

# DEVELOPMENT APPLICATION EVALUATION REPORT

Doc No. #A2018/40399

<b>Panel Reference</b>	2019NTH015
<b>DA Number</b>	10.2018.650.1
<b>LGA</b>	Byron Shire Council
<b>Proposed Development</b>	Demolition of existing building and construction of a mixed use development - Tourist and Visitor Accommodation (Hotel 146 Rooms), Function Centre and Food and Drink Premises
<b>Street Address</b>	98-106 Jonson Street, Byron Bay
	Proposed Lot 42 and Part Proposed Lot 41 in the subdivision of Lots 6 & 7 DP 619224 and Lots 8 & 9 DP 617509
<b>Applicant/Owner</b>	Applicant: Mercato on Byron Pty Ltd c/- Urbis Pty Ltd Owner: Task Group Services Pty Ltd as trustees for The Group Services Trust and Wingate Byron Property Holdings Pty Ltd as trustee for The Wingate Property Trust
<b>Date of DA lodgement</b>	19 December 2018
<b>Number of Submissions</b>	423 all opposing the proposed development
<b>Recommendation</b>	Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, it is recommended that development application no. 10.2018.650.1 for Mixed Use Development for Tourist and Visitor Accommodation (Hotel 146 Rooms), Function Centre and Food and Drink Premises, be <b><u>refused</u></b>
<b>Regional Development Criteria</b> (Schedule 7 of the SEPP (State and Regional Development) 2011)	Development with a Capital Investment Value more than \$30 million (CIV is \$33.93M)
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy No. 44 - Koala Habitat Protection (saved)</li> <li>• State Environmental Planning Policy No. 55 - Remediation of Land</li> <li>• State Environmental Planning Policy (Coastal Management) 2018</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• Byron Local Environmental Plan 2014</li> <li>• Byron Development Control Plan 2014</li> <li>• Environmental Planning &amp; Assessment Regulation 2000 (prescribed matters and conditions under clauses 92, 98(1)(a), 98A(2) and (3), and 98E)</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<p>Attachments numbered as follows:</p> <ol style="list-style-type: none"> <li>1. Development Plan Set by nra-co-lab, dated June 2020</li> <li>2. Landscape Concept Plan by Urbis, dated November 2018</li> <li>3. Clause 4.6 Variation request – Building Height, by Urbis, dated June 2020</li> <li>4. Clause 4.6 Variation request – FSR, by Urbis, dated June 2020</li> </ol>

	5. Traffic Impact Assessment, by Bitzios Consulting, dated June 2020 6. Dewatering Management Plan, by ADG Consulting, dated July 2019 7. Acid Sulfate Soil Investigation Report, by ADG Consulting, dated July 2019 8. Stage 1 Preliminary Site Investigation, by ADG Consulting, dated July 2019 9. Social Impact Assessment Report, by Real options Consultancy Services, dated April 2019 10. Noise Impact Assessment, by Acoustic Logic, dated November 2018 11. State Agency Responses 12. Submissions received during exhibition
<b>Report prepared by</b>	Rob van Iersel, Major Projects Planner
<b>Report date</b>	07/09/2020

#### Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

**Yes**

#### Legislative clauses requiring consent authority satisfaction

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

**Yes**

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

#### Clause 4.6 Exceptions to development standards

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

**Yes**

#### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

**Not Applicable**

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

#### Conditions

Have draft conditions been provided to the applicant for comment?

**No**

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

# Executive Summary

## Proposed Development

Byron Shire Council received Development Application 10.2018.650.1 on 19 December 2018, for construction of a mixed use hotel/ function centre/ restaurant (including demolition of existing building) at 98-106 Jonson Street, Byron Bay.

The key elements of the proposal are:

- Demolition of existing building and at-grade car park; and
- Construction of mixed use building, including:
  - basement car park, containing parking and hotel facilities including administration space, staff facilities (amenities & canteen), storage and building services. The basement will connect to the existing basement car park of the adjoining Mercato on Byron shopping complex. Access to the basement car park is by a new driveway and access ramp at the north-eastern corner of the site, with exit by shared use of the existing driveway and access ramp of the adjacent shopping complex basement.
  - ground level conference centre/ function space, hotel lobby, restaurant/ lobby lounge, 'back of house' facilities and central landscaped courtyard. The restaurant includes an outdoor dining terrace facing onto Jonson Street. The main hotel entrance, including a porte cochure, is on the southern side of the building, accessed via the shared driveway between the proposed development and the adjacent shopping complex.
  - two upper levels of hotel rooms, with 73 rooms on each level. The rooms range in size from 25m<sup>2</sup> to 45m<sup>2</sup>, with 8 'dual-key rooms'. Level 1 connects via an elevated balcony to the adjacent Mercato development.
  - roof level including a landscaped recreation/ function space containing a pool and adjacent deck and bar. Solar panels are proposed on the non-use roof areas.

The proposed development constitutes 'regional development', requiring referral to the Northern Regional Planning Panel (RPP) for determination, as the capital investment value of the development exceeds \$30 million (estimated cost \$33.9M).

## Assessment Delay

Primary access to the site is by way of an existing driveway, which currently services the adjoining Mercato shopping complex. Development approval for that complex included a condition requiring road upgrade works in the adjacent Jonson Street. Those conditions have been challenged by the proponent of that development, resulting in Land & Environment Court proceedings.

Given that access to the development proposed in this application relies, in part, on the outcomes of those proceedings, assessment of this application was significantly delayed.

Notwithstanding, significant non compliances with the planning controls remain, which are beyond any access concerns and the application has been assessed accordingly.

## The Site

The property is known as Proposed Lot 42 and Part Proposed Lot 41 in the subdivision of Lots 6 & 7 DP 619224 and Lots 8 & 9 DP 617509 and is located at 98-106 Jonson Street, within the Byron Bay Town Centre.

*[Note: Subdivision of these properties was approved as part of DA 10.2013.587.1 (Mercato Shopping Complex). An application for Subdivision Certificate (15.2013.587.1) was lodged in August 2019 and is pending at the time of drafting this report]*

The property has an area of 4,194m<sup>2</sup>, with a frontage to Jonson Street of 60.25m on its eastern boundary and a frontage of 44.7m to the disused North Coast Rail Line on its western boundary.

The northern boundary, approx. 63m in length, adjoins a retail plaza, with shops along the western and northern boundaries around a central bitumen-sealed car park. The southern boundary, with a length of approx. 53m, adjoins the recently constructed Mercato of Byron shopping complex, under the same ownership as the subject land.

The subject site contains a building that previously housed a Woolworths supermarket, with an at-grade sealed car park at the Jonson Street frontage. That supermarket has recently relocated into the adjacent Mercato on Byron shopping complex. Demolition of the empty building is proposed as part of this application.

### **Zoning and Permissibility**

The property is zoned B2 Local Centre under Byron Local Environmental Plan 2014 (BLEP 2014). In relation to the proposed uses:

- *hotel or motel accommodation*, which is a type of *tourist and visitor accommodation*, is permissible with consent;
- *function centre* is permissible with consent;
- *restaurant / café*, which is a type of *commercial premises*, is permissible with consent;
- components such as the basement car park, staff facilities, landscaping, etc. are ancillary to the primary hotel use and are therefore permissible with consent.

### **Assessment**

A detailed assessment has been undertaken against the provisions of the Byron LEP, relevant Environmental Planning Instruments and the Byron Development Control Plan 2014 (DCP). A detailed assessment is contained in the s4.15 assessment forming part of this report (see below).

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

- **Clause 7 of SEPP No. 44 Koala Habitat Protection\***

Clause 7 requires the consent authority to determine whether or not the land is a potential koala habitat.

The site has an area less than 1ha. The development control provisions of this SEPP, therefore, do not apply.

In any case, it is a fully developed commercial site within the Byron Bay Town Centre. There is no potential koala habitat within the site.

As such, a Koala Plan of Management is not required.

*\*[Note. SEPP 44 has been repealed and replaced by SEPP (Koala Habitat Protection) 2019. The savings provisions of the current SEPP apply as the subject application was made prior to its commencement]*

- **Clause 7 of SEPP No. 55 Remediation of Land**

Clause 7 requires the consent authority consider whether the land is contaminated.

A Stage 1 Preliminary Site Investigation Report was provided to support the application.

Investigations found the presence of asbestos material, used as part of wall cladding associated with the existing building. Radioactive mineral sands were also detected, potentially associated with historical mineral sands mining undertaken in the area.

A Stage 2 detailed contamination report would be required for the management of these contaminants, and provision of that report could be conditioned as adequate management measures are well known and could be adopted for this case.

- **Clauses 10-15 SEPP (Coastal Management) 2018**

Clause 10 specifies that a consent authority must not grant consent for development on land identified in the SEPP as “coastal wetlands” or “littoral rainforest”, unless it is satisfied that sufficient

measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the coastal wetland or littoral rainforest.

The subject land is not identified as coastal wetlands or littoral rainforest on mapping associated with this SEPP.

Clause 11 specifies that development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” unless the consent authority is satisfied that the proposed development will not significantly impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

The south-western part of the subject land is mapped as being proximate to a coastal wetland, with the wetland located to the west and south-west.

The proposal includes excavation for a basement car park, which will require dewatering. Information submitted with the application indicates a volume of discharge in the order of 326ML over a construction period of approx. 20 weeks. Discharge of treated water is proposed to the west, into a Council drain that flows west into the coastal wetland.

While Council’s drainage and flooding engineer is of the opinion that adequate treatment and detention measures could be employed to avoid or minimise potential impacts, the application has not addressed the issue.

Insufficient information has been submitted to demonstrate that the dewatering activities will not significantly impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland, or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland.

Clause 12 relates to development on land within the coastal vulnerability area. This is not applicable as the land is not identified as such.

Clause 13 relates to development on land within the coastal environment area. This is not applicable as the land is not identified as such.

Clause 14 relates to development on land within the coastal use area. This is not applicable as the land is not identified as such.

Clause 15 relates to development in coastal zone generally and requires that the consent authority must be satisfied that development will not increase risk of coastal hazards. The location of the site is sufficiently distant from the active coastal zone in this regard.

- **Clauses 86, 101 & 104 SEPP (Infrastructure) 2007**

Clause 86 deals with excavation in, above, below or adjacent to rail corridors and requires that a consent authority must advise the relevant rail authority of the proposal and take into consideration any response received.

The application was referred to RailCorp (the rail authority). John Holland Rail, acting on behalf of RailCorp, have reviewed the application and provided recommended conditions of approval.

Clause 101 relates to development on land with frontage to classified road. It specifies that, where practicable, vehicular access should be provided by way of a road other than the classified road. Jonson Street is a classified road, and the site does not have any other road frontage.

The clause also requires the consent authority to be satisfied that the development will not adversely affect the safety, efficiency and operation of the classified road. Council’s Development Engineer has raised concerns in regard to access arrangement, primarily associated with truck movements likely to be required for servicing. Those concerns cannot be adequately addressed by conditions of approval, as redesign of building components would likely be required.

Clause 104 relates to traffic generating development and applies as the proposed development involves 50 or more car parking spaces with access to a classified road. For such applications, the consent authority must give written notice of the application to RMS and consider any response received. The authority must also consider any potential traffic safety, road congestion or parking implications of the proposed development.

RMS was advised of the application and raised a number of points in response, which have been considered in the assessment of Council's Development Engineer. As outlined in the body of this report, the assessment raises concerns regarding traffic safety, road congestion and parking implications of the proposed development.

- **Clause 2.3 Byron Local Environmental Plan 2014 – Zone objectives and land use table**

Clause 2.3 requires the consent authority to have regard for the relevant zone objectives when determining a development application. The proposal is permissible with consent in the B2 Local Centre zone and is compatible with the relevant zone objectives.

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

Clause 4.6 provides that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant has provided a written request that seeks to justify the contravention of the 11.5m maximum building height and 1.3:1 floor space ratio development standards.

The assessment outlined in the body of this report concludes that there are sufficient environmental planning grounds to justify contravention of the building height standard, but that the applicant's submission has failed to demonstrate that such grounds exist to justify contravention of the floor space ratio standard.

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

Clause 6.2(3) requires the consent authority to consider effects and potential impacts on the site and surrounding locality as a result of the proposed earthworks. Subject to conditions of consent, Council officers are satisfied that the proposed development meets the provisions of clause 6.2(3) of the Byron LEP 2014, other than potential impacts associated with dewatering during excavation, as discussed above.

- **Clause 6.6 Byron Local Environmental Plan 2014 – Essential Services**

The clause requires that, prior to granting consent to development, the consent authority must be satisfied that the nominated services are available or that adequate arrangements have been made to make them available.

Preliminary assessment indicates that sufficient capacity exists within the current infrastructure to cater for the proposed development.

## **Key Issues**

### **Building Height**

While the majority of the building complies with the development standard, there are some roof-top elements that exceed the 11.5m maximum, with the maximum height being 14.05m.

