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URBIS

STATEMENT OF ENVIRONMENTAL EFFECTS

29 Shirley Street and 2-4 Milton
Street, Byron Bay

Prepared for

29 SHIRLEY STREET PTY LTD

19 September 2023

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| Report Number | SEPTEMBER 2023 |

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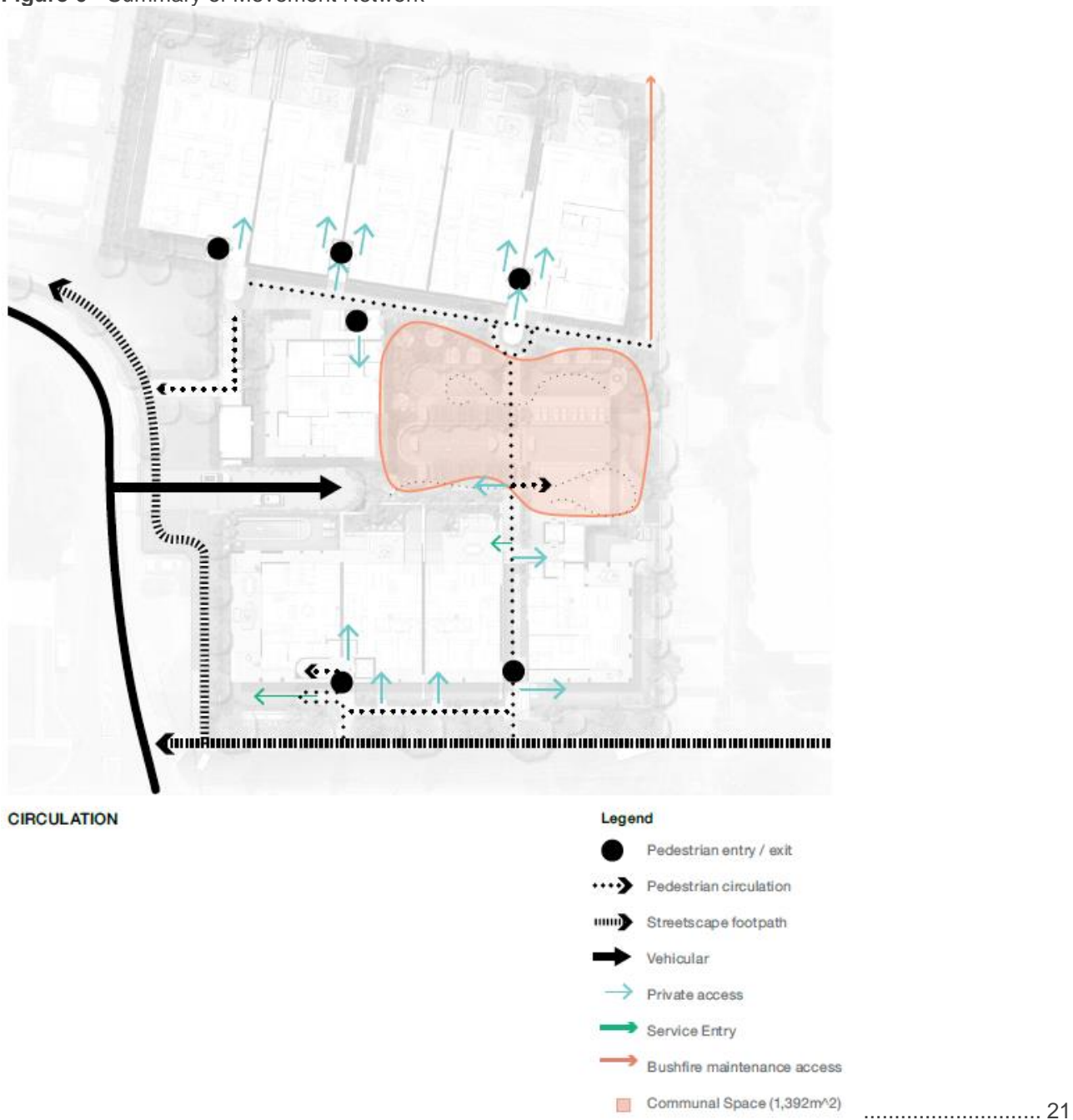
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EXECUTIVE SUMMARY

This Statement of Environmental Effects ('SEE') has been prepared on behalf of 29 Shirley Street Pty Ltd ('the applicant') and in support of a Development Application ('DA') for a Residential Flat Building at the corner of Shirley Street and Milton Street in Byron Bay. The proposed development will comprise an architecturally designed building containing 25 three-bedroom dwellings, distributed across four separate three-storey and two-storey buildings.

SITE DESCRIPTION

The address of the subject site is No. 29 Shirley Street, No. 2 & 4 Milton Street Byron Bay. The total site area is 5,937sq.m, comprising the following lots:

- Lot 8, Section 52 on DP758207
- Lot 9, Section 52 on DP758207
- Lot 2 on DP582819
- Lot 7 on DP841611
- Lot 12 on DP1138310
- Lot 1 on DP582819
- Lot 1 on DP780935
- Lot 8 on DP841611
- Lot 9 on DP841611
- Lot 11 on DP1138310

The subject site has frontage to Shirley Street to the south, Milton Street to the west, the Byron Bay Solar Train line to the north and residential development to the east. The site currently contains a backpackers accommodation within the southern section of the site, and two dwellings fronting Milton Street to the north. The existing site improvements are proposed to be removed to allow the development to occur.

DEVELOPMENT DESCRIPTION

The DA seeks development consent for the following:

- Demolition of the existing development within the site.
- Construction of a four individual two and three-storey buildings containing 25 three-bedroom dwellings.
- Basement car parking with access from Milton Street, containing 69 car parking spaces, storage units, waste storage and other service spaces.
- Substantial communal spaces, most notably include a substantial 1,392sq.m ground floor communal pool area.
- High quality and purpose designed landscaping, which includes the planting of replacement native trees.

The proposed works have an estimated cost of \$45,475,000 and development consent is sought in accordance with Part 4 of the EP&A Act.

PLANNING CONTEXT

The proposal has been assessed in accordance with the key planning objectives, priorities and actions outlined within relevant strategic land use and transport planning policies including:

- The North Coast Regional Plan 2036; and
- The applicable Byron Shire Council Policies.

This SEE also provides a comprehensive assessment of the proposed development in accordance with the following statutory controls and regulatory instruments:

- SEPP (Transport and Infrastructure), which identifies key agencies for referral.
- SEPP (Building Sustainability Index: Basic), with the enclosed BASIX Certificate demonstrating the development meets the NSW government requirements for sustainability.
- SEPP (Design Quality of Residential Apartments) and associated Apartment Design Guide Assessment, which demonstrates the development achieves essential criteria for high quality apartments.
- SEPP (Planning Systems), which notes the requirement for determination by the Regional Planning Panel.
- SEPP (Resilience and Hazards), which demonstrates the proposed development meets criteria for the coastal location.
- SEPP (Remediation of Land), which demonstrates the risk of widespread contamination on site is low, and can be addressed through further soil testing prior to construction.
- The Byron Local Environmental Plan 2014, which demonstrates the proposed use and scale of development is consistent with the zone objectives. The minor variations to height and floor space ratio are also appropriately justified, and ultimately continue to meet the zone objectives.
- The Byron Local Environmental Plan 1988, with supporting technical information demonstrating that the proposed development is not impacted by, or causes impact to, the coastal erosion processes.
- The applicable Byron Development Control Plan provisions, which demonstrates the development is functional, site and context responsive, and ecologically responsible.

Overall, the proposed development is well informed by supporting technical reports, and the development is responsive to the site conditions and context.

ASSESSMENT OF KEY ISSUES

The SEE identifies and assesses the key environmental, social and economic impacts of the proposal and recommended measures to mitigate, minimise or manage these impacts. These include:

- The proximity to the railway corridor does not present a major constraint to the site. All noise impacts are able to be managed through detailed design construction standards.
- The site is not expected to be subject to widespread contamination due to historical use. Regardless, targeted site testing will be undertaken prior to construction to confirm no isolated events of contaminants are present from the adjacent rail corridor.
- The bushfire risk to the site is low, and is able to be managed through detailed design standards and ongoing management fuel loads through vegetation maintenance measures.
- Desktop services review has demonstrated the site is capable of being fully serviced.

Each of the recommended measures can be incorporated as conditions of consent to be implemented during the demolition, construction and operational phases to avoid unacceptable environmental impacts.

CONCLUSION

The SEE demonstrates the proposed development is appropriate for the site and the locality as summarised below

- The built form capitalises on the corner lot configuration by delivering apartments with a minimum of two outlooks, cross ventilation, north-east aspect and 8 star environmental certification.
- The access arrangements provide for separation of vehicle and pedestrian movements, and the basement parking arrangement allows for screening of all car parking and services.
- The site provides substantial communal spaces, supported by a comprehensive and high quality landscape design which includes the retention of one significant tree on site.

Accordingly, it is submitted that the proposal is in the public interest and should be approved subject to appropriate consent conditions.

1. INTRODUCTION

This SEE has been prepared on behalf of *29 Shirley Street Pty Ltd* (the **Applicant**) and in support of a DA for Residential Flat Building at 29 Shirley Street, Byron Bay.

The proposed works have an estimated cost of \$45,475,000 and development consent is sought in accordance with Part 4 of the EP&A Act.

