

COUNCIL ASSESSMENT BRIEFING REPORT TO PANEL

NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PAN-225655, 1012/22DA
PROPOSAL	Eco-tourist facility over \$5 million
ADDRESS	Lot 21 DP 869885 97 Sealy Lookout Drive, Coffs Harbour 2450
APPLICANT	Clark Webb on behalf of Bularri Muurlay Nyanggan Aboriginal Corporation
OWNER	Bularri Muurlay Nyanggan Aboriginal Corporation
DA LODGEMENT DATE	26/05/2022
APPLICATION TYPE	Development Application (Integrated Development)
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19(1) and Clause 6 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as: Eco-tourist facilities over \$5 million
CIV	\$7,568,000.00 (excluding GST)
CLAUSE 4.6 REQUESTS	Coffs Harbour Local Environmental Plan 2013 (CHLEP 2013) Clause 4.3 Height of Buildings
LIST OF ALL RELEVANT PLANNING CONTROLS (S4.15(1)(A) OF EP&A ACT)	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>, • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>, • <i>State Environmental Planning Policy (Planning Systems) 2021</i>, • <i>Coffs Harbour Local Environmental Plan 2013 and</i>, • <i>Coffs Harbour Development Control Plan 2015</i>
AGENCY REFERRALS	N/A
TOTAL & UNIQUE SUBMISSIONS	Twenty (20) submissions were received, of which eighteen (18) objected to the application and two (2) raised concerns
KEY ISSUES	<ul style="list-style-type: none"> • Bushfire-prone land • Building height • Slope • Aboriginal heritage • Access road (Sealy Lookout Drive)

DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Architectural plans prepared by Walknorth Architects, dated 04/04/2022 • Bushfire Hazard Assessment Addendum for Radiant Heat at Refuge prepared by BlackAsh, dated 02/08/2022 • Concept Engineering Report prepared by Northrop, dated 18/03/2022 • Clause 4.6 Request for Variation to Height of Building Standard prepared by Keiley Hunter Town Planning, dated 17/05/2022 • Site Contamination Report prepared by Regional Geotechnical Solutions, dated 25/01/2022 • Cost Report prepared by Del Consultants Pty Ltd, dated 10/05/2022 • Design Verification Statement prepared by Walknorth Architects, dated 05/2022 • Geotechnical Investigation Report prepared by Regional Geotechnical Solutions, dated 25/01/2022 • Aboriginal Cultural Heritage Assessment Report prepared by Everick Heritage, dated 13/12/2021 • Landscape Concept Plan prepared by Myrtle Studio, dated 20/04/2022 • Statement of Environmental Effects prepared by Keiley Hunter Town Planning, dated 17/05/2022 • Traffic Impact Assessment prepared by George Stulle Traffic Engineering, dated 12/2022 • Waste Management and Minimisation Plan prepared by Walknorth Architects, dated 11/05/2022
PREVIOUS BRIEFINGS	N/A
PLAN VERSION	4 April 2022 Version B
ASSESSMENT STATUS	Recommended for approval, subject to conditions (Attachment A)
PREPARED BY	Luke Perry, Section Leader Development Assessment
DATE OF REPORT	20 October 2022

1. THE SITE AND LOCALITY

1.1 The Site

The site is legally referred to as Lot 21 DP 869885 and known as 97 Sealy Lookout Drive, Coffs Harbour, NSW 2450. Refer to Location Plan at Figure 1 and view of site at Figure 2 below.

Currently vacant, the site has an area of 3.59 ha. The area is characterised by steep topography. The site is situated on the north facing slopes of a generally east to west trending ridge. There is a drainage gully running south-west to north-east through the site. Generally,

the site grades at approximately 20 to 25 degrees from top to bottom. Localised steep slopes exist across the site with some grades in the order of 45 degrees. The upper portion of the site, where the main eco-tourist facility infrastructure is proposed, grades from about 5 degrees along the ridge up to about 20 degrees with localised steeper areas.

Vegetation located on the site is a combination of native and introduced species. Banana plantings are prominent from a previous banana plantation. The north-eastern boundary is adjacent to Bruxner Park Road, whilst the south-western boundary is adjacent to Sealy Lookout Drive. The proposed works will take place on the south-western portion of the site with access from Sealy Lookout Drive.

The site is identified as bushfire-prone and has therefore been referred to the RFS in accordance with the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the *Rural Fires Act 1997*.

The site is 7 kilometres north of the Coffs Harbour town centre, which provides access to retail, commercial and entertainment facilities.



Figure 1: Location Plan, site outlined in red (Source: SixMaps)



*Figure 2: Looking south-west towards the site from Coachmans Close, Korora
(Source: Keiley Hunter Town Planning)*

1.2 The Locality

The entire site is zoned R5 Large Lot Residential. The surrounding area is predominantly zoned R5 Large Lot Residential, interspersed with areas of C2 Environmental Conservation zoned land. The south-western border of the site is adjacent to an area zoned RU3 Forestry. Refer Zoning Map at figure 5 below.

The surrounding lots to the north, east and west have been developed with detached dwellings with ancillary structures on each lot. There are two short-term accommodation facilities located approximately 600m south-east of the site, accessible via Bruxner Park Road.

The Bularri Muurlay Nyanggan Aboriginal Corporation, the landowner of the site, has other facilities in the adjacent Orara East State Forest, namely the Giingan Gumbaynggirr Cultural Experience and the Nyanggan Gapi café that operates from Niigi Niigi (Sealy Lookout).

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for the development of an eco-tourist facility. Specifically, the proposal involves:

- Removal of vegetation to make way for the proposed building footprint
- Construction of:
 - eighteen (18) cabins and two (2) accessible cabins, including:
 - Kitchen facilities
 - Bathroom facilities including incineration toilets
 - Outdoor open space
 - Communal hall (340m²) comprising an administration area, bushfire refuge, night manager's office, communal bathroom facility, back of house facilities, storage area, garbage and electric cart (buggy) store
 - Pool, open deck and outdoor seating area
 - 31 car parking spaces (including two (2) accessible spaces)
 - Plant room
 - Vehicle and pedestrian accessways
 - Landscape planting and retaining
 - Infrastructure and services including underground water tanks and drainage systems.