The rooftop elements that exceed 11.5m are set well back on the building, such they would not be visible from either side of Jonson Street immediately in front of the building.

These elements are set toward the southern edge of the rooftop. It is unlikely, therefore, that they would be visible when viewed from the north or north-east. The position of the Mercato on Byron development to the south means that they are also unlikely to be visible from the south-east.

It is considered that the exceedance of the maximum building height standard does not offend the public interest, as it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

### Floor Space Ratio

In relation to the subject site, the Floor Space Ratio Map specifies a maximum ratio of 1.3:1.

Based on the site area of 4,194m<sup>2</sup>, the maximum FSR of 1.3:1 equates to 5,452m<sup>2</sup> of gross floor area. The proposed development exceeds this by 2,261m<sup>2</sup>, and the FSR of 1.84:1 represents a 41.5% variation to the development standard.

This significant exceedance results in a building of a scale that is inconsistent with the existing and desired future character of the Byron Bay Town Centre.

### Clause 4.6 Submission

The application includes submissions in relation to building height and floor space ratio.

Based on those submissions, it is considered that the proposed contravention of the building height standard could be justified in the circumstances.

However, the applicant's submission has failed to justify the significant contravention of the floor space ratio development standard.

### Traffic/ Access/ Parking

Primary access to the proposed development is by way of an existing driveway off Jonson Street that provides access to basement car parking and ground level service areas for the adjoining Mercato shopping complex.

The configuration of the existing access and associated local road network upgrades have been conditioned as part of the development consent for the neighbouring shopping complex development. This includes a requirement to provide a roundabout treatment at Carlyle St/Jonson St intersection.

That requirement is currently the subject of Land & Environment Court proceedings instigated by the shopping complex developer.

At the time of drafting this report, the outcome of the proceedings is not known. However, the traffic assessments provided to the hearing were based on cumulative traffic volumes associated with the existing Mercato development and the development proposed by this development.

On that basis, it can be assumed that the Court's findings would address the potential for traffic impacts from the development in relation to the local road network in order to ensure that local traffic safety and efficiency is not negatively impacted.

Council's assessment, however, indicates that neither the existing access nor the proposed new entry ramp to the subject development's basement car park meet relevant Australian Standards. Reconfiguration of these accesses to comply with the relevant standards would require redesign of some components of the development, including the location of existing and proposed electrical infrastructure and bicycle parking proposed within the Jonson Street road reserve.

The configuration of ground level access and movement areas located between the existing and proposed buildings creates significant potential for traffic/ pedestrian conflicts, particularly around existing and proposed service areas and the proposed hotel porte cohere.

Servicing arrangements create a potential for queuing of servicing vehicles within the shared access space, further compounding conflicts and potentially leading to queuing of vehicles on Jonson Street.

The proposed basement car park is significantly deficient in parking spaces. 103 spaces are proposed; 221 spaces short of the total number required based on compliance with Byron Development Control Plan standards. The application provides an argument for the shortfall based on a 'first principles' assessment. That assessment, however, indicates that the quantum of parking is still deficient by 57 spaces.

The information with the 'first principles' argument is not sufficient to support a variation to the DCP standards of the scale propose. In the absence of that supporting evidence, Council could not be satisfied that the provision of an additional 57 spaces would satisfy parking issues at this site.

The lack of parking will increase pressure on existing on-street parking in a location that is routinely at capacity.

### **Public Submissions**

A total of 424 submissions were received, all opposing the proposed development. Most objections were based on the scale of the development and the perception that it would be inconsistent with the existing and desired future character of the town centre.

Many objections also raised issues of traffic and parking.

The assessment in the attached report concludes that many of the issues raised in submissions are valid and warrant refusal of the application.

### **Conclusion**

The proposed development is not consistent with development standards within Byron Local Environmental Plan 2014, specifically maximum building height and maximum floor space ratio.

The result is a proposed building that would be inconsistent with the scale and character of existing development in the town centre and inconsistent with the desired future character.

Design of the building creates a number of significant access and movement issues, with potential pedestrian and vehicle conflicts and potential for queuing onto Jonson Street in peak times.

The proposed development is inconsistent with a number of provisions of Byron Development Control Plan 2014, notable in relation to parking and access, and is not considered to be in the public interest.



## 1. INTRODUCTION

### 1.1. History/Background

The site is part of a larger holding that was developed in the later 1970s/ early 1980s as a shopping plaza, with individual tenancies located north and south of the central Woolworths supermarket.

There is a considerable history of approvals relating to the whole of the plaza area, but a summary of the key approvals relevant to the land that is subject to the current application is outlined below:

81/2441	Supermarket	Approved 21/09/1981
10.1999.528.1	Refurbishment of Woolworths	Approved 12/09/2001
10.2013.78.1	Internal alterations and fit out – Woolworths	Approved 29/04/2013
10.2013.587.1	Redevelopment of existing shopping centre and subdivision of land to create 2 lots (i.e. Mercato Shopping Complex)	Approved 20/11/2014
10.2013.587.2	Modification – delete condition regarding future lease arrangements	Approved 21/05/2015
10.2013.587.3	Modification – various conditions: signage, amenity of neighbourhood, availability of parking, traffic, construction staging, roof height, stormwater, site waste management, flood planning, pipelines, landscaping, excavation, public safety, water pollution, public art and services	Approved 21/05/2015
10.2013.587.4	Modification – addition of roof top screen and other internal and external modifications	Approved 16/05/2018
10.2013.587.5	Modification – amend conditions relating to site access works	Pending*
10.2013.587.6	Modification – minor changes to approved plans, amendments to easements and hours of operation, removal of requirement to comply with Council's Airspace Policy	Approved 16/05/2019
10.2013.587.7	Modification – minor changes to approved plans and amendments to easements	Approved 23/04/2020

\*On 17 April 2019, the Applicant commenced proceedings in Class 1 of the Land and Environment Court's jurisdiction appealing against Council's deemed refusal of the modification application.

### 1.2. Description of the proposed development

This application seeks approval for the demolition of the existing building and the erection of a mixed use development containing a hotel (146 Rooms), a function centre/ conference facility, restaurant, basement car parking, a roof-top bar/ recreation area and pool and associated services and landscaping.

#### **Development Summary:**

Site Area:	4,128m <sup>2</sup>
Building Height	Maximum heights: <ul style="list-style-type: none"><li>• Lift overrun: 14.05m; 2.55m exceedance (22%);</li></ul>

- Bar area roof: 13.5m; 2.0m exceedance (17%);
- Pool deck: 12.1m; 0.6m exceedance (5%).

Gross Floor Area	Basement:	122m <sup>2</sup>
	Ground floor:	1,889m <sup>2</sup>
	Level 1:	2,427m <sup>2</sup>
	Level 2:	2,441m <sup>2</sup>
	Roof level:	834m <sup>2</sup>
	TOTAL:	7,713m <sup>2</sup>
Floor Space Ratio	1.87:1	
Car Parking Spaces	103 (4 disabled; 8 'ride share'; 4 electric; 2 van; 1 small)	
Bicycle Parking	54 (40 public – on Jonson Street, including 10 shared E-bikes; 14 staff spaces in basement, including 4 shared E-bikes)	
Opening hours	Hotel lobby, restaurant & bar	6.00am to midnight
	Pool deck & bar	7.00am to midnight

The proposed development includes:

- **Basement:**  
103 car parking spaces, inclusive of four (4) disabled spaces; eight (8) spaces marked on the plans for 'share ride cars'; four (4) spaces marked for 'electric'; two (2) marked for 'van'; and one (1) marked 'small'.  
Hotel facilities, including administration space, staff lockers, staff canteen, staff bicycle parking (14 spaces including 4 shared bikes/ E-bikes); service and storage areas.  
The single-level car park is accessed from a new down-ramp proposed off Jonson Street to the north-eastern corner of the property, with the car park exit from the existing ramp shared with the access to basement car parking for the Mercato on Byron shopping complex. Access would also be available into the basement car park of the adjoining shopping complex car park.
- **Ground Level:**  
Function space, with a 236m<sup>2</sup> conference room, and two (2) x 54m<sup>2</sup> meeting rooms.  
Hotel lobby with pedestrian access from Jonson Street and lift access from the basement car park.  
A central landscaped courtyard open to the sky (i.e. voids on levels above).  
Restaurant toward the Jonson Street frontage, including a total of 250 seats, including indoor and undercover outdoor dining along the Jonson Street boundary, and a 137m<sup>2</sup> kitchen area.  
Various amenities, hotel & conference service areas.  
A porte cochere is located at this level, accessing hotel reception/ lobby. Vehicle access to the porte cochere is via the shared access off Jonson Street, requiring cars to pass to the south of the basement carpark access ramp structure, to circle around to the hotel entrance, located to north of that access ramp.  
A loading bay is proposed at the south-west of the proposed building, accessed via the shared accessway, also around the basement carpark access ramp. Loading and service vehicles are required to exit the site through the hotel porte cochere.  
An 'art wall' is proposed toward to south-east corner to enclose the existing and proposed padmounts.  
Bicycle parking is proposed within the footpath areas of the Jonson Street road reserve, with spaces for 40 bikes.
- **Level 1:**  
73 hotel rooms, ranging in size from 25m<sup>2</sup> to 45m<sup>2</sup>, including eight (8) 'dual key' rooms (i.e. capable of use as four (4) two-bed rooms; or as eight (8) single rooms).

The central part of this level contains a void, open to the ground floor courtyard.

This level connects to the Mercato on Byron complex via an elevated walkway.

- Level 2:

This level is identical to the one below, but does not have an access to an elevated walkway.

- Roof level:

Landscaped space, which can be used for recreation and functions in association with the ground floor function centre.

A lap pool with an infinity edge and a transparent bottom and decking that includes a bar, lounge chairs, tables and chairs.

Amenities and storage.

This roof-top function space is accessed by the guest lifts, which service all levels.

A separate goods lift is proposed to the rear of the building, similarly servicing all levels.

The western part of the roof will contain a solar array.

Vegetation within the property will be removed, but trees within the Jonson Street footpath are proposed to be retained. It is noted, however, that the width of the driveway access to the basement access is proposed at 3.6m, which does not comply with the relevant Australian Standard. Compliance with that standard has the potential to require the removal of at least one of the existing street trees within the Jonson Street road reserve.

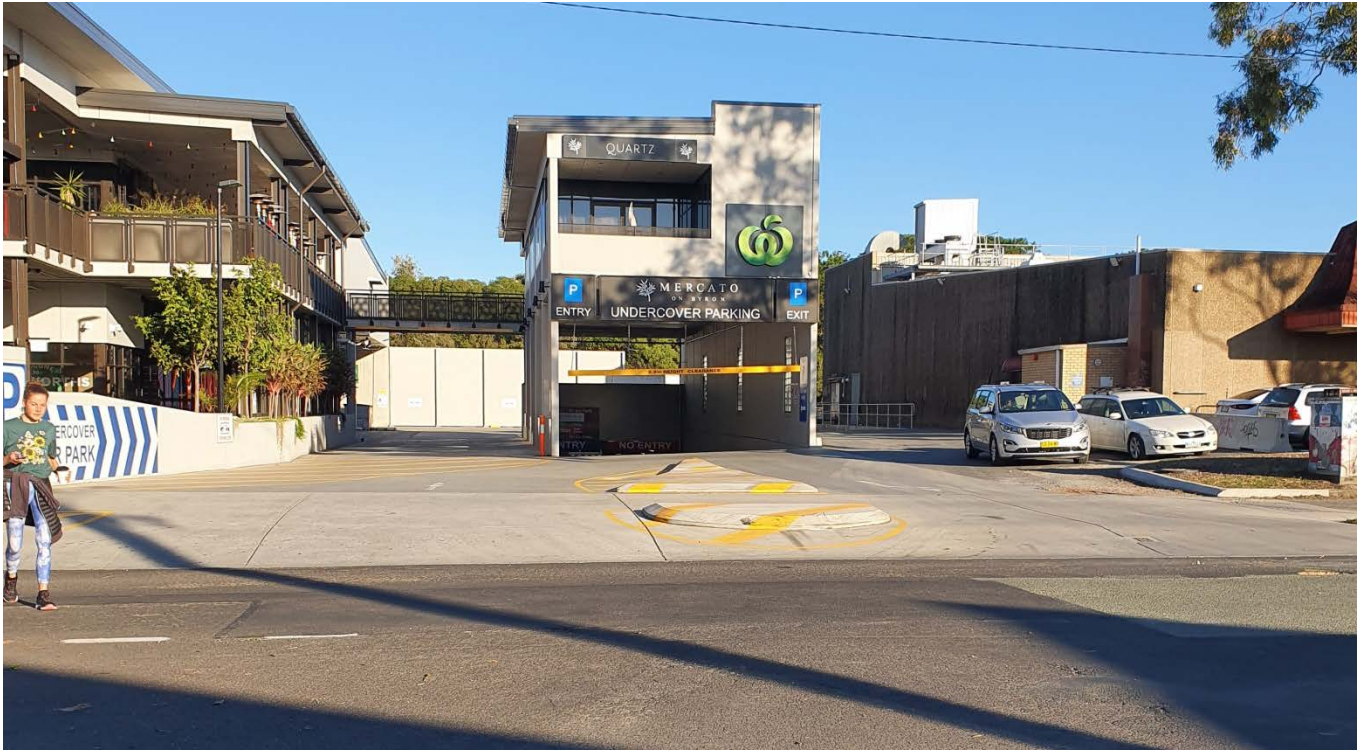


*Photo 1: Trees on the right to be removed; trees on the left to be retained, subject to access design*

### **Vehicle Access:**

The application proposes two accesses to Jonson Street. The primary development access location will be via the existing 15.5m, two-way, median-divided driveway used for the neighbouring Mercato shopping complex, which would then be shared by both developments.





