYRON BAY, 139 Jonson Street BYRON BAY, 3 Browning Street BYRON BAY
	LOT: 21 DP: 247289, LOT: 5 SEC: 51 DP: 758207, LOT: 6 SEC: 51 DP: 758207
Applicant	Mr Malcolm Scott
Owner	JGD Developments Pty Ltd
Date of lodgement	14 September 2017
Number of submissions	Three (3) submissions - objection
Recommendation	It is recommended that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, development application no. 10.2017.510.1 for Mixed use development comprising demolition of all existing structures, removal of vegetation and construction of commercial premises, cafe, child care centre, shop top housing, serviced apartments and associated basement car parking and landscaping, be granted consent subject to the conditions of development consent attached to this report.
Regional Development Criteria	Development with a capital investment value (CIV) over \$20 million lodged prior to 1 March 2018 amendments to Schedule 4A of the EP & A Act 1979.
List of all relevant s4.15(1)(a) matters	• State Environmental Planning Policy No 55 - Remediation of Land • State Environmental Planning Policy No 71- Coastal Protection • State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 • Byron Local Environmental Plan 2014 • Byron Development Control Plan 2014 • EP&A Regulations clauses 92 and 97A
List all documents submitted with this report for the Panel's consideration	Attachments as numbered below: 1. Development Plan Set by Myers Ellyett Architecture, dated September 2018 2. Architects Design Statements for Apartment Design & Childcare by Myers Ellyett Architecture, dated 15 August 2017 3. Landscape Report by RPS Group Plc, dated 23 August 2017 4. Acid Sulfate Soil Management Plan by ENVSolutions Pty Ltd, dated June 2017 5. Environmental Noise Impact Report by CRG Acoustics Pty Ltd, dated 07 August 2018 6. De-watering Management Plan by ENV Solutions Pty Ltd, dated June 2017 7. Engineering Assessment and Engineering Plans by Planit Consulting, dated 08 August 2018 8. Stormwater Management Plan by Planit Consulting, dated 08 August 2018 9. Traffic Impact Study by Planit Consulting, dated 09 August 2018 10. BASIX Certificate No. 836737M_05 by Partners Energy Management, dated 19 September 2018 and NATHERS Summary Certificate No. 0003041740 (average star rating 7.0) prepared by David Howard, Partners Energy Management, dated 07 Aug 2018 11. Clause 4.6 Objection to Development Standard- building height by Malcolm Scott MPIA, dated 06 September 2018 12. Clause 4.6 Objection to Development Standard -floor space ratio by Malcolm Scott MPIA, dated 06 September 2018 13. Architect comments – Intended design outcomes relating to the Apartment Design Guide development standards for SEPP 65, dated 12 December 2017

	14. Interior design statement on ceiling heights by Lockhart Interiors, dated 12 December 2017 15. Architects supporting letter – list of design changes loading area, car park access, security and operation, dated 05 August 2018 16. Shadow assessment and minor change to drawing TP3.06 - by Myers Ellyett Architecture, dated 05 September 2018; Architect response to explain shadow amendments 2 pm corrected to 3 pm on model, by Jade Myers, dated 25 September 2018. 17. Local Traffic Committee Comments, dated 31 October 2017, 16 January 2018 18. Roads and Maritime Services Comments, dated 25 October 2017 19. Submissions received by Council during exhibition 5 Oct - 1 Nov 2017 20. Apartment Design Guide SEPP Evaluation 21. Childcare SEPP Evaluation 22. Recommended conditions of consent
Report prepared by	Patricia Docherty, Planner
Report date	2 October 2018

Summary of s4.15C 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 summarised, in the Executive Summary of the assessment report? <i>e.g. Clause 7 of SEPP55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	Yes
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)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Areas may require specific Special Infrastructure Contributions (SIC) conditions.</i>	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment? <i>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.</i>	Yes

EXECUTIVE SUMMARY

Byron Shire Council has received a development application for a mixed use development on the corner of Jonson Street and Browning Street on land zoned B2 Local Centre in Byron Bay. The application, received on 14 September 2017, has a capital investment value of greater than \$20 million and is considered to be regionally significant development. The Northern Joint Regional Planning Panel (JRPP) is the relevant consent authority.

The development application seeks consent for mixed use development comprising demolition of all existing structures, removal of vegetation and construction of commercial premises, cafe, child care centre, shop top housing, serviced apartments and associated basement car parking and landscaping. The site comprises three (3) lots and has a combined total site area of 2,834.8m².

In summary, the proposed development will provide a 65 place childcare centre with serviced apartments above, and ground level commercial floor space with shop top housing across two buildings, and separated by an open landscaped courtyard. There are two (2) levels of basement parking accessible to all levels by lift. The proposed mix of uses is permissible with consent and is entirely consistent with the objectives of the B2 Local Centre Zone.

The proposed development has been assessed in accordance with Section 4.15 (1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The key issue for consideration in accordance with Section 4.15 (1) is the impact of the proposed height of buildings including impacts on the built environment in the locality; particularly adjoining land zoned R2 Low Density Residential under Byron Local Environmental Plan (LEP) 2014.

The maximum height of building development standard applicable to the land is 9 metres and maximum floor space ratio (FSR) of 1.3:1 is applicable to the site and all land zoned B2 Local Centre in Byron Bay. The majority of land zoned B2 Local Centre in Byron Bay Town Centre has a maximum building height of 11.5 metres except land on the south east side of Jonson Street including the subject site comprising a total of fifteen (15) lots and on land south of Main Beach foreshore and north of Bay Lane.

Two written requests for a contravention to a development standard (clause 4.6 of the LEP) were received from the applicant to vary the applicable maximum building height and FSR.

- All parts of the proposed roof and upper walls at 4 storeys are above the 9 metre height limit. The tallest part of the building is the southern lift overrun being 12.2 metres above existing ground level below.
- The total proposed gross floor area of the building is 4,379.6 m² on a site area of 2,834.8 m², which is an FSR of 1.54:1.

The application cites Byron Bay Town Centre Masterplan (the Masterplan) and an associated Draft Planning Proposal (No. 26.2017.6.1) in its justification to vary the development standards. The Masterplan identifies the potential to implement LEP amendments that would increase the maximum building height on this site and other land within Byron Bay Town Centre and to remove FSR controls to support the built form aspirations for the town centre. The Masterplan was endorsed by Council in 2016. Due to the extent of community engagement in the preparation and ongoing implementation of the Masterplan, its consideration is in the public interest in accordance with Section 4.15 (e) of the EP&A Act.

Planning Proposal 26.2017.6.1 was reported to the Council meeting of 20 September 2018 (Report No. 13.9). This follows an earlier resolution of Council to undertake preliminary (pre-Gateway) community engagement to discuss planning controls under review in response to the Masterplan. Council resolved to increase the building height on the south eastern side of Jonson Street from 9 metres to 11.5 metres and to remove the maximum FSR in Byron Bay Town Centre where land is zoned B2 Local Centre. Following a draft plan preparation period of twenty months, on 3 October 2018 planning

proposal 26.2017.6.1 was lodged for Gateway' determination, prior to being publicly exhibited (Reference: EF18/43674 - Department of Planning and Environment , Northern Region).

This development assessment has been undertaken on the basis that the Council has considered that the land zoned B2 Local Centre and on the eastern site of Jonson Street is suitable for a maximum height of 11.5 metres and that FSR controls will be removed across Byron Bay Town Centre, subject to Gateway determination.

The proposed development primarily complies with the future indented height of building controls with most part of the building being below 11.5 metres with the exception of lift over-runs arising from site specific conditions including a 4 metre cross fall.

The physical height (metres above ground) is not an issue in the context of proposed amendments to the LEP, but the community have clearly articulated a desire for a maximum of 3 storeys. The number of storeys varies across the site and responds to the existing ground level; from 3 storeys above ground on the north building adjoining Ruskin Lane to 4 storeys adjoining Jonson and Browning. The building appears as a three storey building from Jonson Street and Browning Street, with the ground floor of the childcare centre being partly lower than natural ground level.

The bulk of the building could be 'distributed', better, particularly along the Browning Street frontage, where it presents a vertical wall (albeit broken up by balcony elements).

The setbacks to the northern boundary are problematic, in that non-compliance with the apartment guide and the lack of vertical 'breaks' of floors above ground present an imposing bulk for the neighbouring property. The potential to increase the northern setbacks and first level floor to ceiling heights provides an opportunity to revisit the issues of bulk.

Otherwise, the scale of the building is considered appropriate to the 'book-end' location, particularly in the context of the Town Centre Master Plan and future bypass.

There are a number of environmental planning instruments applicable to the site which the consent authority must consider. A detailed assessment against the relevant parts of each instrument is included in the body of this report. A summary of the applicable provisions is noted below:

- **Clause 7 of State Environmental Planning Policy No 55 – Remediation of Land**
Clause 7 requires the consent authority consider whether the land is contaminated. A Stage 1 Preliminary Contamination Assessment prepared by ENV Solutions dated May 2017 provides that all soil results were below the Health Investigation Levels (HIL) in accordance with NEPM (2013) Table 1 A (1) Column A – 'Standard' Residential with garden/accessible soil (home grown produce <10% fruit and vegetable intake (no poultry), also includes childcare centres, preschools and primary schools. The Stage 1 Preliminary Contamination Assessment for the proposed development has been considered and is deemed to satisfy the requirements of clause 7.
- **Clauses 7(b) and 8 of State Environmental Planning Policy No 71—Coastal Protection**
Clause 7(b) stipulates that the matters for consideration under clause 8 are to be taken into account be the consent authority when it determines a development application on land to which the policy applies. The proposal development has been considered and is deemed to satisfy the relevant matters in clause 8.
- **Clause 14 of State Environmental Planning Policy No 71—Coastal Protection**
Clause 14 provides that the consent authority must not consent to development on land to which this part applies if it is likely to impede or diminish the physical land based rights of access of the public to or along the coastal foreshore. The proposed development is situated over 900 metres from the coastal foreshore and will not impede public access.
- **Clause 15 of State Environmental Planning Policy No 71—Coastal Protection**

Clause 15 provides that the consent authority must not consent to a development application to carry out development on land to which this Policy applies in which effluent is proposed to be disposed of by means of a non-reticulated system if it is likely to, have a negative effect on the water quality of the sea or any coastal water body. The proposed development is able to be connected to the Council reticulated sewage system and satisfies the requirements of clause 15.

- **Clause 16 of State Environmental Planning Policy No 71—Coastal Protection**

Clause 16 provides that the consent authority must not grant consent to development on land to which this Policy applies if the development will, or is likely to, discharge untreated stormwater into the sea or a coastal water body. The proposed development will direct stormwater to discharge to the Council stormwater system in Browning Street, satisfying the requirements of the clause.

- **Clause 28 (2) of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development**

Clause 28 provides that prior to the determination of development applications the matters to be taken into consideration relating to the design quality of the development. This Policy applies to the development as it is a new building with shop top housing comprising 3 or more storeys. The proposed shop top housing does not comply with design criteria under the apartment design guide, specifically in relation to setbacks on the northern boundary, deep soils. The plans will need to be marked up to minimise non compliance with SEPP 65 Apartment Design Guide design criteria in northern building module:

- 3E-1 deep soil zone for planting to increase on northern boundary
- 3F- 1 Building separation northern boundary setbacks to balconies and habitable windows to increase, and windows to be opaque glazing within 6 metres of boundary, fixed privacy louvres on balconies.
- 4D-2.2 - Open plan room depths to be reduced to 8 metres or additional windows on courtyard walls to increase ventilation.
- 4-G1 internal storage spaces to be provided.

Detailed evaluation of the proposed development in relation to the design quality principles and the apartment design guide is contained at Attachment 20.

- **Clause 6 (1) of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

Clause 6 (1) provides that proposed BASIX affected development for which the regulations under the Act require a BASIX certificate to accompany a development application. The application for development consent was accompanied by the required BASIX Certification.

