

COUNCIL ASSESSMENT REPORT

DocNo: #A2017/29316

Panel Reference	2017NTH028
DA Number	10.2017.628.1
LGA	Byron Shire Council
Proposed Development	Erection of buildings containing 60 'pocket living' apartments and associated amenities, plus subdivision to create 1 additional Community Title lot
Street Address	Lots 1 & 7 DP 271119
	28 Parkes Avenue, Byron Bay
Applicant	Planners North
Owner	Bayshore Development Pty Ltd
Date of DA lodgement	8 November 2017
Number of Submissions	None
Recommendation	Pursuant to Section 4.16 of the <i>Environmental Planning and Assessment Act 1979</i> , Development Application 10.2017.628.1 for erection of buildings containing 60 'pocket living' apartments and associated amenities, plus subdivision to create 1 additional Community Title lot, be approved, subject to the conditions listed in Attachment 1.
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Development with a Capital Investment Value more than \$20 million (CIV is \$20.64M)*
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning & Assessment Regulation 2000 – S92, S98, S98A, S98B • SEPP 55 Remediation of Land • SEPP 71 Coastal Protection • SEPP (Building Sustainability Index: BASIX) 2004 • SEPP (State and Regional Development) 2011 • Byron LEP 2014 • Byron DCP 2014
List all documents submitted with this report for the Panel's consideration	<ol style="list-style-type: none"> 1. Recommended Conditions of Approval 2. Plans of Development
Report prepared by	Rob van Iersel – Major Projects Planner
Report date	

* Development application was lodged prior to the amendment to SEPP (State and regional Development) 2011. Pursuant to cl.2493) of the SEPP, *if any development that is regionally significant development ceases to be regionally significant development because of an amendment of this Policy and the development is the subject of a development application that has not been determined when this Policy is so amended, the development does not cease to be regionally significant development for the purposes of that application.*

EXECUTIVE SUMMARY

Proposed Development

This report considers a development application for:

- four buildings, which will contain a total of 60 'pocket living' residential apartments;
- an associated amenities building;
- car parking (24 spaces, including 2 universal access spaces), landscaping and servicing; and
- the subdivision of the site to create one additional Community Title lot.

Two of the four 'pocket living' buildings contain 5 x one-bedroom apartments at ground level, with 10 x one-bedroom apartments above (each with a mezzanine bedroom). The other two buildings contain 3 x one-bedroom and 2 x 2 bedroom apartments at ground level, with 10 x one-bedroom apartments above (each with a mezzanine bedroom).

In total, therefore, the application proposes a total of 56 x one-bedroom apartment and 4 x two-bedroom apartments. All of the first floor apartments are one-bedroom, with that bedroom provided as a loft. The individual apartments are specifically designed to provide compact living spaces, but with quality finishes and fittings and generous outdoor living spaces and access to communal open space within the site.

The separate single-level amenities building contains bicycle storage, locker spaces and additional storage for the use of all residents.

The Site

The proposal is part of a larger development known as Habitat, which contains a variety of commercial and residential buildings toward the Bayshore Drive frontage of the land, and a number of live/work buildings in the middle of the site.

Civil works have been completed throughout the whole of the site, including internal roads, car parking areas, services, earthworks and drainage.

The property is within a Community Plan (DP271119). Lot 7 DP271119 contains the parts of the site yet to be developed, including the area proposed for the pocket living apartments. Lot 1 DP271119 is the Community Property, containing the internal roads, recreational facilities and car parking areas. The proposed pocket living buildings rely on these internal roads to access the development. Lot 1 also contains an "Ecological Enhancement" area, located in the north-western corner of the overall site.

Enhancement works have been approved over that precinct, and are subject to an approved "Acid Frog Management Plan". The proposed pocket living buildings rely on these approved works in relation to the management of bush fire risks.

Habitat is located approx. 4kms west of the Byron Bay Town Centre, at the north-western edge of the Arts and Industry Estate. Sunrise Beach residential estate is located immediately to the east.

The site is zoned B4 Mixed Use under Byron Local Environmental Plan 2014.

Key Issues

Building Height

The design of each of the apartment buildings includes a "monitor roof" along part of the ridge of the main roof line, providing for natural light and ventilation to the mezzanine level bedrooms. For buildings A, B & C, the main ridge of the roof complies with the 9m height standard, with the peak of the monitor roof contravening the standard by approximately 0.5m. For building D, the main ridge contravenes the standard by approximately 0.3m, and the monitor roof contravening the standard by approximately 1.0m.

There are sufficient environmental planning grounds to justify contravention of the development standard, associated with a combination of positive impacts for local character and an absence of any impacts on views or associated with overlooking or overshadowing of neighbouring development.

Biodiversity/ Bush Fire Management

The proposed pocket living buildings rely on the approved ecological enhancement works within part of Lot 1 relation to the management of bush fire risks.