*Photo 2: Existing access to shopping complex basement car park; Mercado shopping complex on left, old Woolworths building on right*

This driveway currently provides access to the shopping centre basement car park and the servicing bays, located at ground level at the north-west end of the complex.



*Photo 3: Shopping complex loading bays at rear, behind basement car park entrance*

This shared access will provide vehicular access to the development's proposed servicing areas, located at ground level on the south-west corner of the proposed building, for service vehicles and garbage trucks. These vehicles would pass to the south of the existing basement access ramp before moving to the loading bay. They would then exit around the north of the access ramps, through the



hotel porte cochere, onto Jonson Street. Conditions of approval for the Mercato shopping complex limit exit movements at this existing driveway to left-out only (with both left and right turns in from Jonson Street).

Traffic accessing the hotel porte cochere would also use this shared driveway, passing south of the basement access ramp and around to stop at the hotel to register and drop-off people/ bags. If parking on-site, they would then need to exit the driveway onto Jonson Street to access the separate basement access ramp.

The separate vehicle access to the basement car park level is provided via a one-way, left-in access off Jonson Street, located at the north-eastern corner of the property. This provides the only vehicle entry to the basement.

Vehicles exiting the basement car park do so via the existing shopping complex ramp, which would then be shared by both developments.

Access to and from the basement parking is proposed to be restricted by boom gates on entry and exit.

### ***Building Height:***

The building is proposed to have three storeys, with recreation/ function facilities for hotel guests located on the roof-top.



*Figure 1: Extract from Architects Plan Set*

The property is generally flat, and the ground floor of the proposed building is set generally at existing ground level.

Most of the roof level is below the 11.5m maximum building height standard. Table 1 sets out a summary of the building components that exceed this standard. Overall, around 5% of the building footprint exceeds the 11.5m standard.

**Table 1 Proposed Maximum Heights**

<b>Building Component</b>	<b>Existing Ground Level (RL)</b>	<b>Proposed Height (RL)</b>	<b>Proposed Height (m)</b>	<b>Height above 11.5m max (m)</b>	<b>% Exceedance</b>	<b>% of Building Footprint</b>
Goods lift overrun	3.6	15.5	11.9	0.4	3.5%	0.4%
Pool area	3.8	15.9	12.1	0.6	5.2%	2.1%
Toilets, stairs, storage	3.8	17.3	13.5	2.0	17.4%	0.9%
Guests lift overrun	3.8	17.85	14.05	2.55	22.2%	0.4%

### 1.3. Description of the site

Land is legally described as:

The property is known as Proposed Lot 42 and Part Proposed Lot 41 in the subdivision of Lots 6 & 7 DP 619224 and Lots 8 & 9 DP 617509 and is located at 98-106 Jonson Street, within the Byron Bay Town Centre.

*[Note: Subdivision of these properties was approved as part of DA 10.2013.587.1 (Mercato Shopping Complex). Application for Subdivision Certificate 15.2013.587.1 was lodged in August 2019 and is pending at the time of drafting this report.]*



**Figure 2: The Site**



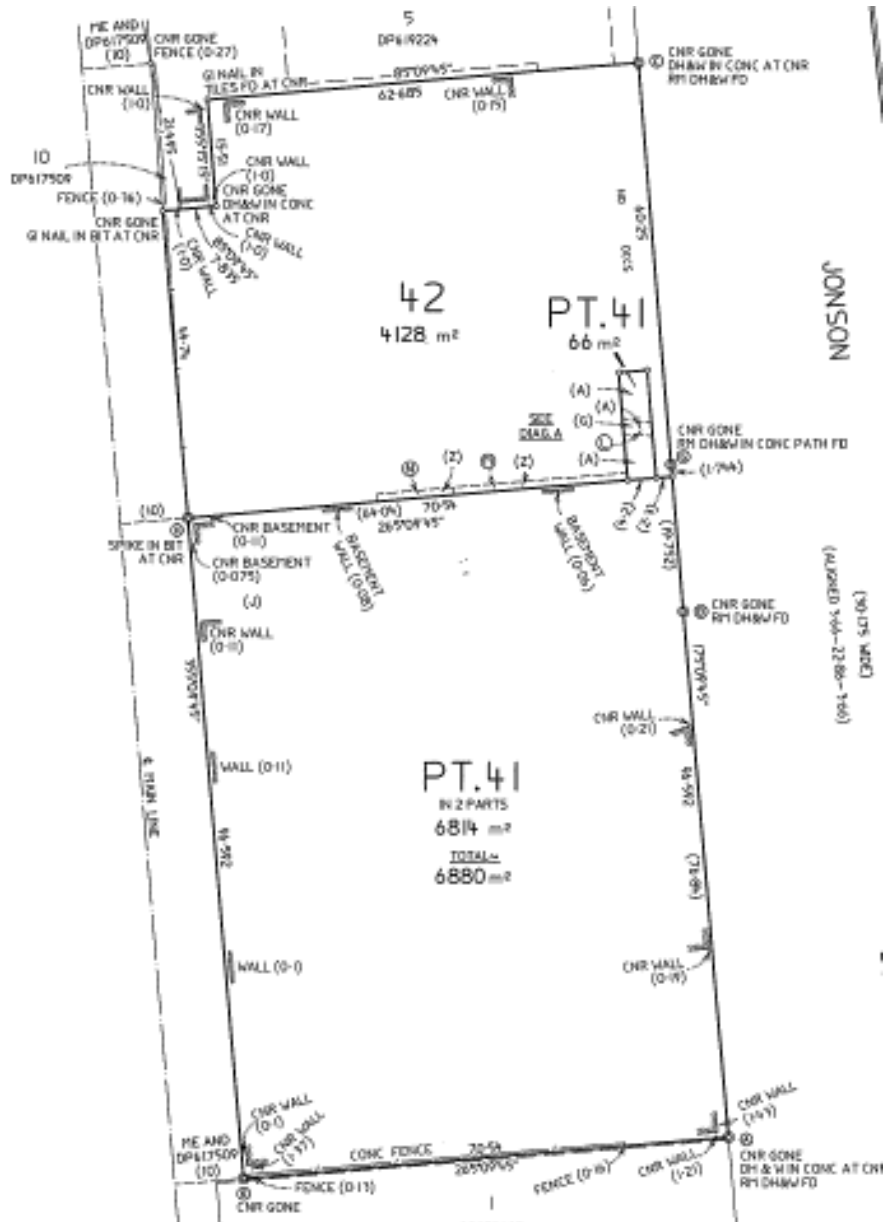


Figure 3: Proposed Subdivision Plan

Property address is:

98-106 Jonson Street BYRON BAY

Land is zoned:

B2 Local Centre

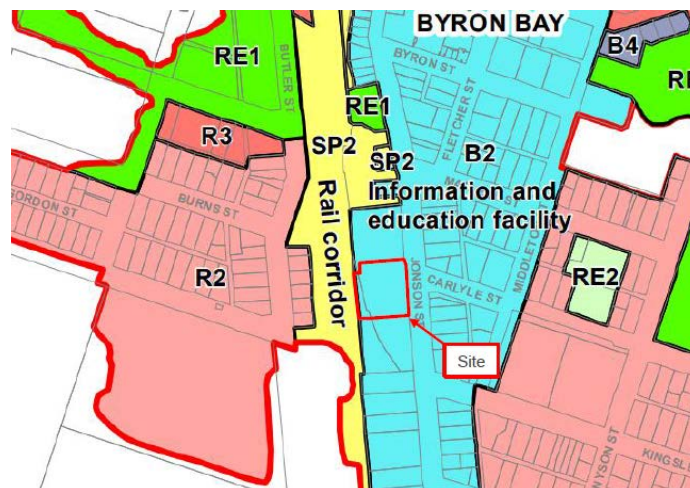


Figure 4: Existing Zoning

Land area is: 4,194m<sup>2</sup> (proposed Lot 42)

Property is constrained by: Acid Sulfate Soils (Class 3)

Bushfire Prone Land (south-west corner)

High Environmental Value Vegetation (Planted Sclerophyll along Jonson Street boundary)

The site is located centrally within the Byron Bay Town Centre, with a frontage of 60.25m to Jonson Street, which forms the eastern boundary. The northern boundary has a length of approx. 63m and adjoins an existing shopping plaza, with shops to the west and north around a central bitumen covered car park.

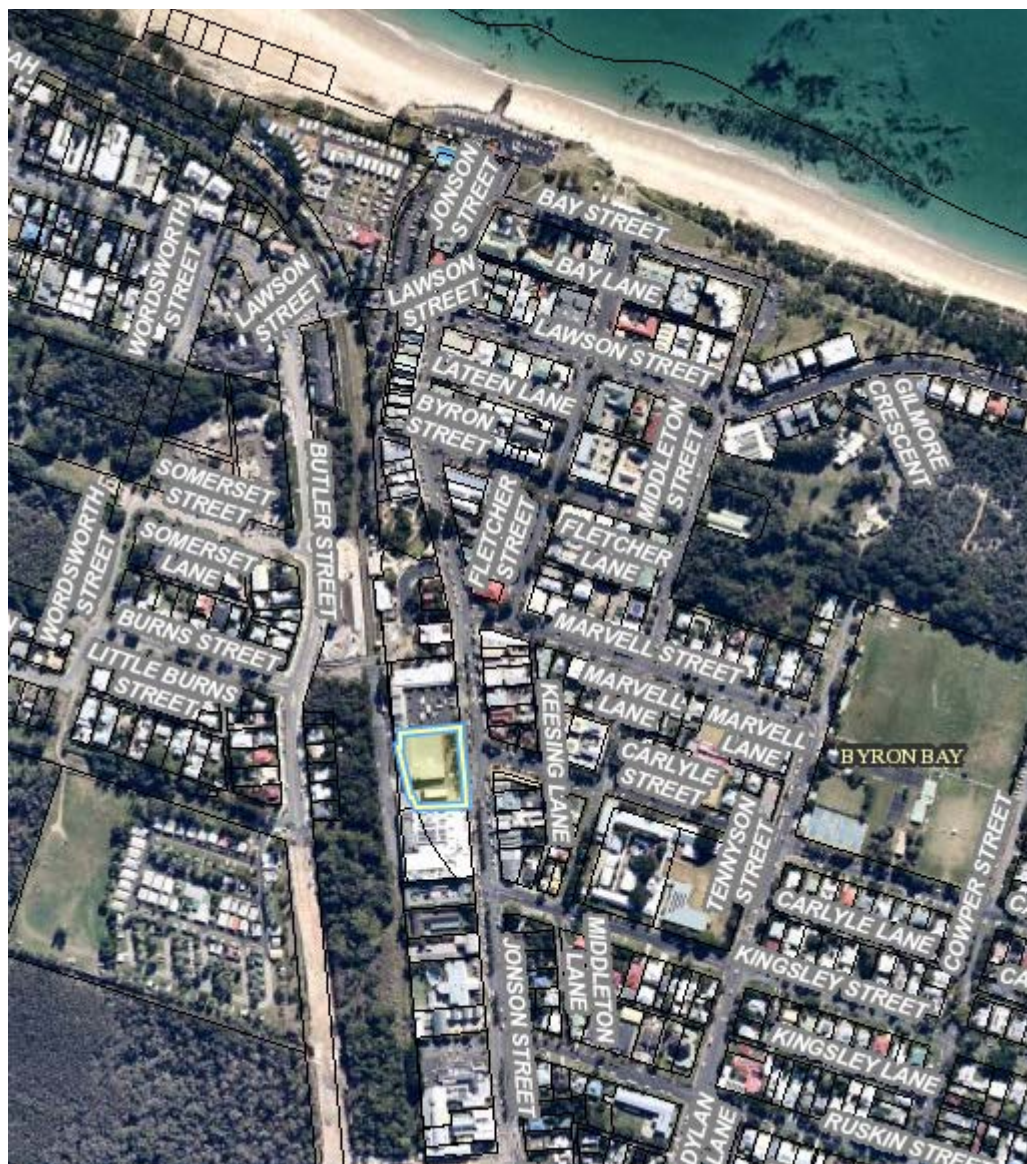


Figure 6: Aerial Photo – Site Locality

The southern property boundary has a length of approx. 70m and adjoins the recently completed Mercato on Byron shopping complex. Access to that complex, including the covered access ramp to basement car parking, is located within the southern part of the land subject of this application, Lot 6 DP 619224.