- **Clause 101 of State Environmental Planning Policy (Infrastructure) 2007**

Clause 101 provides that the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that new development does not compromise the effective and ongoing operation and function of classified roads, and to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads. The SEPP is applicable, as the property fronts Jonson Street and Browning Street, which is a classified road (Main Road MR- 545). The proposed development is considered to be satisfactory with regards to the classified road subject to conditions of consent.

- **Clause 102 of State Environmental Planning Policy (Infrastructure) 2007**

Clause 102 provides that the consent authority considers the impact of road noise or vibration on proposed residential accommodation or centre-based child care that is adjoining a road with an annual average daily traffic volume of more than 20,000 vehicles, based on the traffic volume data published on the website of Roads and Maritime Services (RMS). An Environmental Noise Impact Report by CRG Acoustics Pty Ltd dated 07 August 2018 recommends a number of inclusions to minimise noise impact from the development. The proposed development is considered to be satisfactory with regards to the classified road subject to conditions of consent.

- **Clause 104 of State Environmental Planning Policy (Infrastructure) 2007**
 Clause 104 requires that Roads and Maritime Services (RMS) is given the opportunity to comment on development that is traffic generating development specified under Schedule 3 of the SEPP. The proposed development is traffic generating development based on the proposed number of motor vehicle trips per hour. The RMS provided written comments in a letter to Council dated 25 October 2017 to assist in making a determination. The proposed development is considered to be satisfactory with regards to traffic generating development subject to conditions of consent.
- **Clause 20 of State Environmental Planning Policy(State and Regional Development) 2011)**
 Clause 20 declares regionally significant development in accordance with S4.5 (b) of the EP&A Act 1979. Development application No. 10.2017.510.1 was lodged prior to 1 March 2018 amendments to Schedule 4A of the EP&A Act 1979, which increased the capital investment value (CIV) criteria for declared regional development from \$20 million to \$30 million under Schedule 7(2) of the SEPP. The proposal is general development with a CIV of \$23,186,495 and was lodged prior to 1 March 2018 and is therefore declared regionally significant development.
- **Clause 22 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017**
 Clause 22 provides that the consent authority must not grant development consent except with the concurrence of the Regulatory Authority if a centre- based childcare facility does not comply with regulation 107 (indoor unencumbered space requirements) or regulation 108 (outdoor unencumbered space requirements) of the Education and Care Services National Regulations. The proposed child care facility meets these requirements as it provides at least 3.25 square metres indoor unencumbered space per child and 7 square metres of unencumbered outdoor space per child for up to a total of 65 children. The proposed development is considered to be satisfactory with regards to the provisions of Clause 22; concurrence of the Regulatory Authority is not required.
- **Clause 23 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017**
 Clause 23 provides that before determining application for development for the purpose of a centre-based child care facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development. The proposed development is considered to be satisfactory with regards to evaluation of the proposed development in relation to the applicable provisions, contained at Attachment 21.
- **Clause 25 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017**
 Clause 25 provides for particular matters relating to a centre-based child care facility that, if complied with, prevent the consent authority from requiring more onerous standards for those matters with regards to non-discretionary development standards: location; indoor and outdoor space,; site area and dimensions; and colour of building materials and shade structures in relation to the carrying out of development for the purposes of a centre-based child care facility. The proposed development is considered to be satisfactory for the purposes of section 4.15 (2) and (3) of the EP&A Act.
- **Clause 26 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017**
 Clause 26 provides that the provision of a development control plan that specifies a requirement, standard or control in relation to specific matters does not apply to development for the purpose of a centre-based child care facility. There is no development control plan applicable to the proposed development other than matters concerning setbacks and car parking rates. The proposed development is considered to be satisfactory with regards to these requirements.
- **Clauses 2.1 – 2.3 of Byron Local Environmental Plan 2014 - Zoning and land use table**

Clauses 2.1-2.3 require the consent authority to have regard for the relevant zone objectives and land use table when determining a development application. The proposal is permissible with consent in the B2 Local Centre zone and is compatible with the relevant zone objectives.

- **Clause 2.7 of Byron Local Environmental Plan 2014 – Demolition requires consent**

Clause 2.7 requires that demolition of a building may be carried out only with development consent except where it is demolition of development specified as exempt development under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. The proposal seeks consent for the demolition of all existing structures including four (4) dwelling houses and ancillary structures. This type of demolition is not exempt development. It is permissible with consent under Clause 2.7.

- **Clause 4.3 of Byron Local Environmental Plan 2014 – Height of buildings**

Clause 4.3 provides that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The maximum height of building on the site is 9 metres. The proposed development exceeds the maximum height of building and the application includes a request to vary the development standard. It is considered that the parts of the site over 9 metres and above three storeys can be justified on the basis of a draft planning proposal and resolution of Council to proceed to gateway.

- **Clause 4.4 of Byron Local Environmental Plan 2014 – Floor space ratio**

Clause 4.4 provides that the maximum floor space ratio (FSR) for a building on any land is not to exceed the FSR shown for the land on the floor space ratio map. The maximum permissible FSR on the site is 1.3:1. The proposed FSR of 1.54:1 exceeds and the application includes a request to vary the development standard. It is considered that the variation can be justified on the basis of a draft planning proposal and resolution of Council to proceed to gateway.

- **Clause 4.6 of Byron Local Environmental Plan 2014 – Exceptions to development standards**

Clause 4.6 provides that 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 that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard. The consent authority, having considered the written request, can be satisfied that the proposed building height and FSR will be in the public interest because it is consistent with the objectives of zone; the objectives of the development standard and the expectations of the wider community in the long term strategic planning of this site. This is addressed in the recommendation of this report and by condition of consent.

- **Clause 5.6 of Byron Local Environmental Plan 2014 – Architectural roof features**

Clause 5.6 enables development that includes an architectural roof feature that exceeds the height limits set by clause 4.3 to be carried out with development consent. The proposed architectural roof awnings that wrap around the balconies on the western and southern elevations are between 0.35 m and 0.62 m above the maximum 9 metre height limit. These architecturally innovative features provide for variety in built form. Their scale is compatible with the natural and built features of the locality in this gateway location in Byron Bay Town Centre. The architectural roof features will meet all of the relevant design requirements specified under clause 5.6 (3).

- **Clause 6.1 of Byron Local Environmental Plan 2014 - Acid sulfate soils**

This clause provides that, where applicable, development consent must not be granted for the carrying out of works unless an acid sulfate soils management plan (ASSMP) has been prepared in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority. An ASSMP prepared by ENV Solutions P/L dated June 2017 provides that Actual Acid Sulfate Soils and Potential Acid Sulfate Soils can be adequately managed. This report does not include the methodologies to be employed on site to manage acid sulfate soils and water. Therefore a condition has been imposed requiring that the contracting Engineer demonstrate to Council that

the methodology and equipment employed conforms to the ASSMP, satisfying the requirements of clause 6.1.

- **Clause 6.2 of Byron Local Environmental Plan 2014 – Earthworks**

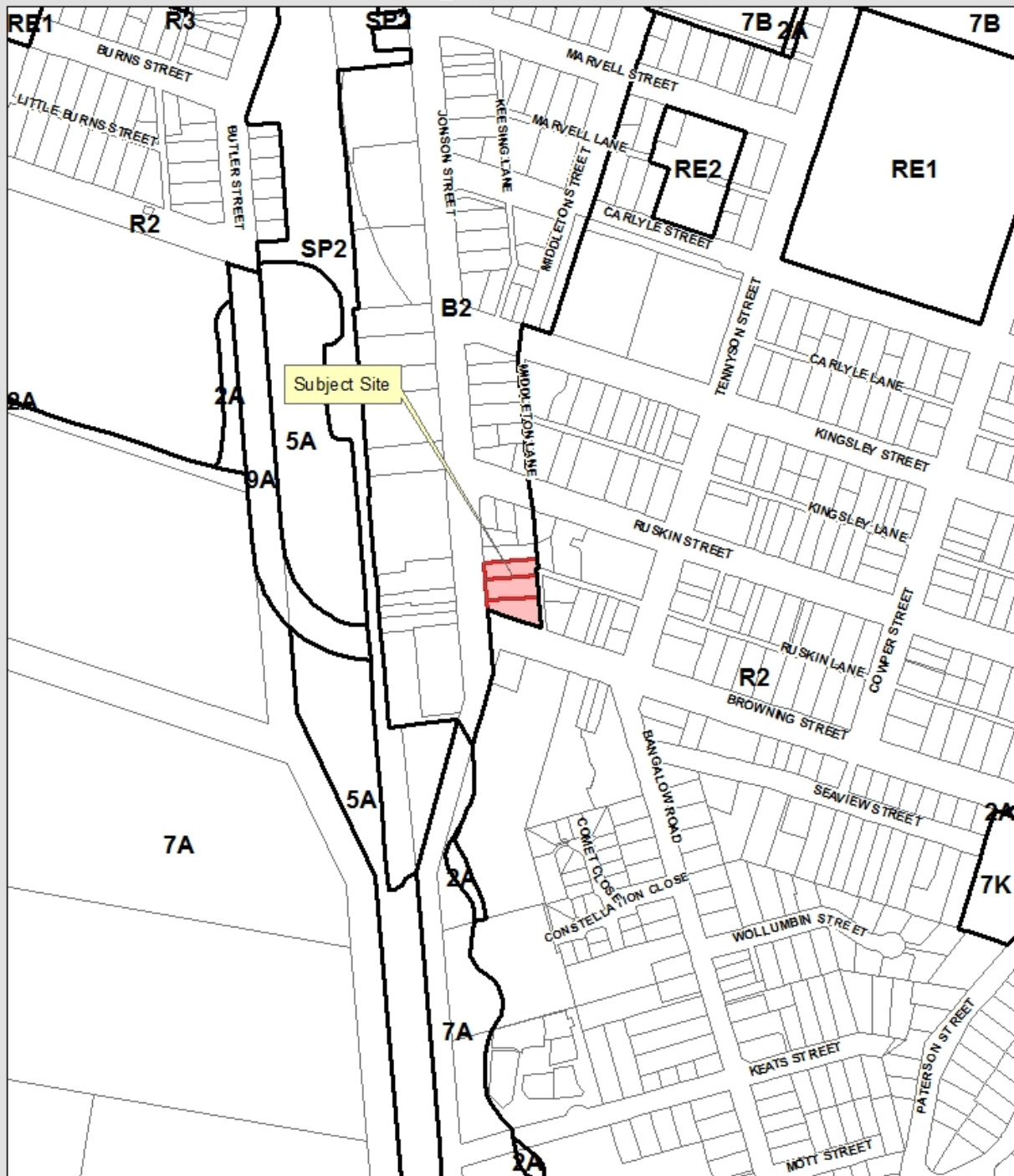
Clause 6.2(3) requires the consent authority to consider the effects of the proposed development on the environment and surrounding area as a result of any proposed earthworks. The earthworks associated with the proposed development are significant. The proposal comprises Integrated Development as approval is required under the Water Management Act 2000. The development application was referred to the NSW Office of Water and General Terms of Approval (GTA's) issued by Water NSW on 23 January 2018. A condition limits any excavations or dewatering to be in accordance with the GTA's. The impacts of the proposal can be addressed through appropriate conditions of consent.

- **Clause 6.6 of Byron Local Environmental Plan 2014 - Essential services**

Clause 6.6 requires the consent authority to be satisfied that essential services are available for the proposed development. Council officers are satisfied that the site is fully serviced and meets the requirements of clause 6.6. It is noted that the electrical power lines will be relocated underground as proposed. The timing and location of these works are addressed by condition of development consent. The ongoing arrangements for waste collection services are required to be provided on-site as and when a suitably sized multi rigid vehicle becomes available in Byron Shire. Operational waste collection management requirements are specified by condition of consent.

In summary, the assessment of the proposed development has adequately addressed all relevant considerations required by the above mentioned environmental planning instruments in some cases subject to condition of consent. The JRPP can proceed to determine the application subject to the recommended conditions of consent.