The approved Acid Frog Management Plan provides for a 10m wide “managed grassland” strip directly adjoining the boundary of Lot 7, specifically to provide for the bush fire management.

Council’s ecologist provided suggestions for species composition within this 10m strip but raised concern that the landscape plan provided with the bush fire assessment report suggested that the 10m wide strip would be battered down from the common boundary at a slope of 1 in 4.

The applicant advises that this 1 in 4 batter is not necessary and a condition would be accepted to clarify this.

The Bush Fire Safety Authority issued by RFS contains a condition requiring a Bush Fire Fuel Management Plan, to be provided prior to Construction Certificate, which will address the species composition in this managed grassland strip.

This will provide a mechanism to achieve the appropriate balance between bush fire protection and ecological enhancement, in accordance with the approved Acid Frog Management Plan.

Legislative clauses requiring consent authority satisfaction

Clause 7 of **SEPP 44** states that, before granting consent to a development application on land with an area greater than 1ha, Council must satisfy itself whether or not the land contains potential or core koala habitat.

The combination of Lots 1 & 7 has an area in excess of 1ha. In this case, however, there are no trees on the land other than those planted as part of the previous stages of Habitat development, which are not koala feed trees.

The site therefore does not constitute potential koala habitat nor contain core koala habitat.

Council, therefore, is satisfied that the development as proposed does not require any further assessment in relation to SEPP 44.

Clause 7 of **SEPP 55** states that Council must not consent to the carrying out of any development unless it has considered if the land is contaminated and, if so, whether it is suitable, or can be suitable after remediation, for the proposed use. The provisions of this SEPP were considered for DAs 10.2011.162.1; 10.2008.360.1 and 10.2005.705.1. The proposed development does not result in an increase in sensitivity. The site is considered to be suitable for the intended use. No further action is warranted.

Clause 101 of **SEPP (Infrastructure) 2007** relates to development with frontage to a classified road and requires that Council not approve development on such land unless it is satisfied regarding a range of specified matters. The site does not front a classified road.

Clause 104 of **SEPP (Infrastructure) 2007** relates to *traffic generating development*, which is defined in a Table to Schedule 3. The table specifies that apartment or residential flat buildings containing more than 300 dwellings is traffic generating development. The proposed development does not exceed this threshold.

Conclusion

The proposed development provides a positive response to the character of the area, particularly in terms of other built form within the site. The proposed use and building scale responds positively to the mix of industrial buildings in the nearby Arts and Industry Estate and the residential nature of the nearby Sunrise residential estate.

The development adds to the existing Habitat development and provides positive social, economic and environmental outcomes, particularly through the provision of housing diversity, commercial and retail diversity and increased live/ work opportunities.

The minor exceedence of building height is acceptable in the circumstances. Otherwise, the development complies with all applicable controls and policies.

Approval of the proposed development is recommended.

1. INTRODUCTION

1.1. History/Background

The property has an extensive history of approvals, as outlined in the table within **Appendix A**.

A summary of the key approvals is:

DA 10.2005.705.1	Stockpiling of 15,000m ³ of landfill over an area of 12,500m ² at a height of approximately 1.5m Deferred commencement consent conditions satisfied	Deferred Commencement 25/09/2006 12/06/2008
DA 10.2007.177.1	Environmental enhancement work	Approved 04/01/2008
DA 10.2008.360.1	Mixed use development comprising 82 residential dwellings, plus commercial, retail and creative industrial units, with the provision of fill, roadworks, carparking, landscaping, water, sewer, drainage and communication services	Deferred Commencement 06/01/2009
CC 11.2008.360.1	Bulk earthworks	Approved 06/01/2009
DA 10.2009.12.1	Community title subdivision of approved mixed use development Consent surrendered 12/11/2014	Approved 09/12/2009q
DA 10.2011.162.1	Mixed-use development comprising 67 residential dwellings, commercial, retail, live/work and creative industry units, with the provision of road works, car parking, landscaping, water, sewer, drainage and communication services, plus subdivision of the site under a Community Scheme	Approved (JRPP) 24/02/2012
DA 10.2015.353.1	Stage 1 - Mixed use development comprising 28 Residential dwellings, plus commercial and retail units, recreation facilities, associated infrastructure and subdivision	Approved 04/02/2016
DA 10.2017.4.1	Live/work buildings - Residential flat building and light industry (creative industries)	Approved 10/05/2017

1.2. Description of the proposed development

This application sets out the latest stage of development for Habitat. It comprises:

- four buildings, which will contain a total of 60 'pocket living' residential apartments;
- an associated amenities building;
- car parking (24 spaces, including 2 universal access spaces), landscaping and servicing; and
- the subdivision of the site to create one additional Community Title lot.

The proposed development is located to the western part of the site, in an area where a combination of live/ work and light industrial units were previously approved.

