

## COUNCIL ASSESMENT REPORT

Doc No. #A2017/25301

<b>Panel Reference</b>	2017NTH030
<b>DA Number</b>	10.2017.509.1
<b>LGA</b>	Byron Shire
<b>Proposed development</b>	Alterations and additions to Byron Bay Public School including removal of five demountable buildings, removal of twelve trees, demolition of classroom building 'L', construction of a new two storey classroom building containing ten home base rooms, covered walkway, new play area and associated landscaping.
<b>Street Address</b>	Lot 1 in DP 805037, Lot 1 Section 43 in DP 758207, Lots 2 Section 43 in DP 758207
	Kingsley Street, Byron Bay
<b>Applicant:</b>	Conrad Gargett (on behalf of NSW Department of Education)
<b>Owner:</b>	NSW Department of Education
<b>Date of lodgement</b>	14 September 2017
<b>Number of submissions</b>	No submissions were received in relation to the subject application.
<b>Recommendation</b>	Approval subject to conditions of consent
<b>Regional Development Criteria (Schedule 4A of the EP &amp; A Act)</b>	Crown development with a Capital Investment Value more than \$5 million.
<b>List of all relevant s79C(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• Byron Local Environmental Plan 2014</li> <li>• Byron Development Control Plan 2014</li> <li>• State Environmental Planning Policy No 44—Koala Habitat Protection</li> <li>• State Environmental Planning Policy No 55—Remediation of Land</li> <li>• State Environmental Planning Policy No 71—Coastal Protection</li> <li>• State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017</li> <li>• Draft Coastal Management State Environmental Planning Policy</li> <li>• EP&amp;A Regulations clauses 92 and 94</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Attachment 1 – Architectural Plans and Shadow Diagrams</li> <li>• Attachment 2 – Landscaping Plans</li> <li>• Attachment 3 – Engineering Plans</li> <li>• Attachment 4 – Geotech Report and Acid Sulfate Soils Management Plan</li> <li>• Attachment 5 – External Colours and Finishes</li> <li>• Attachment 6 – Site Waste Minimisation and Management Plan</li> <li>• Attachment 7 – Assessment of Design Quality Principals</li> <li>• Attachment 8 – Statement of Heritage Impact</li> <li>• Attachment 9 – Conditions of Consent</li> </ul>

<b>Report prepared by</b>	Ben Grant – Planner
<b>Report date</b>	2 May 2018

### Summary of s79C matters

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

**Yes**

### Legislative clauses requiring consent authority satisfaction

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

**Yes**

*e.g. Clause 7 of SEPP55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

### Clause 4.6 Exceptions to development standards

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

**Not Applicable**

### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)?

*Note: Certain Das in the Western Sydney Growth Areas Special Contributions Areas may require specific Special Infrastructure Contributions (SIC) conditions*

**Not Applicable**

### Conditions

Have draft conditions been provided to the applicant for comment?

**Yes**

*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*

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## EXECUTIVE SUMMARY

Byron Shire Council is in receipt of a Crown development application for alterations and additions to Byron Bay Public School, Byron Bay. The proposal has a capital investment value of greater than \$5 million and is considered to be regionally significant development. The northern Joint Regional Planning Panel is the relevant consent authority.

The development application seeks consent for the removal of five demountable buildings, removal of twelve trees, demolition of classroom building 'L', construction of a new two storey classroom building containing ten home base rooms, covered walkway, new play area and associated landscaping.

The Byron Bay Public School has occupied the site continuously since 1897 and comprises a number of demountable and permanent buildings as well as playground areas and a sports field. Currently, there are 679 students enrolled and 39 full time staff. Upon completion, the proposed development will result in an increased capacity for up to 60 students.

The development application was initially advertised and notified from 5 October 2017 until 25 October 2017 and was advertised for a second time from 7 December 2017 to 20 December 2017. During this time no submissions were received.

The proposed development has been assessed in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and is considered satisfactory. Two key issues for consideration are impacts on the heritage significance of the site and traffic and parking impacts generated by the increase in student capacity.

The school is a locally listed heritage item and sits within the Kingsley Street Heritage Conservation Area which lies to the south east of the Byron Bay town centre. Two historic school buildings are situated approximately 10m from the proposed two storey classroom building. Council's Heritage Advisor commented that the proposal would generally not have an adverse impact on the aesthetic significance of the heritage items or the conservation area, despite being a distinct contrast to the historic school buildings.

In relation to traffic and parking impacts, the increase in student capacity may potentially generate additional traffic volumes and demand for parking and bus services over the longer term. To address this issue, the applicant has agreed to undertake a traffic impact assessment (TIA) prior to the certification of the Crown building work. Any recommendations of the TIA will be approved and implemented as part of the development. It is considered that the impact of the proposed development on the surrounding road network will be manageable subject to the above condition.

There are a number of environmental planning instruments applying 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 (1) of State Environmental Planning Policy No 44—Koala Habitat Protection**  
Clause 7 (1) requires the consent authority to satisfy itself as to whether the land is a potential koala habitat. If the land is not a potential koala habitat, SEPP 44 does not prevent consent from being granted. The site is mostly cleared of vegetation except for a band of planted trees around the perimeter of the site. The land is not considered to be a potential koala habitat.
- **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 desktop review of the site history indicates the site has been continuously used by the Byron Bay School since 1897. There is no record of previous land uses that are likely to have resulted in

contamination and the site is not listed on Council's contaminated lands register. Based on the available information, it is considered highly unlikely that the site is contaminated.

- **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 well away from 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 an on-site detention tank which will discharge to the Council stormwater system in Carlyle Street, satisfying the requirements of the clause.
- **Clause 35 (6) of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017**  
Clause 35(6) provides that the consent authority must consider the design quality of the development when evaluated in accordance with the design quality principles set out in schedule 4 of the policy, and whether the development enables the use of the school facilities (including recreational facilities) to be shared with the community. The architectural and landscaping design is generally of a high standard and satisfies the design quality criteria in schedule 4. The new classroom building has an adaptable floor plan that could potentially be used by other community groups if required.
- **Clause 57 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017**  
Clause 57 (3) stipulates that the consent authority must take into consideration any submission provided by RMS within 21 days after the notice was given, and must also consider and issues relating to accessibility, traffic, safety, parking and congestion. The subject application does raise some concerns in relation to traffic congestion and parking, however this has been addressed through appropriate conditions of consent. RMS raised no objections to the proposal.
- **Clauses 2.1 – 2.3 of Byron Local Environmental Plan 2014 - Zoning and land use table**  
This clause requires the consent authority to have regard for the relevant zone objectives and land use table when determining a development application. The proposed school is permissible with consent in the R2 Low Density Residential and B2 Local Centre zones and is compatible with the relevant zone objectives.
- **Clause 5.5 of Byron Local Environmental Plan 2014 - Development within the coastal zone**  
Clause 5.5 (2) provides that a consent authority must not grant development consent to development within the coastal zone unless it has considered public access, relationship with the

surrounding area, amenity of the coastal foreshore, visual impacts, biodiversity and the cumulative impacts on the coastal catchment. Clause 5.5 (3) further requires the consent authority to be satisfied that the proposed development will not impede public access to the coastal foreshore, dispose effluent or stormwater to a coastal water body, or be significantly affected by coastal hazards. The proposed development is considered to be acceptable having regard to these matters.