The western property boundary, of 44.7m, is bounded by the non-operational North Coast Rail Corridor.



The property currently contains an empty building, which formerly contained a Woolworths supermarket, with a bitumen sealed at grade car park along the Jonson Street frontage. Mature trees are located along the property frontage, some within the site and four large trees within the Jonson Street footpath.

There are two padmount electricity 'boxes' located within the south-eastern corner of the property.

The property is generally flat with levels ranging from approx. RL 2.8m AHD in the south-west to approx. RL 4.13m AHD along the pathway at the eastern frontage of the existing building.



*Photo 4: Site viewed from eastern side of Jonson Street*



*Photo 5: Site viewed from southern approach on Jonson Street*





*Photo 6: Site boundary Jonson Street*



*Photo 7: Disused building onsite*  
**The locality – Byron Bay Town Centre**



Development within the town centre is characterised by a mix of one, two and three storey buildings containing a mix of retail business, with many cafes and restaurants at street level.

Most of the existing lots in the town centre have frontages of between 15 and 20m, providing a fine-grain and visual mix of development.



*Photo 8: Existing development, east side of Jonson Street opposite subject site*



*Photo 9: Existing development, west side of Jonson Street, north of subject site*





Photo 10: Existing development, north side of Lawson Street



Photo 11: Mercato shopping complex adjoining subject site to south



Photo 12: Plaza development adjoining subject site to north

## 2. SUMMARY OF REFERRALS

### External:

<b>Referral</b>	<b>Issue</b>
John Holland Rail	A letter was provided on 4 July 2019, on behalf of RailCorp, owner of the adjoining non-operational rail corridor, containing conditions to be applied to any consent. The recommended conditions are aimed at ensuring that construction and operation of the development does not result in adverse impacts on the rail corridor.
Transport for NSW (RMS)	A response was received from RMS on 16 July 2019. RMS reiterated comments made in relation to the previous development application for the adjoining Mercato Shopping Complex (DA 10.2013.587.5), relating to potential impacts of turning traffic on Jonson Street at Carlyle Street. RMS also noted that cumulative traffic impacts, associated with the shared access between the current proposal and the adjoining shopping complex, require consideration. Traffic issues are discussed in further detail below.
Rural Fire Service	The RFS provided a response to the integrated development referral on 18 February 2020, including General terms of Approval and a Bush Fire Safety Authority, issued subject to a number of conditions. There is no restriction on granting this application in relation to the identified integrated development requirements (s.4.47(2) EP&A Act).
Natural Resources Access Regulator	By letter dated 19 August 2019, NRAR advised that a controlled activity approval is not required for the subject development.

### Internal:

<b>Referral</b>	<b>Issue</b>
Environmental Health Officer	<u>Noise</u> : Concern that the impact assessment does not adequately address potential impacts associated with use (see below). <u>Acid Sulfate Soils</u> : Assessment report is considered to be adequate,

<b>Referral</b>	<b>Issue</b>
	<p>although minimal details are provided relating to treatment and disposal of potentially acid groundwater associated with dewatering during construction. This could be managed by conditions of approval, as solutions are technical feasible.</p> <p><u>Contaminated Land</u>: Preliminary assessment has been undertaken and is acceptable. More detailed soil testing could be subject to conditions of approval, as treatment and management of potential contaminants, including potentially radioactive soils, can be managed during construction.</p>
Development Engineer	The development is not supported. See summary of issues below.
Building Certifier	<p>Council's Building Certifier reviewed the application and noted general compliance with the BCA, with performance solutions for some non compliant issues.</p> <p>It is considered that BCA compliance is achievable with a full BCA report provided with a Construction Certificate.</p>
Water & Sewer Engineer (Local Approvals Officer)	Modelling undertaken to confirm capacity within the local water supply network. Additional loads on water and sewerage infrastructure can be managed by conditions of approval.
Contributions Officer	S7.12 contributions would apply if the application were to be approved.

## **Issues:**

### Noise:

The assessment report presents indicative noise levels, however, noise modelling was not provided. The location of roof-top plant was not detailed on a site plan and the likely use and location of amplified speakers for roof-top activities was not assessed.

The nature, frequency and duration of use of the proposed roof-top recreation spaces (hours of operation or number of events) were not assessed. The noise impacts of mechanical plant including carpark exhaust systems, ventilation systems, air-conditioner systems and air conditioner condensers were not assessed. Wind and temperature inversion were not included. Cumulative impacts were not assessed. Monitoring and management programs were not discussed.

Based on the information provided, and given the potential for disturbance associated with use of the roof-top recreation spaces, Council cannot be satisfied that the development would not result in an adverse noise impact for residential areas around the periphery of the Town Centre.

It is not considered appropriate that this issue could be addressed by conditions of approval, as the outcome of a proper assessment is unknown.

### Traffic / Access:

Primary and secondary accesses have been proposed to service the development. The primary access point is shared with the existing driveway access to the neighbouring building and the secondary access (entry to basement parking) is directly opposite Carlyle St/Jonson St intersection.

The configuration of the existing access and associated local road network upgrades have been conditioned as part of the development consent for the neighbouring shopping complex development. This includes a requirement to provide a roundabout treatment at Carlyle St/Jonson St intersection.

That requirement is currently the subject of Land & Environment Court proceedings instigated by the shopping complex developer.

At the time of drafting this report, the outcome of the proceedings is not known. However, the traffic assessments provided to the hearing were based on cumulative traffic volumes associated with the existing Mercato development and the development proposed by this development.

On that basis, it can be assumed that the Court's findings would address the potential for traffic impacts from the development in relation to the local road network in order to ensure that local traffic safety and efficiency is not negatively impacted.

The primary (shared) access will service:

- parking for the shopping complex – 333 spaces within an existing two-level basement car park;
- servicing for shopping complex – located at north-west corner of existing building;
- parking for proposed hotel, restaurant & function centre – see parking analysis below;
- servicing for proposed development, located at south-west corner of proposed building, directly opposite shopping complex servicing area; and
- porte cochere for proposed hotel, restaurant & function centre.

Given that Jonson Street is an arterial road, the access should be designed as either a Category 4 or 5 Access Treatment (depending on final car parking numbers) in accordance with Australian Standard AS2890.1:2004 Parking Facilities Part 1 – Off Street Parking.

The design of the current access is designed as a Major Access Driveway as defined in the Standard, which does not adequately cater for the volume of traffic likely to use the access nor the maximum sized service vehicle likely to access the site.

Reconfiguration of the access to meet Australian Standards has the potential to impact on the location of existing and proposed electricity infrastructure (padmount transformers) and restrict the ability to provide bicycle parking as proposed.

The secondary access, as proposed, would service 103 car parking spaces. As it accesses an arterial road, it would need to meet the requirements of a Category 4 Access Treatment (AS2890.1:2004). As a minimum, this would require a width of 6m. The proposal is designed with a width of 3.6m. Widening of this access would potentially require tree removal and would impact on the ability to provide the bicycle parking as proposed.

#### Car Parking:

The assessment provided to support the application notes that the quantum of parking does not meet the requirements of Council's DCP. A 'first principles' parking assessment has been provided in Sections 4.1.2 and 4.1.3 of the Traffic Impact Assessment report (*Essence of Byron Traffic Impact Assessment*, Bitzios Consulting, P3829, Version 3, 18 June 2020) to justify this non-compliance.

The quantum of parking required under the provisions of the DCP is:

Use	GAF (m <sup>2</sup> )	Rooms	Staff	Car Parking		Staff Parking		Total Required
				Rate	Required	Rate	Required	
Hotel	na	146	120	1 per room	146.0	0.5 per staff	60	206.0
Restaurant	865			1 per 20m <sup>2</sup>	43.2	na		43.2
Function	1,490			1 per 20m <sup>2</sup>	74.5	na		74.5
								<b>323.7</b>

The application proposes the provision of 103 spaces and is therefore deficient by 221 spaces.



The first principles assessment suggests:

- of the 120 staff, only 80 would be on site at one time;
- journey to work data for the locality suggests 52.9% of employed persons use private vehicles, therefore staff parking should be  $80 \times 0.529 = 42.3$  spaces;
- the hotel and function areas should be 'discounted' by 25% based on use by hotel patrons; and
- hotel parking rates should be based on RMS Guide to Traffic Generation rates of 1 space per 5 rooms for a 5-star hotel.

Based on these principles, the car parking quantum would be:

Use	GAF (m <sup>2</sup> )	Rooms	Staff	Car Parking		Staff Parking		Total Required
				Rate	Required	Rate	Required	
Hotel	na	146	80	1 per 5 rooms	29.2	0.529 per staff	42.3	71.5
Restaurant	865			1 per 20m <sup>2</sup> x 75%	32.4	na		32.4
Function	1490			1 per 20m <sup>2</sup> x 75%	55.9	na		55.9
								<b>159.8</b>

The applicant's first principles assessment shows that the proposal would still be deficient by 57 spaces.

Council's Development Engineer does not support the first principles parking proposal, as quantifiable evidence has not been provided to demonstrate that the proposed measures are able to accommodate the deficiency of parking spaces in peak conditions.

The lack of appropriate on-site parking for the development will likely result in increased parking demand in Jonson St, adversely impacting the safety and efficiency of traffic in peak conditions.

#### Loading Bays and conflict areas:

The Traffic Impact Assessment report (TIA) compared Council's required service vehicle rate against that of Tweed Shire Council, Gold Coast City Council and RMS Guide. The comparison rates indicated, however, do not appear to match the rates specified in Tweed Shire Council DCP, Gold Coast City Council Development Code and RMS Guide.

The summary of comparison found that:

- RMS Guide requires parking for 6 service vehicles, with 50% adequate for trucks;
- Tweed Shire Council requires 3 spaces for Heavy Rigid Vehicles (HRV);
- Gold Coast City Council requires all classes of service vehicle; and
- BSC requires 6 service vehicle bays, including one for an Articulated Vehicle (AV).

The TIA argued that AV vehicles are considered unnecessary because Tweed Shire Council and Gold Coast City Council's maximum sized service vehicle are HRV.

The Development Proposal provides 1 loading bay for a Medium Rigid Vehicle (MRV). The proposal is deficient in accordance with BSC DCP, RMS and other coastal local government councils mentioned in the report.

The deficiency will likely result in conflicts within the manoeuvring area between the proposed hotel and the adjoining Mercato shopping complex and/ or spill into Jonson Street waiting for availability of loading bay area in peak conditions.



Further, the manoeuvring movement for both MRV & HRV encroaches outside the reciprocal right of way easement with the neighbouring building.

In peak conditions, where all loading bays are utilised/occupied, the HRV will require a significant number of manoeuvres to access the proposed loading bay, making the manoeuvring area unsafe.

Moreover, all commercial vehicles servicing both proposed and existing developments (MRV, HRV & AV) would be required to utilise the porte cochere, which is also utilised by incoming and outgoing guests and visitors. This creates the potential for significant and unacceptable movement conflicts.

The porte cochere does not have a dedicated drop off or set down area for guest and visitors or for shuttle buses.

This area is considered to be unsafe for both pedestrian and vehicular traffic in peak conditions.

The design of the port cochere, particularly its orientation facing the Mercato shopping complex rather than Jonson Street, makes the access arrangements as proposed overly complicated, considering the inherent conflicts associated with and already inbuilt with the neighbouring development.

### 3. SECTION 4.14 – 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 mapped as bush fire prone land.

A Bush Fire Hazard Assessment Report was submitted in support of the application and referred to the NSW Rural Fire Service (as Integrated Development). As outlined above, RFS provided General Terms of Approval and a Bush Fire Safety Authority.

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

Having regard to the matters for consideration detailed in Section 4.15(1) of the Environmental Planning & Assessment Act 1979 (EP&A Act), the following is a summary of the evaluation of the issues.