This SEE is structured as follows:

- **Section 2 - Site Context:** identifies the site and describes the existing development and local and regional context.
- **Section 3 - Project History:** outlines the approvals history and pre-lodgement discussions with key stakeholders.
- **Section 4 - Proposed Development:** provides a detailed description of the proposal including the built form scale and design merit, site layout and functionality, and environmental considerations including tree retention and planting.
- **Section 5 - Strategic Context:** identifies and analyses the State, regional and local strategic planning policies relevant to the site and proposed development.
- **Section 6 - Statutory Context:** provides a detailed assessment of the State and local environmental planning instruments and plans relevant to the site and development.
- **Section 7 – Assessment of Key Issues:** identifies the potential impacts arising from the proposal and recommends measures to mitigate, minimise or manage these impacts.
- **Section 8 - Section 4.15 Assessment:** provides an assessment of the proposal against the matters of consideration listed in Section 4.15 of the EP&A Act.
- **Section 9 – Conclusion:** provides an overview of the development assessment outcomes and recommended determination of the DA.

2. SITE CONTEXT

2.1. SITE DESCRIPTION

The site is located at 29 Shirley Street and 2-4 Milton Street, Byron Bay, which sits slightly north of the Byron Bay Town Centre, between Belongil Beach and Shirley Street. Key features of the site are summarised in **Table 1** below, with a Location Plan and Site Aerial shown below in **Figure 1** and **Figure 2** respectively.

Table 1 Site Description

| Feature | Description |
|----------------------------|---|
| Street Address | 29 Shirley Street, Byron Bay 2 Milton Street, Byron Bay 4 Milton Street, Byron Bay |
| Legal Description | Lot 8, Section 52 on DP758207 Lot 9, Section 52 on DP758207 Lot 2 on DP582819 Lot 7 on DP841611 Lot 12 on DP1138310 Lot 1 on DP582819 Lot 1 on DP780935 Lot 8 on DP841611 Lot 9 on DP841611 Lot 11 on DP1138310 |
| Site Area | 5,937sq.m |
| Site Dimensions | Shirley Street – 60.345 metres Milton Street – 60 metres Side Boundary (North) – 20.115 metres Side Boundary (West) – 62.095 metres Rear Boundary (Railway Corridor) – 73 metres Side Boundary (East) – 99.19 metres |
| Easements and Restrictions | Refer to Table 2 below |
| Site Topography | The site has an undulating topography, summarised as follows: North-South: Existing ground level increases from approximately 4.58m ADH at Shirley Street to a high point of 6.6m, decreasing to approximately 6.1AHD at the rear boundary. This results in a site difference of approximately 2m between the lowest and highest point on the site. |

| | |
|----------------|---|
| Feature | Description |
| | East-West: Existing ground level increase from approximately 4.52AHD at the Milton Street frontage, rising to a high point of 5.76AHD, and falling again to 4.93ADH at the eastern boundary. This results in a difference of approximately 1.2m between the lowest and highest point on the site. |
| Vegetation | The subject site contains a backpackers hostel and short stay accommodation fronting Shirley Street and Milton Street. The remainder of the site is predominantly undeveloped and landscaped with maintained lawns and garden beds. Some scattered trees are present towards the rear of 29 Shirley Street, which also contains a mature fig species. |

The following table outlines the notifications and limitations listed on the Certificates of Title which are relevant to the proposed development.

Table 2 Summary of Title Instruments

| Instrument | Details |
|---|---|
| Lot 9 in DP 841611 | |
| 2. 6927007 easement for noise and vibration | <p>Easement burdening Lot 9 to the benefit of the State Rail Authority of NSW. The easement embeds the right to transmit noise and vibration from the rail operation.</p> <p>The impacts of the noise created by the rail operation is detailed addressed at the noise impact statement at Appendix E of this report.</p> <p>As noted in Section 6.2 of this report, the proposed development is expected to be referred to the rail operation for comment during the assessment process.</p> |
| 3. 6927007 easement for stray electrical currents | <p>Easement burdening Lot 9 to the benefit of the State Rail Authority of NSW. The easement embeds the right to cause stray electrical currents</p> <p>As noted in Section 6.2 of this report, the proposed development is expected to be referred to the rail operation for comment during the assessment process.</p> |

| Lot 8 in DP 841611 | |
|---|---|
| 2. 6926940 – Easement for noise and vibration | <p>Easement burdening Lot 8 to the benefit of the State Rail Authority of NSW. The easement embeds the right to transmit noise and vibration from the rail operation.</p> <p>The impacts of the noise created by the rail operation is detailed addressed at the noise impact statement at Appendix E of this report.</p> |
| 3. 6926940 – Easement for stray electrical currents | <p>Easement burdening Lot 9 to the benefit of the State Rail Authority of NSW. The easement embeds the right to cause stray electrical currents</p> <p>As noted in Section 6.2 of this report, the proposed development is expected to be referred to the rail operation for comment during the assessment process.</p> |
| Lot 1 in DP 780935 | |
| 3. Z443523 – Restrictions on the use of the land. | <p>Instrument issued by the Shire of Byron in 1991 relating to the erosion escarpment.</p> <p>The civil report provided at Appendix H of this report demonstrates coastal erosion will not impact the proposed development in the short to medium term. As a result, this instrument is considered redundant, and will be lifted from the title as a separate process.</p> |

Figure 1 Location Plan



Source: Nearmap 2021

Figure 2 Aerial Photograph of the Site



Source: Nearmap 2021

2.2. EXISTING DEVELOPMENT

The site is currently improved by a backpackers hostel, including accommodation buildings, shared facilities such as kitchen and dining areas, car parking area and communal open spaces. There are also two dwellings located to the rear of the site which are currently used for short-term accommodation. The existing site improvements are proposed to be removed to allow the development to occur.

Vehicle access is provided via a crossover from Milton Street, with pedestrian access via the existing footpath from Shirley Street. There are also two existing crossovers providing access to the dwellings at 2 and 4 Milton Street.

2.3. LOCALITY CONTEXT

The site is located within Byron Bay, within the broader Northern New South Wales region, and sits approximately 400 metres from the Byron Bay Town Centre and 5.8km from the Pacific Motorway. The broader context around the subject site is illustrated in **Figure 3** below.

Figure 3 Regional Context



Source: Nearmap 2021

The site sits along the eastern approach of Shirley Street, which is a key thoroughfare for vehicles travelling into Byron Bay as they exit the Pacific Highway onto Ewingsdale Road.

Within the local context, the site benefits from its proximity to the Byron Bay Town Centre, which includes bus services, retail and restaurant offerings, as well as civic services. The Town Centre is easily accessed via a wide, sealed footpath running along Shirley Street.

Figure 4 Local Context



Source: Nearmap 2021

Surrounding development includes:

- **North** – immediately north, the site adjoins the rail corridor of the former Casino-Murwillumbah line. The rail corridor is still used by the Byron Bay Train, which is a solar-powered train used largely to connect tourists from the Elements of Byron Resort to the Byron Town Centre. Beyond the rail corridor, the area transitions to the coastal environment of Belongil Beach and the Pacific Ocean.
- **East** – the site adjoins an existing two-storey Dwelling House, positioned towards the front of the lot. Further east sits a series of two-storey resort, motel and serviced apartment developments, before the character of Shirley Street transitions through civic services, such as an aged care facility and Byron Bay Police Station. Shirley Street continues east, turning into Lawson Street as it enters the Byron Bay Town Centre.
- **South** – immediately south, the site fronts Shirley Street, which adjoins an area of one- to two-storey Dwelling House developments, holiday villas, and medical and allied health uses including the former Byron District Hospital. Further south sits Cumbebin Swamp and associated Nature Reserve.
- **West** – the site adjoins the intersection of Shirley Street and Milton Street. West of the subject site and north of Shirley Street is an area largely dominated by two- to three-storey resort and hotel developments. South of Shirley Street sits a cluster of single Dwelling Houses on smaller lots, interspersed by larger lots and resort developments. Further west Shirley Street transitions to Ewingsdale Road, past the Cumbebin Swamp and associated Nature Reserve.

2.4. RECENT APPROVALS

A number of Clause 4.6 approvals seeking variation to building height and floor space ratio variations have been granted in proximity to the subject site. These approvals create the precedent to consider a variation to these development standards in some circumstances, where appropriate justification is provided.

Table 3 below provides a summary of comparable approvals which have been granted with a Clause 4.6 variation to height and floor space ratio. This demonstrates that a performance based approach may be taken to building height or floor space ratio standards, where appropriate justification is provided. Of note, the following points of justification have supported successful approval of these variations:

- Building height variations have been approved where the additional height is attributed to the existing variation in the level of the land. 10% variation were justified in this manner.

- Building height variations have been approved where the additional height is the result of roof features or structures (e.g. roof parapet safety rail). An 11% variation was justified in this manner.
- Building height variations have been approved where the variation not excessive in the context of the immediate streetscape, would not detract from the character of the area, and would not result in unacceptable overshadowing . A variation of greater than 10% was justified in this manner.