- **Clause 5.10 of Byron Local Environmental Plan 2014 - Heritage conservation**  
Clause 5.10 provides that the consent authority must consider the impact of the proposed development on the heritage significance of the item or area concerned, and may require the submission of a heritage management document or conservation management plan before granting consent. A Statement of Heritage Impact (SOHI) has been provided in addition to a report from Council's Heritage Advisor. Both assessments concluded that the proposal will not have an adverse impact on the historic school buildings or the Kingsley Street Heritage Conservation Area.
- **Clause 6.1 of Byron Local Environmental Plan 2014 - Acid sulfate soils**  
This clause advises 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. The applicant has provided an ASSMP detailing measures to contain and neutralise acid sulfate soils and ground water during construction, satisfying the requirements of clause 6.1.
- **Clause 6.2 of Byron Local Environmental Plan 2014 – Earthworks**  
Clause 7.2(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 considered to be minor. The impacts of the proposal can be addressed through appropriate conditions of consent.
- **Clause 6.3 of Byron Local Environmental Plan 2014 - Flood planning**  
Clause 6.3 provides that the consent authority must not grant consent to development below the flood planning level unless it is satisfied that the development is compatible with the flood hazard of the land. Council's Development Engineer has calculated a 2050 flood planning level (FPL) of 3.97m AHD for the site, which incorporates 0.5m freeboard. The plans identify a finished floor level (FFL) of 4.0m AHD for the classroom building ground floor, which is 30mm above the FPL. A condition of consent is recommended for surveyor's certification of the finished floor levels prior to the occupation of the new building.
- **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.

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

## 1. INTRODUCTION

### 1.1. History/Background

#### Site history

The Byron Bay School was established in 1892. An adjoining allotment was incorporated into the school grounds as a sports oval in 1897, creating the school site as it remains today. The school has occupied the site continuously since its founding.

#### Previous determinations

A desktop search of Council's records identified the following determinations for the site:

Record no.	Description	Determination	Date
5.1997.306.1	Tree removal: three (3) fig trees and three (3) casuarinas	Approved	12/09/1997
10.2003.608.1	Special projects classroom	Approved	05/04/2004
10.2004.648.1	Tree removal: one (1) casuarina	Approved	01/12/2004
10.2006.1.1	Tree removal: ten (10) trees	Approved	27/01/2006
10.2006.609.1	Tree removal: two (2) flooded gums, two (2) swamp turpentine and one (1) tuckeroo	Approved	09/11/2006

### 1.2. Description of the site

#### The site and surrounds

The subject site comprises three allotments legally described as Lot 1 DP 805037 and Lots 1 and 2, Section 43, DP 758207. The site is located at Kingsley Street, Byron Bay, and occupies an entire block immediately south east of the Byron Bay town centre. The block is bounded by Kingsley Street, Carlyle Street, Tennyson Street and Middleton Street and covers an area of approximately 2.02 hectares.

The school comprises a number of demountable and permanent buildings as well as playground areas and a sports field.

The site lies at the interface between commercial land in the Byron Bay town centre and established residential areas to the east within the Kingsley Street Heritage Conservation Area. The school is within the boundaries of the conservation area and is listed in Schedule 5 of *Byron Local Environmental Plan 2014* (LEP 2014) as a heritage item of local significance (item no. I080). The land is zoned R2 Low Density Residential and B2 Local Centre under LEP 2014.

Surrounding land uses are characterised by a mix of commercial, residential, recreational and public land uses including: a bowling club to the north; dwellings and an Anglican church to the south, tennis club and sports fields to the east; and a fire station and commercial development along Jonson Street to the west.

The site is identified as being subject to flooding and is affected by class 3 and class 5 acid sulfate soils. There are no easements or restrictions on title.

#### Parking and access

No car parking is currently provided within the school grounds. Car parking is only available in the surrounding streets which is time limited and metered in the areas closer to the town centre.

A designated bus zone is sign posted near the main pedestrian entrance to the school along Kingsley Street which is about 75m in length. A separate vehicular pick-up/drop-off facility for parents and pupils is located at Carlyle Street on the opposite side of the campus.



Internal vehicular access is provided by a single crossover and driveway located off Kingsley Street, to the east of the bus zone. This is the only entry point for emergency and maintenance vehicles to enter and exit the school grounds.

### **Student and staff numbers**

The school currently has 679 students enrolled and 39 full time staff. The Department of Education has indicated that the forecast school enrolment is anticipated to be 650 students upon completion of the proposed development.

Notwithstanding the forecast reduction in enrolments, the proposed development will increase the capacity of the school by up to 60 students. This was confirmed by the applicants who provided the following comment during the assessment:

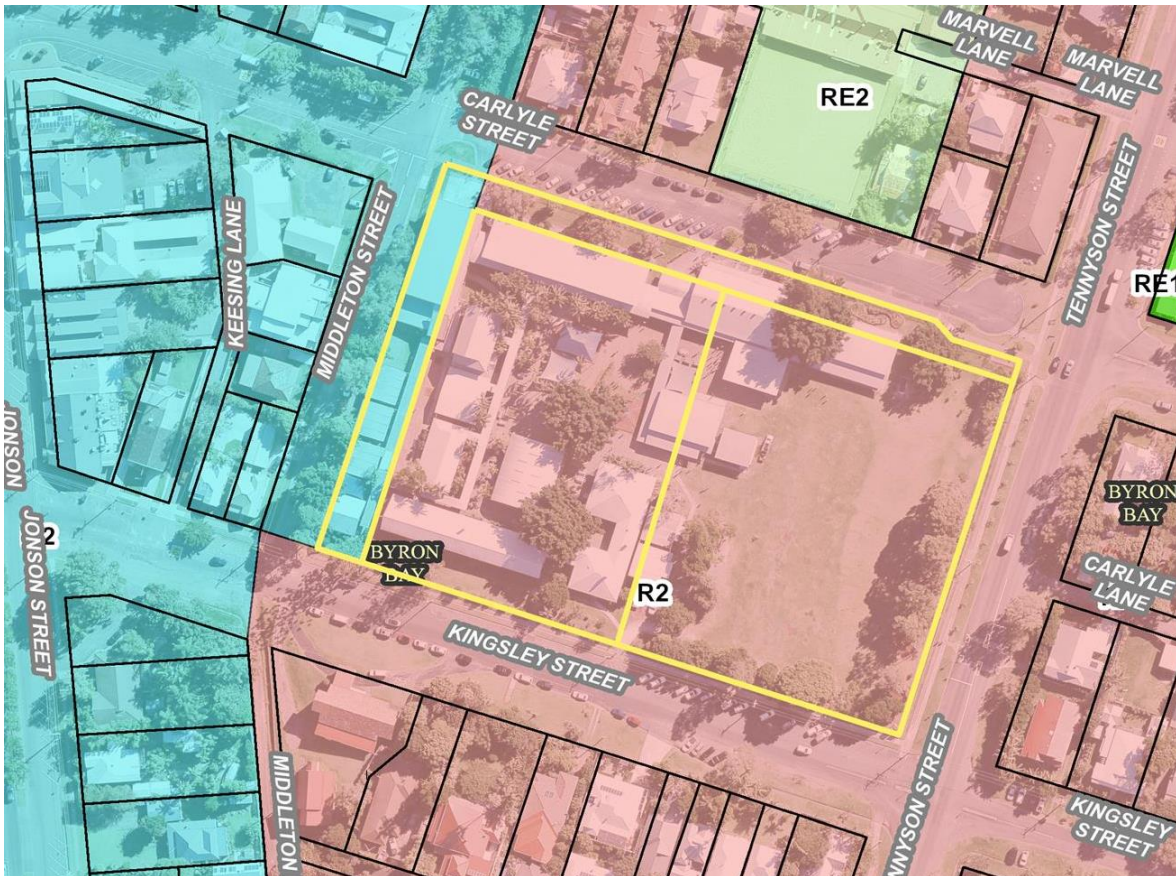
*“The new buildings are anticipated to have a maximum capacity of 300 students although we understand from the school the occupancy of the new buildings is dependent on which year groups occupy the building each year. Some year classes have a maximum capacity of 22, middle years have 26 and Years 3-6 have a maximum of 30 per class. The demountable classrooms to be removed currently house 240 students”.*

An aerial image of the site plus land use zoning and heritage maps are shown in figures 1 – 3.