#### 4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 44 - Koala Habitat Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Consideration:</u> The site has an area less than 1ha. The development control provisions of this SEPP, therefore, do not apply. In any case, it is a fully developed commercial site within the Byron Bay Town Centre. There is no potential koala habitat. As such, a Koala Plan of Management is not required. [Note: On 1 March 2020, this SEPP was repealed and replaced by SEPP (Koala Habitat Protection) 2019. The savings provisions of the new SEPP provide, however, that a development application made, but not finally determined, before the commencement of the new Policy must be determined as if this Policy had not commenced]		
State Environmental Planning Policy No 55 - Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Consideration:</u> Preliminary assessment has been undertaken and is acceptable. More detailed soil testing could be		

	Satisfactory	Unsatisfactory
subject to conditions of approval, as treatment and management of potential contaminants, including potentially radioactive soils, can be managed during construction.		
State Environmental Planning Policy (Coastal Management) 2018	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Consideration:</u> The south-western part of the subject site is mapped as being proximate to a coastal wetland. Satisfactory evidence has been provided to determine that the proposed development will not result in significant impacts on the adjacent wetland.		
State Environmental Planning Policy (Infrastructure) 2007	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Consideration:</u> Clause 86 of the SEPP is applicable as the application proposes excavation within 25m of a rail corridor. The application was referred to RailCorp (the rail authority). John Holland Rail, acting on behalf of RailCorp have reviewed the application and provided recommended conditions of approval. Clauses 101 and 104 of the SEPP are applicable, as the property fronts Jonson Street which is part of the classified road (MR 454).		
<ul style="list-style-type: none"> <li> <b>Clause 101</b>  The clause applies to development on land that has a frontage to a classified road. The objectives are to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.  The clause requires that a consent authority must not consent to development on such land unless it is satisfied that: <ul style="list-style-type: none"> <li><i>where practicable and safe, vehicular access to the land is provided by a road other than the classified road</i>  The property does not have frontage to any other road.</li> <li><i>the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:</i> <ul style="list-style-type: none"> <li>(i) <i>the design of the vehicular access to the land, or</i></li> <li>(ii) <i>the emission of smoke or dust from the development, or</i></li> <li>(iii) <i>the nature, volume or frequency of vehicles using the classified road to gain access to the land</i></li> </ul> </li> </ul> The assessment of traffic aspects of the development is outlined in this report, highlighting potential impacts associated with site access as proposed. <ul style="list-style-type: none"> <li><i>the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.</i>  An acoustic assessment has been submitted, demonstrating that the accommodation uses will not be adversely impacted by road noise.</li> </ul> </li> <li> <b>Clause 104</b>  Clause 104 requires that Roads and Maritime Services (RMS) is given the opportunity to comment on development that is traffic generating development specified under Schedule 3 of the SEPP. The proposed development is traffic generating development based on car parking numbers and the proposed number of motor vehicle trips per hour. The RMS provided written comments in a letter to Council dated 16 July 2019 to assist in making a determination.  Issues raised in that letter are addressed in this report. </li> </ul>		
State Environmental Planning Policy (State and Regional Development) 2011	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Consideration:</u> Pursuant to Schedule 7, the proposed development is 'Regionally Significant Development' as it has a Capital Investment Value more than \$30 million (CIV is \$33.93M).		

## 4.2 Byron Local Environmental Plan 2014 (LEP 2014)

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

(a) The proposed development is defined in the LEP 2014 Dictionary as:

- *Tourist and Visitor Accommodation*  
*Hotel or Motel Accommodation;*
- *Function Centre;*
- *Commercial Premises;*  
*Retail Premises;*  
*Food and Drink Premises;*  
*Restaurant or Café;*

(b) The land is within the B2 Local Centre according to the Land Zoning Map;

(c) The proposed development is permissible with consent; and

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

<b>Zone Objective</b>	<b>Consideration</b>
<i>To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.</i>	<p>The majority of the proposed development will serve the needs of people who visit Byron Bay. The restaurant can serve both local and visitor needs.</p> <p>In relation to visitor accommodation, background work undertaken associated with Council's draft Sustainable Visitor Strategy indicates that hotels/ motels currently provide only a very small component of available accommodation:</p> <ul style="list-style-type: none"> <li>• less than 1% of the total number of properties; and</li> <li>• only 5% of available beds.</li> </ul> <p>By contrast, holiday houses constitute:</p> <ul style="list-style-type: none"> <li>• 60% of the total properties; and</li> <li>• 40% of the available beds.</li> </ul> <p>Given the continued strong tourism demand, the provision of hotel beds is considered to serve the needs of people who visit the local area.</p> <p><i>(Byron Shire Sustainable Visitation Strategy - Community Solutions Panel Briefing Book)</i></p>
<i>To encourage employment opportunities in accessible locations.</i>	The proposed development will generate employment in the hospitality sector.
<i>To maximise public transport patronage and encourage walking and cycling.</i>	While public transport options remain limited, the proposal includes measures aimed at promoting cycling and walking.
<i>To encourage vibrant centres by allowing residential and tourist and visitor accommodation above commercial premises.</i>	Not directly relevant.

Relevant provisions of the LEP are addressed below:

### Clause 2.7 – Demolition requires consent

Clause 2.7 requires that demolition of a building may be carried out only with development consent, except where it is demolition of development specified as exempt development under State

Environmental Planning Policy (Exempt and Complying Development Codes) 2008. The proposal seeks consent for the demolition of the existing building on-site. This type of demolition is not exempt development. It is permissible with consent under Clause 2.7.

### **Clause 4.3 – Height of Buildings**

The maximum height of buildings within this part of the town centre is 11.5m. Building height is defined in the LEP as:

*the vertical distance from ground level (existing) to the highest point of the building.....including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like*

While the majority of the building complies with the development standard, there are some roof-top elements that exceed the 11.5m maximum, with the maximum height being 14.05m.

The application includes a written submission from the applicant seeking to justify the contravention of this development standard. This submission is addressed below.

### **Clause 4.4 – Floor Space Ratio:**

The maximum floor space ratio for this part of the town centre is 1.3:1.

Floor space ratio is defined in the LEP to mean:

*the ratio of the gross floor area of all buildings within the site to the site area.*

Gross floor area means:

*the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes -*

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*  
*but excludes -*
- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement -*
  - (i) storage, and*
  - (ii) vehicular access, loading areas, garbage and services, and*
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) any space used for the loading or unloading of goods (including access to it), and*
- (i) terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) voids above a floor at the level of a storey or storey above.*

In accordance with this definition, the gross floor area of the proposed building is:

Basement:	122m <sup>2</sup>
Ground floor:	1,889m <sup>2</sup>
Level 1:	2,427m <sup>2</sup>
Level 2:	2,441m <sup>2</sup>
Roof level:	834m <sup>2</sup>
<b>TOTAL:</b>	<b>7,713m<sup>2</sup></b>

[Note: Floor areas based on figures provided on Drawing No. NRA-84169-DD-SK1100 Rev H, prepared by nra-co-lab, dated 18/06/2020. Some floor areas quoted differ from areas shown on floor plans (Rev J of same date) and also differ from areas provided in Clause 4.6 submission – none of the differences substantially alter the extent to which the proposed development contravenes the standard]

The property has an area of 4,194m<sup>2</sup> (the area of proposed Lot 42 and part proposed Lot 41 to be created by the subdivision of Lots 6 & 7 DP 619224 and Lots 8 & 9 DP 617509). The floor space ratio, as proposed therefore, is 1.84:1.

The applicant has made a submission under Clause 4.6, arguing that strict adherence to the 1.3:1 development standard is unreasonable or unnecessary in the subject circumstances.

The clause 4.6 variation request is considered below.

#### **Clause 4.6 – Exceptions to development standards**

Clause 4.6 provides that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant has made a submission under Clause 4.6, relating to the contravention of the building height and FSR development standards.

#### ***Building Height:***

##### The Development Standard to be varied

The development standard to be varied is contained in Byron LEP 2014 clause 4.3(2), which requires 'The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map'.

In relation to the subject property, the Height of Buildings Map specifies a maximum building height of 11.5m.

##### Extent of Variation to the Development Standard

The extent of the variation is summarised below:

<b>Building Component</b>	<b>Existing Ground Level (RL)</b>	<b>Proposed Height (RL)</b>	<b>Proposed Height (m)</b>	<b>Height above 11.5m max (m)</b>	<b>% Exceedance</b>	<b>% of Building Footprint</b>
Goods lift overrun	3.6	15.5	11.9	0.4	3.5%	0.4%
Pool area	3.8	15.9	12.1	0.6	5.2%	2.1%
Toilets, stairs, storage	3.8	17.3	13.5	2.0	17.4%	0.9%
Guests lift overrun	3.8	17.85	14.05	2.55	22.2%	0.4%

As indicated above, the majority of the roof complies with the 11.5m height limit. The guest lift overrun is the highest component of the building, but over a very small area. The pergola roof structure over the pool bar and the toilet roof area has a significant exceedance over a larger area, as does the pool deck.

## Objectives of the Development Standard

The objectives of the development standard are:

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

The first object is somewhat of an anomaly; in that clause 4.6 would have no work to do in allowing flexibility in relation to the height standard if this objective meant that the specified maximum height always must be met.

The applicant's submission is therefore considered below in relation to the remaining two objectives.

### Assessment – the specific questions to be addressed:

- (a) *Clause 4.6(3)(a) – Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*

The applicant's submission addresses the 'five-part test' outlined in *Wehbe v Pittwater [2007] NSWLEC 827*, to argue that compliance with the standard is unnecessary in the circumstance of the case.

### ***Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard***

The applicant argues that the proposed development achieves the objectives of the standard. As outlined in the table below, that position is not accepted.

<b>Objectives</b>	<b>Assessment</b>
<i>to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located</i>	<p>The proposed building is located in the middle of the Byron Bay Town Centre. The streetscape in this part of Jonson Street is dominated by the recently completed Mercato on Byron shopping complex, located directly to the south of the development site (see Photo 11).</p> <p>The Mercato building has a finished height of approx. 12.5m, and is set forward to the Jonson Street boundary.</p> <p>The streetscape character immediately to the north is more 'low key', dominated by an open bitumen-sealed car park fringed by single storey retail premises (see Photo 12).</p> <p>Further afield, the Town Centre contains a wide variety of buildings, from single storey to three-storey in height (see Photos 8-10).</p> <p>While the proposed building is consistent with the height of the adjoining Mercato shopping complex, it is not consistent with the majority of the existing built form in the town centre.</p> <p>However, the inconsistency arises primarily because of the bulk and scale of the building (a function of FSR) rather than on building height alone.</p>
<i>to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development</i>	<p>The rooftop elements that exceed 11.5m are set well back on the building, such they would not be visible from either side of Jonson Street immediately in front of the building.</p> <p>These elements are set toward the southern edge of the rooftop. It is unlikely, therefore, that they would be visible when viewed from</p>

Objectives	Assessment
	<p>the north or north-east. The position of the Mercato on Byron development to the south means that they are also unlikely to be visible from the south-east.</p> <p>The building elements that exceed the development standard will not result in significant visual impact, disruption of views, loss of privacy and loss of solar access to existing development.</p>

***Test 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary***

This test is not relied upon by the applicant.

***Test 3: The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable***

This test is not relied upon by the applicant.

***Test 4: The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable***

This test is not relied upon by the applicant.

***Test 5: The zoning of the particular land on which the development is proposed to be carried out is unreasonable or inappropriate so that the development standard, which is appropriate for that zoning, is also unreasonable or unnecessary as it applies to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary***

This test is not relied upon by the applicant.

***Conclusion:***

The applicant's clause 4.6 submission demonstrates that compliance with the development standard is unnecessary in this case, given that the elements that exceed the maximum height will not be visible from the public realm and do not contribute to the bulk and scale of the building.

***(b) Clause 4.6(3)(b) – Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?***

The submission put forward by the applicant is addressed below:

Submission	Comment
<i>The development is consistent with the objectives of the Environmental Planning and Assessment Act 1979 by promoting the orderly and economic use and development of the land by delivering new tourist accommodation, function facilities, retail and entertainment offerings. The full utilisation of the site is reasonable given this is commercial zoned land in the Byron Town Centre, where land is at a premium.</i>	<p>It is agreed that full utilisation of the site is reasonable within a town centre environment.</p> <p>However, the development standards set within the LEP and DCP are the controls established by Council to determine what "full utilisation" is, in the context of the existing and desired future character of the centre.</p> <p>The contravention of the maximum building height standard is not justified by the statement provided.</p>
<i>The proposed development achieves objectives</i>	The objectives are addressed above.