Table 3 – Summary of Approvals

| Application Number / Date | Address | Details | Extent of Variation |
|----------------------------------|---|--|---|
| 10.2014.742.2 (16/09/2021) | 33 Lawson Street Byron Bay (Lot 8 DP 758207) | Demolition of existing single-storey motel building. Erection of a three (3) storey motel accommodation building plus two (2) levels of basement parking. S4.55 to Modify Consent to include Eight (8) Additional Motel Units, Remove the Ground and Third Floor Swimming Pools, Add a Roof Top Recreation Area comprising a Swimming Pool, Bar and Café. | Building Height >10%, FSR variation 1.6%. <u>Justification for Variation</u> Increase in building height is limited to stair and lift overruns and small bathroom. The proposal for additional building height exceedance is consistent with the objectives of the development standard, in that the design of the roof-top facilities will result in minor visual impacts, do not result in significant privacy or overlooking issues, and do not noticeably change the bulk and scale of the approved building or its consistency with the character of the town centre. |
| 10.2016.55.1 (15/12/2016) | 17 Shirley St, Byron Bay 2481 NSW 19-21 Shirley St, Byron Bay 2481 NSW | Demolition of Existing Buildings and Construction of Two (2) Residential Flat Buildings, Including Swimming Pool, Landscaping and Strata Subdivision (17 units) | Building Height Variation - exceeds the 9.0m height limit by 0.55 metres <u>Justification for Variation</u> The proposed building height is not considered to be excessive in the immediate streetscape and should not detract from the character of the area. The proposed portion of Building No 1 exceeding the height limit should not result in any unacceptable overshadowing of neighbouring properties. Subject to conditions relating to privacy screens the proposed development should not result in |

| Application Number / Date | Address | Details | Extent of Variation |
|---|---|---|---|
| | | | any unacceptable loss of privacy to any neighbouring property. |
| 10.2017.160.1 | 21 Fawcett Street, Brunswick Heads | Residential Flat Building | FSR Variation – 6% <u>Justification for Variation</u> Proposed variation consistent with objectives of standard and zone. |
| 10.2017.628.1 (24/07/2019) | 28 Parkes Avenue, Byron Bay (LOT: 1 & 7 DP: 271119) | 60 x 1 & 2 bedroom apartments, plus subdivision to create 1 additional community lot | Building Height – between 5% and 10% variation <u>Justification for Variation</u> The monitor roof feature provides for natural ventilation and light to the mezzanine bedrooms of the upper floor. The roof form and building scale responds to the character of built form in the locality. The buildings will not overshadow or overlook any other development, as the land immediately to the west is retained for environmental purposes. |
| 10.2017.678.1 (21/02/2019) | 17 Shirley St, Byron Bay 2481 NSW 19-21 Shirley St, Byron Bay 2481 NSW | Demolition of existing buildings and construction of two (2) residential flat buildings, containing 17x3 bedrooms and 2 x 4 bedroom dwellings including swimming pool, landscaping, basement car parking and strata subdivision | Building Height Variation Building No. 1 - 9.77m (8.6% variation) Building No. 2 - 9.8% - 11% <u>Justification for Variation</u> Non-compliance with the building height can be largely attributed to the existing variation in the level of the land. The building is lower than the approved adjoining buildings to the east. |
| 10.2014.398.1 (16/07/2015) / Modified 11.2.2021) | 3 Shirley St, Byron Bay 2481 NSW 5 Shirley St, Byron Bay 2481 NSW | Motel - two storey 16 guest rooms with a roof top terrace and basement parking for 27 cars | Height variation 21% <u>Justification for Variation</u> Non-compliance is attributed to architectural roof structures and gables. The proposal was supported by Council on the ground that the variation in building |

| Application Number / Date | Address | Details | Extent of Variation |
|-------------------------------|---|---|---|
| | 7 Shirley St, Byron Bay 2481 NSW Shirley St, Byron Bay 2481 NSW | | height will have negligible impact on the surrounding area. A variation to the 4.5m upper floor level height limit outlined in the Byron Bay 1988 LEP was also justified on the ground of it being outdated policy. |
| 10.2019.616.1 (21/05/2020) | 137-139 Jonson Street & 3 Browning Street Byron Bay (Lot 21 DP 247289; Lot 5 DP758207; Lots 60 & 61 DP 1256365)) | Demolition of existing buildings and the construction of a mixed use development for: <ul style="list-style-type: none"> Commercial premises Café Shop-top housing Basement car parking; and Infrastructure. | Building Height 9% Variation Floor Space Ratio 9.6% Variation <u>Justification for Variation</u> <p>The proposed building is consistent in scale to nearby buildings and establishes the desired future character of the locality consistent with the Byron Bay Town Centre Master Plan.</p> <p>Varying the floor space ratio standard will enable an optimal, landmark, fully integrated development solution for a landmark site.</p> <p>The proposal maximising the 'return' on a large private investment, generating new and sustaining existing employment and achieving positive social and economic outcomes within sound planning and environmental parameters, is therefore considered to be clearly in the public interest.</p> |
| 10.2021.291.1 | 116-118 Jonson Street Byron Bay | Mixed Use Development - Shops and Serviced Apartments | Building Height 10% - 22.6% Variation <u>Justification for Variation</u> <p>The proposed height of the building is consistent with that of existing surrounding development in the locality.</p> <p>The proposed variation to the height limit does not result in a materially different presentation to</p> |

| Application Number / Date | Address | Details | Extent of Variation |
|---------------------------|---------|---------|--|
| | | | <p>Jonson Street or the western elevation of the building.</p> <p>The proposed variation does not impact on the bulk or scale of the proposed built form which has been designed to present three distinct elements to Jonson Street.</p> <p>The proposed development will not adversely impact on existing or future surrounding development in terms of view, privacy or solar access.</p> <p>The proposed variations satisfy the tests and considerations established in <i>Wehbe v Pittwater Council</i> [2007] NSW LEC 82 and <i>Winten Developments Pty Ltd v North Sydney Council</i> [2001] NSWLEC 46.</p> |

3. PROJECT HISTORY

3.1. APPROVALS HISTORY

The Byron Shire Council Application Tracker shows the determination of Construction and Occupation Certificates associated with the Motel use of the site, which date back to 2001/02. There are no details available for revelation Planning Approvals over the site.

3.2. PRE-LODGE MENT DISCUSSIONS

The Applicant engaged with Byron Shire Council through a Development Advisory Panel meeting held on 16 November 2021. This meeting comprised Council staff representing the disciplines of planning, ecology, engineering, environmental health, infrastructure and resource recovery, with Minutes provided on 30 November 2021. A summary of key items raised by the Applicant and Council is itemised in **Table 4** below.

Table 4 Response to Pre-Lodgement Minutes

| Development Advisory Panel Comment | Applicant Response |
|--|---|
| Applicant Items | |
| High Environmental V (HEV) vegetation in north-eastern portion of the subject site | The proposed development seeks removal of vegetation within the site. This removal is addressed within the Ecological Assessment, prepared by JWA Ecological Consultants and attached in Appendix F . |
| Proposal of a FSR of 0.6 + 10%, with a focus on, strong architecture, high quality construction and communal areas | The proposed development has reduced the proposed FSR in line with Council commentary to 0.66, which represents a variation of 10%. This development application is therefore accompanied by request for variation to Clause 4.4, made under Clause 4.6 of LEP 2014. |
| Proposed Building Height of or very close to 9m | <p>The proposed development aims to achieve a typical building height of 9.0m. Due to the changes in the existing natural ground level lift overruns, glass balustrading and architectural features, this height variation increases in some areas.</p> <p>This development application is therefore accompanied by request for variation to Clause 4.3, made under Clause 4.6 of LEP 2014 and Clause 64A of LEP 1988 (refer to Section 6.8.1.2 of this report).</p> <p>The Clause 4.6 and Clause 64A assessments conclude that the proposed building height variation is justified on the following basis:</p> <ul style="list-style-type: none">▪ The height variation is partially attributed to the existing changes in topography of the site.▪ The additional height improves the spatial quality of the individual apartments.▪ The scale of height variation is consistent with similar development approvals in the locality. |

| Development Advisory Panel Comment | | Applicant Response |
|---|---|---|
| | | <ul style="list-style-type: none"> Height variations are partially the result of architectural features, such as glass balustrades and lift overrun. |
| Single-lane car park entry from Milton Street, with traffic light control | | A 6.1m entry is provided to the basement car park to provide for two-way access. |
| Other Items | | |
| Planning | Objectives of 7(f2) Zone under Clause 9 LEP 1988 and R3 Zone under LEP 2014 | The 1988 LEP is addressed in Section 6.8.2 of this report. |
| | Integrated Development Approvals under s4.46 of EP&A Act 1979 | The proposal does not trigger approval under the requirement for an Integrated Approval. |
| | Bushfire Prone Land | A Bushfire Management Plan is provided at Appendix I , and summarised at Section I of this report. |
| | BASIX, Assessor Certificates and Assessor Stamped Plans | Refer Appendix D for the BASIX Certificate. |
| | SEPP 65 and Apartment Design Guide | Refer to Section 6.4 and Appendix J for the ADG Assessment |
| | SEPP (Infrastructure) 2007 | Refer to Section 6.2 below. |
| | Heritage Management Document under Clause 5.10 LEP 2014 | Refer to Appendix K . |
| | Provisions of Clause 32 LEP 1998, which apply to 7(f2) Zone | The 1988 LEP is addressed in Section 6.8.2 of this report. |
| | Community Participation Plan (CPP) and pre-lodgement community consultation | Refer to Section 3.3 below. |
| | Relevant provisions of DCP 2014 and DCP 2010 | Refer to Section 6.9.1 and 6.9.2 of this report respectively. |
| Development Engineer | Stormwater Management Plan | Refer to Appendix H and Section 4.9 of this report. |

| Development Advisory Panel Comment | | Applicant Response |
|------------------------------------|--|--|
| Environmental Health Officer | Noise and Vibration | Refer to Appendix E of this report for the Noise Impact Assessment. |
| | Pool Filter Noise | Refer to Appendix E of this report for the Noise Impact Assessment. |
| | Contaminated Land | Refer to Section 6.6 for an assessment against SEPP (Resilience and Hazards) |
| Resource Recovery Team | Site Waste Minimisation and Management Plan, including demolition, construction and ongoing operations | Refer to Appendix L of this report for the Site Waste Minimisation Plan. |
| | Waste Servicing, including noise, visual impact and vehicle access | Refer to: <ul style="list-style-type: none"> ▪ Appendix E for the Noise Impact Assessment, addressing potential service noise sources; and ▪ Appendix G for the Transport Impact Assessment addressing vehicle access. |
| ET Engineer | Building in the Vicinity of Underground Infrastructure | Refer to Appendix H Civil Servicing Report. |

3.3. PRELIMINARY STAKEHOLDER CONSULTATION

Community engagement has been carried out to obtain views on the proposal, the outcomes of which are summarised in the Consultation Report, prepared by Caroline Desmond and attached at **Appendix M**.