The proposed development is to be staged. Stage 1 in the Statement of Environmental Effects prepared by Keiley Hunter Town Planning and submitted with the DA includes the works described above. Stage 2 will consist of a site workshop, machinery store, access driveway, onsite parking for operational staff and associated amenities accessed via Brunxer Park Road.

The key development data for the proposal is provided in Table 1. An artist's impression of the proposed development is at Figure 3 below. The architectural plans are at Attachment B.

Additional works/activities are proposed within the adjacent land (Sealy Lookout Road) which is owned by Forestry Corporation. These works have been approved pursuant to Part 5 of the EPA Act and consist of:

The main elements of the activity are:

1. Cultural knoll meeting place/interpretive area.
2. Cultural interpretive pathway (accessible)
3. Seven (7) car parking spaces
4. Waste collection – (garbage collection point only)
5. Two (2) traffic calming (flat top road humps) to Sealy Drive at the commencement and mid-section of the cultural reserve.
6. 4 m wide sealed vehicular entry and exit to Lot 21 in DP869885
7. Signage to Lot 21 in DP869885. Subject to approval from FCNSW

Table 1: Key Development Data

Control	Proposal
Site area	11,110m ² of 34,900m ² (Development is taking place on the 'Inner Protection Zone' which totals 11,110m ² of the site area). Refer Figure 4 below.
GFA	1,240m ²
FSR	0.3553:1
Clause 4.6 Requests	Yes – seeking variation to height of buildings
No. of dwellings	20 cabins (and one communal hall)
Max Height	9.95m
Landscaped area	9,870m ² of the inner protection zone (88.84%)
Car Parking spaces	24 (including 2 accessible spaces)
Setbacks	16m front setback and 5m side setback

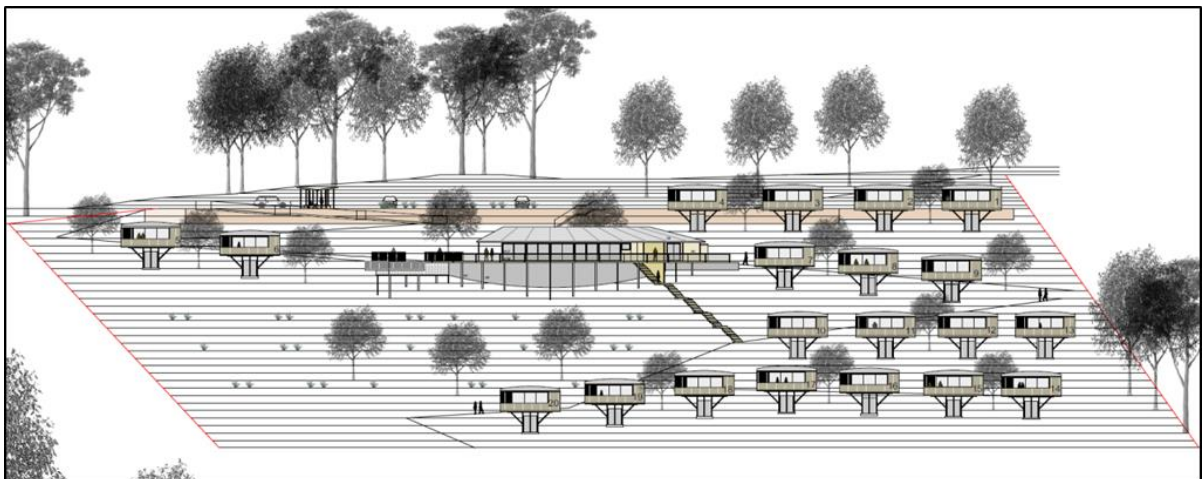


Figure 3: Artist's impression of proposed development (Source: Walknorth Architects 2022)

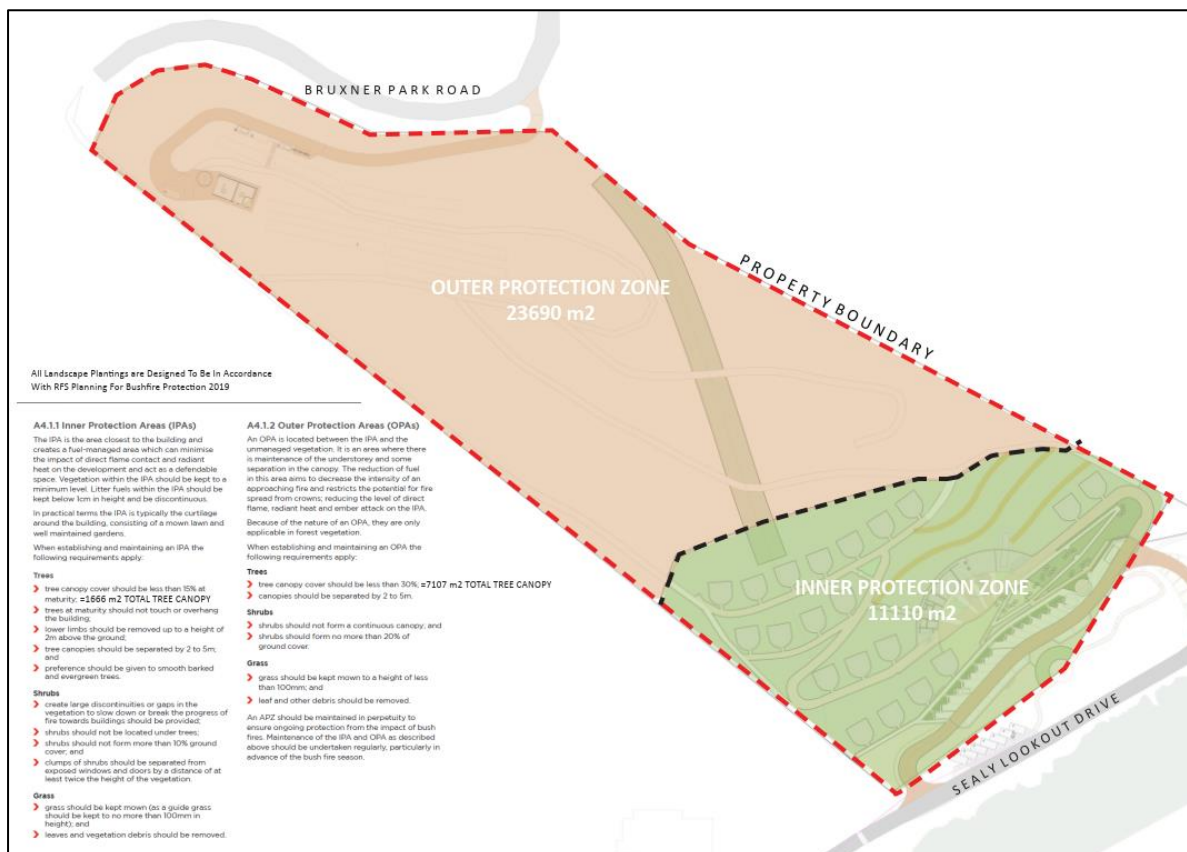


Figure 4: Landscape Plan: L101 Asset Protection Zones (Source: Myrtle Studio))