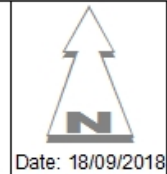
**LOT: 21 DP: 247289, LOT: 5 SEC: 51 DP: 758207,
 LOT: 6 SEC: 51 DP: 758207
 137 Jonson Street BYRON BAY, 139 Jonson Street BYRON BAY,
 3 Browning Street BYRON BAY**



0 100 200 300 metres
 Scale 1:5,000



Disclaimer: While all reasonable care has been taken to ensure the information contained on this map is up to date and accurate, no warranty is given. Further information contained on this map is to be used as a guide only. Any reliance placed on such information shall be without disclaimer. Please verify the accuracy of the information prior to using it.
 Note: The information shown on this map is a copyright of the Byron Shire Council and is the property of the Department of Land.



1. INTRODUCTION

1.1. History/Background

A search of Council records confirmed the following history of development approvals:

137 Jonson Street, being Lot 21 in DP 247289:

Formatted Account	Document Type	Ext: Precs	Received Dat	Determination Date	Determination
006.1988.00002476.001	Building Applications	Alterations to existing flat	10/08/1988	01/12/1988	Finalised
006.1991.00002038.001	Building Applications	Alterations to Dwelling	31/01/1991	26/02/1991	Finalised

139 Jonson Street, being Lot 5 of Section 51 in DP 758207:

Formatted Account	Document Type	Ext: Precs	Received Dat	Determination Date	Determination
010.2011.00000553.001	Development Application	Part use of site for a car hire business and change of use ...	09/12/2011	16/04/2012	Approved

3 Browning Street, being Lot 6 of Section 51 in DP 758207:

Formatted Account	Document Type	Ext: Precs	Received Dat	Determination Date	Determination
010.2009.00000009.001	Development Application	Remove 1 tree	13/01/2009	28/01/2009	Approved
010.2016.00000077.001	Development Application	Upgrade of Existing and Construction of New Road in Butler Street	15/02/2016	22/06/2016	Approved - Joint Re

Byron Bay Town Centre Masterplan and Strategic review of planning controls

Byron Bay Town Centre Masterplan (the Masterplan) was endorsed by Council in June 2016 and its consideration is in the public interest in accordance with Section 4.15 (e).

The Masterplan is of direct relevance to the proposed development because the application cites the Masterplan and an associated Draft Planning Proposal (No. 26.2017.6.1) in its justification to vary development standards.

The Masterplan identifies the potential to implement amendments to the maximum building height on this site and other land within Byron Bay Town Centre. It further identified the potential to remove FSR controls to support the built form aspirations for the town centre. The desired future character of Byron Bay is subject to the principles in the Masterplan and strategic planning amendments in the form of a planning proposal to amend the LEP in consultation with the community, industry and other key stakeholders.

Planning Proposal 26.2017.6.1 was reported to the Council meeting of 20 September 2018. This follows an earlier resolution of Council to undertake preliminary (pre-Gateway) community engagement during 2018 to discuss the planning controls under review.

The engagement consisted of:

- Two community workshops, run in “world café” style, with four topics explored at each workshop. Building height was one of these topics. The workshops were held on 31 May 2018 (29 attendees) and 4 June 2018 (34 attendees). Attendees included general community members, architects, developers, real estate agents and local business owners.
- A workshop with Byron Bay High School students; and
- One on one meetings with two land owners and one urban designer.

In relation to height, all participants were asked, amongst other things, whether they would support an increase in the maximum height limit for the southern end of Jonson Street from the current 9.0m to 11.5m. Council resolved to increase the building height on the south eastern side of Jonson Street from 9 metres to 11.5 metres and to remove the maximum FSR in Byron Bay Town Centre where land is zoned B2 Local Centre.

RESOLUTION NUMBER: 18-609

Resolved that Council:

1. *Forward the Planning Proposal at Attachment 1 (#E2018/72394) to the NSW Department of Planning and Environment for a Gateway Determination, to amend Byron Local Environmental Plan 2014 in relation to various town planning controls applicable to the Byron Bay Town Centre with the following amendments;*
 - a. *delete and replace Section 2.2 Height of Buildings with the following:*

2.2 Height of Buildings

 1. *Amend the Height of Buildings Map by extending the area within the Byron Bay Town Centre that is subject to a maximum height of 11.5m, to include:*
 - a) *the area bounded by Bay Lane to the north, Lawson Street to the south, Jonson Street to the west and Middleton Street to the east; and*
 - b) *the area bounded by Kingsley Street to the north and Browning Street to the south, Jonson Street to the west and Middleton Lane and unnamed lane to the east.*
 - b. *include backpackers accommodation as a permissible use in the B3 Core Business Zone.*
2. *Agree that staff can proceed to public exhibition of the Planning Proposal and government agency consultation based on the Gateway Determination.*
3. *For the purposes of community engagement, endorse the proposed amendment to Byron Development Control Plan 2014 at Attachment 2 (#E2018/72398), to introduce a new Chapter dealing with the Byron Bay Town Centre, to provide more detailed design and building height controls, together with the appropriate amendments to Part A of the DCP, and exhibit the draft Town Centre Chapter in conjunction with the Planning Proposal.*

(Spooner/Hunter)

Planning proposal 26.2017.6.1 was sent to Gateway on 27 September 2018 for determination prior to being exhibited.

1.2. Description of the proposed development

This development application seeks approval for demolition of all structures and removal of eight (8) trees to construct a mixed use development comprising commercial premises, cafe, child care centre, shop top housing and serviced apartments and associated car parking and landscaping.



Browning Street Elevation

The mixed use development is an amalgamation of three (3) lots with a boundary adjustment for future road upgrades associated with the Byron Bay Bypass at the intersection of Bowning and Jonson Street. The building is a perimeter block that will align the development to both street edges and clearly defines the street corner. Building height responds to the slope of the site and orientation with the lower parts of the building orientated to the north that allows for sunlight to access apartments, the courtyard and Ruskin Lane. Vehicle access, loading and waste collection is off Browning Street via Ruskin Lane.



Jonson & Browning St - View Through Pedestrian Entry

Ground floor street frontages are active with commercial activity and childcare. There will be a continuous articulated awning on Jonson Street. The building is constructed close to the side boundary in anticipation of future development permissible in the B2 Local Centre Zone.

Shop top housing and serviced apartments are set above the noisy street level which will be buffered by balconies and adjustable screens. Acoustic treatments for the childcare and residential areas have been assessed and will be incorporated into the construction. Lift access is located within the communal courtyard.

The open courtyard allows for landscaping and deep soil planting on top of the basement parking structure. Large trees and building separation will enhance amenity, encourage social interaction and ensure passive surveillance. Privacy is achieved through set backs of upper storeys, planting podiums and screens.

The proposed development is over the following levels:

Basement Level - 2 is the lowest level comprising: residential parking - sixty-five (65) car spaces including forty (40) with private storage and six (6) disabled accessible spaces, two (2) lifts plus one (1) goods lift, two (2) stairwells, two (2) plant rooms and two (2) store rooms, a two-way vehicle ramp access to basement level -1 above and deep soil planting areas.

Basement Level - 1 comprising: parking for child care and non-residential tenants – fifty-three (53) car spaces including two (2) disabled accessible spaces, four (4) staff spaces in a stacked arrangement, two (2) electric car charging bays, ten (10) motorcycle spaces, fifteen (15) bicycle racks, charging station for battery operated bicycles, four (4) lifts – one (1) immediately adjacent to cycle parking and one (1) goods lift, childcare laundry, plant rooms, two–way vehicle ramp access to exit above and two-way vehicle ramp access to basement below and deep soil planting areas.

Ground Level comprising a central courtyard between two (2) building modules, connecting Jonson Street to Ruskin Lane:

- South east building module contains two–way vehicle ramp access off Ruskin Lane, a 65 place 0-5 child care centre including indoor and open air play areas, lobby, two (2) lifts, two (2) stairwells, separate residential and retail waste bin storage, and a loading area off Ruskin Lane.
- North west building module contains two (2) shops, a café with outdoor dining area within the property boundary, lobby entry to upper floors, two (2) stairwells, one (1) lift, one (1) goods lift, ten (10) open air bike racks, a further ten (10) indoor bicycle storage racks and end of trip facilities including two (2) separate showers, an on site manager's office, letter boxes, retail bin store, retail toilet facilities, tank room, pad mount for services accessible from Jonson Street, and additional courtyard on the northern boundary.

Level 1 comprising two (2) building modules:

- South east building module contains ten (10) serviced apartments with balconies comprising 4 x 2 bedroom and 6 x 1 bedroom), podium planters, open garden immediately adjacent to one (1) lift, and one (1) stairwell.
- North west building module contains nine (9) shop top housing apartments with balconies comprising 5 x 2 bedroom and 4 x 1 bedroom, podium planters, street awning, one (1) lift, and one (1) stairwell.

Level 2 comprising two (2) building modules:

- South east building module contains ten (10) serviced apartments with balconies comprising 4 x 2 bedroom and 6 x 1 bedroom, one (1) lift, and one (1) stairwell.

- North west building module contains nine (9) shop top housing apartments with balconies comprising 5 x 2 bedroom and 4 x 1 bedroom, one (1) lift, and one (1) stairwell.

Level 3 comprising two (2) building modules:

- South east building module contains six (6) serviced apartments with balconies comprising 2 x 3 bedroom and 4 x 1 bedroom, podium planters, one (1) lift, one (1) stairwell to lower levels and one (1) service stairway to roof.
- North west building module contains nine (9) shop top housing apartments with balconies comprising 1 x 3 bedroom, 5 x 2 bedroom, podium planters, one (1) lift, one (1) stairwell to lower levels and one (1) service stairway to roof.

Roof Level

- South east building module contains shade arbours, plant area, one (1) lift over-run, and open stair roof access.
- North west building module contains shade arbours, plant area, one (1) lift over-run, open stair roof access, hot water solar and photovoltaic array, four (4) skylights

Other associated development

Tree removal

The following eight (8) trees are proposed to be removed:

- One (1) Brazilian Pepper Tree (Exotic)
- One (1) Chinese Elm (Exotic)
- One (1) Frangipani (Exotic)
- One (1) Liquid Amber (Exotic)
- One (1) Oleander (Exotic)
- One (1) Lilly Pilly (Native rainforest – compensatory planting ratio of 1: 5 recommended)
- Two (2) Tuckeroo (Native Rainforest – compensatory planting ratio of 1: 5 recommended)

Landscaping treatments

Landscaping treatments in accordance with Landscape Report by RPS Group Plc, dated 23 August 2017 comprising the following planting quantities and detailed design features:

Ground level:

- 215m² total planting within boundary
- 71m² deep planting within boundary (15% of total site planting)
- 195m² Streetscape planting (deep planting)
- Feature paving within courtyard
- Planting beds at back of kerb, species to maintain vehicle site lines and views through to building
- Deep planting with feature tree
- Trellis to boundary acoustic fence
- Podium planter
- Feature planting to boundary acoustic fence
- Rainforest courtyard including feature trees, timber seating, podium planter, vertical trellis with climbers, Green wall, Street piano - "Play me, I'm yours" project, Art structure with vertical greening system, and granite pavement.
- Staff courtyard
- Turf to verge
- 0-3 year old outdoor playspace with roof over
- 3-5 year old outdoor playspace with roof over
- 4m and 2 m wide pedestrian pavements on Jonson Street .Wave pattern to council colour specifications

- 2m wide pedestrian path on Browning Street.
- Bike racks in courtyard

Level 1:

- 178m² podium planting

Level 2:

- 6m² podium planting

Level 3:

- 41m² podium planting (not including freestanding pots)

Protection of trees on adjoining land

Protection of trees on the lot immediately to the north will be required by condition of development consent.

Ruskin Lane - Service bay, waste collection and vehicle access ramp

Council has had ongoing discussions with the applicant regarding waste collection methodology and the proposed service bay. A condition of consent will require that the waste management plan for the mixed use building controls how waste shall be collected within the laneway by Heavy Rigid Vehicle (HRV) front loading waste truck but only until such time as a Medium Rigid Vehicle (MRV) front loading waste truck becomes available in Byron Shire – whether by private operator or Council.

When a MRV waste collection truck becomes available in Byron Shire, the operator and building manager is to ensure all skip bins be loaded within the loading bay with MRV and skip bins located fully within the site and not encroaching within the laneway.