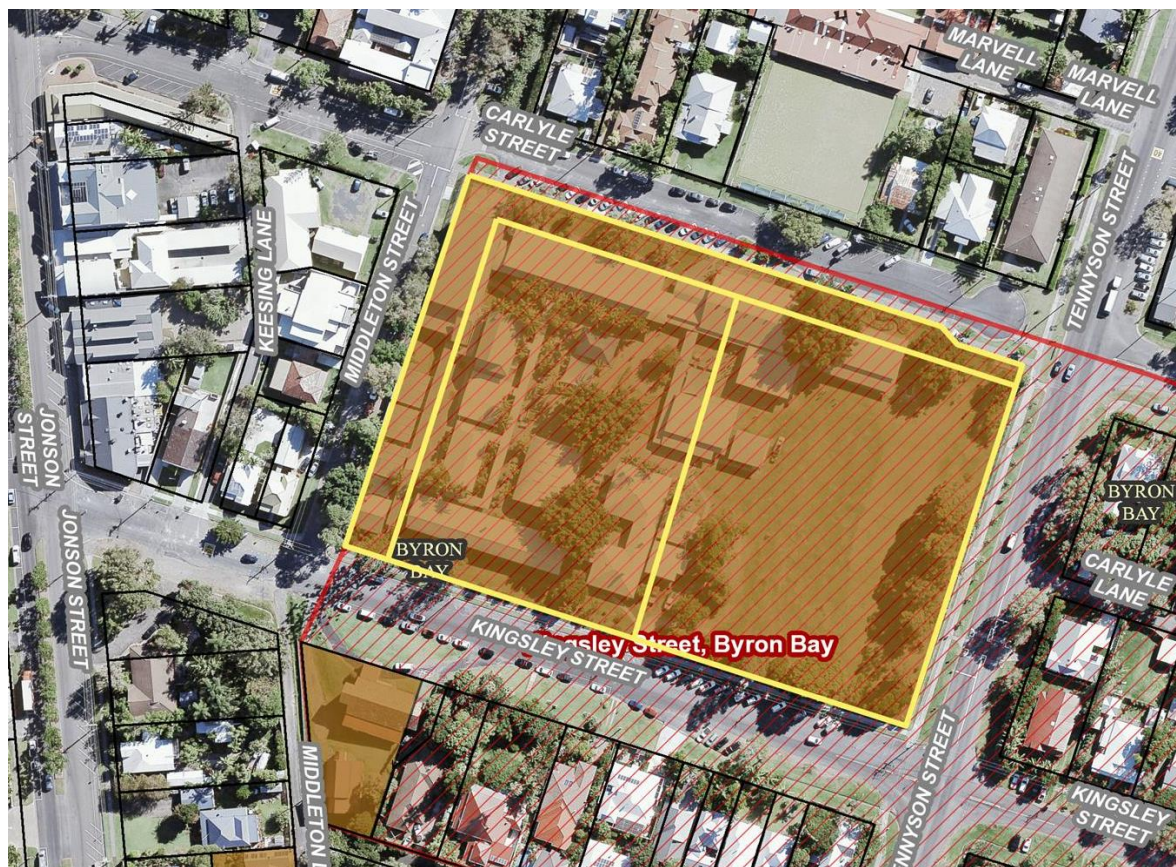


**Figure 1:** Aerial image of the subject site (2016).





**Figure 2:** Zoning of the site: R2 Low Density Residential (pink) and B2 Local Centre (blue).



**Figure 3:** Heritage mapping: The school is a locally listed heritage item (brown) and is within the Kingsley Street Heritage Conservation Area (red dashed line).





**Photo 1:** Proposed location of new classroom building. Trees to be removed are located centre frame.



**Photo 2:** Three demountable buildings to be removed near Middleton Street (left of frame). A new Kindy play area is proposed in this location.





**Photo 3:** Three centrally located demountable buildings to be removed.



**Photo 4:** Classroom building 'L' to be demolished.



**Photo 5:** A view towards the school entrance from Kingsely Street. Two historic school buildings are located along this frontage.



**Photo 6:** View of Kingsely Street, looking east towards the proposed location of the new two storey classroom building.



### 1.3. Description of the proposed development

#### Details of proposal

The development application seeks consent for alterations and additions to Byron Bay Public School, including removal and demolition of demountable buildings and one classroom, tree removal and the construction of a new two storey classroom building.

In detail, the following is proposed:

- Removal of six demountable classroom buildings including three that are currently located to the west of the site along Middleton Street, and a further three located centrally on the site;
- Demolition of permanent classroom 'Building L' and an adjacent shade structure;
- Removal of twelve trees adjacent to the administration building;
- Construction of a new two storey classroom building consisting of:
  - a. Ground floor – 'home base' rooms 1 - 5, toilets, learning commons, cleaner store, airlock, external stairs and lift.
  - b. First Floor - 'home base' rooms 6 – 10, learning commons, cleaner room, airlock, comms room, external stairs and lift.
- New landscaping and Kindy play area to be located at the west of the site near Middleton Street;
- New internal access path and landscaping works.

The new classroom building is to be constructed using masonry blockwork walls with prefinished CFC external cladding and will have a slightly pitched skillion roof. Vertical, perforated metal sunshades will be attached to the western and southern elevations. Extracts from the site plan and elevations including and artists impressions of the proposed development are shown at figures 4 - 8.