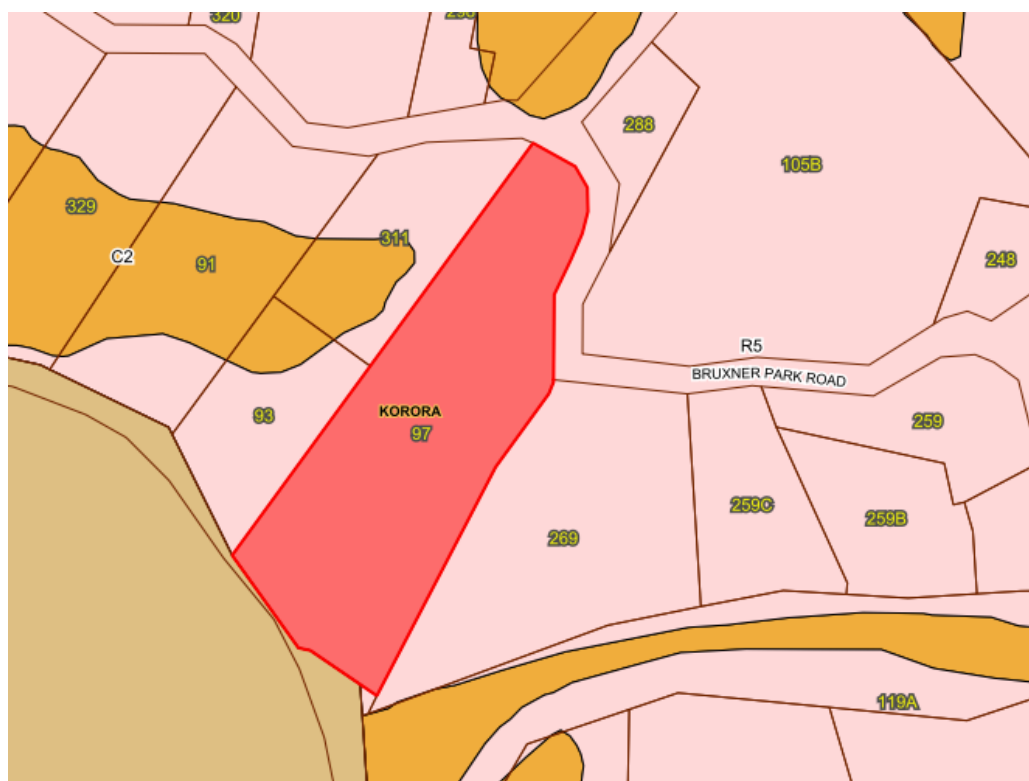


Figure 5 - Land Zoning Map CHCCLEP

2.2 Background

The development application was lodged on 26 May 2022. A chronology of the development application since lodgement is outlined in **Table 2**.

Table 2: Chronology of the DA

Date	Event
7 June 2022	DA referred to RFS
25 June 2022	Exhibition of the development application
25 July 2022	Exhibition closing date
11 July 2022	Request for Information from Council to applicant
Select Date	Northern Regional Planning Panel briefing

2.3 Site History

The site has been subject to two previous development applications. The Coffs Harbour City Council development application tracker has record of applications 1436/15DA and 0814/18DA being withdrawn by the delegated authority, which were for a “new dwelling”, and a “dwelling and swimming pool” respectively. No reasons are given as to why these developments were withdrawn.

It is noted in the Statement of Environmental Effects prepared by Keiley Hunter Town Planning, that the site was previously used for agricultural purposes, specifically a banana plantation. These activities ended in the early 2000’s and resulted in minor contamination of land due to the ongoing use of pesticides. There is remaining vegetation from this activity in the north-west portion of the site, and the submitted Contamination Investigation Report revealed that pesticides had left remnants of arsenic in the soil.

Works within the adjoining Forestry Corporation land are subject to a separate Review of Environmental Factors (dated 16 May 2022) and Part 5 approval for “*clearing and construction works to establish a cultural reserve including an access driveway to the associated Yilaami Eco Tourist Facility which is to be constructed within Lot 21 869885 subject to a separate Part 4 development approval*”.

3. PLANNING CONTROLS

The site is located within the R5 Large Lot Residential zone pursuant to Clause 2.3 of *Coffs Harbour Local Environmental Plan 2013* (CHLEP 2013) (refer Zoning Map at **Error! Reference source not found.**). Eco-tourist facilities are permissible in the zone with consent. The proposal is consistent with the zone objectives, which are:

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*

- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

A summary of the key matters for consideration and non-compliances arising from the relevant Environmental Planning Instruments (EPIs) are outlined in **Table 3** below. The pre-conditions to the granting of consent have been considered and are outlined in bold.