Two of the four 'pocket living' buildings contain 5 x one-bedroom apartments at ground level, with 10 x one-bedroom apartments above (each with a mezzanine bedroom). The other two buildings contain 3 x one-bedroom and 2 x 2 bedroom apartments at ground level, with 10 x one-bedroom apartments above (each with a mezzanine bedroom).

In total, therefore, the application proposes a total of 56 x one-bedroom apartments and 4 x two-bedroom apartments. All of the first floor apartments are one-bedroom, with that bedroom provided as a loft.

The compact apartments include outdoor terraces and decks and all units have access to communal open space and garden areas.

Solar panels will be installed on all buildings, feeding energy into the site-wide embodied energy network, providing benefits for all tenants.

Three unit types are proposed, as follows:

Type A (16 apartments)	Bedrooms:	1
	Floor Area:	67m ²
	External Area:	47m ²
Type B (4 apartments)	Bedrooms:	2
	Floor Area:	68m ²
	External Area:	49m ²
Type C (40 apartments)	Bedrooms:	1
	Floor Area:	46m ²
	Deck Area:	10m ²

The separate single-level amenities building contains bicycle storage, tenant storage spaces, bin stores and recycling facilities, for the use of all residents.



1.3. Description of the site

Land is legally described as Part Lot 7 DP: 271119
 Property address is 28 Parkes Avenue BYRON BAY
 Land is zoned: B4 Mixed Use
 Land area is: Part Lot 7: 6,264m²
 Whole Lot 7: 1.616ha

Property is constrained by: Acid Sulfate Soil Class 3
 (Note: Site previously filled in accordance with previous approvals – see Appendix A)
 Bushfire Prone Land (vegetation buffer)



High Environmental Value vegetation



Wildlife Corridor

Habitat is a mixed use development purpose-built to accommodate a variety of commercial, retail and residential uses. To date, two stages have been constructed, with the commercial precinct at the eastern (Bayshore Drive) frontage of the site containing a number of retail and office spaces, a restaurant/ café and with shared office facilities.

Two live / work precincts are located west of the commercial precinct, containing individual units that provide for office/ commercial space at ground level with a combination of one and two bedroom residences above and behind.

A central recreation space has also been constructed, including a pool and play area, with associated amenities.

Access is from Wallum Place, with all internal roads and car parking constructed as part of the first stage of works.

2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections. Notes that most environmental issues have been addressed within previous applications. Conditions of approval are recommended.
Development Engineer	No objections. Conditions of approval are recommended.

Referral	Issue
S64 / Systems Planning Officer	Developer Servicing Charges are applicable, based on the additional water and sewer demands generated by the proposed development, equivalent to: <ul style="list-style-type: none"> • 24.8 ET for water & bulk water services; and • 31.01 ET for sewer services.
S94 / Contributions Officer	Developer contributions applicable in accordance with Council's Contributions Plan 2012.
Ecologist	<p>Concerns initially raised regarding details of the landscaping/ environmental enhancement proposed on the adjoining Lot 1.</p> <p>This area was subject to enhancement proposals approved under DA 10.2007.177.1 and detailed in a subsequently approved Acid Frog Management Plan.</p> <p>Ongoing management of this area is also important in relation to bush fire risk. The approved Acid Frog Management Plan provides for a 10m wide "managed grassland" strip directly adjoining the boundary of Lot 7, specifically to provide for the bush fire management.</p> <p>Council's ecologist provided suggestions for species composition within this 10m strip but raised concern that the landscape plan provided with the bush fire assessment report suggested that the 10m wide strip would be battered down from the common boundary at a slope of 1 in 4.</p> <p>The applicant advises that this 1 in 4 batter is not necessary and a condition would be accepted to clarify this.</p> <p>The Bush Fire Safety Authority issued by RFS contains a condition requiring a Bush Fire Fuel Management Plan, to be provided prior to Construction Certificate, which will address the species composition in this managed grassland strip.</p> <p>This will provide a mechanism to achieve the appropriate balance between bush fire protection and ecological enhancement, in accordance with the approved Acid Frog Management Plan.</p>
Rural Fire Service (100B/79BA/79C)	See below

3. 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 bush fire prone land. The development application was referred to the NSW Rural Fire Service, which provided conditions which are reflected in the Recommendation of this Report below.

EFFECT OF 10/50 RULE ON SIGNIFICANT VEGETATION

The 10/50 exemption to clear vegetation cannot be exercised on this parcel of land, as it is identified as being directly adjacent to an identified SEPP 14 wetland area.