The plans (as amended in red pen) are acceptable because this allows an HRV waste truck to reverse into the site and leave Ruskin Lane in a forward direction and for an MRV waste truck to load skip bins fully within the property boundary.

The location of the basement ramp is considered acceptable after review by independent external traffic consultant provided boom gates and intercoms etc. are appropriately located to ensure not traffic conflicts on Ruskin Lane or Browning St.

Engineering works

Site preparation – excavation, management of dewatering and potential acid sulfate soils.

Services relocation –including underground electricity on Jonson and Brewing Street required prior to construction.

Signage

Signage on the plans is indicative and all future signage will either be subject to exempt and complying development codes or separate Development Application, dependent on future tenant needs.

Note. Summary of design revisions during assessment:

1. Reduction of building height

Overall building height reduced to be almost entirely under the 11.5m height plane above natural ground. Floor to-floor levels have been reduced and the roof has been changed to a low-profile metal roof (no parapet).

Relevant drawings: TP1.12, TP1.13, TP2.20, TP3.05

2. Northern building setback

Increased building setback to the NW corner of the site. Apartments U1.5, U2.5, U3.3 reduced in area, balconies added to the northern face, inclusive of privacy/sun screening and planting.

Relevant drawings TP1.02 – TP1.04, TP1.18

3. Central courtyard apartment windows

Extent of openable windows facing the central courtyard clarified on the drawings.

Relevant drawings TP1.02 – TP1.04, TP2.30, TP2.31

4. Central courtyard screens

Extent of full height timber screening within the central courtyard reduced.

Relevant drawings TP2.30, TP2.31

5. Areas Update

Minor reduction to the overall GFA and apartments areas. Areas updated to reflect the latest design.

No changes occur to the child care. The revised total building GFA is 4379.6 m². Relevant drawings TP3.01, TP3.02

6. Vehicle Ramp Update

Further drawings provided to demonstrate achieved headroom on the vehicle entry ramp.

Relevant drawing TP2.32

7. Solar access to apartments:

The apartment solar access drawing was updated to reflect the revised apartments. It is noted the revisions are minor in nature. (TP3.09)

8. Shadow diagram modelling correction

The sun shading diagrams have been updated to reflect the latest design and to correct an error in data entry on the shadow diagram modelling. the discrepancy on drawing TP3.06 relates only to the last diagram 'SITE SUN STUDY – WINTER 3PM'. The previous drawing revision (revision 3) had the time set at 2pm, rather than 3pm. The latest revision (revision 4) has the correct time set.

The architect confirmed that the sun shadowing diagrams contained within these drawings have been generated by computer software Autodesk Revit Architecture with the following parameters:

Location: Byron Bay, Australia

Latitude: -28.64 (south)

Longitude: 153.61 (east)

Daylight savings: Not included.

It is noted the revisions are minor in nature. (TP3.06-TP3.08)

9. Carpark Access, Security & Operation:

Basement carpark access, security and operation has been clarified as the following:

- a. The basement carpark of the proposed development are to be secured by a metal security gate located at base of main vehicle ramp.
- b. The security gates located at the base of the ramp allows for approx. 29m of queuing up the ramp to the site boundary on Ruskin Lane.
- c. It is proposed that the basement security gates remain open during hours of operation of the commercial and child care uses, being from 7am – 7pm Monday to Friday, and 7am to 1pm Saturday. This will freely allow the carpark to be accessed for those uses and during peak times.
- d. After hours, it is proposed that the basement security gates remain closed but can be opened via a swipe card on the way in and an in-slab pressure sensor on the way out. Swipe cards will be issued to residents, staff & tenants as part of the building management.

1.3. Description of the site

Land is legally described as LOT: 21 DP: 247289, LOT: 5 SEC: 51 DP: 758207, LOT: 6 SEC: 51 DP: 758207

Property address is 137 Jonson Street BYRON BAY, 139 Jonson Street BYRON BAY, 3 Browning Street BYRON BAY

Land is zoned: B2 Local Centre

Note. The site is on a zone boundary adjoining land zoned R2 Low density residential to the east and south.

Land area is: 2,834.8m²

Property is constrained by: Parts of the site affected by Potential Acid Sulfate Soils (small area of Class 3 in south east; and Class 5 in southern and western parts of site)



Lot boundaries – Site



Existing dwellings No.137 and No.139 Jonson St



Existing dwelling No. 3 Browning St; Existing dwellings No .137 and No.139 Jonson Street from Ruskin Lane



Existing buildings and shop top apartments on western side of Jonson Street



Location of proposed by-pass road looking from site to west; Dwelling No. 5 Browning St (approved as B&B)



Corner of Ruskin Lane looking south; No 5 Browning Street including solar panels



Ruskin Lane and dwelling No 1 Ruskin Lane



Existing dwelling to the north



Ruskin Lane looking to Browning Street; Browning Street looking to Ruskin Lane



Overhead powerlines to be put underground both frontages, Lilly Pilly tree on adjoining lot north to be protected

2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions. Refer to Doc # A2017/25303
Development Engineer	No objections subject to conditions. This assessment has also considered the content of a third party peer review submitted by neighbouring property owners in October 2013 in relation to traffic. Refer to Doc # A20147/25304
Building Surveyor	No objections subject to conditions. Refer to Doc # A2017/27520
S64 / Systems Planning Officer	No objections subject to conditions. Refer to Doc # A2018/34319 which supersedes Doc # A2017/25312. ET contributions will be payable.
S94 / Contributions Officer	No objections subject to conditions. Refer to Doc # A2017/25311 <i>Local infrastructure contributions The assessment report should address contributions required under section 94 and section 94A of the EP&A Act in accordance with the council's adopted contributions plan applicable to the DA. The planning panel cannot impose any additional contributions that are inconsistent with council's contributions plan.</i>
Local Traffic Advisory Committee	No objections subject to conditions. Refer to Doc # E2018/32834, and Doc # E2018/33953
Roads & Maritime Services	No objections subject to conditions. Refer to Doc # E2018/78542
Department of Primary Industries – Office of Water	No objections subject to conditions. Refer to Doc # S2018/1700 The Department has reviewed the development application and determined that a license under Part 5 of the Water Act 1912 will be required for the proposed works. General terms and conditions relating to the license are attached for inclusion in any development approval. An updated dewatering management plan may need to be provided with the licence application. The GTA's are not the licence. The applicant must apply for a licence after consent has been issued by council and prior to the installation of any groundwater works.

* Conditions provided in the above referral are included in the Recommendation of this Report below

3. SECTION 79BA – BUSH FIRE PRONE LAND

Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land that the development complies with the document Planning for Bush Fire Protection 2006. The site is not bush fire prone land.

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

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

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 14 - Coastal Wetlands	☒	☐
Consideration: There are no SEPP 14 Coastal Wetlands in the immediate vicinity of the property. The nearest mapped wetland is located approx. 120m to the west, near the railway corridor adjoining the western side of Jonson Street. The proposed development will include bio retention measures to ensure that the quantity and quality of stormwater leaving the site is within the capacity of existing stormwater infrastructure. As such, the development will not have an indirect impact on the nearby wetland.		
State Environmental Planning Policy No 55 - Remediation of Land	☒	☐
Consideration: Clause 7 of State Environmental Planning Policy No 55 – Remediation of Land Clause 7 of the policy requires the consent authority to consider whether the land is contaminated. A Stage 1 Preliminary Contamination Assessment prepared by ENV Solutions dated May 2017 provides that all soil results were below the Health Investigation Levels (HIL) in accordance with NEPM (2013) Table 1 A (1) Column A – ‘Standard’ Residential with garden/accessible soil (home grown produce <10% fruit and vegetable intake (no poultry), also includes childcare centres, preschools and primary schools. The Stage 1 Preliminary Contamination Assessment for the proposed development has been considered and is deemed to satisfy the requirements of clause 7.		
State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development.	☒	☐
Consideration: This Policy applies to the development as it is a new mixed use building containing apartments in the form of shop top housing comprising 3 or more storeys. Clause 28 (2) of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development Clause 28 provides that prior to the determination of development applications the matters to be taken into consideration relating to the design quality of the development. This Policy applies to the development as it is a new building with shop top housing comprising 3 or more storeys. Council’s evaluation of the proposed development in relation to the design quality principles and the apartment design guide is contained at Attachment 20. <i>The Apartment Design Guide - Desired future character</i> provides for developments that will vary from the established character of an area. This is particularly relevant in the context of this site, which proposes a density and mix of uses on the most southern edge of Byron Bay Town Centre that is very different to the existing buildings within and immediately adjoining the site. Other developments on the western side of Jonson Street already approved or under construction including the old butter factory site and the ‘Marcato’ development have established a precedent for this emerging built form. <i>The desired future character can vary from preserving the existing look and feel of an area to establishing a completely new character based on different uses, street patterns, subdivisions, densities and typologies. Establishing the desired future character is determined through the strategic planning process in consultation with the community, industry and other key stakeholders.</i>		

Understanding the context during this process is crucial to support change and determine appropriate building types and planning controls.

The proposed development does not comply with all of the design criteria under the Apartment Design Guide.

The plans will need to be marked up to minimise non compliance with SEPP 65 Apartment Design Guide design criteria in northern building module:

- 3E-1 Deep soil zone for planting to increase on Northern Boundary
- 3F- 1 Building separation northern boundary setbacks to balconies and habitable windows to increase, windows to be made opaque glazing within 6 metres of boundary, fixed privacy louvres on balconies.
- 4D-2.2 - Open plan room depths to be reduced to 8 metres or additional windows on courtyard walls to increase circulation.
- 4-G1 internal storage spaces to be provided.

Setback to northern boundary – potential to cause overlooking, privacy impacts and poor amenity. Limited deep soil planting and vegetation.

The setbacks to the northern boundary are problematic, in that non-compliance with the apartment guide and the lack of vertical 'breaks' of floors above ground present an imposing bulk for the neighbouring property.

The potential to increase northern setbacks provides an opportunity to revisit the issues of bulk, privacy and landscaping.

Subject to conditions of consent and amendments to the plans, the development is considered to be satisfactory with regards to the design quality principles and the apartment design guide.

State Environmental Planning Policy No 71 - Coastal Protection	☒	☐
--	-------------------------------------	--------------------------

Consideration: The proposed development does not raise any significant issues relating to the matters for consideration in this SEPP.