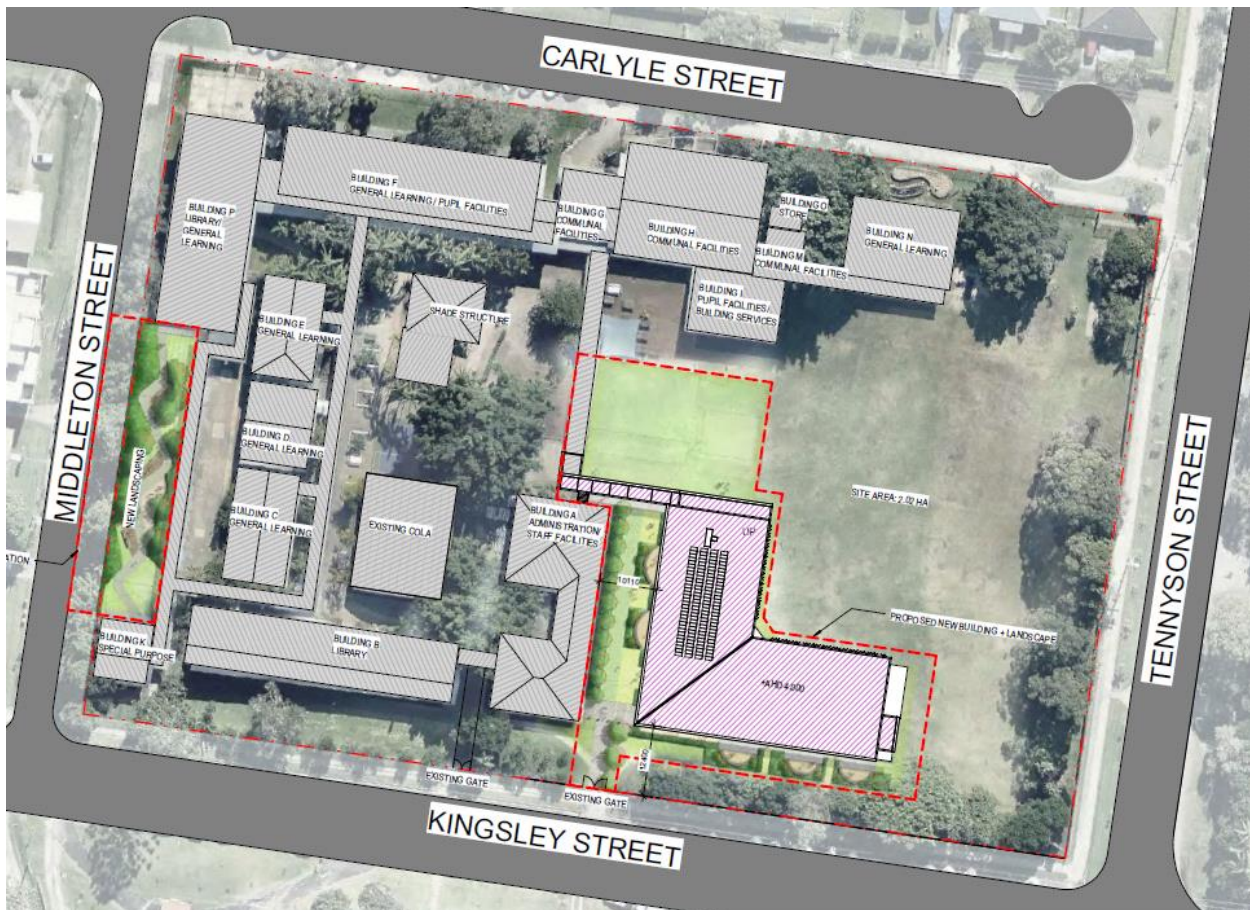


**Figure 4:** Artists impression of the proposed classroom building, looking east.





**Figure 5:** Artists impression of the proposed classroom building, looking north from Kingsley Street.



**Figure 6:** Site plan extract indicating the location of proposed new classroom building and Kindy play area.



**Figure 7:** Southern elevation of the proposed classroom building.



**Figure 8:** Western elevation of the proposed classroom building.

## 2. Summary of Referrals

### Internal Referrals

The development application was referred to the following internal Council officers for comment:

#### Environmental Health Officer

Council's Environmental Health Officer raised no specific objections subject to the imposition of standard conditions. In relation to SEPP 55, the site is considered unlikely to have been contaminated by previous land uses given its continuous use as a school since the 1890's. A preliminary investigation of the land was therefore not requested.

#### Building Surveyor

Council's Building Surveyor raised no specific objections to the development.

#### Systems Planning Officer

Council's Systems Planning Officer determined that levies under section 64 of the *Water Management Act 2000* are payable because the new classroom building will provide capacity for an additional 60 students, thereby increasing the load on Council's water and sewer systems. Calculations are shown in section 6.1 of this report.

#### Section 94 Officer

Council's Section 94 Officer commented that no developer contributions are payable.

#### Development Engineer

Council's Development Engineer raised concerns over flooding, traffic generation and stormwater management. Following discussion with the applicants and the submission of additional information, the proposed development was supported subject to conditions of consent.



To ensure finished floor levels are above the relevant Flood Planning Level (FPL), a condition of consent is recommended requiring all habitable floor levels to be above the FPL of 4.0m AHD. Surveyor's certification of the floor levels is to be provided prior to the occupation of the building.

Further details for the stormwater system are to be provided for approval with the section 68 application for stormwater drainage (on-site detention).

In relation to traffic impact, a condition is recommended for a traffic impact assessment (TIA) to be undertaken post consent. Any recommendations of the TIA are to be approved by Council and implemented prior to the certification of the Crown building work.

#### Heritage Consultant

Council's Heritage Advisor commented the proposal would generally not have an adverse impact on the aesthetic significance of the heritage item or the conservation area, despite being a distinct contrast to the adjacent historic school buildings.

Concerns were noted in relation to the colour of the perforated screens and the following recommendations were given:

- a. *That the proposed colour of the proposed perforated screens and yellow highlight areas, is reconsidered in more muted tones in keeping with the setting of the heritage items on the site and the Kingsley Street Conservation Area streetscape.*
- b. *That the Byron Bay Public School Heritage Item I080 is included in the section 170 Register by the NSW Department of Education pursuant to Section 22 of the Heritage Regulation 2012.*
- c. *That the SHI inventory 1260007 is updated and Criteria C Aesthetic significance is included, as also recognised in the SOHI report by Conrad Gargett dated June 2017.*

**Note.** The applicant did not agree to condition (a) and instead provided an alternative schedule of colours and finishes. A note has been included recommending the section 170 register be updated to include the Byron Bay Public School.

#### **External referrals**

The development application was referred to the following external agencies:

#### Roads and Maritime Services

Pursuant to clause 57 of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*, the application was referred to Roads and Maritime Services (RMS) for comment due the potential increase in capacity for up to 60 students. RMS provided no specific comments or objections to the proposal, noting that no changes to existing parking, pickup and drop off or bus arrangements were proposed.

### **3. Section 23G – Joint regional planning panels**

Section 23G and schedule 4A (5) of the EP&A Act requires the Joint Regional Planning Panel to determine Crown development applications over \$5 million in value. The proposal has a capital investment value of \$6,623,497.

### **4. Section 5AA – Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994**

Having regard to Part 7 of the *Biodiversity Conservation Act 2016* and Part 7A of the *Fisheries Management Act 1994*, 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.

The proposal does not trigger an assessment under the biodiversity offset scheme and is not being carried out in a declared area of outstanding biodiversity value.

## **5. Section 79BA – Consultation and development consent—certain bush fire prone land**

The site is not mapped as bush fire prone land and is not subject to bush fire risk from surrounding vegetation.

## **6. Section 79C Evaluation**

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

### **6.1 79C (1)(i) The provisions of any environmental planning instrument**

#### **State Environmental Planning Policy (State and Regional Development) 2011**

This policy aims to identify development that is State significant development, State significant infrastructure or regionally significant development. Clause 20 and schedule 7 of the SEPP declare Crown development over \$5 million in value as being regionally significant development for the purposes of the EP&A Act. The application is therefore submitted to the northern Joint Regional Planning Panel for determination.

#### **State Environmental Planning Policy No 44—Koala Habitat Protection**

SEPP 44 aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for Koalas. Before granting consent to a development application on land with a total area of greater than 1 hectare, a council must satisfy itself whether or not the land is a potential or core Koala habitat.

If a council is satisfied that the land in question is not a potential koala habitat, it is not prevented by the policy from granting consent to the development application.

The site is mostly cleared of vegetation apart from a scattering of trees around the school grounds and a band of planted trees which skirt the perimeter of the site near to Kingsley and Tennyson streets. The vegetation does not constitute more than 15% Koala feed tree species and the site is not considered to be a potential or core Koala habitat.

#### **State Environmental Planning Policy No 55—Remediation of Land**

This policy requires consideration to be given to previous uses that may have resulted in contamination, particularly in circumstances where a more sensitive land use is proposed.

Clause 7 of the SEPP provides that a consent authority must not consent to the carrying out of development on any land unless:

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

A desktop review of the site history indicates the site has been used by the Byron Bay School since 1897. There is no record of previous land uses that are likely to have resulted in contamination, and the site is not listed on Council's contaminated lands register.

Council has considered that based on all the available information there is no indication that the land is likely to be contaminated. The school has continuously occupied the site since 1897 and the proposal



does not result in a change of use or an increase in sensitivity. The development application satisfies the requirements of SEPP 55.

### **State Environmental Planning Policy (Coastal Management) 2018**

*State Environmental Planning Policy (Coastal Management) 2018* (the Coastal management SEPP) commenced on 3 April 2018. The SEPP forms part of a suite of legislative changes which included the introduction of the *Coastal Management Act 2016* and the repeal of SEPP 14—Coastal Wetlands, SEPP 26—Littoral Rainforests and SEPP 71—Coastal Protection.

Clause 21 of the SEPP provides that the former planning provisions continue to apply (and the SEPP does not apply) to a development application lodged, but not finally determined, immediately before the commencement of the policy. 'Former planning provisions' is defined in clause 21 as follows:

***former planning provisions*** means:

- (a) *the provisions of each of the following Policies as in force immediately before the Policy's repeal:*
  - (i) *State Environmental Planning Policy No 14—Coastal Wetlands,*
  - (ii) *State Environmental Planning Policy No 26—Littoral Rainforests,*
  - (iii) *State Environmental Planning Policy No 71—Coastal Protection, and*
- (b) *the provisions of State Environmental Planning Policy (Infrastructure) 2007 that would be in force if that Policy had not been amended by this Policy.*

The subject application was lodged on 14 September 2018, prior to the introduction of the Coastal Management SEPP. Accordingly, the development application has been assessed in accordance with the former planning provisions.