<b>Submission</b>	<b>Comment</b>
<i>(b) and (c) of the development standard prescribed in clause 4.3 of BLEP 2014 as described in Section 3.4.1 and achieves the objectives of the B2 Local Centre zone as described within Table 3.</i>	The exceedance of height is minimal and located such that those building elements are not visible. As such, it is concluded that the development as proposed generally meets the objectives of the standard for the zone for reasons outlined above.
<i>The proposal is consistent with the use and intensity of built form anticipated in this part of Byron Bay, being the main commercial street of the town. The street parapet height is less than the maximum permitted, and the development is of a similar bulk and scale to the neighbouring development. The perspectives demonstrate that the proposed height to Jonson Street is appropriate and is consistent with the Mercato on Byron Shopping Centre</i>	It is agreed that, at street level, the building presents at a height consistent with the height and scale of the built form anticipated by the applicable planning controls.
<i>The variation to the development standard allows the delivery of an activated and permeable Ground Floor by delivering the hotel amenities on the rooftop. It is reasonable for a hotel of this calibre to deliver a rooftop bar, swimming pool and associated amenities. These are required to be accessed via passenger and goods lifts and consequently a variation is also necessary to accommodate the lift overruns. The rooftop represents the optimal location within the development for these facilities.</i>	While it may be reasonable for a hotel to provide roof-top guest facilities, it does not necessarily follow that this justifies an exceedance of the building height standard.
<i>The alternate location for the hotel amenities would be at the Ground Floor. The location at the Ground Floor would compromise the restaurant and conference facilities. The restaurant and conference facilities can be accessed by members of the public and therefore these components are best suited to the Ground Floor</i>	It is not agreed that this is an environmental planning reason to justify an exceedance of the building height standard.
<i>All of the hotel rooms are contained below a height of 11.5m. The proposal is for a three storey hotel with rooftop features. Habitable floor space is not proposed above 11.5m</i>	The development standard is not restricted to habitable space. It applies to the “maximum height from its existing ground level to finished roof or parapet”.
<i>The proposed development has been carefully designed to include structural elements that require additional space within the middle of the rooftop and allowing recreation space to engage with the streetscape. The massing strategy for the site is reasonable appropriate given the mass and scale of the adjoining development shopping centre.</i>	It is not agreed that this is an environmental planning reason to justify an exceedance of the building height standard.
<i>If the proposed development is to provide private communal open space on the roof level within the building height requirements, it would be mean the development is not able to provide a rooftop pool, terrace and entertainment space, compromising the tourist drawcard and economic opportunity of</i>	It is not agreed that this is an environmental planning reason to justify an exceedance of the building height standard.



Submission	Comment
the proposal.	
<p><i>The proposed building height will have negligible material impacts compared to a compliant scheme in terms of built form, overshadowing, view impacts as:</i></p> <ul style="list-style-type: none"> <li><i>• The use of the roof as proposed is only classified as a storey by technical definition in BLEP 2014 but that use is limited to partially rooved recreational amenities for the hotel, namely, a pool, rooftop bar and associated amenities. The height breach includes lift access to these facilities. Such uses do not materially add to the bulk and scale of the building considering that with the exception of the goods lift, these are all setback and on the main roof. The goods lift is located at the rear of the site and is separated by the Byron Railway corridor</i></li> <li><i>• The proposed development is located on Jonson Street, north of the Mercato on Byron Shopping centre. The proposed development therefore has integrated with the development to the south and is not at risk of creating shadow impacts as it will only shadow the shopping centre. To the west the site is adjoined by the Byron Railway corridor which is currently undeveloped, underutilised land that currently does not have any activity and therefore will not be affected by the components that exceed the height.</i></li> <li><i>• The components that exceed 11.5m are located at the roof level. There are no adverse privacy impacts associated with these building components, noting that the fire stair, storage area and lift overruns do not result in privacy impacts. The swimming pool is located within the centre of the site and significantly separated from surrounding uses, noting that the nearest residential use is approximately 80m from this point.</i></li> <li><i>• Given approximately 5% of the building footprint exceeds the 11.5m height control and that these components are, for the most part, setback from the parapet, the proposed variation would result in a negligible reduction in sky views from the public domain. Similarly, for the same reason, impacts on views from private properties are expected to be negligible</i></li> </ul>	<p>The roof-top elements are not considered to constitute a 'storey'.</p> <p>It is agreed that the building elements that exceed the standard do not materially add to the bulk and scale of the building.</p> <p>It is also agreed that these elements will not contribute to significant shadowing or privacy impacts.</p>

While not all of the applicant's arguments are accepted, it is considered that the submission has presented environmental planning grounds that could justify a contravention of the maximum building height development standard.

(c) *Clause 4.6(4)(a)(i) – Has the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)?*

The assessment above concludes that the submission has adequately addressed the relevant matters.

(d) *Clause 4.6(4)(a)(ii) – is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

Given the assessment and conclusions above, it is considered that the exceedance of the maximum building height standard does not offend the public interest, as it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

(e) *Clause 4.6(4)(b) – the concurrence of the Planning Secretary*

The concurrence of the Planning Secretary can be assumed in this case.

### ***Floor Space Ratio:***

#### The Development Standard to be varied

The development standard to be varied is contained in Byron LEP 2014 clause 4.4(2), which requires 'The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map'.

In relation to the subject property, the Floor Space Ratio Map specifies a maximum ratio of 1.3:1.

#### Extent of Variation to the Development Standard

Based on the site area of 4,194m<sup>2</sup>, the maximum FSR of 1.3:1 equates to 5,452m<sup>2</sup> of gross floor area. The proposed development exceeds this by 2,261m<sup>2</sup>, and the FSR of 1.84:1 represents a 41.4% variation to the development standard.

#### Objectives of the Development Standard

The objectives of the development standard are:

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

#### Assessment – the specific questions to be addressed:

(a) *Clause 4.6(3)(a) – Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*

The applicant's submission addresses the 'five-part test' outlined in *Wehbe v Pittwater [2007] NSWLEC 827*, to argue that compliance with the standard is unnecessary in the circumstance of the case.

### ***Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard***

The applicant argues that the proposed development achieves the objectives of the standard. As outlined in the table below, that position is not accepted.

Objectives	Assessment
<i>to ensure that new buildings are appropriate in relation to the character, amenity and environment of the locality</i>	<p>The submission argues that the scale and form of the proposed development is compatible with the adjoining Mercato shopping complex.</p> <p>The adjoining Mercato shopping complex, as approved, had a floor space ratio of 1.27:1, which complies with the development standard. The proposed hotel building, therefore, is not consistent with the scale of that development.</p> <p>The proposal is also not consistent with the character or amenity of the remainder of the town centre, which contains a majority of two-storey buildings of a scale significantly smaller than the proposed hotel, both in height and bulk.</p> <p>It is reasonable to expect ongoing redevelopment within the town centre to increase building heights in accordance with the maximum building height in place (11.5m), which will lead to increased scale in the centre.</p> <p>However, the applicable floor space ratio (1.3:1) is intended to work in conjunction with the building height control to establish the desired future scale of buildings.</p> <p>The existing development pattern within the town centre is predominantly of a fine grain, with the width of most properties around 15-20m, containing buildings with an active (public) frontage at the street boundary.</p> <p>The proposed development will have a frontage of approx. 60m, with the ground level set back 6.5m from the property boundary, to locate an outdoor dining space (i.e. semi-private).</p> <p>The design, scale and nature of the proposed development, and particularly the significant floor space exceedance is not consistent with either the existing or desired future character of the town centre.</p>
<i>to enable a diversity of housing types by encouraging low scale medium density housing in suitable locations</i>	Not applicable in this case.
<i>to provide floor space in the business and industrial zones adequate for the foreseeable future</i>	<p>The existing development standards, particularly maximum building height and maximum floor space ratio, have been adopted to define the scale of development considered appropriate for the foreseeable future.</p> <p>Council's Business and Industrial Lands Strategy has examined the future need for commercial space within the town centre and concluded that sufficient zoned land exists to cater for those needs, if developed in accordance with the current standards, confirming that the existing floor space standard will provide a level of development adequate for the foreseeable future.</p>
<i>to regulate density of development and generation of vehicular and pedestrian traffic</i>	<p>The additional proposed floor space – 2,261m<sup>2</sup> – would equate to between 50 and 90 rooms (depending on room type).</p> <p>Based on traffic generation rates outlined in the applicant's traffic assessment, this equates to between 10 and 20 peak hour trips.</p> <p>If the additional floor space were total for function or restaurant, it would generate around 117 peak hour trips.</p> <p>Based on these figures, the exceedance of FSR results in a</p>

<b>Objectives</b>	<b>Assessment</b>
	significant traffic generation over what would be considered suitable for development of the site.
<i>to set out maximum floor space ratios for dual occupancy in certain areas</i>	Not applicable in this case.

Given the assessment above, it is considered that the objectives of the standard are not achieved notwithstanding non-compliance with the standard.

***Test 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary***

This test is not relied upon by the applicant. The objective of the standard is very relevant to the proposed development.

***Test 3: The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable***

This test is not relied upon by the applicant. Compliance with the standard would achieve rather than defeat the objective of the control.

***Test 4: The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable***

This test is not relied upon by the applicant. Council has previously exhibited a proposed amendment to Byron LEP which relates to the town centre. Amongst other things, that amendment suggested removing Floor Space Ratio as a standard applicable to the town centre. Council received significant objection to that part of the proposed amendment. At the time of writing this report, Council had not yet considered a report on the submissions received.

***Test 5: The zoning of the particular land on which the development is proposed to be carried out is unreasonable or inappropriate so that the development standard, which is appropriate for that zoning, is also unreasonable or unnecessary as it applies to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary***

The applicant's submission is that the previously exhibited Planning Proposal to amend Byron LEP 2014, which sought to change the zoning of the town centre from B2 Local Centre to B3 Commercial Core, is "an admission by Council that Byron Town Centre is a higher order centre, capable of the most intensive form of urban development in the locality".

The purpose of the proposal to change the zoning was to differentiate the Byron Town Centre from other commercial centres in the Shire, but not specifically to facilitate more intensive development. The original intent of the proposal was to adjust the zoning table to prohibit certain forms of tourist and visitor accommodation, primarily backpacker's accommodation, and to promote greater residential outcomes in the centre, in the form of shop-top housing and other residential uses above commercial development.

As outlined above, Council received a significant level of response to the proposed amendment, and, at the time of writing this report, had not yet considered a report on the submissions received.

***Conclusion:***

The applicant's clause 4.6 submission has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

(b) Clause 4.6(3)(b) – Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

The submission put forward by the applicant is addressed below:

Submission	Comment
<p><i>The development is consistent with the objectives of the Environmental Planning and Assessment Act 1979 by promoting the orderly and economic use and development of the land by delivering new tourist accommodation, function facilities, retail and entertainment offerings. The full utilisation of the site is reasonable given this is commercial zoned land in the Byron Town Centre, where land is at a premium.</i></p>	<p>It is agreed that full utilisation of the site is reasonable within a town centre environment. However, the development standards set within the LEP and DCP are the controls established by Council to determine what “full utilisation” is, in the context of the existing and desired future character of the centre.</p> <p>The contravention of the FSR standard is not justified by the statement provided.</p>
<p><i>The proposed development achieves objectives of the development standard prescribed in clause 4.4 of BLEP 2014 as described in Section 3.4.1 and achieves the objectives of the B2 Local Centre zone as described within Table 3.</i></p>	<p>The objectives are addressed above.</p> <p>It is the conclusion of this report that the development as proposed does not meet the objectives of the standard or the zone for reasons outlined above.</p>
<p><i>The proposed development is located within the core business district of Byron Bay and therefore has an obligation to maximise the commercial and tourist capacity within this precinct. The proposed excess GFA is a necessary function of providing a viable hotel of this calibre with a reputable operator. Whilst the development standard has not been abandoned by Council, the strict application of the FSR would limit the quality and offering of the redevelopment of the site into a modern quality hotel with a number of integrated uses</i></p>	<p>The comment “obligation to maximise the commercial and tourist capacity within this precinct” is addressed above – existing development standards, including FSR, determine the maximum capacity of the town centre.</p> <p>The argument of viability is not an environmental planning ground, and it has not been demonstrated that it is not possible to operate a hotel with a compliant FSR.</p>
<p><i>The increase in FSR results in a built form and activity which is consistent in scale and intensity to existing activities on Jonson Street as the primary commercial precinct. It will not undermine the character and intent for central Byron Bay</i></p>	<p>The proposed development is not consistent with the existing scale and character of buildings within the town centre, much of which contains single or two storey finer grain buildings.</p> <p>The adjoining Mercato shopping complex is the only building in the centre of a similar scale, and that building was approved with a compliant FSR.</p>
<p><i>The additional GFA is unlikely to have an adverse economic impact. The additional tourist accommodation will support existing businesses. The excess GFA is essentially a result of back-of house and ancillary services located in the basement and required to support the hotel. The increased FSR therefore allows for services like housekeeping and commercial kitchen. The additional GFA also allows complementary commercial offers to be accommodated within the development. These include conference facilities and functions and weddings space, supporting and diversifying the tourist economy of Byron Bay.</i></p>	<p>Not agreed.</p> <p>The excess GFA is not necessarily restricted to support parts of the building. A reduction in rooms would, for example, produce a compliant GFA.</p>