Table 3: Summary of Key Matters in the Relevant EPIs

EPI	Matters for Consideration	Comply (Y/N)
<i>State Environmental Planning Policy (Biodiversity & Conservation) 2021</i>	<p><u>Chapter 2: Vegetation in non-rural areas</u></p> <p>This chapter applies to R5 zoned land.</p> <p><i>Part 2.2 Clearing vegetation in non-rural areas</i> 2.6 Clearing that requires permit or approval (1) A person must not clear vegetation in a non-rural area of the State to which Part 3 applies without the authority conferred by a permit granted by the council under that Part.</p> <p>Part 3 applies to Koala habitat protection. The land is not Koala habitat.</p> <p><i>Part 2.3 Council permits for clearing of vegetation in non-rural areas</i> 2.9 Vegetation to which Part applies (1) This Part applies to vegetation in any non-rural area of the State that is declared by a development control plan to be vegetation to which this Part applies.</p> <p>The site does not contain vegetation declared by a DCP to be vegetation to which this part applies.</p>	Y
<i>State Environmental Planning Policy (Planning Systems) 2021</i>	<p><u>Chapter 2: State and Regional Development</u></p> <p>Section 2.19(1) declares the proposal to be regionally significant development pursuant to Clause 6 of Schedule 6 as it is an eco-tourist facility with a capital investment value of more than \$5 million.</p>	Y
<i>State Environmental Planning Policy (Resilience & Hazards) 2021</i>	<p><u>Chapter 4: Remediation of Land</u></p> <p>Contamination and remediation have been addressed in the Site Contamination Report prepared by Regional Geotechnical Solutions. Council's contaminated land engineer has considered the proposal and found the site to be suitable for the proposed land use. The proposal is satisfactory subject to compliance with the recommended mitigation measures set out in the Site</p>	Y

EPI	Matters for Consideration	Comply (Y/N)
	Contamination Report, which are to be applied as conditions of consent.	
<i>Coffs Harbour Local Environmental Plan 2013</i>	<u>Clause 4.3 Height of buildings</u> The proposed development has a maximum building height of 9.95m. This does not comply with the maximum building height control of 8.5m. This variation is discussed further below.	N
	<u>Clause 4.4 Floor space ratio</u> There is no prescribed floor space ratio for the site.	Y
	<u>Clause 4.6 Exceptions to development standards</u> The applicant is proposing a variation to Clause 4.3 Height of buildings of the CHLEP 2013 which sets a maximum height of 8.5m for a building on the site. The proposed maximum building height of the communal building is 9.95m measured from natural ground level, which is a 17% exceedance of the height limit. All other buildings on site comply with the maximum height limit. The communal building is to be single storey only, however it will be set on a steeply sloping part of the site. Where the maximum height of building is exceeded, the distance from the finished floor level to the ridge is 2.8m. This indicates that the building has been designed to minimise any impacts caused by the height of the development, however due to its location on a steep slope, the height limit is exceeded. Following a review of the proposed development and the potential impacts of the height exceedance, it is considered that it will not result in adverse visual or other impacts. The development achieves the objectives of Clause 4.3 without complying with the standard mapped in the 'Height of buildings' map. The variation is therefore deemed acceptable in this instance, as compliance with the development standard is considered unnecessary in the circumstances affecting the proposal.	Y
	<u>Clause 5.13 Eco-tourist facilities</u> The development is an 'eco-tourist facility' which is permissible with consent in the R5 Large Lot Residential zone. <i>An eco-tourist facility means a building or place that –</i> <ul style="list-style-type: none"> (a) <i>Provides temporary or short-term accommodation to visitors on a commercial basis, and</i> (b) <i>Is located in or adjacent to an area with special ecological or cultural features, and</i> 	Y

EPI	Matters for Consideration	Comply (Y/N)
	<p>(c) <i>Is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.</i></p> <p>(1) <i>The Objectives of clause 5.13 are as follows –</i></p> <p>(a) <i>to maintain the environmental and cultural values of land on which development for the purposes of eco-tourist facilities is carried out,</i></p> <p>(b) <i>to provide for sensitively designed and managed eco-tourist facilities that have minimal impact on the environment both on and off-site.</i></p> <p>The proposal meets the definition and objectives of Clause 5.13 as it will provide short-term accommodation to visitors, is located in an area with special cultural features and is sensitively designed and located to minimise its footprint and impact.</p> <p>Conditions of consent are applied to ensure the environmental and cultural values of the land are protected, including amongst others, conditions related to stormwater and drainage design, road design and services, erosion and sediment control measures, construction impacts, retaining walls and a Plan of Management.</p>	
	<p><u>Clause 5.16 Subdivision of, or dwellings on, land in certain rural, residential or conservation zones</u></p> <p>The land use proposed by the applicant is considered to be compatible with the surrounding uses. It is unlikely to have any adverse impacts upon neighbours in the vicinity of the site as neighbouring housing is low-density on large lot residential lots.</p> <p>There are three dwellings within 200m of the site, however these are considered to be of sufficient distance away not to be significantly impacted by the proposal. In addition, where there is the potential for impacts, appropriate mitigation measures can be provided to address these potential impacts.</p>	Y
	<p><u>Clause 7.2 Earthworks</u></p> <p>The proposed earthworks have been considered by Council's development engineer and deemed suitable, subject to the application of conditions of consent.</p>	Y
	<p><u>Clause 7.11 Essential Services</u></p> <p>The applicant has proposed the provision of essential services, including water, electricity, sewage management, stormwater management and vehicular access. Internal Council referrals have confirmed the suitability of proposed site servicing, subject to the application of conditions of consent.</p>	Y

EPI	Matters for Consideration	Comply (Y/N)
Coffs Harbour Development Control Plan 2015	Part D – Built Form Controls	
	<p><u>D4.1 Setback Requirements</u> - The minimum setback for developments on land zoned R5 Large Lot Residential is 10m from the front boundary and 5 metres from the side boundary. The proposed development has a 16m front setback and a 5m minimum side setback. The development is compliant with section D4.1.</p>	Y
	<p><u>D4.2 Design Requirements General</u> - The development meets the requirements of D4.2. The design is compatible with the large lot residential character of the area and minimises direct overlooking by utilising appropriate setbacks from the side boundaries of the site. Building design and height have been appropriately integrated into the site so as not to disturb existing view corridors and to minimise visual impacts. The development achieves variety in built form by incorporating decks, natural/traditional materials and natural colours. The design addresses the slope of the site appropriately.</p> <p>The proposed retaining walls have been assessed by Council's engineer and determined to be appropriate, subject to compliance with conditions of consent.</p>	Y
	<p><u>D4.4 Infrastructure Requirements</u> – There is no reticulated water or sewer available to the site. Tank water supply and on-site management and disposal of wastewater are proposed. All toilets will be incinerator type toilets that generate a small amount of ash waste to be composted or disposed of via the waste collection. Grey water is treated on site via septic and transpiration trenches located in the lower part of the site. Solar electricity with battery backup will be provided as the site will not be connected to mains electricity.</p> <p>These infrastructure arrangements have been determined by Council's engineers to be suitable for the site, subject to the application of conditions of consent.</p>	Y
	<p><u>D4.5 Access and Parking Requirements</u> - The development must comply with F1 Access and Parking – refer below.</p>	Y
	<p><u>D4.6 Landscaping Requirements</u> - The development must comply with F3 Landscaping - refer below.</p>	Y
	<p><u>D4.7 Ancillary Development Requirements</u> - Ancillary development is appropriately incorporated to mitigate visual impacts.</p>	Y
	<p><u>D4.8 Accessibility Requirements</u> - Two cabins are accessible in accordance with the NCC (BCA D3.1 General Building Access</p>	Y