4. SECTION 4.15 – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

Having regard to the matters for consideration detailed in Section 4.15 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	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration:</p> <p>Remains applicable as the application was lodged prior to the gazettal of SEPP (Coastal Protection) 2018.</p> <p>There is no mapped SEPP 14 wetland on the site. The nearest is approx. 575m to the west.</p>		
State Environmental Planning Policy No 26 - Littoral Rainforests	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration:</p> <p>Remains applicable as the application was lodged prior to the gazettal of SEPP (Coastal Protection) 2018.</p> <p>There is no mapped SEPP 26 Littoral Rainforests on the site. The nearest is approx. 566m to the East.</p>		
State Environmental Planning Policy No 44 - Koala Habitat Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration:</p> <p>There is no vegetation on this site, therefore it is not a potential koala habitat and the development control provisions do not apply.</p>		
State Environmental Planning Policy No 55 - Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration:</p> <p>The provisions of this SEPP were considered for DAs 10.2011.162.1; 10.2008.360.1 and 10.2005.705.1. The proposed development does not result in an increase in sensitivity. The site is considered to be suitable for the intended use. No further action is warranted.</p>		
State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration:</p> <p>The SEPP applies to residential flat buildings of at least 3 or more storeys. The Standard template definition of storey specifically excludes mezzanines. In this case, the proposed buildings are therefore 2 storeys.</p> <p>The provisions of this SEPP therefore do not apply.</p>		
State Environmental Planning Policy No 71 - Coastal Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration:</p> <p>Remains applicable as the application was lodged prior to the gazettal of SEPP (Coastal Protection) 2018.</p> <p>See further assessment below.</p>		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration:</p> <p>The proposal is considered to be BASIX affected development. BASIX certification has been included in the application.</p>		
State Environmental Planning Policy (State and Regional Development) 2011	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration:</p> <p>In accordance with the provisions of this SEPP, the proposed development is Regionally Significant Development, as the estimated costs of construction exceeded the then applicable threshold at the time of lodgement.</p> <p>As such the JRPP is the consent authority for this application.</p>		

SEPP 71 - Coastal Protection

Cl. 8 Matters for Consideration:	
(a) the aims of this Policy set out in clause 2:	
(a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and	Not directly applicable
(b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and	The proposed development does not impede coastal foreshore access.
(c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and	Not directly applicable
(d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and	No perceived impacts
(e) to ensure that the visual amenity of the coast is protected, and	No perceived impacts
(f) to protect and preserve beach environments and beach amenity, and	No perceived impacts
(g) to protect and preserve native coastal vegetation, and	No perceived impacts
(h) to protect and preserve the marine environment of New South Wales, and	Not directly applicable
(i) to protect and preserve rock platforms, and	Not directly applicable
(j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of the Environment Administration Act 1991), and	No perceived impacts
(k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and	No perceived impacts
(l) to encourage a strategic approach to coastal management.	No perceived impacts
(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved	Not directly applicable

(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability	Not directly applicable
(d) the suitability of development given its type, location and design and its relationship with the surrounding area	No perceived impacts
(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore	The development will not result in any significant amenity impacts.
(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities	As above.
(g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats	See ecology comments above.
(h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats	No significant impacts envisaged.
(i) existing wildlife corridors and the impact of development on these corridors	No perceived impacts
(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards	No perceived impacts
(k) measures to reduce the potential for conflict between land-based and water-based coastal activities	Not directly applicable.
(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals	The development will not impact on any known areas of Aboriginal Heritage.
(m) likely impacts of development on the water quality of coastal waterbodies	The development is unlikely to impacts coastal water quality.
(n) the conservation and preservation of items of heritage, archaeological or historic significance	The development will not impact on any known areas of historic significance.
(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities	Not directly applicable.
(p) only in cases in which a development application in relation to proposed development is determined: (i) the cumulative impacts of the proposed development on the environment, and (ii) measures to ensure that water and energy usage by the proposed development is efficient.	The development is part of the staged construction of Habitat, which builds upon urban infrastructure approved and constructed on the site. The development includes water and energy saving measures in the design and fit-out of all buildings.

Cl. 13 Flexible zone provisions	Not directly applicable.
Cl. 14 Public access	See above – the proposal does not impede coastal access.
Cl. 15 Effluent disposal	The development is connected to Council's reticulated sewerage infrastructure.
Cl. 16 Stormwater	<p>Stormwater infrastructure has been constructed within the site as part of previous approvals. The impervious areas (roof, etc.) associated with the current proposal is slightly less than the quantum allowed for in the design and approval of that infrastructure.</p> <p>As such, there are no anticipated stormwater impacts associated with the development as proposed.</p>

4.2 Byron Local Environmental Plan 2014 (LEP 2014)

Pursuant to the provisions of LEP 2014:

- (a) The proposed development is defined in the LEP 2014 Dictionary as *Residential Flat Building*;
- (b) The land is within the *B4 Mixed Use* according to the Land Zoning Map;
- (c) The proposed development is permitted with consent; and
- (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
<i>To provide a mixture of compatible land uses.</i>	<p>This development application is for residential accommodation. It is diverse in nature to what is currently available in the Shire.</p> <p>It is part of a larger development on the site that includes commercial and retail premises and therefore contributes to this objective.</p>
<i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i>	<p>The development application brings residential opportunities to the larger mixed-use site.</p> <p>The contribution of smaller living units that this development proposes will allow a range of people who work nearby, particularly within Habitat itself or the Arts and Industry Estate, to live in the area. The development will therefore encourage walking and cycling.</p> <p>It is also located close to the rail line and the starting point for the existing train service, providing a good public transport option to the Byron bay Town Centre.</p>

Other relevant provisions of LEP 2014 are addressed below:

4.1 Minimum subdivision lot size

Part 4(b) of this clause specifically exempts a subdivision under the Community Title provisions from application of the minimum lot size.

4.3 Height of buildings

The Height of Buildings Map specifies a maximum height of 9m in this locality. In part, the proposed buildings will exceed this height.

The application includes a submission under Clause 4.6 of the LEP seeking approval for the contravention of this standard. This is addressed in detail below.

4.4 Floor space ratio

The Floor Space Ratio Map specifies a maximum FSR of 0.9:1. The proposed development has a total floor space of 3,184m², within the Part Lot 7, which has an area of 6,264m². It therefore has an FSR of 0.51:1.

4.6 Exceptions to development standards

The clause provides a mechanism for the approval of a development application where the development would contravene a development standard.

In this case, the development contravenes the 9.0m maximum building height development standard. The applicant has submitted a written request to justify the contravention of this standard.