### **State Environmental Planning Policy No 71—Coastal Protection**

The site is located in the coastal zone as defined in the *Coastal Protection Act 1979* and the provisions of SEPP 71 are applicable to the application.

#### Clauses 7 and 8 - Matters for consideration

Clauses 7 and 8 of the SEPP list the following matters that are to be taken into account by a consent authority when determining a development application:

*The matters for consideration are the following:*

- (a) *the aims of this Policy set out in clause 2,*
- (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,*
- (c) *opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,*
- (d) *the suitability of development given its type, location and design and its relationship with the surrounding area,*
- (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,*
- (f) *the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,*
- (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,*

- (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,*
- (i) *existing wildlife corridors and the impact of development on these corridors,*
- (j) *the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,*
- (k) *measures to reduce the potential for conflict between land-based and water-based coastal activities,*
- (l) *measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,*
- (m) *likely impacts of development on the water quality of coastal water bodies,*
- (n) *the conservation and preservation of items of heritage, archaeological or 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,*
- (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 aims of SEPP 71 relate to the protection and management of the coast with respect to environmental, visual, cultural, recreational and economic values. The proposal is generally consistent with these aims.

The proposed development will not result in any adverse environmental or visual impacts on the coast and is considered to be a satisfactory design response to the characteristics of the site having regard to the above matters for consideration. The site is not affected by coastal hazards and is located well away from the coastal foreshore.

As discussed elsewhere in this report, the proposed development will not have an adverse impact on the heritage significance of the historic school buildings.

#### Clause 14 Public access

Clause 14 provides that a consent authority must not consent to an application to carry out development on land to which this Policy applies if the development will, or is likely to, result in the impeding or diminishing, to any extent, of the physical, land-based right of access of the public to or along the coastal foreshore.

The proposed development is located about 600m from the coastal foreshore and will not impede or diminish any physical, land based rights of access.

#### Clause 15 - Effluent disposal

Clause 15 stipulates that consent must not be granted to 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 the proposal will, or is likely to, have a negative effect on the water quality of the sea or any nearby beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or a rock platform.

The proposed development will be connected to Council's reticulated sewage network. No negative impacts on the water quality of the sea or any nearby body of water will occur.

#### Clause 16 – Stormwater

Clause 16 states that consent must not be granted to carry out development on land to which this Policy applies if the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform.

Stormwater is to be directed to an on-site detention tank, where it will be discharged to the Council stormwater system in Carlyle Street. Untreated stormwater will not be discharged to a coastal water body.

**State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017**  
*State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* came into force on 1 September 2017 and aims to simplify and standardise planning approvals for education establishments and early education and care facilities.

The provisions of the SEPP have been considered with the following clauses being of relevance to the proposed development:

#### Clause 35 Schools—development permitted with consent

Development for the purposes of a school is permitted with consent on land in the R2 Low Density Residential zone and B2 Local Centre zone which apply to the subject site. The proposed development is permissible with consent.

#### Schedule 4 Schools—design quality principles

Clause 35(6) provides that before determining a development application for a school, the consent authority must take into consideration the design quality of the development when evaluated in accordance with the design quality principles set out in Schedule 4 of the policy. Further consideration must also be given to whether the development enables the use of school facilities to be shared with the community.

The application was accompanied by a design statement addressing all of the design quality principles set out in Schedule 4 (refer to attachment 7). The design of the new classroom building and landscaping is of a high quality and satisfies the relevant design quality principles. The building has been designed with an adaptable floor plan which could facilitate different community uses in the future if required.

Each design quality principle is addressed below:

#### **Principle 1—context, built form and landscape**

The new classroom building will be located on the Kingsley Street frontage and integrates reasonably well into the surrounding pattern of buildings on the site. The new building maintains the same alignments to Kingsley Street as the historic school buildings and is separated by 10m from the nearest building by a landscaped corridor. The building is formed by two blocks in an L shape which minimises continuous wall lengths and provides openings to allow views and breezes across the site. Covered internal open spaces at ground level connect to active and passive recreation areas. Extensive new landscaping is proposed which incorporates native and local species.

#### **Principle 2—sustainable, efficient and durable**

The proposal has been designed to incorporate energy saving measures such as a photovoltaic solar system and verandahs and sunshades to maximise natural ventilation and provide permanent shading. Materials are generally durable and resilient to the elements. An adaptable floor plan will enable changes to classroom layouts in the future.

#### **Principle 3—accessible and inclusive**

The existing vehicular access off Kingsley Street is to be upgraded to create a landscaped access corridor which will improve wayfinding into the school grounds and will incorporate new signage for

visitors and students. A lift will provide accessible paths of travel to the first floor of the new building, whilst internal areas contain sufficient circulation space to allow adequate movement of students and staff. The proposal has been designed to comply with AS1428.1 – Design for access and mobility. Accessible pathway grades, surfaces and door clearances will allow for easy circulation.

#### **Principle 4—health and safety**

The design incorporates operable windows, louvers and ceiling fans to provide good opportunities for natural ventilation and light into the classrooms. Covered outdoor play spaces are accessible and encourage use of outdoor areas. Building orientation focuses on active zones for casual surveillance of the sports field and surrounding areas.

#### **Principle 5—amenity**

The new class room building provides flexible internal planning and operable walls to provide pleasant internal spaces which are adaptable and allow for collaboration between classes. Learning spaces are located away from busy roads to minimise noise impacts. The new classroom building has a wide separation from neighbouring residences and incorporates screening to minimise the potential for visual intrusion.

#### **Principle 6—whole of life, flexible and adaptive**

The proposed development will provide capacity to accommodate increased numbers of future students and improves the standard of facilities to meet future needs. The new classroom building has been located to preserve open space and integrates well into the spatial arrangement of buildings on the site. Flexible internal spaces allow for rooms to be changed and adapted over time, to cater for the changing needs of students and the community.

#### **Principle 7—aesthetics**

The new classroom building is a contemporary contrast to surrounding development, but sits within the context of a large school site and is partially screened by a row of mature trees. A bright, but complementary colour palette has been proposed to match the existing school buildings. The removal of the demountable buildings and new landscaping will expose views to the heritage buildings and improve the overall appearance of the school.

#### **Clause 35(9) – Development control plans are of no effect**

Clause 35(9) stipulates that a provision of a development control plan that specifies a requirement, standard or control in relation to a school is of no effect, regardless of when the development control plan was made.

Byron Development Control Plan 2014 includes a range of development controls that would normally be considered for the subject application in relation to traffic, parking, services, visually prominent sites, landscaping and heritage. Pursuant to this clause, these controls are of no effect. These issues have been assessed elsewhere in this report.

#### **Clause 57 Traffic-generating development**

Clause 57 applies to development that will result in an educational establishment being able to accommodate 50 or more additional students, and that involves the enlargement or extension of existing premises, or new premises on a site that has direct vehicular or pedestrian access to any road.

The consent authority must refer any such development application to NSW Roads and Maritime Services (RMS) and take into consideration the following matters listed in subclause (3):

- (3) *The consent authority must take into consideration:*



- (a) *any submission that RMS provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, RMS advises that it will not be making a submission), and*
- (b) *the accessibility of the site concerned, including:*
  - (i) *the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*
  - (ii) *the potential to minimise the need for travel by car, and*
- (c) *any potential traffic safety, road congestion or parking implications of the development.*

The proposed new classroom building can accommodate a maximum of 300 students, resulting in an increase in capacity for up to 60 students. The development application was referred to NSW Roads and Maritime Authority (RMS) which provided a response on 15 February 2018 with the following advice:

*“The development application proposes no changes to existing student or staff numbers; no changes to existing car parking, drop-off, pick-up and servicing area; and no changes to existing facilities for pedestrians, cyclists and public transport. The Environmental Impact Statement should have quantified how the existing traffic, access and parking arrangements complied with current standards and codes”.*

In relation to the accessibility of the site and the need to minimise travel by car, the schools location near the Byron Bay town centre offers reasonable access for pedestrians, cyclists and public transport. However, due to the increase in student capacity there is some potential the development will increase traffic congestion around the school and increase demand for on-street car parking and bus services.