EPI	Matters for Consideration	Comply (Y/N)
	Requirements). Each of these cabins is able to be accessed via an access ramp which connects to a dedicated disabled car parking space. An accessible ramp also links each cabin and car park with the communal building.	
	<u>D4.9 Safer by Design Requirements</u> – The development provides surveillance opportunities from the cabins and communal buildings, along paths and into open spaces on the site. The cabins are clearly for the use of the guests they are assigned to for the duration of their stay.	Y
	<u>D4.12 Signage Requirements</u> - The development must comply with F5 Signage - refer below. [There is one sign noted on the site plan but no details of it]	XX
	<u>D4.13 Water Management Requirements</u> – Compliance is required with council's development specifications for stormwater and water sensitive urban design guidelines. Council's engineer is satisfied with the proposed water and stormwater arrangements for the development, subject to compliance with conditions of consent.	Y
	<u>D4.14 Erosion and Sediment Control Requirements</u> - An Erosion and Sediment Control Plan has been submitted with the application. Conditions of consent with regard to erosion and sediment control measures will be applied.	Y
	<u>D4.18 Contaminated Land Requirements</u> - The development must comply with E3 Contaminated Land – refer below.	Y
	<u>D4.19 Heritage Requirements</u> - The development must comply with F2 Heritage Conservation – refer below.	Y
	Part E – Environmental Controls	
	<u>E3 Contaminated Land</u> - Council's environmental engineer has assessed the applicant's submitted Site Contamination Report and further information provided by the applicant and considers the site suitable for the eco-tourism land use.	Y
	Part F – General Development Controls	
	<u>F1 Access and Parking</u> – Sufficient vehicle manoeuvring areas are required to be provided. Driveway width and grades, vehicle circulation, passing bays and vehicular ramp width and grades are to be in accordance with Australian Standard 2890. Vehicles must be able to enter and leave the site in a forward direction.	Y

EPI	Matters for Consideration	Comply (Y/N)
	<p>Council's engineer has considered the proposal and determined that the proposed access and parking arrangements will be suitable, subject to conditions of consent.</p> <p>The applicant's engineer has acknowledged works are required to Sealy Lookout Drive. Council recognises there are safety issues associated with the intersection of Sealy Lookout Drive and Bruxner Park Road.</p> <p>Conditions are applied requiring that, prior to issue of a Construction Certificate, the following must be carried out:</p> <ul style="list-style-type: none"> • a road safety audit on Sealy Lookout Drive, and the intersection of Bruxner Park Road and Sealy Lookout Drive incorporating a traffic study, and • a separate recommendations report. <p>Both are to be submitted to and approved by Council. All works identified in the road safety audit and recommendations report are to be included in the Civil Works Construction Certificate. Forestry Corporation, as the landowner of Sealy Lookout Drive, will be required to sign the Civil Works Application. All works identified in the road safety audit and recommendation report are to be completed prior to the issue of an occupation certificate.</p>	
	<p><u>F2 Heritage Conservation</u> – Aboriginal objects and places of heritage significance are required to be conserved. The impacts of development on Aboriginal heritage must be adequately considered.</p> <p>An Aboriginal Cultural Heritage Assessment Report (ACHAR) has been prepared by Everick Heritage Pty Ltd and submitted with the application. This makes recommendations with regard to artefacts that have been found on the site. It also recommends a procedure to be followed should any Aboriginal human remains be found during earthworks.</p> <p>The ACHAR documents the consultation that was undertaken with five Aboriginal parties on site, which lead to the recommendations by Everick Heritage. All of the parties agreed during consultation that the artefacts should be put on display in a cabinet on-site. Two of the parties have now lodged submissions as they have changed their view on this approach. However, the three remaining parties are still in agreement. Council considers that based on the majority of parties agreeing, and the need to collect the artefacts during construction and relocate them, the approach proposed by Everick Heritage is appropriate.</p>	Y
	<p><u>F3 Landscaping</u> – Landscaping is required to protect, enhance and maintain key features of the natural environment. Plant selection is encouraged that is sensitive to local climate, topography and natural features.</p>	Y

EPI	Matters for Consideration	Comply (Y/N)
	The submitted Landscape Plan has been assessed by Council's Biodiversity Services. This assessment has determined that as the site has a long history of past disturbance and minimal natural ecology values remain, it is considered that the Landscape Plan will add much needed vegetation cover. The Landscape Plan is to be a condition of consent to ensure it is implemented.	
	<p><u>F6 Waste Management</u> – Waste is required to be appropriately separated to assist with collection and management of waste. Waste management systems are to be compatible with collection services.</p> <p>The proposal has been assessed by Council's Waste Services and found to be suitable subject to the application of conditions of consent.</p>	Y

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to the RFS for concurrence as required by the EP&A Act and outlined below in **Table 4**.

Table 4: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
N/A			
Referral/Consultation Agencies			
N/A			
Integrated Development (s4.46 of the EP&A Act)			
RFS	S100B - <i>Rural Fires Act 1997</i> bushfire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes.	Consultation with the RFS has been ongoing throughout the RFS' consideration of the application. The RFS has advised that it supports approval of the application subject to General Terms of Approval with regard to Asset Protection Zones, Bush Fire	Y

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
		Emergency Management and Evacuation Plan, construction standards, internal access roads, water and utilities services, and landscaping.	

4.2 Council Referrals

The development application has been referred to various Council officers for technical review as outlined in **Table 5**.