Submission	Comment
<p><i>The proposed development maintains the character of the surrounding area with a commercial ground floor that integrates into the pedestrian network with larger footpaths and bicycle infrastructure. With the exception of 70m<sup>2</sup> which is used for storage and bathrooms, all of the GFA is contained below the 11.5m height plane established under clause 4.3 of BLEP 2014. All habitable floorspace is contained within the building envelope established by BLEP 2014</i></p>	<p>As discussed above, it is not agreed that the proposed development maintains the character of the town centre.</p> <p>Not all of the GFA is contained below the 11.5m maximum building height, with some of the roof top recreational/ function space located above that maximum.</p>
<p><i>The proposal is consistent with the use and intensity of built form anticipated in this part of Byron Bay, being the main commercial street of the town. The street parapet height is less than the maximum permitted, and the development is of a similar bulk and scale to the neighbouring development. The perspectives demonstrate that the proposed height to Jonson Street is appropriate and is consistent with the Mercato on Byron Shopping Centre</i></p>	<p>This is addressed above. It is not agreed that the proposed development is consistent with either the existing or desired future character of the town centre.</p>
<p><i>The proposed FSR will have negligible material impacts compared to a compliant scheme in terms of built form, overshadowing, view impacts as:</i></p> <ul style="list-style-type: none"> <li><i>A comprehensive visual analysis has been prepared and submitted with this application. This includes views towards the development from surrounding streets including:</i> <ul style="list-style-type: none"> <li><i>Carlyle Street;</i></li> <li><i>Jonson Street; and</i></li> <li><i>Butler Street.</i></li> </ul> </li> <li><i>When viewed from Jonson Street the proposal will read as a three storey development, which is commensurate to the form and scale anticipated in a town centre environment. Whilst there are components that exceed the building height plane, these are unlikely to be visible from the northern or southern approach. As demonstrated by the section drawings these components are not visible from the opposite side of Jonson Street. Again, we note that only the storage and bathrooms contribute to GFA at the roof level.</i></li> <li><i>On approach from Carlyle Street, the proposal would read as a three-storey building. Whilst glimpses of the components above the height control would be visible, these are predominately attributed with components of the building that do not contribute to GFA.</i></li> <li><i>The perspectives demonstrate that from the northern end of Butler Street, the landscaping on the roof would be visible. It is noted that the perspectives do not include the existing dense</i></li> </ul>	<p>It is not possible to conclude that a compliant scheme would make no difference in terms of the bulk or scale of the buildings as viewed from areas within the town centre.</p> <p>That would depend on the way in which the gross floor area was reduced.</p> <p>The proposal includes approx. 2,261m<sup>2</sup> of floor area above the quantum allowed under the standard. This is a substantial amount of floor area and it is difficult to imagine that a reduction of this scale would not materially affect the overall scale of the building.</p>

Submission	Comment
<p><i>vegetation and trees that separate the site and Butler Street. These are expected to block any view of the proposal from this location.</i></p> <ul style="list-style-type: none"> <li><i>When looking towards the site from the southern end of Butler Street, the perspective demonstrates that the proposal is consistent in form and scale to the neighbouring shopping centre, which suggests the proposed GFA is appropriate on this site. Whilst, the lift overrun and outdoor roof area is visible in the perspective, these components do not contribute to GFA. Notwithstanding, existing dense vegetation and trees are expected to block any view of the proposal from this location</i></li> </ul>	
<p><i>The GFA exceedance does not result in adverse privacy impacts. The proposal has been designed to address the street and provide surveillance of the former railway reserve to the rear. There are no privacy impacts on the adjoining neighbours to the north or south considering openings are not proposed along these elevations and the adjoining uses are commercial</i></p>	<p>Consideration of potential impacts on privacy is not critical to assessment of FSR compliance.</p>
<p><i>The proposed development is located on Jonson Street north of the Mercato on Byron Shopping centre. The proposed development therefore has integrated with the development to the south and is not at risk of creating shadow impacts as it will only shadow the shopping centre. Importantly, the building does not overshadow the street or any sensitive dwellings. To the west the site is adjoined by the former railway corridor which is currently undeveloped, underutilised land that does not have any activity. A three-storey built form is reasonable considering the location of the site and is unlikely to result in any adverse solar impacts on this site</i></p>	<p>It is agreed that a three storey built form is appropriate to this location, and the LEP and DCP controls facilitate this outcome.</p> <p>The lack of shadow impacts, however, does not directly justify exceedance of the FSR control.</p>

The applicant's submission has not presented environmental planning grounds that would justify a contravention of the FSR development standard, particularly to the extent proposed. It would appear that the additional floor space is proposed in order to achieve an economic outcome, linked to the number of hotel rooms provided and the ancillary conference/ restaurant/ recreation areas provided.

In that regard, the submission does not demonstrate why a compliant proposal would not be viable, nor does it present environmental planning grounds that would otherwise justify the significant level of exceedance.

(c) *Clause 4.6(4)(a)(i) – Has the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)?*

The assessment above concludes that the submission has not adequately addressed the relevant matters.

*(d) Clause 4.6(4)(a)(ii) – is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

Given the assessment and conclusions above, it is considered that the proposed development would not be in the public interest, as it is not consistent with the objectives of the FSR standard and the objectives for development within the zone in which the development is proposed to be carried out.

*(e) Clause 4.6(4)(b) – the concurrence of the Planning Secretary*

The concurrence of the Planning Secretary can be assumed in this case.

### **Clause 6.1 – Acid Sulfate Soils**

The property is mapped on the Acid Sulfate Soils Map as Class 3. The application is supported by an acid sulfate soils investigations report and associated management plan.

The investigation report notes that the soils at the site contain both potential acidity and actual acidity, and provides an application rate for the addition of lime to manage soils during construction. Based on that, the report concludes that acid sulfate soils can be adequately managed and that the site is suitable for development.

### **Clause 6.2 – Earthworks**

Clause 6.2(3) requires the consent authority to consider effects and potential impacts on the site and surrounding locality as a result of the proposed earthworks. In this case, earthworks consist of excavation to construct the basement car park.

The matters to be considered are:

*(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*

The excavation for the basement car park is not likely to result in changes to local drainage patterns, given that the building is currently fully developed. Construction of access ramps can be designed to avoid or limit the inflow of stormwater into the basement.

Conventional excavation techniques can be utilised to ensure that the excavation is stable.

*(b) the effect of the development on the likely future use or redevelopment of the land*

The excavation will have no detrimental effect on future land uses.

*(c) the quality of the fill or the soil to be excavated, or both*

A preliminary investigation of potential contaminants indicates the potential presence of radioactive soils, associated with historic sand mining activities. While detailed investigations have not been undertaken, adequate management of these soils could be assured through condition of approval.

*(d) the effect of the development on the existing and likely amenity of adjoining properties*

The excavation will have a temporary impact on local amenity during the construction period, associated with noise, truck movements and the potential for dust. These impacts could be addressed through conditions of approval.

*(e) the source of any fill material and the destination of any excavated material*

The destination for excavated material has not been nominated but could be adequately managed by conditions.

*(f) the likelihood of disturbing relics*

Can be managed by standard conditions.



(g) *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area*

The site is not directly adjacent to a waterway or drinking water catchment. While the excavation itself will not impact on any environmentally sensitive area, the proposed discharge of water obtained through the associated dewatering process has the potential to impact on sensitive wetlands, given that discharge is proposed to an existing Council drain to the west.

Given discharge rates, it would be technically feasible to adequately treat water from the excavation process prior to discharging into the drain, which would minimise impacts. While conditions of approval could manage this issue, the applicant has not addressed the issue in any way.

(h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development*

As outlined above, were the application to be recommended for approval, conditions could adequately manage any potential impacts associated with the proposed excavation.

#### Clause 6.6 – Essential Services

The clause requires that, prior to granting consent to development, the consent authority must be satisfied that the nominated services are available or that adequate arrangements have been made to make them available.

Preliminary assessment, including modelling associated with water supply capacity, indicates that sufficient capacity exists within the current infrastructure to cater for the proposed development. Conditions could adequately address any required infrastructure upgrades.

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

None relevant.

#### 4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the land to which LEP 2014 applies. The DCP 2014 Parts/Chapters that are checked below are of relevance to the proposed development:

Part A	<input checked="" type="checkbox"/>
Part B Chapters:	<input checked="" type="checkbox"/> B2  <input checked="" type="checkbox"/> B3  <input checked="" type="checkbox"/> B4  <input checked="" type="checkbox"/> B5  <input type="checkbox"/> B6  <input type="checkbox"/> B7  <input checked="" type="checkbox"/> B8  <input checked="" type="checkbox"/> B9  <input type="checkbox"/> B10  <input type="checkbox"/> B11  <input checked="" type="checkbox"/> B12  <input checked="" type="checkbox"/> B13  <input checked="" type="checkbox"/> B14
Part C Chapters:	<input type="checkbox"/> C1  <input type="checkbox"/> C2  <input type="checkbox"/> C3  <input type="checkbox"/> C4
Part D Chapters	<input type="checkbox"/> D1  <input type="checkbox"/> D2  <input checked="" type="checkbox"/> D3  <input checked="" type="checkbox"/> D4  <input type="checkbox"/> D5  <input type="checkbox"/> D6  <input type="checkbox"/> D7  <input checked="" type="checkbox"/> D8
Part E Chapters	<input type="checkbox"/> E1  <input type="checkbox"/> E2  <input type="checkbox"/> E3  <input type="checkbox"/> E4  <input type="checkbox"/> E5  <input type="checkbox"/> E6  <input type="checkbox"/> E7

These checked Parts/Chapters have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act.

The proposed development does not meet a number of relevant objectives of DCP 2014, as follows:

<b><i>What Section and prescriptive measure does the development not comply with?</i></b>	<b><i>Does the proposed development comply with the Objectives of this Section?</i></b>	<b><i>Does the proposed development comply with the Performance Criteria of this Section?</i></b>
<i>B2 Preservation of Trees and Other Vegetation</i>	There are no specific objectives in this section.	N/A There is no performance criteria within this chapter.

<b><i>What Section and prescriptive measure does the development not comply with?</i></b>	<b><i>Does the proposed development comply with the Objectives of this Section?</i></b>	<b><i>Does the proposed development comply with the Performance Criteria of this Section?</i></b>
	<p>The Statement of Environmental Effects states that no tree clearing is required for the development. However, there are a number of mature trees located within the property, along the Jonson Street frontage (see <b>Photo 1</b>). It is clear from the plans that these trees will be removed.</p> <p>The applicant has not provided any information addressing the impact of the required tree removal.</p> <p>Council cannot be satisfied that the tree removal is consistent with the requirements of the DCP.</p>	
<p><i>Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access</i></p> <p>B4.2.2 <i>Parking Layout Standards</i></p> <p>B4.2.3 <i>Vehicle Access and Manoeuvring Areas</i></p> <p>B4.2.5 <i>Car Parking Requirements</i></p> <p>B4.2.9 <i>Loading Bays</i></p> <p>B4.2.12 <i>Parking Schedules</i></p>	<p>The applicant has not provided acceptable justification or adequate data to vary Council DCP 2014 Chapter B4 car parking requirements. Therefore, the development does not comply with Council requirements.</p> <p>Council's Development Engineer reviewed the application against the DCP requirements and further undertook a merit based assessment (see commentary above).</p> <p>The total number of spaces proposed fails to satisfy the minimum required.</p>	N/A There is no performance criteria within this chapter.
<i>D3.2.4 Character and Design in Business and Mixed Use Zones</i>	<p>No. The object is "To ensure that tourist accommodation in Business and Mixed Use Zones is compatible with the character and amenity of development in the locality".</p> <p>See assessment above. It is considered that the proposed development is not compatible with the local character and amenity.</p>	No. The performance criterion reflects the objective.
<i>D3.2.6 Hotel or Motel Accommodation</i>	No. The first objective mirrors the objective of section B3.2.4 (above).	No. The first performance criterion reflects the objective. An additional criterion is "Development must be designed

<b>What Section and prescriptive measure does the development not comply with?</b>	<b>Does the proposed development comply with the Objectives of this Section?</b>	<b>Does the proposed development comply with the Performance Criteria of this Section?</b>
		and constructed to minimise noise and vibration impacts on occupants of adjoining or nearby dwellings or buildings". Insufficient information has been provided to demonstrate that the inclusion of the roof-top recreation/ function spaces will not result in noise impacts on nearby residential areas.
<i>D4.2.10 Restaurants, Cafes, Small bars, Pubs Registered Clubs, Function Centres and other Licensed Premises in the Urban Areas of Byron Shire</i>	No. The objectives are (in part) to ensure that such uses do not adversely impact the amenity of the area or generate offensive noise. Insufficient information has been provided to demonstrate that the inclusion of the roof-top recreation/ function spaces will not result in noise impacts on nearby residential areas.	No. The application does not include sufficient information regarding the management of the roof-top function spaces, in relation to noise, patron behaviour etc.

#### 4.5 Any Planning Agreement or Draft Planning Agreement?

	<b>Yes</b>	<b>No</b>
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

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

\* Non-compliances and any other significant issues discussed below

#### 4.7 Any COASTAL ZONE MANAGEMENT PLAN?

	<b>Satisfactory</b>	<b>Unsatisfactory</b>	<b>Not applicable</b>
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

<b>Impact on:</b>	<b>Likely significant impact/s?</b>
<b>Natural environment</b>	The proposal will not have a significantly adverse impact on the natural environment of the immediate locality. However, insufficient information has been provided to demonstrate that the discharge of water associated with dewatering of basement parking excavation would not result in significant negative impacts of coastal wetland areas located to the west of the subject site.
<b>Built environment</b>	Yes. The proposal will have a significantly adverse impact on the built environment of the locality, in that the bulk and scale of the building is inconsistent with the local character.
<b>Social Environment</b>	No. The proposal will not have a significant social impact on the locality.
<b>Economic impact</b>	No. The proposal will not have a significant economic impact on the locality. If approved, the development would create employment during the construction phase and longer term employment once operational in the general hospitality sector.