Key outcomes are per below:

- The immediate neighbour to the west has expressed that previous requests (relating to the sewer diversion and street upgrade on Milton Street) have been addressed by the developer. Multiple changes to the draft proposal were made over a six-month period to address requests from the immediate neighbour to the east which included but are not limited to:
 - Relocation of the electricity substation from the boundary with this neighbour to the opposite side of the site on Milton Street.
 - Relocation of the waste room from the boundary with this neighbour to the opposite side of the site on Milton Street (even though it is in the basement).
 - Removal of two storeys off the middle apartment block and increase the building setback to 7 metres from the shared boundary.
 - Increasing the height of the boundary fence to 2m and making it solid concrete for the entire extent of the shared boundary.
 - Introducing a 1.1m high solid balustrade on the balcony facing this neighbour's property (even though it has no seating capacity) and including a fixed screen above the balustrade so it is not operable.

- With the exception of impacts during the construction period and impacts from Airbnb, which the developer has stated will be banned via body corporate bylaws, there were no concerns expressed from other community members regarding the proposal.
- Positive feedback regarding the design was significant, as was interest in purchasing the apartments.

4. PROPOSED DEVELOPMENT

4.1. OVERVIEW

The proposed development will deliver an architecturally designed development containing residential dwellings and associated amenities. It comprises:

- Demolition of existing development on the site.
- Erection of a Residential Flat Building, comprising:
 - 25 three-bedroom dwellings distributed across four separate two and three-storey buildings;
 - Pedestrian entrance from Shirley Street.
 - One basement parking level containing 69 total car parking spaces including 7 spaces for visitors (mix of 2 or 3 per dwelling) with vehicle access from Milton Street.
 - 1,392sq.m of communal open space at the ground level;
 - 527.32sq.m of deep planting on natural ground at ground level;
 - Associated amenities, including six lifts.
- An integrated landscape and communal open space design concept, including:
 - Landscaping of the verge areas, including large shade trees and feature palms;
 - High quality landscaping to private terraces; and

Central communal open space containing communal the swimming pool.

A summary of the numeric aspects of the proposal are summarised in **Table 5** below. The proposal is described in further detail within the following sections of this report.

Table 5 Numeric Overview of Proposal

| Descriptor | Proposed R3 Zone | Proposed 7(F2) Zone |
|---|--|---|
| Land Use Activity | Residential Flat Building | |
| Height of Building | 2 and 3 storeys predominantly not exceeding 9.0m in height above ground level (existing) | 2 storeys with upper ground floor level not exceeding 4.5m and predominantly not exceeding 9m in height overall above ground level (existing) |
| Floor Space Ratio | 0.66 (2,292.6m) | N/A |
| Density | N/A | Dwellings at 1 per 300m ² of site area = 8.21 |
| Total Communal Space | 1,392sq.m | |
| Total Private Open Space (Courtyards and Balconies) | Approx. 4,036.7sq.m (exceeding the maximum requirement) | |
| Total deep planting on natural ground | 527.32sq.m | |
| Percentage of Landscaping | 8.88% of site area | |
| Car Parking Spaces | 69 spaces (57 prescribed) including 7 visitor spaces | |
| Trees being retained | 0 | |
| Trees being planted | 71 (90% of these are native and endemic species) | |

The estimated cost of the development is \$45,475,000. A Quantity Surveyor's certificate is attached as **Appendix N**. A set of architectural drawings is attached as **Appendix A**.

4.2. BUILT FORM

The proposed development comprises four main building forms, of similar scale to the surrounding buildings. Along Shirley Street, a wider built form to the North and a narrower built form to the South is proposed, to vary the building width along the street and marry with the existing streetscape. The four built forms provide a considerate layout and design incorporating the site dimensions and topography ensuring a reduction of perceived built form from adjoining sites.

A clear orientation toward the foreshore is provided which allows for significant perimeter landscaped and public and private open space areas surrounding the individual buildings, and creation of usable recreational opportunities, particularly in the central communal open space area.

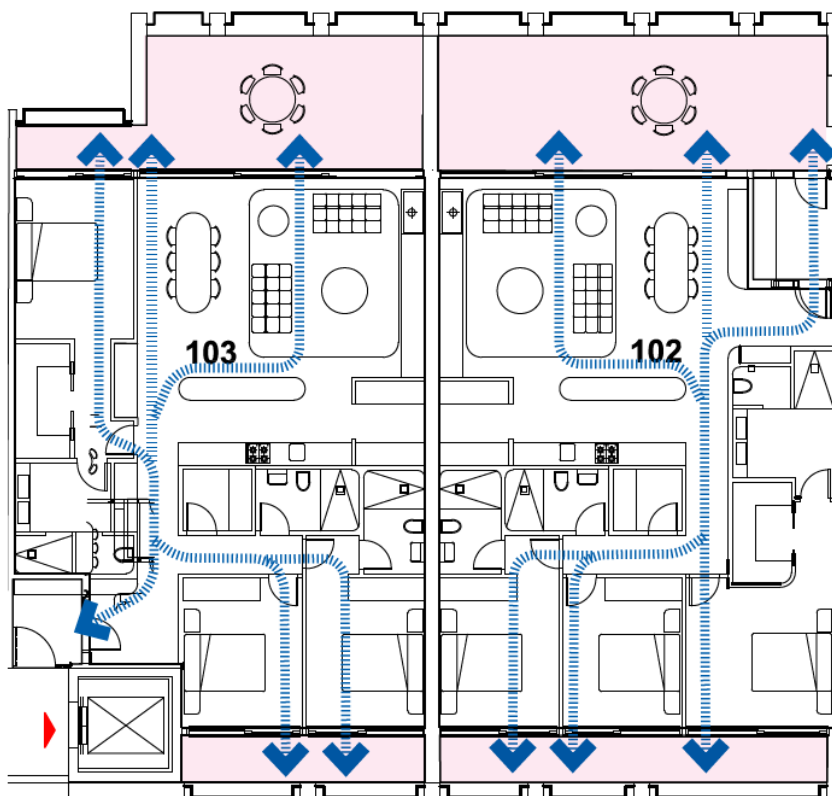
The separation of the built form assists in achieving an exceptional design outcome, where amenity and site responsive design are built form drivers. Specifically, the four tower design assists in maximising natural solar infiltration, cross ventilation, protect privacy and minimise overshadowing, through the following design initiatives, and visually demonstrated in **Figure 8** below:

- Apartments are oriented to have a minimum of 2 facades to allow for cross ventilation;
- Most of the apartments have 3 facades, and the living areas are oriented in different direction to allow more privacy for the residents.

- All apartments benefit from the North East aspect in the morning.
- All dwellings have a North aspect orientation with at least a secondary façade aspect with one façade with access to the communal areas.
- Apartments are orientated to the views or adjacent street to increase surveillance of the public realm, whilst protecting privacy of adjacent neighbours.
- Proposed development will feature double glazed units and aim for 8 stars environmental certification.

The material palette includes bagged render to masonry and metal cladding, with timber louvres and screens to control the glare and light intake into the dwellings. To mitigate the busy traffic along Shirley Street, most properties have a front fence or masonry fence with strong planting and landscaping.

Figure 5 - Demonstration of dwelling cross ventilation



Source: Hayball Architectural Package

Refer to **Appendix A - Architectural Package**

4.3. ACCESS AND PARKING

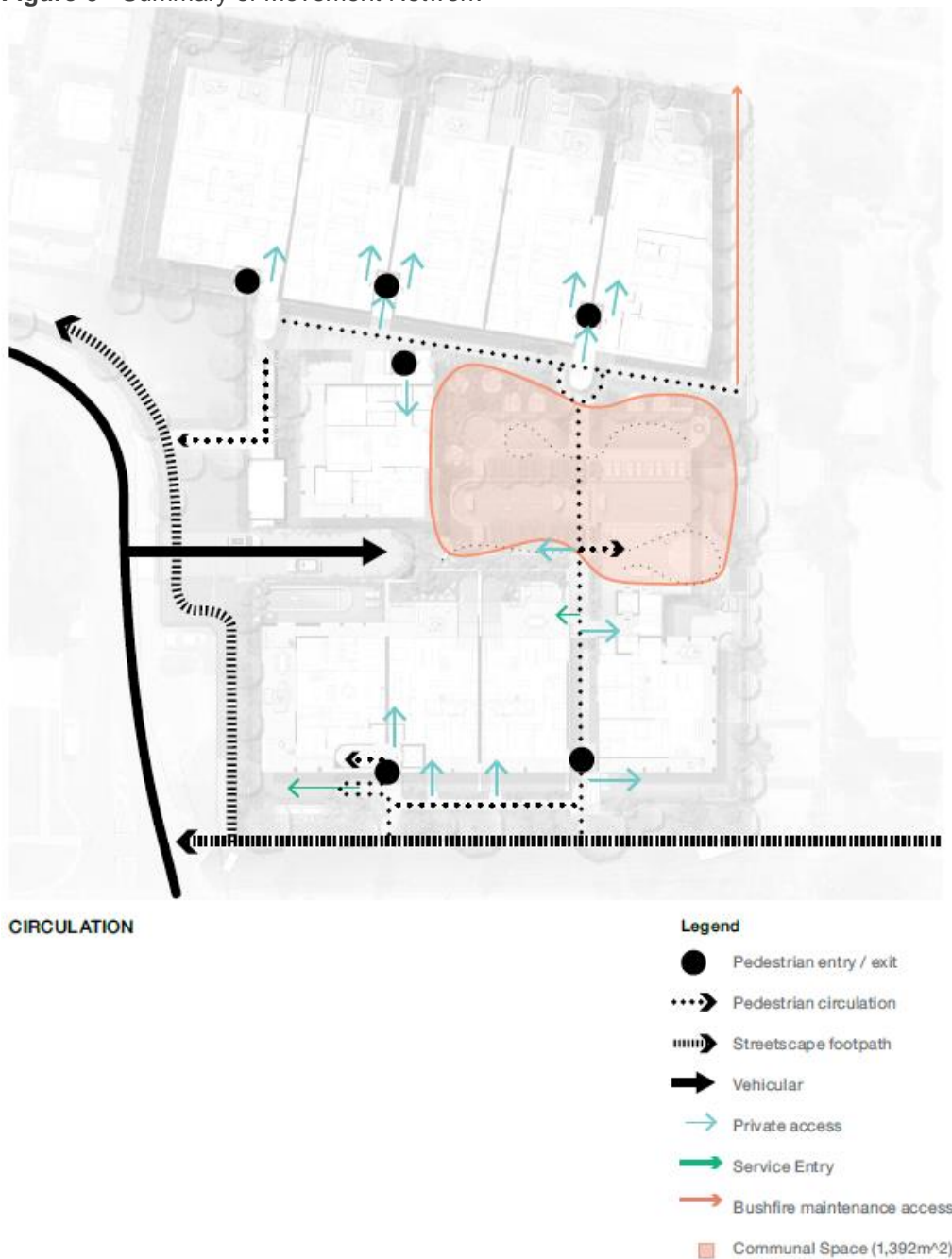
Street activation, prioritisation of pedestrian movements, establishing wayfinding cues and separating vehicle and pedestrian movements are key driving principles informing the developments layout. This has been designed with consideration of traffic engineering standards and consideration of the purpose of the site and connectivity to the surrounds. This has resulted in the following approach to access and parking:

- Primary pedestrian access will be provided on the eastern end of the Shirley Street frontage. In addition to providing resident access to the southern dwellings, this access point will also connect to the communal space.
- A secondary pedestrian access point is provided along Milton Street, providing convenient access to the northern building, and direct access into the communal space.
- An additional pedestrian access point is provided in the western end of the Shirley Street frontage. This is designed as a private entrance, serving dwellings in the south east portion of the site only.

- Vehicle and bicycle parking is provided at the basement level, and accessed via Milton Street. This approach is taken to ensure separation of vehicles and pedestrians, and allows for an uninterrupted pedestrian path along Shirley Street.
- A two lane driveway access to basement level vehicle parking will be provided via a ramp from Milton Street.
- A total of 69 car parking spaces are provided as part of the development. which exceed the minimum requirement prescribed in the DCP by 12 parking bays. This will include 25 electric vehicle charging bays (one per dwelling).

Figure 9 below demonstrates the vehicle and pedestrian movement network within the development and adjoining streets.

Figure 6 - Summary of Movement Network



Source: Urbis Landscaping

4.4. LANDSCAPING & COMMUNAL OPEN SPACE

To ensure the delivery of a site responsive design, the landscape design responsive has been a central driver to the sites layout. Deliberate and coordinated work between the project team architects, and landscape architects has resulted in a series of defined landscape areas with a distinct character and purposes.

Figure 7 - Landscape Masterplan



Source: Urbis Landscaping

A summary of the intent and purpose of each landscape area is as follows:

- The communal open space is the largest of the landscape areas, being in the order of 1,392sq.m , given its function as a central social space. In order to maintain the intimacy and welcomeness of this space, the communal space is informally divided into a number of sub-spaces via the pool and pathway network. Each sub-space has a distinct function and purpose, best summarised as follows:
 - The most dominant feature in this communal open space is the linear pool, which is divided by the pathway network. The south west portion of this site contains the largest section of the pool, and lends itself to resort style pool use, containing a series of palm trees and sun loungers.

- The eastern portion of the linear pool provides a slightly more formal space intended for informal dining.
- The creation of a private and informal space within the north-east portion of the communal open space. The defining feature of this portion is the retention of the large feature fig and supporting planted shade trees, creating natural dappled shade suited for informal dwelling.
- The north west portion by contrast provides a more formal relaxation space, best defined by the magnesium plunge pool and daybed nooks.
- Street setback and verge planting areas by contrast are largely designed for functionality. Large shade are used where possible in this space to provide pedestrian comfort, and feature planting is used to provide a natural wayfinding cue.
- Dwelling courtyard spaces ranging in size from 59.9sq.m to 186.0sq.m and balconies of 31.9m² and 100.4m². are designed for privacy, with perimeter planting to serve this function. Each space is designed to be unique, with differing configurations but consistent material and planting themes.
- Landscaping throughout the site has been incorporated to consider, permeability to connectivity locations, screening to maintain privacy where relevant and appropriate integration with adjacent vegetation. The total landscaped area of the site is in the order of 1,392sq.m.
- Deep Soil Zones are provided along the periphery of the site and within the central communal areas, which equate to in the order of 527.32sq.m, or 8.88% of the site. This is supported by planting on structure with a substantial depth of 1.2 metres, allowing for planting of trees (Refer **Figure 11** below).

In terms of site constraints, the bushfire management requirement to limit canopy coverage in proximity to the buildings has been acknowledged and addressed within the proposed landscaping design. The final design has maximised the achievable tree density, whilst also meeting the bushfire canopy coverage requirements, and maintaining usable outdoor space.

Refer to **Appendix B** - Landscape Plans.

Figure 8 - Summary of Landscape Planting Depth



Source: Urbis Landscaping

4.5. ECOLOGICAL ASSESSMENT AND VEGETATION REMOVAL / RETENTION

The proposed development delivers substantial deep planting areas throughout the design as a notable feature of the proposal. The inclusion of deep planting areas seeks to providing long-term shading and cooling to the public real, reduce overlooking and increase privacy, enhance the general amenity of the development for residents, and reduce road noise.

An ecological assessment prepared by JWA Pty Ltd (**Appendix F** of this report) has considered the habitat provided by the site against the statutory requirements of the State Planning Policy and Development and Byron Development Control Plan.

Key findings of the ecological assessment are as follows:

- The rear of the site contains the most likely ecological features on the subject site and was therefore the focus of the assessment.
- A site assessment confirmed no threatened flora was recorded on the subject site; however, six (6) species indicated the communities potential as a littoral rainforest TEC. This assessment validates the outcomes of the BSC mapping, which identified Areas of High Environmental Value (HEV) containing littoral rainforest (Refer **Figure 5** below). This is listed as endangered under the BC Act and critically endangered under the EPBC Act.
- The site assessment also confirmed no threatened fauna species were recorded on the subject site. 5 fauna species were recorded opportunistically on the subject site during the site assessment. No threatened species was recorded on the subject site. The proposed development would result in very minor loss of foraging and sheltering habitat.
- Under the BCCKPoM the subject site is included in the koala planning area and is mapped as part of the South Byron Coast Koala Management Area (KMA). Despite this, the subject site is not mapped as being part of a Koala Management Precinct (KMP) or containing potential koala habitat.

Figure 9 - HEV Mapping



The proposed development seeks to remove the existing Moreton Bay Fig tree (Small Leaf Fig *Ficus Obliquum*) with a height of 10-15m and DBH of 1,010mm. This tree is located central to the site. Given the existing concern regarding the on-going viability of the Moreton Bay Fig tree during construction and in the ultimate development scheme, Byron Shire Council have indicated that they do not support the retention of the tree. Further details of this are provided within the Arborist Letter provided by Northern Tree Care, enclosed in **Appendix O**. 14 other trees with a diameter breast height of more than 150mm will be removed as part of the development. The removed trees will be replaced with the planting of additional trees from a local native species. The precise number of additional trees will be determined at detailed design, however the current landscape plans indicate up to 102 trees are able to be accommodated on site whilst still meeting the bushfire canopy coverage limitations.

Of the trees being removed from site, the Ecological Assessment has determined that 6 are identified as characteristic species for the EPBC Act TEC (Littoral Rainforest). Despite this, the report concludes that there will be no significant impacts on littoral rainforest EEC, and a further Species Impact Statement is not required for impacts on the already degraded littoral rainforest EEC vegetation.

Management measures recommended by the Ecological Assessment included the following:

Fauna Management

- A suitably qualified ecologist who holds a fauna survey licence is required to manage wildlife onsite during any tree removal and/or disturbance to wildlife habitat. Where translocation is required, the proponent shall seek any relevant permits from the state regulating agency. It is the responsibility of the proponent to ensure all relevant licences have been obtained prior to any fauna interactions.
- Appropriate disposal of rubbish and food scraps reduces opportunities for non-native predators and disturbance adapted competitors.
- Landscape and landfill materials should be sourced from a supplier where Cane toads do not occur.

- Landscape plantings should include native species that will provide forage habitat for nectarivorous and frugivorous birds and bats.

Flora Management

- Vegetation Management Plan (VMP) be prepared for the trees being retained by the development .
- Weeds should be controlled during construction.
- Vegetation removed during construction should be mulched for use on the subject site. This will prevent the introduction of weeds from seeds in mulch brought in from elsewhere.
- Weeds should be controlled in landscaped areas and areas of retained vegetation.
- Known environmental weeds should be avoided in landscaping.
- For the trees being retained on the subject site tree protection measures should be used in accordance with recommendations provided by a suitable qualified arborist.

An Arboricultural Impact Assessment Report was also prepared to consider the condition and value of vegetation within the site. This includes an assessment of tree retention value in the new development. Findings of this report are summarised as follows:

- A total of 15 trees with a DBH greater than 150mm were identified within the subject site, being the trees subject to Chapter B2 of the City's Development Control Plan. These trees are predominately located in the northern section of the site.
- All trees which are not being retained by the development were not assessed to be worthy of retention, and should be removed to allow construction.
- The trees to be retained will be protected during construction in accordance with *AS 4970-2009 Protection of trees on development sites*.

Refer **Appendix O** - Arboricultural Impact Assessment Report.

All recommendations of the Ecological Assessment and Arborist Report are able to be implemented through conditions of approval.

4.6. NOISE AND VIBRATION IMPACT

The primary sources of external noise intrusion and noise creation applicable to the project are as follows:

- External noise and vibration resulting from operation of the Murwillumbah railway line immediately north of the site.
- Noise created from within the development, including mechanical equipment, vehicles moving through the site and human voices from the ground floor communal area and rooftop terraces.