Council's Development Engineer raised concerns in relation to traffic generation and made the following comments:

*‘60 new students has the potential to increase the traffic by 60 trips per day, 30 peak hour trips [PHT's] in the morning and 30 PHT's in the afternoon’.*

*‘Given the above potential increase in traffic volumes the development is considered moderate impact in regards to traffic generation. This means they will need to submit either a Traffic Impact Statement or a Traffic Impact Study, in accordance with DCP 2014 Chapter B4.2.1’.*

A Traffic Impact Assessment (TIA) was requested on 28 February 2018 however this was not responded to by the applicants who instead requested such matters be dealt with as conditions of consent. Following a period of negotiation, Council accepted a condition that requires a TIA to be undertaken and approved prior to the certification of the Crown building work. Any recommendations in the TIA for upgrades to parking or pick-up/drop-off facilities will need to be implemented as part of the approved development. The recommended condition is reproduced below:

### ***Traffic Impact***

*Prior to the certification of Crown Building work, the developer must undertake a traffic impact assessment in accordance with the following Council requirements:*

- a) *a brief description of the development in terms of proposed land use and trips generated;*
- b) *a brief description of the existing operational conditions of the road network in the immediate vicinity of the development;*
- c) *analysis of the operation of the accesses and parking arrangements for the development;*
- d) *analysis of the parking demand and supply of the development;*
- e) *analysis for the mobility impaired;*
- f) *analysis of the operation of the first intersection, as a minimum, on either side of the accesses;*

- g) *a conceptual geometric layout of the access arrangements, including any nearby driveways and intersections; and*
- h) *professional opinion on the expected traffic impact based on a site observation during the expected critical peak hour and the analysis conducted.*

*The assessment and recommendation should be submitted to Byron Shire Council and approved by the General Manager or delegate. Any recommendations will need to be implemented as part of the development of the site.*

**Note.** *Any change to changes to the School set down/pickup arrangements for parents and students may be further considered by the Local Traffic Committee prior to implementation, in order to address traffic safety and other off-site impacts that may arise.*

It is considered that the impact of the proposed development on the surrounding road network will be manageable subject to the above condition.

The proposed development is considered to satisfy the relevant provisions of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*, having regard to permissibility, design quality and traffic generation.

## **Byron Local Environmental Plan 2014**

### Clause 1.2 Aims of Plan

The proposed development is consistent with the aims of LEP 2014, having regard to the principals of sustainable development and the need to protect the cultural heritage of Byron.

### Clauses 2.1 – 2.3 Zoning and land use table

The site is zoned R2 Low Density Residential and B2 Local Centre under LEP 2014. The proposed development is defined in the LEP Dictionary as a 'school' and is permissible with consent in the R2 and B2 zones.

The new two storey classroom building, existing classroom building 'L' and three of the demountable buildings to be removed are located within the R2 Low Density Residential Zone. The three demountable buildings near Middleton Street and the proposed Kindy play area are located in the B2 Local Centre zone.

The objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

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 proposal is not incompatible with the objectives of the R2 and B2 zones. The new classroom building sits within a large site and is consistent with the low density residential setting of the surrounding environment. The classroom building will provide new education facilities to meet the day to day needs of residents and their families and the site is accessible by multiple transport modes including walking and cycling.

#### Clause 4.3 Height of buildings

The Height of Buildings Map specifies height limits of 9m and 11.5m across the site. The proposed two storey classroom building has a maximum height of 8.9m which complies with both height limits. All of the other works and structures are less than 9m in height.

#### Clause 4.4 Floor space ratio

The Floor Space Ratio Map specifies floor space ratios (FSR's) of 0.5:1, and 1:1 across the site. The new classroom building has a gross floor area of approximately 1095m<sup>2</sup>, which will be offset by the removal of six demountable buildings and the demolition of an existing classroom building. Due to the age and number of buildings across the site, it is difficult to calculate an exact FSR; however given that approximately 60% of the school grounds do not contain buildings, the resulting development will not exceed the FSR's of 0.5:1 and 1:1.

#### Clause 5.5 Development within the coastal zone

The objectives of clause 5.5 are to protect the coastal environment for future generation through promoting ecologically sustainable development, and to implement the principles of the NSW Coastal Policy.

Subclauses 5.5 (2) and 5.5 (3) provide that development consent must not be granted on land wholly or partly within the coastal zone unless the consent authority has considered the following matters:

- (2) *Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered:*
  - (a) *existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:*
    - (i) *maintaining existing public access and, where possible, improving that access, and*
    - (ii) *identifying opportunities for new public access, and*
  - (b) *the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:*
    - (i) *the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and*
    - (ii) *the location, and*
    - (iii) *the bulk, scale, size and overall built form design of any building or work involved, and*
  - (c) *the impact of the proposed development on the amenity of the coastal foreshore including:*
    - (i) *any significant overshadowing of the coastal foreshore, and*
    - (ii) *any loss of views from a public place to the coastal foreshore, and*
  - (d) *how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and*
  - (e) *how biodiversity and ecosystems, including:*
    - (i) *native coastal vegetation and existing wildlife corridors, and*
    - (ii) *rock platforms, and*

- (iii) *water quality of coastal waterbodies, and*
    - (iv) *native fauna and native flora, and their habitats,*
  - can be conserved, and*
  - (f) *the cumulative impacts of the proposed development and other development on the coastal catchment.*
- (3) *Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:*
- (a) *the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and*
  - (b) *if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*
  - (c) *the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*
  - (d) *the proposed development will not:*
    - (i) *be significantly affected by coastal hazards, or*
    - (ii) *have a significant impact on coastal hazards, or*
    - (iii) *increase the risk of coastal hazards in relation to any other land.*

The proposed development is considered to satisfy the relevant matters for consideration set out in subclauses 5.5(2) and 5.5(3) for the following reasons:

- The proposed development is not located near the coastal foreshore and will not affect public access for pedestrians;
- The bulk, scale and form of the development is generally compatible with the surrounding area;
- The amenity of the coastal foreshore will not be adversely affected by way of overshadowing or loss of views;
- The scenic qualities of the coast will not be affected;
- Biodiversity and ecosystems will not be significantly affected, and
- No significant cumulative impacts on the coastal catchment are expected.

Furthermore, it is considered that the proposed development will not impede any physical, land-based right of access to coastal foreshore, release effluent by way of a non-reticulated system, discharge untreated stormwater to a coastal water body, or be significantly affected by coastal hazards.

#### Clause 5.10 Heritage conservation

##### *Non-indigenous heritage*

The school site is listed as an item of local heritage significance in Schedule 5 of LEP 2014 (item no. I080) and is located within the Kingsley Street Heritage Conservation Area. The consent authority must consider the following matters in relation to the impact on heritage significance:

#### **(4) *Effect of proposed development on heritage significance***

*The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under*



subclause (5) or a heritage conservation management plan is submitted under subclause (6).

Subclause (5) further stipulates that the consent authority may require the preparation a heritage assessment document as follows:

**(5) Heritage assessment**

*The consent authority may, before granting consent to any development:*

- (a) on land on which a heritage item is located, or*
- (b) on land that is within a heritage conservation area, or*
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b),*

*require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.*

The applicant provided a statement of heritage impact (SOHI) in accordance with the provisions of subclauses (4) and (5) (refer to attachment 8). In addition, Council's Heritage Advisor also provided a heritage assessment report for consideration.

The School dates to 1892 and comprises a collection of single storey buildings over three parcels of land. Two historic school buildings (buildings A and B) are located near the entrance to the school along the Kingsley Street frontage and appear to date to the late 19<sup>th</sup> or early 20<sup>th</sup> century.