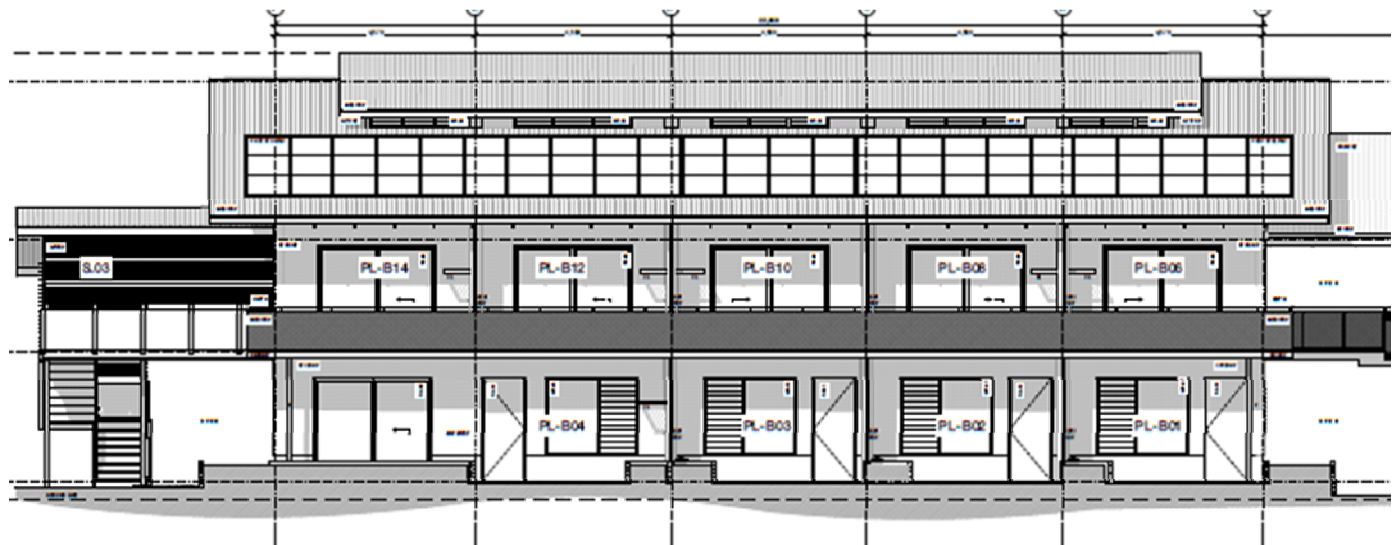
The Development Standard to be varied

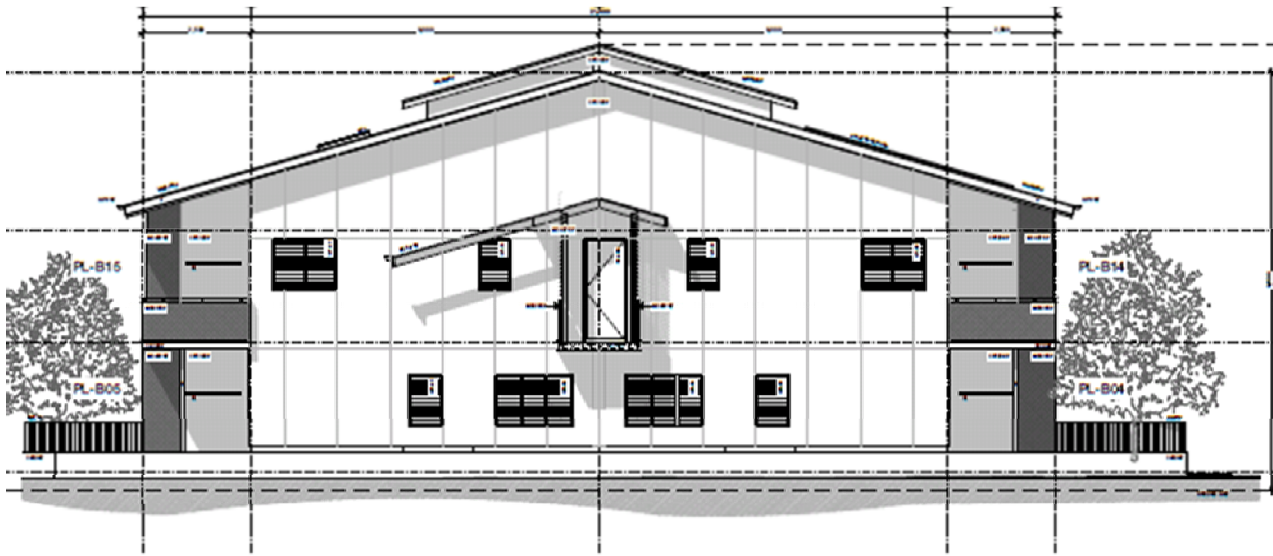
The Building Height development standard is outlined at clause 4.3 of Byron LEP 2015. The clause references the *Height of Buildings Map*, which, in relation to the subject land, specifies a maximum height of 9.0m.

For the purpose of that clause, *building height* is defined as *the vertical distance from ground level (existing) to the highest point of the building*.

Extent of Variation to the Development Standard

Each of the pocket living buildings have a “monitor roof” along part of the ridge of the main roof line, providing for natural light and ventilation to the mezzanine level bedrooms.





For buildings A, B & C, the main ridge of the roof complies with the 9m height standard, with the peak of the monitor roof contravening the standard by approximately 0.5m.

For building D, the main ridge contravenes the standard by approximately 0.3m, and the monitor roof contravening the standard by approximately 1.0m.

Objective of the Development Standard

The objectives of the building height 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.*

Objective of the Zone

The objectives of the B4 Mixed Use Zone are:

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

Assessment

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The building height is primarily driven by the need to achieve positive drainage and to provide good floor to ceiling heights at the ground level, the upper living level and the mezzanine bedrooms, with a minimum of 2.7m floor to ceiling provided.

This will ensure adequate natural lighting and ventilation, which is further assisted by the monitor roof, which includes openable windows. This roof form also provides a positive response to the character of the area, particularly in terms of other built form within the site. The combination of roof form and building scale also responds positively to the mix of industrial buildings in the nearby Arts and Industry Estate and the residential nature of the nearby Sunrise residential estate.

The pocket living precinct of this site directly adjoins land that is currently a “Deferred Matter” under BLEP 2014, with a zoning of 4A Industrial under BLEP 1988.

Despite this zoning, the land has identified biodiversity values. It is subject to approved ecological enhancement works specified in an Acid Frog Management Plan, aimed at enhancing and protecting those biodiversity values.

As shown below, the “E Zone Review” process, while not yet complete, is suggesting that the adjoining land should have a zoning of E2 Environmental Conservation.

As such, it is clear that there will not be further urban development adjoining the pocket living precinct.



Given this context, the contravention of the building height standard will not result in impacts of overlooking or overshadowing. Given the location of the buildings at the western end of the site, they will not be prominent when viewed from Bayshore Drive or other public spaces (Wallum Road, which provides access to the land, is not a through road, providing access only to Council’s sewage treatment plant to the west). As such, the additional height for these buildings will not be perceived outside of the land.

On this basis, it is agreed that compliance with the 9.0m building height standard is unnecessary.

Are there sufficient environmental planning grounds to justify contravening the development standard?

The environmental planning grounds that justify contravention of the development standard are outlined above, associated with a combination of positive impacts for local character and an absence of any impacts associated with overlooking or overshadowing of neighbouring development.

Is the proposed development in the public interest? Is it consistent with the objectives of the standard and the zone as set out above?

The assessment outlined above demonstrates that the buildings as proposed are consistent with the objectives of the development standard. In the context of the Habitat development, the pocket living proposal is also consistent with the objectives of the zone and will lead to outcomes that are in the public interest, through the provision of housing diversity, commercial and retail diversity and increased live/ work opportunities.

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

There are no relevant draft instruments.

4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

Chapter E5 of Byron DCP 2014 specifically applies to the site and the Habitat development. This Chapter was most recently amended in February 2018, specifically to account for the development proposed in this application.