- **Clauses 7(b) and 8 of State Environmental Planning Policy No 71—Coastal Protection**
Clause 7(b) stipulates that the matters for consideration under clause 8 are to be taken into account be the consent authority when it determines a development application on land to which the policy applies. The proposal development has been considered and is deemed to satisfy the relevant matters in clause 8.
- **Clause 14 of State Environmental Planning Policy No 71—Coastal Protection**
Clause 14 provides that the consent authority must not consent to development on land to which this part applies if it is likely to impede or diminish the physical land based rights of access of the public to or along the coastal foreshore. The proposed development is situated over 900 metres from the coastal foreshore and will not impede public access.
- **Clause 15 of State Environmental Planning Policy No 71—Coastal Protection**
Clause 15 provides that the consent authority must not consent to a development application to carry out development on land to which this Policy applies in which effluent is proposed to be disposed of by means of a non-reticulated system if it is likely to, have a negative effect on the water quality of the sea or any coastal water body. The proposed development is able to be connected to the Council reticulated sewage system and satisfies the requirements of clause 15.
- **Clause 16 of State Environmental Planning Policy No 71—Coastal Protection**
Clause 16 provides that the consent authority must not grant consent to development on land to which this Policy applies if the development will, or is likely to, discharge untreated stormwater into the sea or a coastal water body. The proposed development will direct stormwater to

	Satisfactory	Unsatisfactory
discharge to the Council stormwater system in Browning Street, satisfying the requirements of the clause.		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	☒	☐
Consideration: BASIX Certificate provided, as well as appropriate NatHERS Certification. Clause 6 (1) of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 Clause 6 (1) provides that proposed BASIX affected development for which the regulations under the Act require a BASIX certificate to accompany a development application. The application for development consent was accompanied by the required BASIX Certification.		
State Environmental Planning Policy (Education establishments and Child Care Facilities) 2017	☒	☐
Consideration: The requirements of this SEPP are addressed in detail in Council's assessment at Attachment 21 to this report. Clause 22 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 Clause 22 provides that the consent authority must not grant development consent except with the concurrence of the Regulatory Authority if a centre-based childcare facility does not comply with regulation 107 (indoor unencumbered space requirements) or regulation 108 (outdoor unencumbered space requirements) of the Education and Care Services National Regulations. The proposed child care facility meets these requirements as it provides at least 3.25 square metres indoor unencumbered space per child and 7 square metres of unencumbered outdoor space per child for up to a total of 65 children. The proposed development is considered to be satisfactory with regards to the provisions of Clause 22; concurrence of the Regulatory Authority is not required. Clause 23 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 Clause 23 provides that before determining a development application for development for the purpose of a centre-based child care facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development. The proposed development is considered to be satisfactory with regards to evaluation of the proposed development in relation to the applicable provisions, contained at Attachment 21. Clause 25 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 Clause 25 provides for particular matters relating to a centre-based child care facility that, if complied with, prevent the consent authority from requiring more onerous standards for those matters with regards to non-discretionary development standards: location; indoor and outdoor space; site area and dimensions; and colour of building materials and shade structures in relation to the carrying out of development for the purposes of a centre-based child care facility. The proposed development is considered to be satisfactory for the purposes of section 4.15 (2) and (3) of the EP&A Act. Clause 26 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 Clause 26 provides that the provision of a development control plan that specifies a requirement, standard or control in relation to specific matters does not apply to development for the purpose of a centre-based child care facility. There is no development control plan applicable to the proposed development other than matters concerning setbacks and car parking rates. The proposed development is considered to be satisfactory with regards to these requirements.		
State Environmental Planning Policy (Infrastructure) 2007	☒	☐

	Satisfactory	Unsatisfactory
Consideration: Clause 101, 102 and 104 of the SEPP is applicable, as the property fronts Jonson Street and Browning Street, which is a classified road (MR 545). Clause 101 of State Environmental Planning Policy (Infrastructure) 2007 Clause 101 provides that the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that new development does not compromise the effective and ongoing operation and function of classified roads, and to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads. The SEPP is applicable, as the property fronts Jonson Street and Browning Street, which is a classified road (Main Road MR- 545). The proposed development is considered to be satisfactory with regards to the classified road subject to conditions of consent. Clause 102 of State Environmental Planning Policy (Infrastructure) 2007 Clause 102 provides that the consent authority considers the impact of road noise or vibration on proposed residential accommodation or centre-based child care that is adjoining a road with an annual average daily traffic volume of more than 20,000 vehicles, based on the traffic volume data published on the website of Roads and Maritime Services (RMS). An Environmental Noise Impact Report Environmental Noise Impact Report by CRG Acoustics Pty Ltd, dated 07 August 2018, recommends a number of inclusions to minimise noise impact from the development. The proposed development is considered to be satisfactory with regards to the classified road subject to conditions of consent. Clause 104 of State Environmental Planning Policy (Infrastructure) 2007 Clause 104 requires that Roads and Maritime Services (RMS) is given the opportunity to comment on development that is traffic generating development specified under Schedule 3 of the SEPP. The proposed development is traffic generating development based on the proposed number of motor vehicle trips per hour. The RMS provided written comments in a letter to Council dated 25 October 2017 to assist in making a determination. The proposed development is considered to be satisfactory with regards to traffic generating development subject to conditions of consent.		
State Environmental Planning Policy (State and Regional Development) 2011	☒	☐
Consideration: The proposed development has a Capital Investment Value of \$23.186M. It is therefore 'Regional Development' and in accordance with the provisions of this SEPP, the Northern Region Joint Planning Panel has the function of determining the application.		

4.2 Byron Local Environmental Plan 2014 (LEP 2014)

LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 79C(1) of the EP&A Act because it applies to the subject land and the proposed development.

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

- (a) Overall, the proposed development is defined as ***mixed use development*** in the LEP 2014 Dictionary. It includes components defined as:
- Shops (a type of retail premises and commercial premises);
 - Restaurant or café;
 - Office premises (a type of commercial premises);
 - Centre-based child care facility;
 - Shop top housing;
 - Serviced apartment (a type of tourist and visitor accommodation).
- (b) The land is within the B2 Local Centre Zone according to the Land Zoning Map;
- (c) All of the components of the proposed development are permissible with consent; and

(d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
<i>To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.</i>	The provision of shops/ commercial uses and the child care facility will serve the needs of people who live and work in Byron Bay Town Centre.
<i>To encourage employment opportunities in accessible locations.</i>	The commercial and child care uses will generate employment.
<i>To maximise public transport patronage and encourage walking and cycling.</i>	The site is located on a bus route. Cycling spaces are provided as well as 'end of trip' facilities.
<i>To encourage vibrant centres by allowing residential and tourist and visitor accommodation above commercial premises.</i>	Consistent.

Clauses 2.1 – 2.3 of Byron Local Environmental Plan 2014 - Zoning and land use table

Clauses 2.1-2.3 require the consent authority to have regard for the relevant zone objectives and land use table when determining a development application. The proposal is permissible with consent in the B2 Local Centre zone and is compatible with the relevant zone objectives.

Clause 2.7 of Byron Local Environmental Plan 2014 – Demolition requires consent

Clause 2.7 requires that demolition of a building may be carried out only with development consent except where it is demolition of development specified as exempt development under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. The proposal seeks consent for the demolition of all existing structures including four (4) dwelling houses and ancillary structures. This type of demolition is not exempt development. It is permissible with consent under Clause 2.7.

Clause 4.3 of Byron Local Environmental Plan 2014 – Height of buildings

Clause 4.3 provides that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The maximum height of building on the site is 9 metres.

Land on the opposite side of Jonson Street has a maximum height of 11.5m. The proposed building has a maximum height of 12.2 m, 3.2m or 3% above the LEP maximum.

The applicants have provided a submission under Cl. 4.6 of the LEP (see below), arguing that compliance with the 9m development standard is unreasonable and unnecessary. The submission is addressed below.

It is considered that the parts of the site over 9 metres and above three storeys can be justified on the basis of a draft planning proposal and resolution of Council to proceed to gateway. (Refer to Clause 4.6 below)

Clause 4.4 of Byron Local Environmental Plan 2014 – Floor space ratio

Clause 4.4 provides that the maximum floor space ratio (FSR) for a building on any land is not to exceed the FSR shown for the land on the floor space ratio map. The maximum permissible FSR on the site is 1.3:1. The proposed FSR of 1.54:1 exceedance and the application includes a request to vary the development standard. It is considered that the variation can be justified on the basis of a draft planning proposal and resolution of Council to proceed to gateway. Refer to Clause 4.6 below.

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

Where a DA includes a variation to a development standard as defined in the EP&A Act, an objection under State Environmental Planning Policy No 1—Development Standards (SEPP 1), or application under clause 4.6 of the Standard Instrument, is required. The development assessment report is to include an assessment of the objection or application against the relevant statutory provisions.

Clause 4.6 provides that 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 that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

Height:

The Applicant has submitted a clause 4.6 variation request, which is considered with reference to relevant matters as follows:

The development application proposes the construction of mixed use development in the form of 2 joined buildings. Building A (to the north) contains commercial uses at ground level with residential apartments above, in 3 levels. Building B (to the south) contains a child care facility at ground level, with 3 levels of serviced apartments above.

Two levels of basement parking are proposed beneath the building.

The building comprises in part 4 storeys above basement level.

A detailed description of the proposed development is provided in Section 3 of the Clause 4.6 Variation request (Refer to Attachment 11).

Clause 4.6 of Byron LEP 2014 provides that development consent may be granted for development even though the development would contravene a development standard imposed by the LEP.

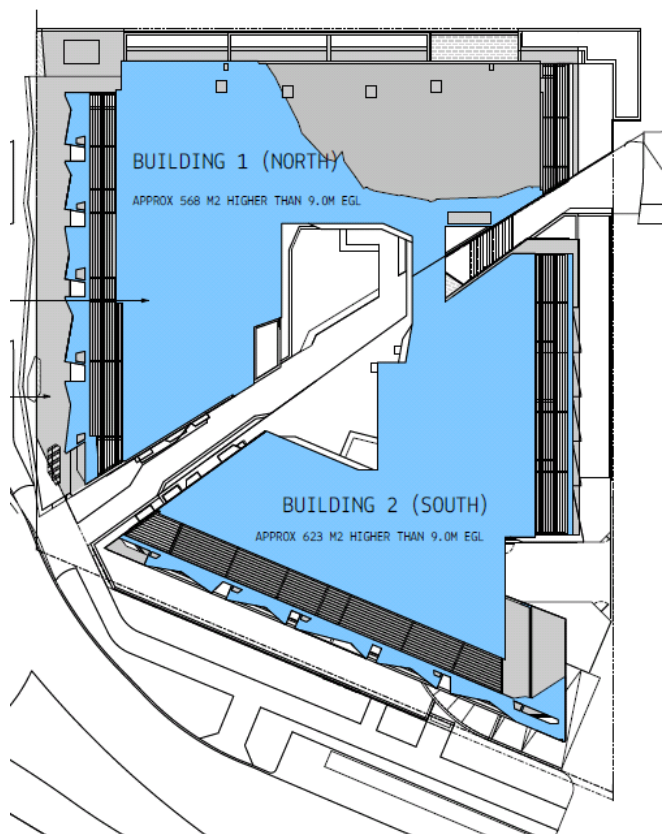
It specifies, however, that consent must not be granted unless Council has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (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.

The development standard to be varied is contained in clause 4.3 of LEP 2014. In this case, the Height of Buildings Map specifies a maximum height of 9m above existing ground level permitted by Clause 4.3 and in part the 11.5m maximum building height proposed in the draft Planning Proposal 26.2017.6.1.

The architects' plans show that the tallest part of the building is the southern lift overrun being 12.2 metres above existing ground level below. Plans were amended after lodgement to reduce the overall height of buildings.

Development Plan TP3.11 shows plan and isometric perspective that the part of the roof and upper walls of the 3rd level shop top houses and serviced apartments of the development that exceeded 9m from existing ground level (refer to Attachment No. 1).



Refer to Attachment 1 – Drawing TP3.10
Building Height Diagram 9m.