Building A is currently used as an administration building and staff facility and is described in the SOHI as follows:

*"a single storey lowset 'timber and tin' building with an almost residential character – with verandah, front door and frenchlight doors facing the street and prominent chimney. Stylistically this building is in the Federation style dating from the late nineteenth to the early 20<sup>th</sup> century – indicating it could possibly date from the establishment of the school in 1892".*

Building B is currently used for classrooms and is described in the SOHI as:

*"a large rectangular building on the west side of building A with a verandah on the north. A photo from 1947 indicates that the building was shorter in length when it was first constructed".*

*"The architectural vocabulary used in building B is also found in other early 20<sup>th</sup> century Public schools such as Coffs Harbour and Wauchope. The use of double hung windows for each classroom on south facades, open verandahs on northern facades and fireplaces is the typical architectural arrangement used in early 20<sup>th</sup> century weatherboard timber schools in at least northern NSW".*

Both heritage assessments concluded these buildings are well preserved examples of school buildings from the early federation period in northern NSW, having high cultural and aesthetic significance.

In relation to the impact of the proposed development, Council's Heritage Advisor commented that the design of two storey classroom building was a contemporary contrast to the adjoining heritage item. Despite this, the scale of the new building is in the context of a large site and is separated by over 10m from the historic buildings. A recessed area under the roof on the corner lessens the impact of the proposed mass and bulk on the heritage items. Front boundary setbacks to Kingsley Street are maintained, and mature vegetation around the perimeter of the site will considerably soften the visual impact of the proposed building on the streetscape.

The SOHI reached a similar conclusion, noting that no works are proposed to the historic buildings with the new classroom building respecting the existing setbacks and alignment to Kingsley Street. The new building is broken down into two blocks in an L shaped formation which helps break up the mass of the two storey building. Removal of the demountable buildings and new landscaping will also have a positive visual impact and improve the appearance of the school and heritage buildings.

The only point of concern from a heritage perspective was the use of bright colours for the sunshades and highlight areas on the façade of the new classroom building. Council's Heritage Advisor noted that the use of a darker green in a more muted tone would be more in keeping with the setting of the heritage items and conservation area streetscape.

A condition of consent to this effect was recommended, however it was not agreed to by the applicants. Instead, an alternative schedule of colours and finishes was provided, offering an equally bright yet more sympathetic colour scheme with blue green and aqua tones and light roofing, matching the colours of the existing school buildings. It is understood the revised colour scheme was developed as a result of feedback gathered from consultation at the monthly school Project Reference Group meeting, parent and student school consultation and community consultation held at the Byron Bay Woolworths.

Based on the findings of the SOHI and the Heritage Advisors assessment, it is considered that the proposed development will not have an adverse impact on the heritage significance of the historic school buildings or the Kingsley Street Heritage Conservation Area.

#### *Indigenous heritage*

The application included an AHIMS (Aboriginal Heritage Information Management System) search, which found no Aboriginal sites or places have been recorded or declared in or near the subject site.

#### Clause 5.12 Infrastructure development and use of existing buildings of the Crown

The development, which is for the removal, demolition and construction of new buildings of the Crown, is proposed to be carried out by the Crown. Consequently, LEP 2014 does not:

- (a) Restrict or prohibit, or enable the restriction or prohibition of, the carrying out of any development, by or on behalf of a public authority, that is permitted to be carried out with or without development consent, or that is exempt development, under *State Environmental Planning Policy (Infrastructure) 2007*, or
- (b) Restrict or prohibit, or enable the restriction or prohibition of, the use of existing buildings of the Crown by the Crown.

#### Clause 6.1 Acid sulfate soils

The proposed development is located on land identified as class 3 and class 5 acid sulfate soils by the Acid Sulfate Soils Map. Subclause (3) provides that development consent must not be granted under this clause unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.

An Acid Sulfate Soils Management Plan (ASSMP) was submitted with the application which recommended measures for neutralising and managing acid sulfate soils and ground water during construction (refer to attachment 4). Conditions of consent are recommended for the ASSMP to be implemented and adhered to during construction.

#### Clause 6.2 Earthworks

It is anticipated that up to one metre of excavation will be required to level the site and establish the footings and/or foundations for the new classroom building. The depth of excavation will vary depending on the method of construction.

A detailed geotechnical report was submitted with the application and no concerns were raised in relation to the impacts of ancillary earthworks (see attachment 4). Subject to the implementation of

erosion controls and the approved Acid Sulfate Soils Management Plan during construction, the proposed ancillary earthworks are unlikely to have any adverse environmental impacts on neighbouring development or on environmental functions and processes.

#### Clause 6.3 Flood planning

Council's mapping indicates that the site is affected by flooding. Subclause (3) provides that development consent must not be granted on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) *is compatible with the flood hazard of the land, and*
- (b) *will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) *incorporates appropriate measures to manage risk to life from flood, and*
- (d) *will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

Council's Development Engineer has calculated a 2050 flood planning level (FPL) of 3.97m AHD for the site, which incorporates 0.5m freeboard. The plans identify a finished floor level of 4.0m AHD for the classroom building ground floor, which is 30mm above the FPL. A condition of consent is recommended for surveyor's certification of the finished floor levels to be provided prior to the occupation of the new building. Subject to the aforementioned condition, the proposed development is considered to be suitable for the flood hazard of the land and is satisfactory having regard to the above mentioned matters.

The year 2100 future flood planning level for the site has been calculated as 4m AHD. Accordingly, the consent authority must, in addition to the matters referred to in subclause (3), also consider the following matters:

- (a) *the proximity of the development to the current flood planning area,*
- (b) *the intended design life and scale of the development,*
- (c) *the sensitivity of the development in relation to managing the risk to life from any flood,*
- (d) *the potential to modify, relocate or remove the development.*

Finished ground floor levels for the new classroom building match the 2100 FPL. The proposed development is therefore unlikely to be subject to an increased risk of flooding in the future and is suitable for the flood hazard of the land having regard to the above matters.

#### Clause 6.6 Essential services

The site is serviced by reticulated water, sewer, electricity and telecommunications. Stormwater is to be discharged from a proposed on site detention tank towards Carlyle Street and will connect with a grated pit inside the school grounds. Further details for the stormwater system are to be provided for approval prior to the certification of the Crown building work. Vehicular access into the school can be gained off Kingsley Street via a gutter crossing and school gate. Conditions are recommended for the vehicular access to remain accessible at all times including the use of removable bollards.

### **6.2 79C (1)(a)(ii) Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority**

#### **Draft State Environmental Planning Policy (Coastal Management) 2016**

The Coastal SEPP came into force on 3 April 2018, however it was a draft instrument at the time of lodgement. The Coastal SEPP must therefore be considered as a draft EPI.

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

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

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

The proposed development is considered to be acceptable having regard to the provisions of the Draft SEPP particularly Divisions No. 4 & 5. The proposed development is not in a wetland, littoral rainforest, coastal environment area or coastal vulnerability area.

#### **4.4 79C (1)(a)(iii) Byron Shire Development Control Plan 2014**

Subclause 35 (9) of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* provides that any requirement, standard or control included in a development control plan has no effect in relation to a school. Accordingly, the provisions of Byron Development Control Plan 2014 are of no effect in relation to the subject application and have not been considered in this assessment.

The proposed development is generally consistent with the provisions of DCP 2014, except for the following parts:

- Chapter B4: Traffic Planning, Vehicle Parking, Circulation and Access  
Table B4.2.12 requires 1 car parking space to be provided per 2 staff members and 1 bicycle space to be provided per 5 students over year 4. No car parking is provided within the school grounds, although adequate bicycle parking is proposed. Traffic issues have been assessed elsewhere and are addressed through an appropriate condition of consent.
- Chapter C1: Non-Indigenous Heritage  
The design is not strictly in accordance with the provisions of Chapter C1: Non-Indigenous Heritage in relation to proportions, roof form, materials or colours. An assessment of the impacts on heritage significance has been undertaken under clause 5.10 of LEP 2014 and the design is considered to be acceptable.