#### 4.9 The suitability of the site for the development

The site is a serviced, relatively unconstrained property and is suitable for commercial development. However, the assessment above demonstrates that the bulk and scale of the proposed building is inconsistent with the existing and desired future character of the town centre, indicating that the site is not suitable to the development that is proposed in this application.

#### 4.10 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited over the period 30 May 2019 to 26 June 2019.

There were 423 submissions made on the development application, all objecting to the proposal.

The issues raised within the submissions are addressed below:

<b>Issue</b>	<b>Staff Comment</b>
<p>Exceedance of height and floor space standards</p> <p>Bulk and scale of development inappropriate in the context of the town centre</p> <p>Building inconsistent with existing and desired character of Byron Bay</p>	<p>Comments within submissions included:</p> <p><i>This is a big city development being put onto a small town scale streetscape and a village scale street network</i></p> <p><i>The low-scale developments, which are rich and varied in their size and use allow for a rich social fabric, interesting and ever-changing tourist fabric, and an escape from big city development</i></p> <p><i>Such a development, if it went ahead, would risk causing major change to the uniqueness of a town which is known and celebrated all over the world</i></p> <p><i>A single line of glass to cater for a massive buffet restaurant goes against the staggered characteristics of Jonson Street, which at its core is defined by multiple narrow tenancies to create a multi-faceted streetscape that is historic to Byron Bay. This development would set a major precedent for ignoring the established character of the town. A 528m<sup>2</sup></i></p>

Issue	Staff Comment
	<p><i>restaurant tenancy / lobby area does not adhere to the type of environments the town has become characterised by and is therefore damaging to surrounding developments.</i></p> <p>The scale of the building, while consistent with the adjoining Mercato shopping complex, is not consistent with the existing character within the remainder of the town centre.</p> <p>Further, the assessment outlined above demonstrates that the FSR of the proposal significantly exceeds the maximum established for the town centre, indicating that the development is also inconsistent with the desired future character of the town centre.</p>
Noise and amenity impacts associated with roof top facilities	<p>Council's Environmental Health Officer advises that the noise assessment provided in support of the application has not adequately demonstrated that use of the roof-top facilities will not result in noise impacts for nearby residential areas.</p> <p>A number of submitters indicated that they currently hear noise associated with various activities within indoor venues located adjacent to the subject site.</p>
Scale of building will dominate streetscape and shadow pedestrian space	<p>The Jonson Street frontage of the proposed building meets the maximum building height. It is noted, however, that because this is a large, wide site, the building will dominate the street along this frontage, resulting in a significant shift in character from the current single-storey building, which is set back from the boundary, and the single storey 'plaza' development immediately to the north.</p> <p>Existing development within the town centre is of a finer grain, primarily because of more narrow frontages. The design has not attempted to break up the frontage of the proposed building to reflect that finer grain.</p>
No landscaping proposed – site cover does not allow	Landscaping is concentrated within the internal courtyard.
Traffic impacts - quantum of vehicle trips adding to existing congestion	In part, the traffic generation of the proposed development is exacerbated by the significant exceedance of FSR.
Traffic impacts - safety and efficiency of nearby intersections (particularly Carlyle and Jonson Streets)	<p>Given the shared access proposal, traffic safety/amenity impacts have been considered (in part) in association with the recent Land &amp; Environment Court proceedings relating to the adjoining shopping complex.</p> <p>At the time of drafting this report, the outcome of the proceedings is not known. However, the traffic assessments provided to the hearing were based on cumulative traffic volumes associated with the existing Mercato development and the development proposed by this development.</p>

<b>Issue</b>	<b>Staff Comment</b>
	On that basis, it can be assumed that the Court's findings would address the potential for traffic impacts from the development in relation to the local road network in order to ensure that local traffic safety and efficiency is not negatively impacted.
Traffic impacts - safety and efficiency issues already evident at existing shopping complex access, will increase with proposed development	Notwithstanding the above, the configuration of ground level access and movement areas located between the existing and proposed buildings creates significant potential for traffic/ pedestrian conflicts, particularly around existing and proposed service areas and the proposed hotel porte cochere.  Servicing arrangements create a potential for queuing of servicing vehicles within the shared access space, further compounding conflicts and potentially leading to queuing of vehicles on Jonson Street.
Insufficient parking will add to existing on-street parking issues	See parking assessment above. The development is significantly deficient in the provision of car parking and this will result in increased demand for on-street spaces.
Pedestrian connectivity is insufficient, particularly from east side of Jonson Street	The site is located south of the nearest pedestrian crossing on Jonson Street. Pedestrian access within the town centre is being addressed by Council more strategically.
Discharge of water from dewater during construction proposed to a coastal wetland – inappropriate environmental impacts	Discharge is proposed to a Council-maintained drain to the west. While no details have been provided, Council's drainage and flood engineer, having reviewed the total discharge volumes and rates, is of the view that appropriate treatment and detention could be achieved so as to minimise or avoid impacts on the coastal wetland to the west.
Contamination issues - site was location used for stockpiling associated with sand mining	The contamination assessment notes the presence of such soils. Appropriate treatment/ management/ disposal methods are available to address the soils. Conditions of consent could adequately deal with this issue.
Currently, there is not a large, branded hotel in the Byron Bay CBD. Hence, there are numerous small, boutique, individual accommodation choices that are for the most part, locally owned. This is a game changer that has the potential to put some, if not many, of these small businesses out of business. It has the potential to bring in large groups of tourists that does not currently happen - because there isn't the type of accommodation to service them. The social and economic impacts of this type of accommodation needs to be adequately assessed and they have not been	Work undertaken for Council's Draft Sustainable Visitation Strategy 2020-230 indicates that, in 2019, the majority of tourist accommodation is in the form of holiday houses, which account for 40% of all bed spaces in the Shire.  Hotels account for only 5% of the total bed spaces.  The Draft Strategy indicated that current visitor numbers are around 2.2 million people staying for a total of 5.5 million nights. The draft forecasts that this will grow to around 3.86 million visitors and 8.5 millions visitor nights if current trends continue.  This suggests that there is strong demand for additional hotel accommodation and that the proposed hotel would be unlikely to detrimentally impact on

Issue	Staff Comment
	existing businesses.
Precedent set by allowing additional height and floor space	<p>As outlined above, the exceedance of maximum building height could be justified in the circumstances. Allowing the height exceedance would not, in itself, set precedence, as each proposal would continue to be assessed based on its merits, in accordance with the provisions of clause 4.6 of the LEP.</p> <p>The exceedance of FSR, however, cannot be justified in this case. Allowing such exceedance would therefore set a precedent on the basis that it cannot be justified by the individual circumstances of this application.</p>
Byron already has problems with too much tourism eroding community – don't need more	<p>As outlined above, Council's draft Sustainable Visitation Strategy 2020-2030 forecasts continued significant growth in tourism. Based on the current supply mix, that would generate continued strong demand on Airbnb and similar holiday home platforms.</p> <p>The draft Strategy recommends actions to increase the proportion of 'professional;' and 'business' tourist offerings, as a way to minimise the growth of holiday homes and change the type of tourist visiting.</p> <p>Council and the community have very limited opportunities to impact tourist numbers – Byron Bay will continue to be very attractive to visitors for the foreseeable future. Reducing the impacts of tourism, therefore, is the focus of the draft Strategy, and increasing hotel beds (as a proportion of total beds) is one way Council has identified to achieve this.</p>
<p><b>Public Interface on Jonson St</b></p> <p><i>The entire eastern frontage of the building is primarily concerned with private usage. This results in an entire street area in-front of the proposed hotel that is ostracised from the public realm - creating a large section of negative space to the Jonson Street facade - residents don't want to engage with 50 meters of straight glass revealing tourists shovelling their breakfast, nor do the tourists want to feel like they are in a fishbowl scenario being scowled at by locals because they are in an environment that the locals resent. The design fails at both ends of the spectrum here.</i></p>	<p>The design provides an "open" frontage to Jonson Street, in the form of an outdoor dining area. While this does provide an active street front, it will be less "welcoming" than other retail uses of the main street, in that it will clearly be recognised as for patrons only, as opposed to retail shop fronts where the public is more able to enter to "browse".</p> <p>There is, however, nothing in the application to indicate that the restaurant would be restricted to hotel guests only, so it would be just as likely to see locals "shovelling their breakfast" as tourists.</p>
<p><i>The building imagery is unrealistically concealed in greenery where as the current reality of such images is that the building will be a comparatively dry environment. Developers and Architects must ensure there is sufficient soil for the amount of plants being shown as we genuinely intend to incorporate</i></p>	<p>A number of submitters expressed similar concerns, based on a general perception that the adjacent Mercato shopping complex has turned out somewhat different to the plans and artists' perspectives of that development, particularly relating to landscaping and 'softening' of the building.</p> <p>In this case, it is considered that the elevations,</p>

<b>Issue</b>	<b>Staff Comment</b>
<i>them in the design. As the drawings are now, plants are a temporary cover-up that will be substantially reduced by construction.</i>	rendering and perspectives are generally 'realistic', other than the front elevation not showing the extent of driveway required for the basement car park.

#### **4.11 Public interest**

The proposed development contravenes Council's adopted development standards and controls without sufficient justification and approval will set a precedent for similarly inappropriate development within land zoned B2 Local Centre in Byron Bay Town Centre. The proposed development is not in the public interest.

### **5. DEVELOPER CONTRIBUTIONS**

#### **5.1 Water & Sewer Levies**

Section 64 levies would be payable, should the development be approved.

#### **5.2 Section 7.11 Contributions**

Section 7.12 Contributions would be payable, should the development be approved.

### **6. CONCLUSION**

The proposed development is not consistent with development standards within Byron Local Environmental Plan 2014, specifically maximum building height and maximum floor space ratio.

The result is a proposed building that would be inconsistent with the scale and character of existing development in the town centre and inconsistent with the desired future character.

Design of the building creates a number of significant access and movement issues, with potential pedestrian and vehicle conflicts and potential for queuing onto Jonson Street in peak times.

The proposed development is inconsistent with a number of provisions of Byron Development Control Plan 2014, notably in relation to parking and access, and is not considered to be in the public interest.

Insufficient information has been provided to demonstrate that the discharge of water associated with dewatering of basement parking excavation would not result in significant negative impacts of coastal wetland areas located to the west of the subject site.

### **7. RECOMMENDATION**

It is recommended that, pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, development application no. 10.2018.650.1 for Mixed Use Development for Tourist and Visitor Accommodation (Hotel 146 Rooms), Function Centre and Food and Drink Premises, be refused for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development contravenes the Floor Space Ratio development standard at clause 4.4 of the *Byron Local Environmental Plan 2014*, and the applicant's submission pursuant to clause 4.6 of the LEP has failed to provide adequate environmental planning grounds to justify the extent of contravention.
2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal has not adequately demonstrated that the safety, efficiency and ongoing operation of the adjoining classified road will not be adversely affected by the development as a result of the design



of vehicular access to the site, contrary to Clause 101 of *State Environmental Planning Policy (Infrastructure) 2007*.

3. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal has not adequately demonstrated that areas mapped as Coastal Wetland and/ or proximity to Coastal Wetland would not be adversely impacted by dewatering activities associated with construction of the proposed development.
4. Pursuant to Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not satisfy all the relevant matters for consideration within Byron Shire Development Control Plan 2014, particularly in relation to:
  - Chapter B2 Preservation of Trees;
  - Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access, particularly Parts B4.2.3 Vehicle Access and Manoeuvring Areas and B4.2.5 Car Parking Requirements;
  - Chapter D3 Tourist Development, particularly Part D3.2.4 Character and design in Business and Mixed Use Zones and D3.2.6 Hotel or Motel Accommodation; and
  - Chapter D4 Commercial and Retail development, particularly Part D4.2.10 Restaurants, Cafes, Small bars, Registered Clubs, Function Centre and other Licensed Premises in the Urban Areas of Byron Shire.
5. Pursuant to Section 79C(1)(b) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been submitted to demonstrate that dewatering activities associated with the construction of the proposed development will not result in significant impacts on the natural environment in the local area.
6. Pursuant to Section 79C(1)(c) of the *Environmental Planning and Assessment Act 1979*, it is considered that the site is not suitable for the scale of development as proposed, given the contravention of the development standards regarding building height and floor space ratio.
7. Pursuant to Section 79C(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the public interest having regards to the level of community objection to the subdivision and the number of outstanding issues raised in the assessment.