Plan view – Building Height Diagram (Left)

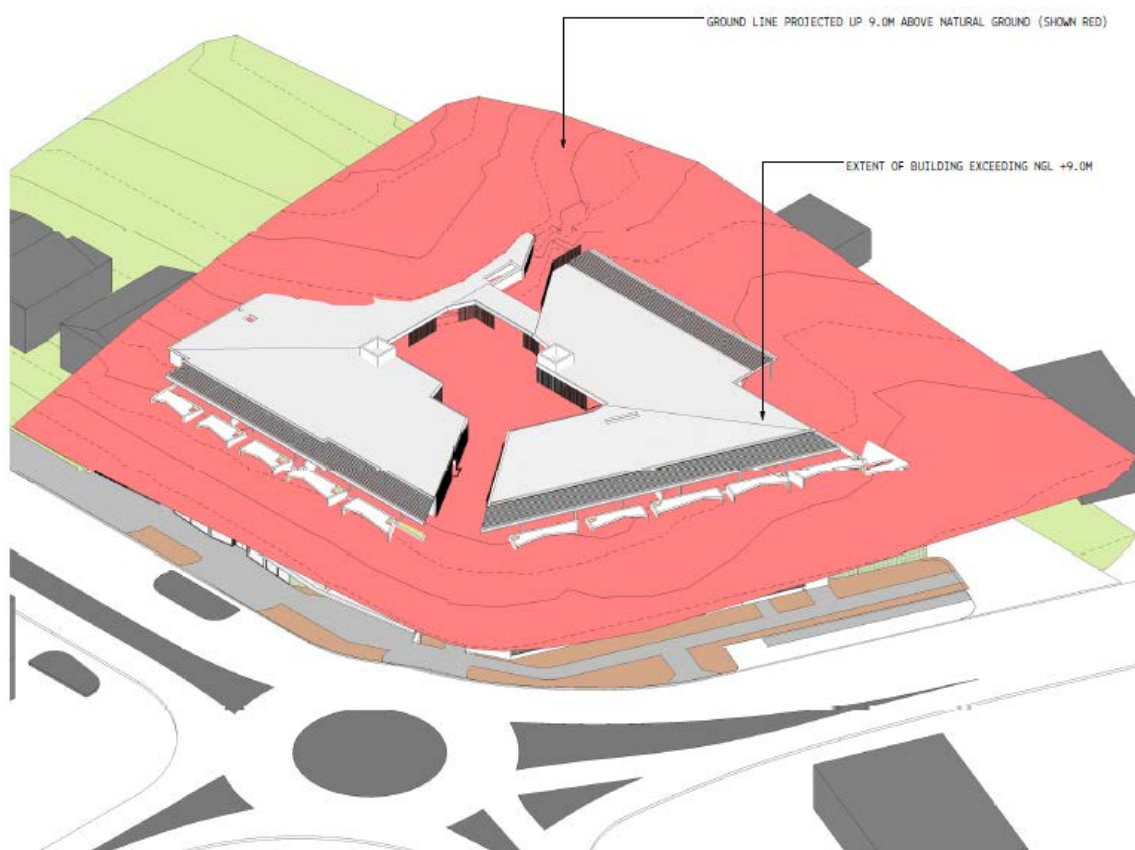
Area breaching 9 metres measured from existing ground level (shown blue)

Building roof outline (shown grey)

Isometric – Building Height Diagram (Below)

Ground line projected up 9m above natural ground (shown red)

Extent of building exceeding existing ground level +9m



Tables No. 1 & No. 2 identify the numerical value of those parts of the buildings within the development as lodged that exceeded 9m from existing ground level immediately below.

Buildings	Existing level m(AHD)	Floor level m(AHD)	Height m	%age variation
Building No. 1 (north)				
Position 1				
Roof	4.8m	16.5m	+11.7m	30.0%
Roof parapet / safety rail	4.8m	17.1m	+12.3m	36.0%
Position 2				
Roof	5.1m	16.5m	+11.4m	26.6%
Roof parapet / safety rail	5.1m	17.1m	+12.0m	33.3%
Building No. 2 (south)				
Position 3				
Roof	5.4m	16.5m	+11.1m	23.2%
Roof parapet / safety rail	5.4m	17.1m	+11.7m	30.0%
Position 4				
Roof	5.3m	16.5m	+11.2m	24.4%
Roof parapet / safety rail	5.3m	17.1m	+11.8m	31.1%

Table No. 1 As lodged building floor levels & heights above 9m – section 01

Buildings	Existing level m(AHD)	Floor level m(AHD)	Height m	%age variation
Building No. 1 (north)				
Position 1				
Roof parapet / safety rail	8.0m	17.1m	+9.1m	1.1%
Position 2				
Roof	6.5m	16.5m	+10.0m	11.1%
Roof parapet / safety rail	6.5m	17.1m	+10.6m	17.7%
Building No. 2 (south)				
Position 3				
Roof	5.1m	16.5m	+11.4m	26.6%
Roof parapet / safety rail	5.1m	17.1m	+12.0m	33.3%
Position 4				
Roof	5.1m	16.5m	+11.4m	26.6%
Roof parapet / safety rail	5.1m	17.1m	+12.0m	33.3%

Table No. 2 As lodged building floor levels & heights above 9m – Section 02

Tables No. 3 & No. 4 identify the numerical value of those parts of the buildings within the development that exceed 9m from existing ground level immediately below following amendment of the DA as proposed in Attachment 1.

Buildings	Existing level m(AHD)	Floor level m(AHD)	Height m	%age variation
Building No. 1 (north)				
Position 1				
Roof	4.8m	16.2m	+11.4m	26.6%
Position 2				
Roof	5.1m	16.5m	+11.4m	26.6%
Building No. 2 (south)				
Position 3				
Roof	5.4m	16.5m	+11.1m	23.3%
Position 4				
Roof	5.3m	16.2m	+10.9m	21.1%

Table No. 3 Amended building floor levels & heights above 9m – Section 01

Buildings	Existing level m(AHD)	Floor level m(AHD)	Height m	%age variation
Building No. 1 (north)				
Position 1				
Roof	8.0m	16.2m	+8.2m	Below 9m
Position 2				
Roof	6.5m	16.4m	+9.9m	10.0%
Building No. 2 (south)				
Position 3				
Roof	5.1m	16.5m	+11.4m	26.6%
Position 4				
Roof	5.0m	16.3m	+11.3m	25.5%

Table No. 4 Amended building floor levels & heights above 9m – section 02

Objective of the Development Standard

The objectives of the development standard are:

- (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.*

Objectives of the Zone

The objectives of the B2 Local Centre Zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To encourage vibrant centres by allowing residential and tourist and visitor accommodation above commercial premises.*

The applicant argues that the current 9m height limit does not have regard for the circumstances of the site, particularly given the height limit set on the western side of Jonson Street and all other land zoned B2 Local Centre in this locality; the existing height of newer development opposite the subject property; and the future character of the land as envisaged in the Byron Bay Town Centre Masterplan.



Height limit 11.5 m and 9 m

The above extract from the Height of Buildings Map shows the extent of the 11.5m height limit (in yellow) versus the 9.0m limit (in green) for the southern end of Jonson Street. The current controls envisage a distinct height difference on either side of the street in this locality.

In relation to the South Jonson Street precinct, the Town Centre Masterplan establishes the following short & long term priorities:

The south of Jonson Street should, over time, gradually transition into a mixed use district that supports medium density living and local business.

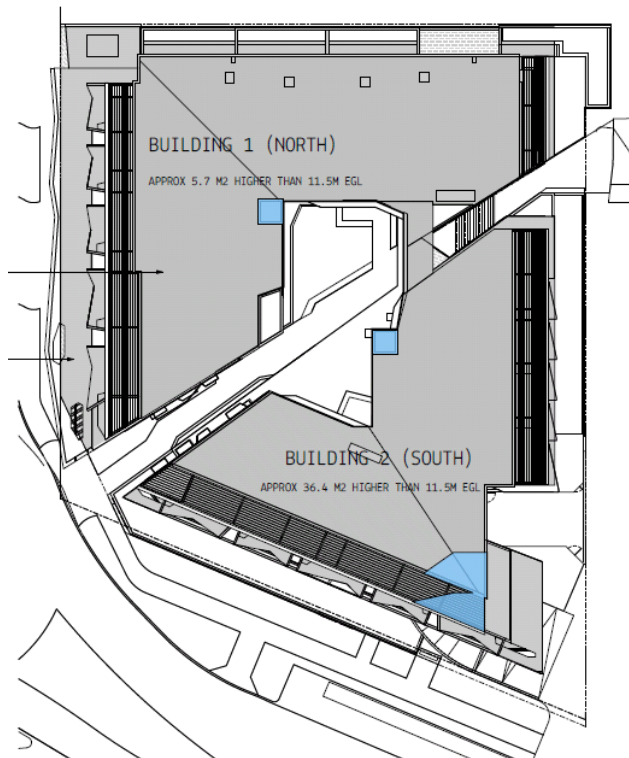
While the Masterplan suggests that the 11.5m building height should be expanded to include the eastern side of Jonson Street, it also recommends maintaining a three storey limit (*Sub-Strategy 2: A Varied and Defined Centre*).

Assessment against building height at 11.5m

During assessment, the objection was amended to reflect the 11.5m max. building height proposed in the draft Planning Proposal 26.2017.6.1 provided to Council at its Ordinary Meeting of 23 Nov. 2017 as that reflects the strategic direction of the adopted Byron Bay Town Centre Masterplan (Rev. E 20/7/16) and recommended changes to the height limitations for the amendment to the BLEP 2014.

Tables 5 & 6 (below) repeat the tables above, but in relation to the recommended 11.5m height limit, highlighting where the proposed development exceeds that anticipated control.

Amended Development Plan TP3.05-Rev3 shows in plan and isometric perspective the part of the roof and upper walls of the 3rd level shop top houses and serviced apartments of the development that exceeded 11.5m from existing ground level (refer to Attachment No. 1).



Refer to Attachment 1 – Drawing TP3.05
Building Height Diagram.

Plan view – Building Height Diagram (Left)

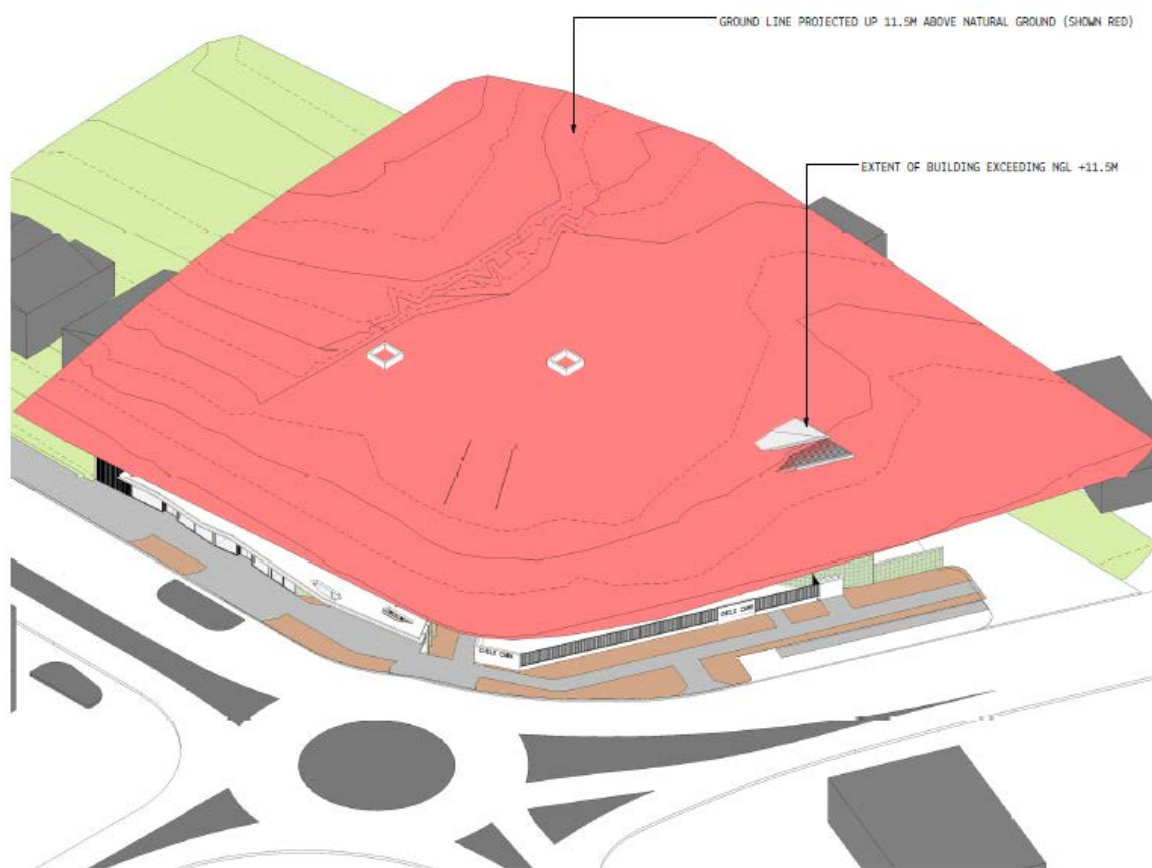
Area breaching 11.5 metres measured from existing ground level (shown blue)

Building roof outline (shown grey)

Isometric – Building Height Diagram (Below)

Ground line projected up 11.5 m above natural ground (shown red)

Extent of building exceeding existing ground level +11.5 m



ISOMETRIC - BUILDING HEIGHT DIAGRAM 11.5 M

Tables No. 5 & No. 6 identify the numerical value of those parts of the buildings within the development that exceed 11.5m from existing ground level immediately below following amendment of the DA. Amended Development TP3.05-Rev3 shows those parts of the building exceeding 11.5m.