#### **6.3 79C(1)(a)(iiia) Any Planning Agreement or Draft Planning Agreement**

There are no planning agreements entered into or any draft agreement offered to enter into under S93F which affect the development.

#### **6.4 79C (1)(a)(iv) Environmental Planning & Assessment Regulation 2000**

##### **Clause 92(1)(a)(ii) Government Coastal Policy**

The development is consistent with the Government Coastal Policy. The proposal will not result in overshadowing of any foreshore open space or impede public access to any such area.

##### **Clause 92(1)(b) application for demolition**

The application seeks consent for the removal of several demountable classroom buildings and the demolition of existing classroom building 'L'. A condition of consent is recommended for any demolition work to be undertaken in accordance with the provisions of AS2601 - *The demolition of structures*. Further conditions for the management and handling of building waste and asbestos are also recommended.



### **Clause 93 Fire Safety and other Considerations**

Not applicable. A change of building use is not proposed.

### **Clause 94 Consent authority may require buildings to be upgraded**

Council's Building Surveyor reviewed the proposal and made no comments in relation to building upgrades.

#### **6.5 79C (1)(a)(v) Any coastal zone management plan**

Not applicable. The site is not covered by a coastal zone management plan.

#### **6.6 79C (1)(b) The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

##### **Natural environment**

###### Removal of vegetation

Twelve trees are to be removed to accommodate the new classroom building. The trees are isolated specimens and do not have environmental or heritage significance. The tree removal will be adequately offset by new plantings and landscaping works to account for any loss of amenity or biodiversity.

###### Soils and water:

Conditions are recommended for the implementation of sediment and erosion controls and the approved Acid Sulfate Soils Management Plan during construction. Subject to the implementation of these conditions, no adverse impacts on soils and/or water quality is expected.

##### **Built environment**

###### Heritage, context and streetscape:

As discussed elsewhere in this report, the proposal supports the continuing use of the site as a school and is unlikely to have an adverse impact on the adjoining historic buildings or Kingsley Street Heritage Conservation Area streetscape.

###### Access, transport and traffic:

The proposed development will increase the schools capacity by up to 60 students, potentially generating additional traffic volumes and demand for parking and bus services over the longer term.

To address this issue, the applicant has agreed to undertake a traffic impact assessment (TIA) prior to the certification of the Crown building work. Any recommendations of the TIA will be approved and implemented as part of the development.

Council has considered that the impact of the proposed development on the surrounding road network will be manageable subject to the above condition.

###### Internal vehicular access:

An emergency vehicle access point is currently in place off the Kingsley Street frontage. This access will be upgraded and reconfigured to provide a shared pedestrian and vehicular access corridor between the new classroom building and the existing administration building. The corridor has a width of 4m and is sufficient to enable ongoing access for emergency and maintenance vehicles. A condition is recommended for the corridor to remain unobstructed at all times and any bollards to be removable.

###### Privacy (visual and acoustic):

No adverse impacts on neighbouring residences by way of visual or acoustic privacy are expected. The new classroom building has sunshades along the southern façade which will minimise direct lines of sight to residences on the opposite side of Kingsley Street.

### Overshadowing

Shadow diagrams have been provided demonstrating no overshadowing on neighbouring school buildings or adjoining properties.

### Stormwater drainage

Stormwater is to be handled by an on-site detention (OSD) system which discharges to a grated pit inside the school property near Carlyle Street. Details of the OSD system are to be provided for approval prior to the certificate of Crown building works.

### **Social Environment**

The proposed development will provide improved education facilities and is likely to result in a net social benefit to the community.

### **Economic impact**

The proposal is not expected to have a significant economic impact in the area.

## **6.7 79C (1)(c) The suitability of the site for the development**

The proposed development is suitable for the location and supports the continuing use of the site as a school. The site attributes are generally conducive to the development having regard to environmental constraints, flooding, heritage, traffic, access, drainage and the availability of services.

## **6.8 79C (1)(d) Any submissions made in accordance with this Act or the regulations**

The development application was advertised and notified for a period of 21 days from 5 October 2017 until 25 October 2017. The application was advertised for a second time between 7 December 2017 and 20 December 2017. No submissions were received.

## **6.9 79C(1)(e) The public interest**

The proposed development will provide a benefit to the area through the provision of improved educational facilities for the community and is therefore in the public interest.

## **6.10 79C(2) Compliance with non-discretionary development standards—development other than complying development**

*State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* contains non-discretionary development standards for centre based childcare facilities however no such standard are applied for schools.

## **6.11 Section 89 – Determination of Crown development applications**

Section 89 of the Act precludes a consent authority, including a regional panel, from refusing a Crown development application, except with the approval of the Minister, or from imposing a condition of consent to a Crown development application, except with the approval of the applicant or the Minister.

Following a period of negotiation, final draft conditions of consent were provided to the applicant for consideration on Wednesday 18 May 2018. The applicant responded on Wednesday 18 May 2018 with approval of the conditions of consent which are included in Schedule 9.

## **7. DEVELOPER CONTRIBUTIONS**

### **6.2 Water & Sewer Levies**

Council's Systems Planning Officer commented the proposal will increase the load onto Council's Water, Bulk Water and Sewer System and therefore levies under section 64 of the *Water Management Act 2000* are Payable. Calculations are shown below.

**Table 1 - Calculation of Existing Water & Sewer ETs**

Ref	Development Type	Standard Unit	Quantity	ET Rate (ET/unit)		ET Load	
				Water	Sewer	Water	Sewer
12.2	Education - School (primary & secondary)	Person	658	0.03	0.05	19.74	32.9
<b>TOTAL</b>						<b>19.74</b>	<b>32.90</b>

The existing ET entitlement for this property is:

- **19.74 ET** for Water
- **19.74 ET** Bulk Water; and
- **32.90 ET** for Sewer.

**Table 2 - Calculation of Proposed Development Water & Sewer ETs**

Ref	Development Type	Standard Unit	Quantity	ET Rate (ET/unit)		ET Load	
				Water	Sewer	Water	Sewer
12.2	Education - School (primary & secondary)	Person	718	0.03	0.05	21.54	35.9
<b>TOTAL</b>						<b>21.54</b>	<b>35.9</b>

**Table 3 - Calculation of Additional Water & Sewer ET Load**

	Water	Bulk Water	Sewer
<b>Existing ET Entitlements (Table 1)</b>	19.74	19.74	32.90
<b>Proposed Development ET loading (Table 2)</b>	21.54	21.54	35.90
<b>Additional ET loading</b>	<b>1.8</b>	<b>1.8</b>	<b>3.0</b>

Therefore, this development generates an additional load onto Councils Water, Bulk Water and Sewer System. Council requires Payment of Developer Servicing Charges (prior to issue of a construction/subdivision certificate) of:

- **1.8 ET** for Water &
- **1.8 ET** Bulk Water; and
- **3.0 ET** for Sewer.

A condition is recommended for a certificate of compliance to be obtained from Council prior to the certification of the Crown building work.

## **6.2 Section 94 Contributions**

Council's Section 94 Officer commented that no Section 94 Contributions are required.

## **6 CONCLUSION**

In conclusion, it is considered that the proposed development is suitable for the location and will enhance the ongoing use of the site as a school. The design is generally of a high standard and will meet the needs of existing and future students and provide a public benefit to the community.

The proposed development is consistent with the relevant environmental planning instruments and planning controls applicable to the site, although it is acknowledged that traffic and parking will need to be addressed further through a condition of consent.

The proposal otherwise 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.

## **7 RECOMMENDATION**

It is recommended that pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application no. 10.2017.509.1 for alterations and additions to Byron Bay Public School including removal of five demountable buildings, removal of twelve trees, demolition of classroom building 'L', construction of a new two storey classroom building containing ten home base rooms, covered walkway, new play area and associated landscaping, be granted consent subject to the attached conditions.