The development as proposed assists in meeting the objectives of this Chapter by:

- Adding to the compatible mix and density of business, office, residential, retail, light industry and other development on the site;
- increasing the range of housing choice and further promoting affordable living opportunities (in the context of Byron Bay); and
- reflecting Byron Bay's character and scale.

The development is wholly within Precinct 2 as set out in the Chapter, which is specifically identified as the "pocket living" precinct. The development is consistent with the prescribed land use and density outlined in Table E5.1 for this precinct.

The development complies with relevant prescriptive measures, including setbacks, buffers, car parking and building design.

Overall, the proposed development is demonstrated to meet the relevant Objectives of DCP 2014.

4.5 Any Planning Agreement or Draft Planning Agreement?

	Yes	No
Is there any applicable planning agreement or draft planning agreement?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

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

4.7 Any coastal zone management plan?

	Satisfactory	Unsatisfactory	Not applicable
Is there any applicable coastal zone management plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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.
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
Social Environment	The proposal will provide a social benefit in the locality through the

	provision of increased housing diversity and choice, particularly relevant for key workers within the site and the wider Arts and Industry Estate.
Economic impact	The proposal provides an economic benefit within the locality, associated with the increased housing choice and diversity. Given the compact nature of the smaller apartments, they are very likely to be more affordable than the majority of housing product currently available in Byron Bay.

Standard conditions of consent are recommended to control construction activities such as hours of work, construction noise, builders waste, implementation of sedimentation and erosion control measures and the like.

4.9 The suitability of the site for the development

The proposed development is part of the larger Habitat development. Previous approvals, including civil works and environmental enhancement, are relied upon for this development. The proposal is consistent with those approvals and the overall master-planning for the property.

The site is suitable to the use as proposed.

4.10 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited from 3/11/17 to 20/12/17. No submissions were received.

4.11 Public interest

The proposed development is unlikely to prejudice or compromise the public interest or create a dangerous precedent

4.12 Effect on threatened species

Having regard to sections 5A, 5C and 5D of the EP&A Act, there is unlikely to be a significant effect on threatened species, populations or ecological communities, or their habitats as a result of the proposed development because the development is restricted to Precinct 2 within the site, which has been subject to previously approved civil works, including filling of the land.

The development does not compromise the approved ecological enhancement works approved for directly adjoining land, as outlined in the approved Acid Frog Management Plan.

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

Section 64 levies will be payable.

5.2 Section 94 Contributions

Section 94 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	No

Division.	
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Provide Disclosure Statement register details here: Not applicable

7. CONCLUSION

The application proposes a total of 56 x one-bedroom apartment and 4 x two-bedroom apartments. All of the first floor apartments are one-bedroom, with that bedroom provided as a loft. The individual apartments are specifically designed to provide compact living spaces, but with quality finishes and fittings and generous outdoor living spaces and access to communal open space within the site.

The 'pocket living' development will form a precinct within a larger development known as Habitat, which contains a range of commercial and live/work development.

The proposal will provide greater diversity of housing for Byron Bay, particularly targeting key workers within the Arts and Industry Estate.

The development complies with all development standards other than building height. The applicant has submitted an application under clause 4.6 of BLEP 2014 seeking a variation to the 9.0m height limit. The contravention of this standard arises because of the "monitor roof" form, which is located above the mezzanine bedrooms to provide increased solar access and natural ventilation.

The development site adjoins vacant natural areas which will not be developed in the future, as they are subject to previously approved and partly implemented ecological enhancement projects.

As such, the contravention of the 9m height limit is acceptable in the circumstances.

The development is consistent with Chapter E of Byron DCP 2014, which applied to the Habitat site. This Chapter was updated earlier this year to provide for this specific development.

Overall, the pocket living proposal is considered to be good development, meeting a need for housing in Byron Bay, on a site which is demonstrably suitable to development of this type and scale.

Approval of the application is recommended.