These sources are considered in detail in the following sections.

4.6.1. External Noise and Vibration Sources

Given the sites location adjacent to the Murwillumbah railway line, the potential noise and vibration impact from this infrastructure on the proposed development has been considered in the noise impact assessment at **Appendix E** of this report.

Key methodology and findings of the report are summarised as follows:

- The Murwillumbah railway line can only be used for recreation, tourism or community and related purposes, and is not capable of accommodating heavy rail. The only train operating on the railway line is the lightweight Byron Solar Train. A light rail noise assessment has been applied on this basis.
- The Byron Solar Train operates at a maximum of twenty services per day, between the hours of 7am and 10pm. The arithmetic average noise level of has been modelled 63dB(A).
- The maximum predicted vibration level at the future dwellings at 29 Shirley Street is 0.46 mm/s, which is well within the strictest 5 mm/s vibration limit for building damage.

- The outcomes of modelling has determined that a number of facades will not comply with the noise criterion by default, and will require noise mitigation measures built into the development. The modelling concluded that a minimum of 25dB sound reduction is required through the building facades of the development, with the following measures recommended:
 - Construction standards as summarised in **Table 6** below; and
 - Mechanical ventilation to the impacted units, allowing the units to meet ventilation requirements whilst allowing occupants to leave windows closed.

Table 6 - Recommended Acoustic Construction Standards

| Location | Façade | Construction element | R _w required | Recommended construction |
|---|--------|----------------------|-------------------------|--|
| Units 005, 006, 007, 008, 009, 101, 105, 106, 107, 108, 109, 201, 202, 205, 206, 208, and 209 | N | Windows | 31 | 6.76mm laminated safety glass in an acoustically sealed frame |
| | | External walls | 31 | Standard construction |
| | E, W | Windows | 26 | Standard 4mm float glass in an acoustically sealed frame |
| | | External walls | 26 | Standard construction |
| | S | Windows | 12 | Standard 4mm float glass with standard weather seals |
| | | External walls | 12 | Standard construction |
| | - | Rooftop | 26 | Metal roof sheeting (Colorbond over steel or timber purlin); Single layer of 10mm gypsum plasterboard internally. |
| | | | | |

Source: Noise Impact Assessment Report

These construction specifications will be applied during the detailed design and construction stage of the development, and may be reflected as a condition of approval accordingly.

4.6.2. Noise Creation

As the subject site is located in proximity to noise sensitive residential and short stay accommodation, the potential for noise generation from within the development has also formed part of the assessment.

For the purpose of controlling noise and amenity, the operation of communal resident areas will be controlled as follows:

- Pool Area – 7am to 10pm
- Private Roof Top Terraces – 24/7
- Communal Space internal – 8am – 9pm

This is consistent with the recommendations of the acoustic assessment, which recommends the use of the communal pool area must be limited to daytime and evening hours only (7:00am to 10:00pm).

Additional construction measures are also required as follows:

- Noise barrier fences must be constructed at ground level along the eastern property boundary adjacent to the nearest residences to protect from noise from the communal outdoor recreation area.
- The mechanical plant must be contained within a purpose built mechanical plant deck.
- Solid balustrades are required at all rooftop terraces.
- All acoustic barriers and acoustic screens must be constructed of a material with minimum superficial mass of 12.5 kg/sq.m.
- Select equipment with low sound power levels;
- Locate equipment as far away from noise sensitive areas as possible;
- Construct solid acoustic screens or enclosures around equipment to screen it from noise sensitive areas;
- Where equipment has directional noise characteristics, point equipment away from noise sensitive areas; and

- Provide acoustic lining to inside of ventilation ducts and/or provide duct silencers.

These construction specifications will be applied during the detailed design and construction stage of the development, and may be reflected as a condition of approval accordingly.

4.7. HERITAGE

Whilst the existing buildings within the site are not heritage listed, the subject site is located adjacent to the Shirley Street Heritage Conservation Area (HCA) requiring a heritage management plan in accordance with S5.10 of the Byron LEP.

The HCA notes the following significance:

A group of dwellings and public buildings, rear lanes, street trees and landscaping which, taken together, illustrate a pattern of settlement in Byron Bay of distinctive character. The area contrasts strongly with the modern beachside developments on the eastern side of Shirley Street, although the two areas are unified by the striking avenue of mature Norfolk Island pine trees.

The Heritage Management Report provided at **Appendix K** of this report has considered the significance of the HCA in the context of the proposed development, with the following key findings:

- The proposed development will contribute to the surrounding treescape by retaining the Moreton Bay Fig tree within the centre of the site.
- The proposed development will be clearly readable as a new development to contrast with the distinctive character of the HCA.
- The proposed development will complement the existing streetscape height, bulk, and scale.
- The proposed development will complement the streetscape with complementary materials, planting, and landscaping.

The outcomes of this heritage assessment demonstrates that the proposed development will not detrimentally impact on the adjacent HCA.

Preparation of an ACHA is underway. Two groups have joined the process, the Arakwal People of Byron Bay and the Tweed Byron Local Aboriginal Land Council. A site visit with these groups has now been completed and it is intended for the final ACHA to be completed in late September, 2023.

4.8. BUSHFIRE MANAGEMENT

As the subject site is partially mapped as 'Bush Fire Prone Land' under S10.3 of the Environmental Planning and Assessment Act 1979 (EPA Act), a Bushfire Management Plan (BMP) has been prepared in support of the proposed development (Refer **Appendix I**). Key findings of the BMP are as follows:

- The proposed landscaping plan meets the performance criteria, subject to appropriate ongoing maintenance (to be completed by a body corporate management scheme), preparation of a bushfire management plan, and further detailed design measures.
- Vehicle access and egress is appropriately designed for evacuation.
- Water supply is available in the site, and additional hydrants will be incorporated in the development to meet the acceptable solution requirements.
- Radiant heat influx is below the threshold of BAL-12.5, and associated construction requirements are achieved.
- The adjacent rail corridor provides a permanent managed bushfire buffer, due to train clearance requirements.

An important consideration in the bushfire management strategy is limiting the canopy coverage within proximity to the building. This requirement has limited the ability to plant substantial shade trees in proximity to the building envelopment, as reflected in the proposed landscape plan. This canopy coverage requirement has ultimately also limited the ability deliver the density of replacement native trees required to be planted on site.

Overall, the assessment concludes that the proposed building mass and height in this low risk locality are unlikely to increase the risk to occupants or the building from excessive radiant or convective fire behaviour and the proposed development, APZ and BAL ratings for this site are deemed appropriate.

4.9. CIVIL AND SERVICES

The development will be fully serviced, including the following:

- Mechanical Systems: air conditioning to apartments and common areas, mechanical ventilation to the basement car park, façade mounted air intake to apartments, energy and water sub-metering, and residential exhaust systems.
- Electrical Services: Low voltage power distribution and switchboards, authority energy metering for house services, mechanical heating/cooling, Building earthing system, Power supply to equipment and control panels, internal and external lighting and emergency lighting.
- Hydraulic Systems: incoming water supply, fire protection systems and domestic cold water.
- Fire Services: Combined Fire Sprinkler & Hydrant System, On-Site Fire System Water Storage Tanks, Fire System Pumps, Fire Hose Reel System, Fire Detection System, Occupant Warning System and Portable Fire Equipment.
- Communications: NBN communications with each apartment provided with a NBN network terminating device, Security Systems (access control, CCTV and intercom).
- Vertical Transportation: the development will be served by four lifts.