Buildings	Existing level m(AHD)	Floor level m(AHD)	Height m	%age variation
Building No. 1 (north)				
Position 1				
Roof	4.8m	16.2m	+11.4m	Below 11.5m
Position 2				
Roof	5.1m	16.5m	+11.4m	Below 11.5m
Building No. 2 (south)				
Position 3				
Roof	5.4m	16.5m	+11.1m	Below 11.5m
Position 4				
Roof	5.3m	16.2m	+10.9m	Below 11.5m

Table No. 5 amended building floor levels & heights above 11.5m – section 01

Buildings	Existing level m(AHD)	Floor level m(AHD)	Height m	%age variation
Building No. 1 (north)				
Position 1				
Roof	8.0m	16.2m	+8.2m	Below 11.5m
Position 2				
Roof	6.5m	16.4m	+9.9m	Below 11.5m
Building No. 2 (south)				
Position 3				
Roof	5.1m	16.5m	+11.4m	Below 11.5m
Position 4				
Roof	5.0m	16.3m	+11.3m	Below 11.5m

Table No. 6 Amended building floor levels & heights above 11.5m – section 02



Sections TP1.12-13

The horizontal red line in these sections drawings is 11.5 metres above existing ground level.

The vertical red lines indicate the overall height.

The lowest part of the building shown in these sections is 8.2 metres on Ruskin Lane where the site slopes up and adjoining land zoned R2 Low density residential.

The Sections in TP1.12-13 shows the heights of the buildings at the 4 locations identified in Tables No. 5 & No. 6 above.

The architects' plans show that the tallest part of the building is the southern lift overrun being 12.2 metres above existing ground level below which is a 6 % variation over the proposed 11.5 metre height limit (Refer to Attachment 11).

While the extent of variation from the proposed 11.5m standard is clearly substantially less than the variation from the current standard, the building is non-compliant. Further, the application proposes four storeys above basement in parts, where the Town Centre Masterplan has clearly recommended maintenance of the three storey built form as viewed from the street.

Given the Byron Bay Town Centre Masterplan and planning proposal to amend LEP 2014, there are reasonable planning grounds to justify contravention of the 9.0m height limit and the extent of the contravention of the suggested 11.5m limit is minor subject to conditions of consent to mitigate visual impacts and avoid privacy impacts. There are several site specific considerations that merit a variation to the standard due to the slope of the site with a cross fall over 4 metres, which is taller than a single storey (minimum habitable floor to ceiling heights are 2.4 metres).

The development is consistent with the B2 Local Centre zone objectives. It is consistent with the objectives of the building height standard; with consideration of the recommendations of the Byron Bay Town Centre Masterplan and draft planning proposal resolved by Council in relation to increasing that height standard.

On this basis the consent authority can be satisfied that:

- compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- there are sufficient environmental planning grounds to justify contravening the development standard;
- the applicant's written request has adequately addressed the matters required to be demonstrated;
- 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
- that the concurrence of the Secretary has been obtained.

Floor Space Ratio:

A maximum Floor Space Ratio of 1.3:1 applies to the subject site under LEP 2014.

The floor areas of the proposed development have reduced as a consequence of the amendments made 19 Dec. 2017, 6 March 2018 and 8 Aug. 2018.

Tables No. 1 & No. 2 identify the floor plan areas for each level of the buildings.

Table No. 1 Floor plan areas – ground floor Buildings	Area (m2)
Building No. 1 (north)	
Restaurant or café	120
Business / retail premises	584
Managers office	18
Storage, change rooms, toilets and amenities	36
Sub-total	758
Building No. 2 (south)	
Childcare centre	372
Childcare centre storage	30
Sub-total	402
Total	1,160

Table No. 2 Floor plan areas – levels 1, 2 & 3 Buildings	Area (m2)
Building No. 1 (north)	
Level 1 - 6 shop top houses	604.5
Level 2 - 16 shop top houses	604.5
Level 3 - 2 shop top houses	503.3
Sub-total	1,712.3
Building No. 2 (south)	
Level 1 - 16 serviced apartments	557.9
Level 2 - 8 serviced apartments	557.9
Level 3 - 2 serviced apartments	391.5
Sub-total	1,507.3
Total	3,219.6

The objection is required because the site has an area of 2,834.8m² and the sum of the floor plan areas of the buildings in the development will be 4,379.6m² which is a floor space ratio of 1.54:1.

The percentage variation is 16% greater than that the floor space ratio of 1.3 : 1 or 3,685.2m² permitted by Clauses 4.4 & 4.5 and FSR Map of the BLEP 2014 permitted by Clauses 4.4 & 4.

FSR controls are resulting in development that is inconsistent with the objectives of the zone and no such controls applied in Byron Bay Town Centre under the previous LEP 1988. The Masterplan recommended floor space ratio is reviewed and amended to ensure development is viable. The draft Planning Proposal 26.2017.6.1 recommended there be no floor space controls within Byron Bay Town Centre. Draft Planning Proposal 26.2017.6.1 related to a comprehensive review of planning objectives and development standards on land currently zoned B2 Local Centre under LEP 2014 within Byron Bay Town Centre.

Objectives of the Clause

4.4 Floor space ratio

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

- (a) to ensure that new buildings are appropriate in relation to the character, amenity and environment of the locality,*
- (b) to enable a diversity of housing types by encouraging low scale medium density housing in suitable locations,*
- (c) to provide floor space in the business and industrial zones adequate for the foreseeable future,*
- (d) to regulate density of development and generation of vehicular and pedestrian traffic,*
- (e) to set out maximum floor space ratios for dual occupancy in certain area*

The applicant states that the objectives of the clause are achieved because:

- the development reflects the character of existing commercial and accommodation buildings in Jonson St. (south) and will define the southern edge of the Byron Bay town centre consistent with the streetscape and character developed in the Byron Bay Masterplan
- a diversity of housing types are provided
- floor space suitable for retail and business purposes is provided
- the generation of traffic is not beyond the capacity of the road system and
- a community facility, for which there is a high demand for the service, is provided.

Strict compliance with the development standard is unreasonable and unnecessary in this particular case because of the following circumstances and reasons stated by the applicant.

1. *The DA is consistent with the strategic directions of the Byron Bay Masterplan,*
2. *The DA does not raise any matter of significance for State or regional planning,*
3. *The DA proposes a mixed use development (retail premises, café, child care centre, shop top houses and serviced apartments) permissible in the B2-Local centre zone.*
4. *The floor space ratio sets a theoretical maximum floor plan capacity on the land without having regard to the overall integrated nature and integrity of the design of the buildings and overall development. Providing some flexibility in floor space ratio ensures the merits of a proposal are considered and design integrity is fulfilled.*

5. *Exceeding the floor space ratio does not substantially contribute to the buildings; scale, bulk or density. The proposed development is compatible in height, scale, and bulk to those on lands to the west.*
6. *There will be no unreasonable loss of amenity or excessive or unreasonable shadowing of the open space areas of adjoining lands, within the development or the public domain*
7. *It will not be evident to a person either standing in either Jonson or Browning Street. that the floor plan area of the development is 16% greater than otherwise permitted.*
8. *The use of the proposed buildings is similar in nature to buildings on land in the locality.*
9. *The development will not diminish the existing character of the area. The proposed development is of a good design and will make a positive contribution to the streetscape.*
10. *Approval of the development as proposed does not create any apparent adverse impacts on the social, environmental and economic environment of land in the zone and locality.*

The land is appropriately zoned and the buildings will have a positive impact on the character of the area. The development provides additional medium density permanent and short to medium term accommodation / housing and a 65 place child care centre in Byron Bay.

There is demand for permanent and short to medium term accommodation / housing and child care services in Byron Bay.

Given the Byron Bay Town Centre Masterplan and planning proposal to amend LEP 2014, there are reasonable planning grounds to justify contravention of the FSR limit and the extent of the contravention of 16%.

The development is consistent with the B2 Local Centre zone objectives. It is consistent with the objectives of the FSR clause when considering the recommendations of the Byron Bay Town centre Masterplan and draft planning proposal resolved by Council in relation to removing the FSR Control in Byron Bay Town Centre.

The consent authority can be satisfied that:

- compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- there are sufficient environmental planning grounds to justify contravening the development standard;
- the applicant's written request has adequately addressed the matters required to be demonstrated;
- 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
- that the concurrence of the Secretary has been obtained.

Clause 5.6 of Byron Local Environmental Plan 2014 – Architectural roof features

Clause 5.6 enables development that includes an architectural roof feature that exceeds the height limits set by clause 4.3 to be carried out with development consent. The proposed architectural roof awnings that wrap around the balconies on the western and southern elevations are between 0.35 m and 0.62 m above the maximum 9 metre height limit. These architecturally innovative features provide for variety in built form. Their scale is compatible with the natural and built features of the locality in this gateway location in Byron Bay Town Centre. The architectural roof features will meet all of the relevant design requirements specified under clause 5.6 (3) (a). In particular, the consent authority can be satisfied that that the architectural roof features:

- comprises a decorative element on the uppermost portion of a building, and
- is not an advertising structure, and
- does not include floor space area and is not reasonably capable of modification to include floor space area, and
- will cause minimal overshadowing, and

- any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.

Clause 6.1 of Byron Local Environmental Plan 2014 - Acid sulfate soils

This clause provides that, where applicable, development consent must not be granted for the carrying out of works unless an acid sulfate soils management plan (ASSMP) has been prepared in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority. An ASSMP prepared by ENV Solutions P/L dated June 2017 provides that Actual Acid Sulfate Soils and Potential Acid Sulfate Soils can be adequately managed. This report does not include the methodologies to be employed on site to manage acid sulfate soils and water. Therefore a condition has been imposed requiring that the contracting Engineer demonstrate to Council that the methodology and equipment employed conforms to the ASSMP, satisfying the requirements of clause 6.1.

Clause 6.2 of Byron Local Environmental Plan 2014 – Earthworks

Clause 6.2(3) requires the consent authority to consider the effects of the proposed development on the environment and surrounding area as a result of any proposed earthworks. The earthworks associated with the proposed development are significant. The proposal comprises Integrated Development as approval is required under the Water Management Act 2000. The development application was referred to the NSW Office of Water and General Terms of Approval (GTA's) issued by Water NSW on 23 January 2018. A condition limits any excavations or dewatering to be in accordance with the GTA's. The impacts of the proposal can be addressed through appropriate conditions of consent.

Clause 6.6 of Byron Local Environmental Plan 2014 - Essential services

Clause 6.6 requires the consent authority to be satisfied that essential services are available for the proposed development. Council officers are satisfied that the site is fully serviced and meets the requirements of clause 6.6. It is noted that the electrical power lines will be relocated underground as proposed. The timing and location of these works are addressed by condition of development consent. The ongoing arrangements for waste collection services are required to be provided on-site as and when a suitably sized multi rigid vehicle becomes available in Byron Shire. Operational waste collection management requirements are specified by condition of consent.

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

Not applicable

4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 79C(1) of the EP&A Act because it applies to the land to which LEP 2014 applies.

Many part of the proposed development are subject to provisions within State Environmental Planning Policy (SEPP) and only parts of the DCP that do not repeat or contradict a SEPP have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act.

The proposed development complies with all sections of the DCP 2014 (in some cases subject to conditions and/or to the satisfaction of other assessing officers), including requirements in relation to car parking, public art, street landscaping.

Parking requirements are achieved

A total of 118 car spaces are required as shown below. The plans show that a total of 120 car spaces are, 2 of which are in a stacked parking arrangement. The submitted plans are acceptable in terms of the number of spaces proposed.