Table 5: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's engineer has reviewed the application and this aspect of the development is considered satisfactory, subject to the application of conditions of consent.	Y
Flora and Fauna	Council's Biodiversity Services have reviewed the application and this aspect of the development is considered satisfactory, subject to the application of conditions of consent.	Y
Waste Disposal	Council's Waste Services have reviewed the application and this aspect of the development is considered satisfactory, subject to the application of conditions of consent.	Y
Finance	The Section 7.11 contribution is currently \$183,625.11. Contributions have been imposed under the following plans; <ul style="list-style-type: none"> • Coffs Harbour Open Space 2019, • Coffs Harbour Road Network 2019, • Surf Rescue Facilities 2019, and • Coffs Harbour Administration Levy 2019. 	Y [Note: referral states that figures valid till 27 July – after that CPI check required]
Contaminated Land	Council's Contaminated Land Services have reviewed the application and this aspect of the development is considered satisfactory, subject to the application of conditions of consent.	Y
Local Planning WSUD	Council's Water Sensitive Urban Design Services have reviewed the application and this aspect of the development is considered satisfactory, subject to the application of conditions of consent.	Y

Officer	Comments	Resolved
Effluent Disposal	Council's Effluent Disposal Services have reviewed the application and this aspect of the development is considered satisfactory.	Y

4.3 Community Consultation

The proposal was notified in accordance with the *Coffs Harbour City Council Community Participation and Engagement Plan* from 25 June 2022 until 25 July 2022. A total of 20 unique submissions, comprising 18 objections and two submissions raising concerns regarding the proposal, were received.

The issues raised in these submissions included the following:

Issue	Council Comment
The proposed development does not comply with the definition of eco-tourism.	<p>Under the CHLEP 2013, <i>eco-tourist facility means a building or place that –</i></p> <ul style="list-style-type: none"> (a) <i>provides temporary or short-term accommodation to visitors on a commercial basis, and</i> (b) <i>is located in or adjacent to an area with special ecological or cultural features, and</i> (c) <i>is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.</i> <p>The proposed development will provide short-term accommodation to visitors on a commercial basis. The site is located in an area with special cultural features. The built elements of the proposed development are considered to be sensitively designed with regard to bulk and scale. The height of the buildings complies with the CHLEP 2013 with the exception of the communal building. A Clause 4.6 variation report has been submitted with the application and has conveyed to a satisfactory degree that the variation in height is justified and will cause no adverse impacts. This is discussed further in section 3 of this assessment report.</p>
The proposed development is not in keeping with the context and character of the surrounding area.	The development has utilised design features, materials and colours, as well as layout of the development, to complement the natural environment on and surrounding the site. As discussed in section 3, the development satisfies the requirements of the Coffs Harbour DCP 2015, including being suitable within its context in the R5 Large Lot Residential zone.

Issue	Council Comment
The proposed development will have a substantial visual impact upon surrounding residences.	The design elements of the development have been assessed against the relevant provisions of the CHLEP 2013 and CHDCP 2015 and found to be appropriate to the site. The development is permissible within the zone and complies with the development standards with the exception of the building height limit. The non-compliance with the height limit has been considered and determined to be acceptable in the context of the site and surrounds. Refer to section 3 of this report.
The proposed development will have a substantial noise impact upon surrounding residences.	The site's use as an eco-resort is not considered to be an activity that is known for generating excessive or offensive noise. A Plan of Management is to be submitted to Council and approved prior to the issuing of an occupation certificate to ensure that the facility is appropriately managed.
The development is considered an overdevelopment of the site given that it is classified by the applicant as an eco-tourist facility.	The development is not required to adhere to a maximum floor space ratio (FSR) but is required to meet the criteria for an eco-tourist facility. As stated previously in this section, the proposed development meets the criteria for an eco-tourist facility as defined in the CHLEP 2013. The development has an FSR of 0.3553:1 which is appropriate to the nature of the development and therefore is not considered an overdevelopment of the site.
The development does not comply with the scenic protection outcomes for the area.	The design of the buildings, the natural colours and materials proposed and the layout on the site are considered to be in keeping with the scenic qualities of the area.
The proposed development raises concerns regarding future developments for the site. There is a major concern that this development is "Stage 1" of a much larger development.	The application includes plans showing the possible future staging of the development, which includes Stages 1 and 2. This development assessment is of Stage 1 only. If Stage 2 is submitted as a development application, it will need to go through the full assessment process.
The development raises concerns regarding the traffic impact of the development considering the nature of the existing road (Sealy Lookout Drive).	<p>The applicant's engineer has acknowledged works are required on Sealy Lookout Drive. Council also recognises there are safety issues associated with the intersection of Sealy Lookout Drive and Bruxner Park Road.</p> <p>Conditions are applied requiring that, prior to issue of a Construction Certificate, the following must be carried out: a road safety audit on Sealy Lookout Drive, and the intersection of Bruxner Park Road and Sealy Lookout Drive incorporating a traffic study, and separate recommendations</p>

Issue	Council Comment
	report. Both are to be submitted to and approved by Council. All works identified in the road safety audit and recommendations report are to be included in the Civil Works Construction Certificate. All works identified in the road safety audit and recommendation report are to be completed prior to the issue of an occupation certificate.
The development raises concern regarding geotechnical safety risks.	Council's development engineer has reviewed the Geotechnical Report and is satisfied with the proposed development, subject to the application of conditions of consent.
The development raises concerns regarding the estimated cost provided with the application as this seems excessively low for the type of the development and the site context.	Council's finance officer has reviewed the cost report and has not identified any cause for concern with regard to the accuracy of the report.
Other environmental and erosion issues are raised as concerns that will be detailed in the future report.	The application has adequately addressed environmental issues and conditions of consent will be applied to ensure all potential environmental impacts are appropriately mitigated. An Erosion and Sediment Control Plan has been submitted with the application and must also be submitted and approved by Council prior to the issue of a construction certificate.
Large scale of the proposed development in its current form.	The bulk and scale of the development has been assessed against the relevant provisions of the CHLEP 2013 and CHDCP 2015. The non-compliance with the height limit has been considered and determined to be acceptable in the context of the site and surrounds. Refer to section 3 of this report. The scale of the proposal has been deemed appropriate and subject to the application of conditions of consent, no significant adverse impacts are expected as a result of the scale of the proposed development.
The development doesn't appear to adhere to the zoning and standards in certain areas.	The development has been assessed against the relevant provisions of the CHLEP 2013 and CHDCP 2015. The development is permissible within the zone and complies with the development standards with the exception of the building height limit. The non-compliance with the height limit has been considered and determined to be acceptable in the context of the site and surrounds. Refer to section 3 of this report.