Refer **Appendix P** – Return Services Brief

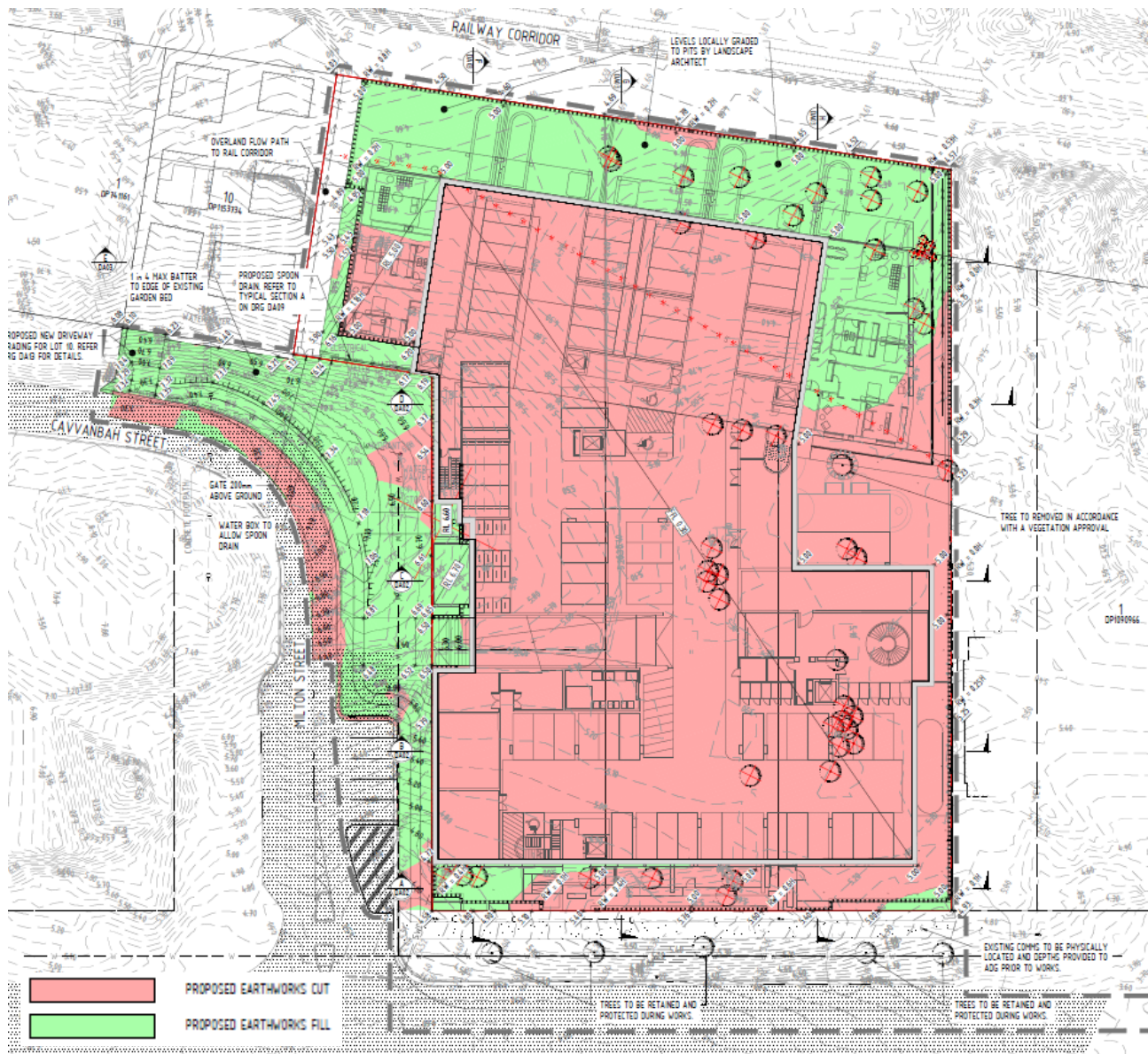
4.10. SITE PREPARATION AND CIVIL WORKS

The proposed development is supported by a preliminary civil plans, including earthworks layout plan, engineering services layout plan and stormwater drainage catchment plan. These preliminary civil plans outline the following:

- Due to the existing topography of the site and the construction of the basement car park, cut and fill works will be required on site. Cut occurs predominately within the designated basement areas, and fill will occur to the north of the site, and within the Milton Street verge (refer **Figure 13** below)
- The extent of earthworks will require the removal of all but one tree from site. This includes trees located to the rear of the property, which are required to be removed due to the extent of earthwork fill. Substantial tree replacement will occur on site to replace removed trees.
- A basement level of 0.3AHD is proposed, with the ground floor level of 5.0AHD.
- The existing sewer line traversing the site will be capped at the site boundary and decommissioned. Indicative replacement infrastructure is designed within the civil plans but will ultimately be determined at detailed design.

Refer **Appendix H** – Civil Plans

Figure 10 - Preliminary Cut and Fill Plan



Source: ADG

5. STRATEGIC CONTEXT

5.1. NORTH COAST REGIONAL PLAN 2036

The *North Coast Regional Plan 2036 (Regional Plan)* is a 20-year blueprint for the future of the North Coast. Its vision is for the North Coast to be the best region in Australia to live, work and play thanks to its spectacular environment and vibrant communities.

To achieve this vision, the NSW Government has acknowledged the importance of the environment and the opportunities of the Pacific Highway, South East Queensland and the region's cities and centres, and set the following regionally focused goals:

- The most stunning environment in NSW;
- A thriving, interconnected economy;
- Vibrant and engaged communities; and
- Great housing choice and lifestyle options.

The Regional Plan is further refined into a series of Local Government Narratives, which establish Urban Growth Area Maps and Regional Priorities for specific area, including Byron. Under the Byron Housing priority, the Regional Plan supports the investigation of opportunities to increase housing diversity, specifically in the form of additional multi-unit dwellings in appropriate locations.

5.2. BYRON SHIRE COUNCIL POLICIES

The following table summarises the Byron Shire Council policies applicable to the proposed development.

Table 7 Summary of Byron Shire Council Policies

| PROVISION | PROPOSED | |
|--|--|---|
| Building in the Vicinity of Underground Infrastructure Policy 2020 | | |
| <p>The objectives of this policy are to:</p> <ol style="list-style-type: none"> <i>To set out the conditions under which easements are created for underground pipelines and structure including sewer lines.</i> <i>To set out the conditions under which excavations, cutting or filling of land or the erection of any structure over or near easements, pipelines and other underground structures may be permitted.</i> <i>To protect buildings and the public.</i> <i>To protect and facilitate maintenance of Council's underground infrastructure.</i> <i>To indemnify Council against damages caused by the failure of underground structures.</i> | <p>The Civil Plans provided at Appendix H of this report demonstrate:</p> <ul style="list-style-type: none"> ▪ The general location of service connections, including proposed sewer connection, water mains and stormwater drainage. ▪ The extent of cut and fill required to deliver the final development levels, including excavation of the basement car park, retaining walls and shoring system locations. <p>This preliminary information is considered sufficient to demonstrate a safe and functional development, with all further supporting management measures able to be considered as conditions of approval.</p> | ✓ |
| Water Sensitive Urban Design Policy and Strategy | | |
| <p>This policy aims to achieve:</p> <ul style="list-style-type: none"> ▪ Better management of stormwater runoff peak flows, volumes and quality; | <p>The following is provided to demonstrate water sensitive urban design:</p> | |

| PROVISION | PROPOSED | |
|--|---|--|
| <ul style="list-style-type: none"> Improving compliance through monitoring of construction activities and built assets; Reducing demands on the use of the regions finite potable water supplies * (i.e. to maximise water efficiency through demand management and conservation); Supporting reuse of recycled water in appropriate locations * (i.e. investigate the suitability of water re-use as an additional new water source), and Enhancing habitat values for flora and fauna through biodiverse local plant selections. | <ul style="list-style-type: none"> A total of 30.5% of the site area comprises landscape catchment areas, minimising impervious areas and runoff volumes (Refer Appendix H – Civil Plans). Landscape species from the Byron Shire Coastal Palette are utilised where possible to ensure the landscaping is adaptable to local climate conditions (Refer Appendix B – Landscape Plans). The development aims for an 8 star environmental certification. | |

6. STATUTORY CONTEXT

6.1. STATE ENVIRONMENTAL PLANNING POLICIES

The following State Environmental Planning Policies (**SEPP**) have been identified as being relevant to the proposed development:

- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (Transport and Infrastructure) 2021
- SEPP No 65—Design Quality of Residential Apartment Development
- SEPP (Coastal Management) 2018
- SEPP (Planning Systems) 2021

6.2. SEPP (TRANSPORT AND INFRASTRUCTURE)

State Environmental Planning Policy (Transport and Infrastructure) aims to facilitate effective delivery of infrastructure by identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure and prescribing consultation requirements for certain development.

Table 8 Summary of SEPP (Transport and Infrastructure)

| Infrastructure SEPP Clause | Response | Referral Agency |
|---|---|-----------------|
| Division 5 Electricity transmission or distribution | A new electricity substation will be constructed as part of the development. As a result, written notice is to be provided to the electricity supply authority. | Ausgrid |
| Division 15 Railways Subdivision 2 (Development in or adjacent to rail corridors and interim rail corridors – notification and other requirements) | Given the development is adjacent to the Murwillumbah railway line, written notice is expected to be provided from the rail operator. | Rail Operator |
| Division 17 – Roads and Traffic Development with frontage to classified road. | The site fronts Shirley Street which is a classified road. Vehicle access will be via Milton Street, which is a local road. The traffic impact of the development is addressed in the Transport Impact Statement at Appendix G . | TfNSW |
| Schedule 3 – Traffic Generating Development | Pursuant to Schedule 3 of the SEPP, the proposal is not categorised as traffic generating development, given it involves less than 300 dwellings. Referral is therefore not required. | N/A |

6.3. SEPP (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

A BASIX Certificate is included at **Appendix D**. The certificate confirms that the proposed development will meet the NSW government's requirements for sustainability. The BASIX assessment indicates that the proposed development achieves the water and thermal performance ratings required.

6.4. SEPP 65 AND APARTMENT DESIGN GUIDE

State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65) aims to improve the design quality of residential flat buildings and residential components of mixed-use developments. It applies to any building that comprises 3 or more storeys and 4 or more dwellings, and therefore includes the subject site.

In determining a development application for residential flat development, a consent authority is to consider:

- (a) the advice (if any) obtained from the design review panel, and*
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and*
- (c) the Apartment Design Guide.*

A comprehensive assessment of the proposed development against the Apartment Design Guidelines is attached at **Appendix J** and should be viewed in conjunction with the Architectural Plans, prepared by Hayball and attached in **Appendix A**. A supporting declaration from the Hayball confirming the proposed design is capable of achieving the design principles of SEPP 65 is also enclosed at **Appendix J**.

Overall, the proposal achieves a high level of compliance with the relevant provisions of the ADG.

6.5. SEPP (PLANNING SYSTEMS) 2021

State Environmental Planning Policy (Planning Systems) 2021 outlines the procedures for dealing with Regionally Significant Development, defined as development with a value over \$30 million. The cost summary report provided at **Appendix N** confirms the cost of development will exceed \$30 million, requiring determination by the Regional Planning Panel.

6.6. SEPP (RESILIENCE AND HAZARDS) 2018 AND COASTAL SEPP 2018

The subject site is located within a 'Coastal Use Area' for the purpose of the Resilience and Hazards SEPP (refer **Figure 7**). Chapter 2 (Coastal management) of this SEPP implements land use planning controls and approvals pathways for development within the 'Coastal Use Area' zone.

Chapter 2 (Coastal Management) of this SEPP implements the objectives of the Coastal Management Act from a land use planning perspective. Division 4 provides the requirements for Coastal Use Areas, which have addressed in Table 9 below.