APPENDIX A

History of Approvals

DA 10.2004.394.1	Stockpiling of fill material	Deferred Commencement 04/11/2004
DA 10.2005.705.1	Stockpiling of 15,000m ³ of landfill over an area of 12,500m ² at a height of approximately 1.5m	Deferred Commencement 25/09/2006
	Deferred commencement consent conditions satisfied	12/06/2008
S96 10.2005.705.2	Modification to wording of conditions	Approved 04/05/2007
S96 10.2005.705.3	Modification to consent to extend approval by 12 months	Approved 16/03/2008
CC 11.2005.705.1	Stockpiling of 15,000m ³ of landfill	Approved 04/05/2007
DA 10.2007.177.1	Environmental enhancement work	Approved 04/01/2008
DA 10.2008.360.1	Mixed use development comprising 82 residential dwellings, plus commercial, retail and creative industrial units, with the provision of fill, roadworks, carparking, landscaping, water, sewer, drainage and communication services	Deferred Commencement 06/01/2009
S96 10.2008.360.2	Amend deferred commencement condition (a) to require a licence instead of an easement over adjoining Council owned land	Approved 27/03/2009
S96 10.2008.360.3	Amend staging, conditions relating to the road reserve (Bayshore Drive / Ewingsdale Road intersection), carparking layout, bird strike and bushfire conditions (Mixed residential, commercial and industrial development)	Approved 25/02/2010
S96 10.2008.360.4	Modification to amend the design, layout and consent conditions of the approved Bayshore Village development, including amendments to the overall distribution of commercial, retail, industrial/workspace and residential floor areas, dwelling numbers, bedroom numbers, road design, traffic generation and associated facilities and services.	Refused 30/08/2010
S96 10.2008.350.5	Amended by Condition #5 of Consent 10.2011.162.1 to reduce bulk earthworks	Approved 09/12/2014
CC 11.2008.360.1	Bulk earthworks	Approved 06/01/2009
DA 10.2009.12.1	Community title subdivision of approved mixed use development	Approved 09/12/2009q
	Consent surrendered 12/11/2014	

DA 10.2011.162.1	Mixed-use development comprising 67 residential dwellings, commercial, retail, live/work and creative industry units, with the provision of road works, car parking, landscaping, water, sewer, drainage and communication services, plus subdivision of the site under a Community Scheme	Approved (JRPP) 24/02/2012
S96 10.2011.162.2	Correct minor error in proposal description	Approved 20/03/2012
S96 10.2011.162.3	Modifications to landscaping plans and parking	Approved 29/06/2017
CC 11.2011.162.1	Site preparation and 9-lot community title subdivision	Approved 20/11/2014
DA 10.2015.353.1	Stage 1 - Mixed use development comprising 28 Residential dwellings, plus commercial and retail units, recreation facilities, associated infrastructure and subdivision	Approved 04/02/2016
S96 10.2015.353.2	Amend Condition 26 to allow staging of developer contributions	Approved 29/03/2016
S96 10.2015.353.3	Design modification to buildings within Stage 01b	Approved 06/09/2016
S96 10.2015.353.4	Amend land use definition in Condition 79 and hours of operation in Condition 80	Approved 23/01/2017
S96 10.2015.353.5	Modification of live/ work units	Approved 23/01/2017
S96 10.2015.353.6	Reduce the number of residential dwellings from 28 to 22, amend Master Plan and other matters	Approved 27/04/2017
S96 10.2015.353.7	Amend Condition No.2 (Staging of Consent) to allow occupation of residential buildings prior to completion of community recreation facilities and amend Condition 88 relating to strata subdivision	Approved 26/07/2017
CC 11.2015.353.1	Part Stage 1: Commercial Buildings B1, T3, C1-C5, T1, T2, Associated carpark	Approved 01/04/2016
CC 11.2015.353.2	Stage 01B - Live Work Units C & D, Terrace Units TA-A & TA-B	Approved 27/09/2016
CC 11.2015.353.3	Amendment to Roofs and Building Design (Stage 01B - Live Work Units C & D, Terrace Units TA-A & TA-B)	Approved 01/03/2017
CC 11.2015.353.4	Performance Solution for Stage 01A - First Floor Balconies and Reduced Path of Travel Width, Stage 01B - Enclosure of Space Under Exit Stairs	Approved 27/06/2017
CC 11.2015.353.5	Fit out of Tenancy C4 as Office	Approved 09/08/2017
CC 11.2015.353.6	Amendment to Stage 01B: Performance Solutions for Fire Separation, Sound Transmission, Stairs to Unit 2, Terrace A and Type C Construction Throughout	Approved 12/09/2017
DA 10.2016.617.1	Enhancement of approved recreation facilities Deferred commencement consent conditions satisfied	Deferred Commencement 23/12/2016 09/05/2017

DA 10.2017.4.1	Residential flat building and light industry (creative industries)	Approved 10/05/2017
S96 10.2017.4.2	Amend Conditions No. 12 – On-site Stormwater Detention, Condition No 16 – Provision of Public Art and Condition No. 18 – Adaptable Housing	Approved 12/09/2017
S96 10.2017.4.3	Amend Condition 18 Equity of Access and Mobility	Approved 13/10/2017
CC 11.2017.4.1	Live Work Units x Twelve (LWA, LWB)	Approved 17/10/2017
DA 10.2017.330.1	Change of Use of Tenancies (Unit 30/C1 and Units 35 and 36/C2) to Recreation Facility (Indoor)	Approved 04/08/2017
S96 10.2017.330.2	Amend Condition 3 Relating to Hours of Operation and Delete Conditions 11, 12, 15 and 18	Approved 20/09/2017
S96 10.2017.330.3	Include Tenancy C3 for Use as a Recreation Facility (Indoor)	Approved 16/10/2017