Land Use	Car Parking Rates	Units		Car Spaces
Shop top housing	Residential component: 1 space / 1 or 2 bed unit, 2 spaces / 3 or more bed unit, 1 visitor space per 4 dwellings or part thereof. Shop component: 1 space per 20m ² GFA Each dwelling to have at least one covered car space.	No. of 1-2 Bed Units =	22	69.80
		No. of 3+ Bed Units =	2	
		No. of dwellings	24	
		Shop GFA (m2) =	756	
Serviced apartment	☐ 1 space / 1 or 2 bed unit, 2 spaces / 3 or more bed unit, 1 visitor space / 4 dwellings or part thereof. Each dwelling to have at least one covered car space. Where dwellings are designed with studies/ offices and other areas capable of being utilised as separate sleeping quarters these will be counted as bedrooms.	No. of 1-2 Bed Units =	22	32.00
		No. of 3+ Bed Units =	2	
		No. of dwellings =	24	
Child care centre	☐ 1 space per 4 children plus drop off/pick up area	No. of Children	65	16.25

Public Art Plan

The application proposes to undertake a public art plan to provide for public art in accordance with DCP 2014. A condition of development consent will require that a public art plan be prepared in accordance with the necessary selection process and to be approved by Council's Public Art Committee prior to application for a construction certificate.

Streetscape planting

DCP 2014 requires 1 street tree for each 8 metres of street frontage. Extensive tree planting and landscaping is to be provided as part of the streetscape improvements proposed.

4.5 Any Planning Agreement or Draft Planning Agreement?

Not applicable

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

Clause 50(1A), (1AB) & (1B):

The application must be accompanied by a statement from a qualified designer, verifying that he or she designed, or directed the design, of the development and explaining how the development addresses the design quality principles and other relevant provisions of the Apartment Design Code.

A statement has been provided by Mr Jade Myers, from Myers Ellyett, meeting the requirements of the Regulation. The design principles are addressed in further detail above.

Clause	This control is applicable to the proposal:	I have considered this control as it relates to the proposal:	If this control is applicable, does the proposal comply?
92	Yes	Yes	Yes
93	No	N/A	N/A
94	No	N/A	N/A
94A	No	N/A	N/A
97A	Yes	Yes	Yes

* Non-compliances and any other significant issues discussed below

4.7 Any coastal zone management plan?

Not applicable

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

Impact on:	Likely significant impact/s?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality subject to conditions of consent.
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality subject to conditions of consent.
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.

Conditions of consent are recommended to manage all construction activities including:

- hours of work,
- builders waste,
- noise,
- dewatering,
- acid sulfate soils,
- vibration and
- requirements for dilapidation reports.

Conditions of consent recommend amendments to plans to mitigate and reduce impacts of building separation setbacks to balconies and habitable windows, windows to be made opaque glazing within.

Recommended conditions of consent require a detailed operational management plan to address the following, as a minimum:

1. Carpark Access, Security & Operation:

- Basement ramp - The location of the basement ramp is considered acceptable after review by independent external traffic consultant provided boom gates and intercoms etc. are appropriately located to ensure not traffic conflicts on Ruskin Lane or Browning St.

Basement carpark access, security and operation have been clarified as the following:

- o The basement carparks of the proposed development are to be secured by a metal security gate located at base of main vehicle ramp.
- o The security gates located at the base of the ramp allows for approximately 29m of queuing up the ramp to the site boundary on Ruskin Lane.
- o It is proposed that the basement security gates remain open during hours of operation of the commercial and child care uses, being from 7am – 7pm Monday to Friday, and 7am to 1pm Saturday. This will freely allow the carpark to be accessed for those uses and during peak times.
- o After hours, it is proposed that the basement security gates remain closed but can be opened via a swipe card on the way in and an in-slab pressure sensor on the way out. Swipe cards will be issued to residents, staff & tenants as part of the building management.
- o 2 stacked car spaces in -B1 that are blocked and must only be used as staff car parking.
- o Safe path of travel arrangements for childcare drop-off and communication plan for parents/guardians.

2. Traffic Management Plan provided for deliveries and waste collection into Ruskin Lane to be followed by operators and building manager.

3. Site Waste Minimisation and Management Plan:

The SWMMP must incorporate the following requirements:

- A site manager who is responsible for waste management and waste collection.
- Specify the proposed method of recycling or disposal and the waste management service provider.

- Submit an assessment from the waste service provider assessing whether the site is able to be adequately serviced given the number and type of waste bins, service area layout, Standard Operating Procedure requirements and parameters, such as: all vehicles must enter and leave Ruskin lane in a forward direction.
- Provide a Standard Operating Procedure within the SWMMP that incorporates the following requirements:
 - o Waste collection is to be undertaken on no more than two working days a week and outside of peak hours either 6am-8am or 2pm-4pm.
 - o Wheelie bins must be presented in the laneway no more than 30 minutes prior to collection and returned to the bin store immediately following collection. Bins must be presented in a row commencing from the northern point of the loading bay along the property boundary, spaced 750mm apart and 750mm from the property boundary wall/fence.
 - o Skip bins are not to be presented in the laneway. All waste collection of skip bins to be undertaken entirely within the curtilage of the site.
 - o Clearly state who is responsible for:
 - Managing and running the Standard Operating Procedure.
 - Maneuvering bins from the waste storage area to the service area for each collection and returning them to the waste storage area immediately following each collection.
 - Collecting ground litter resulting from waste collection activities and disposing of it immediately following collection.
- 4. Café operations including but not limited to operational hours, operational requirements of the *Food Act 2003* and *Food Regulation 2015* (incorporating *Food Standard Code*) food safety, trade waste and other day to day waste management procedures.
- 5. Childcare operations including and an emergency and evaluation plan that details:
 - o the mobility of children and how this is to be accommodated during an evacuation
 - o the location of a safe congregation/assembly point, away from the evacuated building, busy roads and other hazards, and away from evacuation points used by other occupants or tenants of the same building or of surrounding buildings
 - o how children will be supervised during the evacuation and at the congregation/assembly point, relative to the capacity of the facility and governing child-to-staff ratios
- 6. Serviced apartments operations.
- 7. Building and landscaping maintenance.
- 8. Management of noise in accordance with the approved acoustic measures.
- 9. Management of complaints and any matters of non-compliance are also required to further manage the impacts of waste collection, café operations, and childcare noise.

4.9 The suitability of the site for the development

The site is a serviced, unconstrained property and is suitable for the proposed development subject to conditions of development consent.

4.10 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited from 5 October 2017 till the 1 November 2017. There were three (3) submissions made against the development application during the exhibition period. Issues raised in the submissions regarding the impacts on adjoining and neighbouring properties are addressed as follows:

Height and FSR variation – refer to detailed assessment in Section 4.2

SEPP 65 - Non Compliance with Apartment Design Guide

Council has assessed the development against the design criteria under the Apartment Design Guide and considers that setbacks and opportunities for deep soil planting must be increased along the northern boundary to reduce potential impacts of overlooking and to increase the amenity offered by deep soil planting. Setback to northern boundary – potential to cause overlooking, privacy impacts and poor amenity. Limited deep soil planting and vegetation.

The setbacks to the northern boundary are problematic, in that non-compliance with the apartment guide and the lack of vertical 'breaks' of floors above ground present an imposing bulk for the neighbouring property. The potential to increase northern setbacks provides an opportunity to revisit the issues of bulk, privacy and landscaping.

Traffic Impact

All submitters raised concerns about traffic impacts. Adjoining owners made a decision to appoint an independent traffic consultant to peer review the traffic impacts application and submitted this to council on 3 October 2018.

Council Development Engineer's Review of Independent Traffic Impact Assessment (TIA)

17 Oct. 2018 – Council received a late submission against the development. The late submission consists of an independent TIA review, dated 29 September 2018, by Greys Australia. Council's Development Engineer undertook an assessment on this report following the Section headings listed within the submitted report.

2.1 Traffic Management Plan

It is considered the concerns in relation to service vehicles can be managed through conditions, specifically the condition relating to a Site Waste Minimisation and Management Plan. An additional Traffic Management Plan has been condition focusing on construction traffic.

The waste collection area on Browning Street is no longer proposed. The TIA may be based on an older revision of the development.

2.2 Traffic Trends

Traffic growth rates and traffic impact due to the development have been taken into account as part of the engineering assessment.

Council has considered annual traffic growth along Ewingsdale Rd and Browning / Jonson St for this DA and other significant DA's along this route. It has been considered that a continual 3.3% growth is not sustainable given the existing road design and that peak hour traffic volumes are at saturation if not near saturation. Instead of an annual growth rate of 3.3% during peak periods it has been considered more realistic to expect the peak hours to become longer, rather than significantly higher on volumes.

In addition traffic impacts have been taken into account as part of the engineering assessment. Local Traffic Committee, RMS comments and external traffic consultant comments have been obtained in regards to traffic. As a result measures such as incorporating a median strip along Browning St at the Bypass construction have been identified and all traffic is to be left in and left out of Ruskin Lane.

2.5 Trip Distribution Impacts of Byron Bay Bypass

It is assumed in the report that vehicles approaching Ruskin Lane from the east will need to perform a u turn at the Bypass roundabout. However, alternatively they may access the proposed basement car park via Tennyson St and Ruskin Lane as Ruskin Lane will remain two ways.

The report recommends providing access off Jonson St instead of Ruskin Lane. However, this alternate driveway location will still require vehicles approaching from the east to utilise the Bypass Roundabout and is not expected to reduce the impact on the roundabout. For the current proposed driveway location the alternate access off Tennyson and Ruskin Lane provide greater options for trips routes to the site and potentially less impact on the Bypass roundabout.

2.6 SIDRA Models

The submitted SIDRA model was based on a Ruskin Lane intersection where cars could enter and exit either left or right. Traffic generation was considered to be over estimated by the applicant. Based on this the submitted TIA indicated the Ruskin Lane / Browning St intersection LOS was assessed as acceptable and unchanged, [except] for the right out of Ruskin Lane. Due to this it was recommended to make Ruskin Lane Left out only.

This model also assumed no cars would access the proposed development via Tennyson St / Ruskin Lane intersection. It is expected that many vehicles will access the site via Tennyson / Ruskin Lane, thus improving the SIDRA results.

The current Ruskin Lane design is now 2 ways. While the Basement exit is conditioned to be right only this can be easily adjusted if the LOS is unsatisfactory. Therefore, while the LOS was model as satisfactory using worst

case turning manoeuvres and traffic generation volumes, the ability to adjust traffic flow along Ruskin Lane improves the options even more.

In addition, Local Traffic Committee and Council agreed that a median strip is to be constructed along Browning St to prevent a right turn into Ruskin Lane. While this was not modelled, the ability to access the site via Tennyson St / Ruskin Lane is expected to attract a reasonable number of traffic movements rather than cars doing U-turns at the Bypass roundabout.

In addition, RMS and external consultant TPS Group reviewed the TIA as Browning St is a Classified Rd and did not raise specific concerns with the TIA SIDRA models.

2.7 Swept Paths

External consultants reviewed the swept paths and provided an assessment that resulted in the final loading bay design. The applicant was required to modify the loading bay to take into account the consultants advice and Council's requirement to do all HRV loading within the site boundary.

MRV waste loading is proposed to be done in the lane. While not desirable it is not uncommon within Byron CBD and in keeping with common practice.

The loading bay was design to ensure MRV and HRV could reverse in and leave Ruskin Lane in a forward direction.

Other issues raised that have been addressed in technical reports and assessment to the satisfaction of Council and in some cases subject to recommended conditions of consent:

- Noise.
- Tree removal.
- Acid Sulfate Soils.
- Solar access.
- Ventilation.
- Visual aesthetics and appearance.
- Economic impacts on permissible and lawful uses in the locality.
- Social impacts and amenity in the locality.
- Suitability of the site
- Public interest

All matters raised during assessment have been subject to the assessment under the EP&A Act by council officers including planners, environmental health officers, development, infrastructure and traffic engineers, as well as the NSW Water, Local Traffic Committee and Roads and Maritime Services.

4.11 Public interest

The proposed development is unlikely to prejudice or compromise the public interest or create an undesirable precedent.

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

Section 64 levies will be payable.

5.2 Developer Contributions

Section 7.12 (94A) Contributions will be payable.

6. 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: Not applicable

7. CONCLUSION

The proposed development is consistent with the relevant environmental planning instruments and planning controls applicable to the site in some cases subject to recommended conditions of consent and changes marked on plans. The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development. The application is recommended for approval subject to conditions of consent.

END OF ASSESSMENT REPORT