Issue	Council Comment
The development doesn't align with Clause 5.13 Eco-Tourist Facility of the CHLEP.	The proposed development has been assessed against Clause 5.13 Eco-tourist facilities and found to be compliant. Refer to section 3 of this report.
The current design has a huge bushfire risk that isn't covered with the current bushfire assessment.	There has been ongoing consultation with the RFS which has resulted in the RFS supporting the approval of the DA subject to General Terms of Approval.
What happens if this is sold to a commercial entity later on that wants to run it more like a commercial resort rather than an eco-tourist facility?	The development seeks consent for an eco-tourist facility. A change of land use would require a new development application.
We request that the area is made an alcohol-free area to minimise potential environmental impacts such as noise.	A Plan of Management is to be submitted to Council and approved prior to the issuing of an occupation certificate to ensure that the facility is appropriately managed.
We request that the operating hours be changed to 8:00am-5:00pm Monday to Friday and 9:00am - 12:00pm on Saturdays to suit the legislation and specifications and to minimize the impacts to surrounding residents.	A Plan of Management is to be submitted to Council and approved prior to the issuing of an occupation certificate to ensure that the facility is appropriately managed.
What restrictions are there preventing tourists from accessing neighbouring properties and intruding on surroundings residents' privacy and security?	A Plan of Management is to be submitted to Council and approved prior to the issuing of an occupation certificate to ensure that the facility is appropriately managed.
The firepit should be limited to daytime hours only for cultural presentations.	A Plan of Management is to be submitted to Council prior to the issuing of an occupation certificate to ensure that the facility is appropriately managed.
The traditional custodians of the land should be adequately consulted before the approval of the development.	An Aboriginal Cultural Heritage Assessment Report (ACHAR) has been prepared by Everick Heritage. Consultation with the Aboriginal community in accordance with the <i>Aboriginal Cultural Heritage Consultation Requirements for Proponents</i> has been undertaken. The

Issue	Council Comment
	ACHAR makes a number of recommendations which are applied as conditions of consent.
There is an existing risk of slope instability, landslips and stormwater runoff within the site.	The application has been assessed by Council's engineers and found to be suitable subject to compliance with conditions of consent with regard to stormwater management and land stability.
There is an existing risk of slope instability, landslips and stormwater runoff on Sealy Lookout Drive which will be exacerbated by the proposed development. These also pose safety risks for those who utilise the development in the future.	The application has been assessed by Council's engineers and found to be suitable subject to compliance with conditions of consent with regard to stormwater management and land stability.
Water use detailed in the WWMP is significantly low in its estimation of peak usage.	The application, including the submitted wastewater management plan, has been assessed by Council's wastewater engineer and found to be satisfactory.
The toilets proposed within the cabins will not adequately serve the target market and will pose as nuisance to surrounding properties.	The application, including wastewater management plan and proposed incineration toilets, has been assessed by Council's wastewater engineer and found to be satisfactory.
A noise impact assessment should be required for assessment prior to consent being given.	A Plan of Management is to be submitted to Council and approved prior to the issuing of an occupation certificate to ensure that the facility is appropriately managed. Activities which could potentially generate noise will be addressed within the Plan of Management.
The development will likely cause light pollution.	Low level solar powered bollards and light fittings are proposed to be used to minimise light pollution.
Increased traffic is expected as a result of the development and the access roads currently existing are not adequate in serving any additional users.	<p>The applicant's engineer has acknowledged works are required on Sealy Lookout Drive. Council also recognises there are safety issues associated with the intersection of Sealy Lookout Drive and Bruxner Park Road.</p> <p>Conditions are applied requiring that, prior to issue of a Construction Certificate, the following must be carried out: a road safety audit on Sealy Lookout Drive, and the intersection of Bruxner Park Road and Sealy Lookout Drive incorporating a traffic study, and separate recommendations report. Both are to be submitted to and approved by Council.</p>

Issue	Council Comment
	All works identified in the road safety audit and recommendations report are to be included in the Civil Works Construction Certificate. All works identified in the road safety audit and recommendation report are to be completed prior to the issue of an occupation certificate.
The council does not currently provide waste services to Sealy Lookout Drive. Enquiries with Handybin Waste Services also confirm they will not service the area.	The applicant has advised that waste collection on Sealy Lookout Drive will be undertaken by private contractor, Cleanaway, which currently collects other waste bins along Sealy Lookout Drive. A condition of consent requires that prior to issuing an occupation certificate, details of the contract will be provided to Council for approval.
The Bushfire Risk Assessment appears inadequate and contains a number of irregularities.	There have been ongoing discussions with the RFS which has resulted in the RFS supporting the approval of the DA, subject to General Terms of Approval.
Where are the large amounts of fuel needed for the generator going to be stored on-site and how is it protected from a potential fire risk?	The main power source for the development is solar electricity, with battery backup. No fuel-powered generator is required.
The overall size and scale of the current design is very large and commercial in nature.	The bulk and scale of the development has been assessed against the relevant provisions of the CHLEP 2013 and CHDCP 2015. The scale has been deemed appropriate and no adverse impacts are expected as a result of the proposed development. Refer to section 3 of this report for further information.
The amount and types of equipment that would need to traverse the natural landscape will have a large effect on the environment here.	Conditions of consent are proposed by Council's engineer which address the potential impacts of construction on the site and surrounds.
The current cost of works has been severely underestimated and doesn't account for a large number of things that the current design needs.	Council's finance officer has reviewed the cost report and has not identified any cause for concern with regard to the accuracy of the report.

Issue	Council Comment
Due to the large commercial nature of this development we have concerns there will be a significant drop in the house values in the area.	Impacts upon house values are not included in the matters for consideration under the EP&A Act.
The architectural design contributes to safety risks in relation to bushfires and steep slopes on site.	There has been ongoing consultation with the RFS which has resulted in the RFS supporting the approval of the DA subject to General Terms of Approval. Council's development engineer has reviewed the Geotechnical Report and does not raise concerns about this aspect of the development, subject to the application of conditions of consent.
The height of buildings is not appropriate for the site and zoning.	The applicant has submitted a Clause 4.6 Exceptions to development standards variation request, which seeks variation to Clause 4.3 Height of Buildings for the height of the communal building. The applicant has demonstrated to an appropriate standard that the variation to the height limit is warranted in this instance. Refer to section 3 for more information on the height variation.
The development is not compliant with the Coffs Harbour DCP.	An assessment against the CHDCP 2015 has been conducted which shows that the development complies with relevant provisions. Refer to section 3 for more information.
The Indigenous community was not properly engaged as they should have been in the proposal.	An Aboriginal Cultural Heritage Assessment Report (ACHAR) has been prepared by Everick Heritage. Consultation with the Aboriginal community in accordance with the <i>Aboriginal Cultural Heritage Consultation Requirements for Proponents</i> has been undertaken. The ACHAR makes a number of recommendations which are applied as conditions of consent.
The development will have a detrimental impact upon the wildlife in the area.	Consideration of the application by Council's Flora and Fauna officer identified no issues of concern in relation to flora and fauna, subject to the imposition of conditions of consent.
Pedestrian access is inadequate and promotes unsafe conditions.	Parking for the 20 cabins is accessed from the loop road at the top of the development area (Inner Protection Zone). Two of the cabins are accessible, therefore two accessible parking bays are provided with level pedestrian access directly from the parking platform. A series of accessible compliant pedestrian paths and ramps will provide access from Cabins 1 to 4 to the communal building. An on-site cart (buggy) service will be provided for less ambulant visitors and to transfer luggage and equipment from the car parking

Issue	Council Comment
	<p>area to the cabins and communal areas. A series of cart trails and steps links Cabins 7 to 20 with the communal areas.</p> <p>These arrangements have been assessed by Council's engineer, who has determined that the arrangements are suitable subject to compliance with conditions of consent. These conditions require that the works conform with the standards and requirements set out in Council's Development Design and Construction specifications and relevant policies.</p>
The accessway is not safe for vehicles or pedestrians due to the degree of slope.	Council's engineer has considered the proposal and determined that the proposed access and parking arrangements will be suitable, subject to conditions of consent.

5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

Bushfire -

The site is identified as bushfire-prone land. Consultation with the RFS has been ongoing as the RFS has considered the application.

Resolution:

The RFS has advised that it supports approval of the application subject to General Terms of Approval with regard to Asset Protection Zones, Bush Fire Emergency Management and Evacuation Plan, construction standards, internal access roads, water and utilities services, and landscaping.

Building height -

The applicant is proposing a Clause 4.6 Variation (refer to Attachment C) to Clause 4.3 Height of buildings of the CHLEP 2013 which sets a maximum height of 8.5m for a building on the site. The proposed building height for the communal building is 9.95m, which is a 17% exceedance. All other buildings on site meet the maximum height limit.

The communal building is to be single storey only, however it will be set on a steeply sloping part of the site. Where the maximum height of building is exceeded, the distance from the finished floor level to the ridge is 2.8m. This indicates that the building has been designed to minimise any impacts caused by the height of the development, however due to its location on a steep slope, the height limit is exceeded. Following a review of the proposed development and the potential impacts of the height exceedance, it is considered that it will not result in adverse visual or other impacts.

The development achieves the objectives of Clause 4.3 without complying with the standard mapped in the 'Height of buildings' map.

Resolution:

The variation to the height limit for the communal building is therefore deemed acceptable in this instance, as strict compliance with the development standard is considered unnecessary in the circumstances affecting the proposal.

Earthworks -

Given the steepness of the site, careful planning of site layout and use of cut and fill and retaining walls has been required to provide usable accessways, pedestrian walkways and platforms for the buildings.

Resolution:

Conditions of consent recommended by Council's engineer are applied to ensure the site is safe for use and does not result in land instability.

Aboriginal heritage -

The ACHAR prepared by Everick Heritage Pty Ltd found that the project area includes a number of previously recorded Aboriginal archaeological sites which are consistent with forest landscapes of the Coffs hinterland. The artefacts comprise a low-moderate density artefact scatter located on the elevated ridge crest. The artefacts have been subject to a range of processes associated with forest clearing and management, the construction of Sealy Lookout Drive and the associated informal lookout arrangement.

The most significant recent alteration of the site was the relocation of the artefacts to the base of two trees during a community cultural burn. A consultation meeting was held on-site with five Aboriginal parties in attendance. At this meeting, it was decided that permanent storage within the Yilaami communal building was the best way to manage the artefacts. There have been submissions from two of the Aboriginal parties who were in attendance at the consultation meeting, advising that this approach is no longer supported. It is considered that as the majority of parties are still in agreement with this approach, and it will be necessary to move the artefacts during construction and relocate them, the recommendations of the ACHAR are appropriate.

Resolution:

Conditions of consent are recommended which include the requirement to obtain an AHIP to provide for community collection and relocation to the Yilaami communal building; implementation of an Aboriginal Object Collection Procedure; arrangements to be followed. should any human remains be located at any stage during earthworks within the project area.

Road access (Sealy Lookout Drive) -

Sealy Lookout Drive and its intersection with Bruxner Park Road are expected to require some upgrading works to be undertaken, to improve safety for road users following development of the proposal.

Resolution:

Conditions of consent are applied to ensure Sealy Lookout Drive and its intersection with Bruxner Park Road are upgraded as necessary prior to the issue of an occupation certificate for the proposed development.

6. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls and the key issues identified in this report, it is considered that the application can be supported.

The development will provide for an Eco-tourist facility that will serve to contribute to the tourism needs and economic development of the LGA, is suitable for the site, has adequately considered the constraints of the site and is compatible with the existing development on the site and in the immediate locality.

It is considered that the key issues as outlined in Section 6 have been resolved satisfactorily through the provision of an adequate written request to vary the development standard (height).

7. RECOMMENDATION

That the Development Application 1012/22DA (PAN-225655) for Eco-tourist facility at Lot 21 DP 869885 97 Sealy Lookout Drive, Coffs Harbour 2450 be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

8. ATTACHMENTS

The following attachments are provided:

- Attachment A: Draft Conditions of Consent
- Attachment B: Architectural Plans (as uploaded to portal)
- Attachment C: Clause 4.6 Variation Request (as uploaded to portal)