Figure 11 – Coastal Management SEPP Map



Table 9 Division 4 – Coastal Use Area Assessment

| Clause | Proposed | |
|---|---|---|
| 2.11 Development on Land within the coastal use area | | |
| 2.11 (1) (a) Matters to be considered on land within coastal use area - | <p>(i) a rail corridor is provided between the subject site and the coastal area, meaning direct access to the foreshore is not proposed. Fill earthworks and landscaping works will also occur within the northern section of the site to mitigate erosion.</p> <p>(ii) the site is south of the foreshore, and will not overshadow coastal areas. The modest scale of development will ensure minimal wind tunnel impacts or loss of views.</p> | ✓ |

| Clause | Proposed | |
|---|---|---|
| | <p>(iii) the modest scale of the development will not result in loss of visual amenity.</p> <p>(iv) the site contains existing development, and is not a listed aboriginal site.</p> <p>(v) built heritage is considered in the heritage report at Appendix K.</p> | |
| <p>2.11 (1) (b) Consent authority is satisfied that –</p> <p>(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or</p> <p>(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</p> <p>(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact,</p> | <p>In addition to the points addressed in paragraph (a) above, it is noted that the development will be earth worked, retained and landscaped to prevent damage causing erosion from occurring within the site. This includes the construction of retaining structures and shoring systems to the basement.</p> | ✓ |
| <p>2.11(1)(c) (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development</p> | <p>Refer to assessment against Local Environmental Plan requirements at Section 6.8 of this report</p> | ✓ |

6.7. SEPP NO. 55 – REMEDIATION OF LAND

In accordance with Clause 7 of the State Emergency Planning Policy (SEPP) Number 55, development on land must not be carried out unless the consent authority has considered whether the land is contaminated from preliminary investigations in accordance with the Contaminated Land Planning Guidelines.

Section 3.4.1 of the Policy requires the applicant to provide responses to the questions contain in **Table 10** below.

Table 10 Section 3.4.1 of SEPP No. 55

| SEPP Requirements | Response |
|--|---|
| <i>Please specify all land uses to which the site has been put, including the current use.</i> | The site currently contains backpackers accommodation (hostel land use). Residential Flat Buildings are proposed. |
| <i>Is the proponent aware of uses to which properties adjoining the site have been put? If so, please specify.</i> | Surrounding development comprises residential development. These include a combination of Dwelling Houses and Residential Flat Buildings. |
| <i>Do any of the proposed uses correlate with the potentially contaminated activity set out in table 1 in schedule 1 of this policy?</i> | No. |

| SEPP Requirements | Response |
|--|----------|
| <i>If the answer to 3 is yes – has there been any testing or assessment of the site and, if so, what were the results?</i> | No. |
| Is the proponent aware of any contamination on the site? | No. |

As demonstrated in **Table 10**, there is no evidence to demonstrate the site would be subject to widespread contamination as a result of historical use. However, the presence of isolated contamination resulting from proximity to the railway corridor or other residues will be investigated via targeted soil testing prior to the commencement of construction works.

6.8. LOCAL ENVIRONMENTAL PLANS

The site is affected by two Location Environmental Plans, being the Byron Local Environmental Plan 2014 (LEP 2014) and Byron Local Environmental Plan 1988 (LEP 1988). The 2014 LEP is applicable to the southern portion of the subject site. The remainder of the site is a 'Deferred Matter', meaning planning controls revert to the 1988 LEP.

A comprehensive assessment of the proposed development against the applicable Sections of each LEP is included in **Section 6.8.1.** and **Section 6.8.2** below.

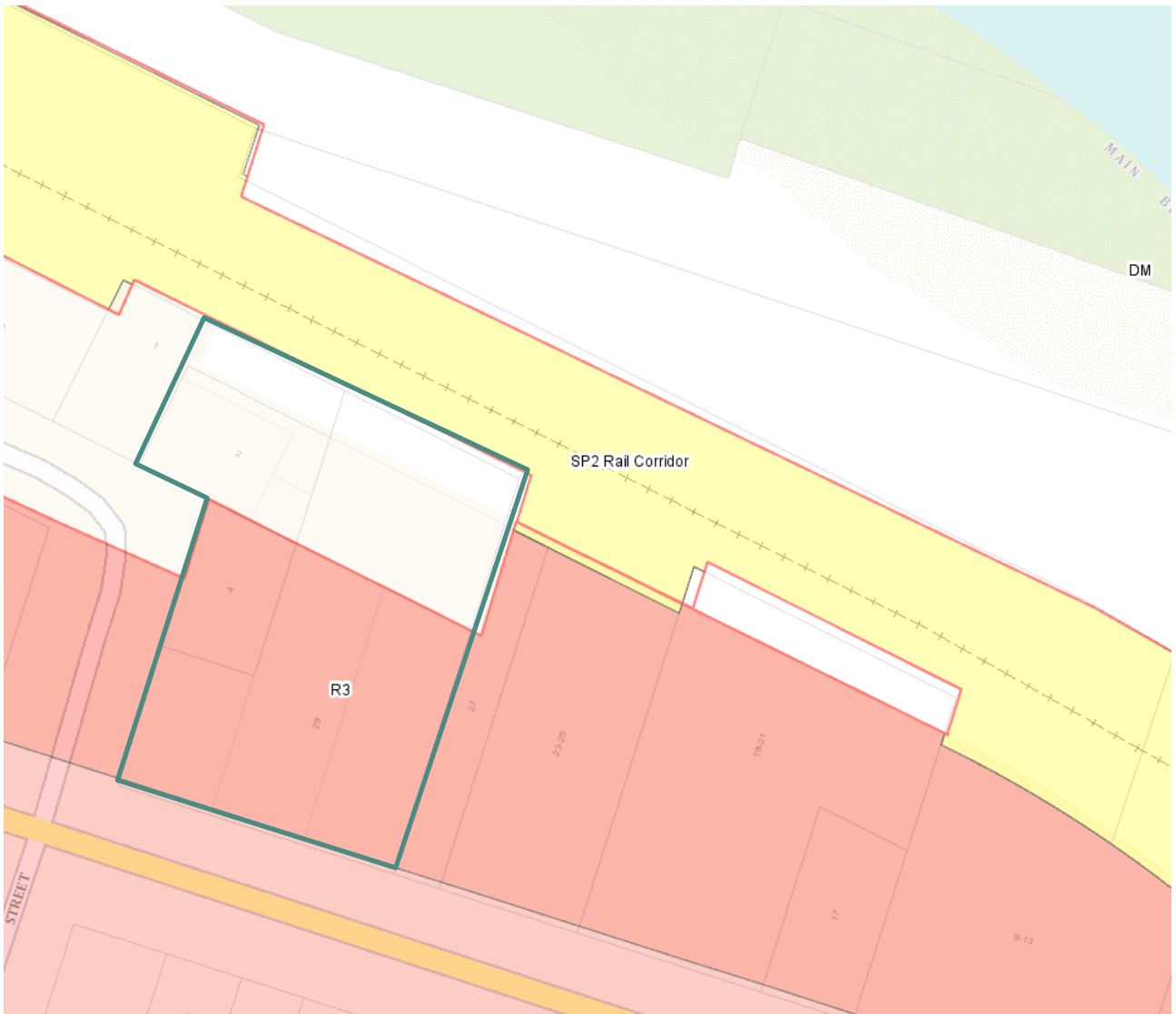
6.8.1. Byron Local Environmental Plan 2014 (LEP 2014)

6.8.1.1. Land Zoning and Permissibility

The southern portion of the site is zoned 'R3: Medium Density Residential' under the LEP 2014 (Refer **Figure 8**). A 'Residential Flat Building' is not listed as a prohibited land use for the R3: Medium Density Residential zone, and is therefore capable of approval with consent.

The remainder of the site is identified as 'Deferred Matter', which reverts to the Byron Local Environmental Plan 1988 (Refer **Section 6.8.2**) and Development Control Plan 2010 (Refer **Section 6.9.2**).

Figure 12 LEP 2014 Zoning Map



6.8.1.2. LEP 2014 Provisions

The following table provides and assessment of the proposal against relevant provisions and clauses of the LEP.

Table 11 LEP 2014 Provisions

| Required | Provided | |
|---|--|------------------|
| Part 4 Principal Development Standards | | |
| <u>Clause 4.3 – Height of Buildings</u> 9m – as per Height of Building Map | The proposed development seeks a variation of the height – refer to Clause 4.6 for a detailed assessment of the variation request. | Variation |
| <u>Clause 4.4 – Floor Space Ratio (FSR)</u> 0.6 – as per FSR Map | 0.66 (2,292.6sq.m) over the R3 portion. The proposed development seeks a variation of the Floor Space Ratio – refer to Clause 4.6 for a detailed assessment of the variation request. | Variation |
| <u>Clause 5.10 – Heritage Conservation</u> | Whilst the existing buildings within the site are not heritage listed, the subject site is located adjacent to the Shirley Street Heritage Conservation Area (HCA). The heritage report at Appendix K demonstrates the proposed development does not impact on the heritage value of this precinct. | ✓ |
| <u>Clause 6.17</u> | The subject site is currently used for the purpose of a ‘ <i>Tourist and visitor accommodation – backpackers’ accommodation</i> ’ which provides temporary and short-term accommodation on a commercial basis. Removal of the current land use on the site will not result in loss of affordable housing within Byron Bay. | ✓ |
| <u>Clause 6.18</u> | The Byron Shire Council Affordable Housing Contribution Scheme adopted by the Council on 11 August 2022 defines the affordable contribution area for Byron Bay. The proposed development is not located on land within the affordable housing contribution area and therefore Clause 6.18 of the BLEP 2014 does not apply. | ✓ |

As noted in **Section 3.2** of this report, both the FSR and building heights were items of discussion during the pre-lodgement meetings on this application. The feedback provided during this meeting noted that a 10% variation could be considered, subject to the delivery of strong architecture, high quality construction and communal areas. The built form summary provided at **Section 4.2** of this report outlines the measures which have been applied to deliver this high quality outcome.

In order to deliver this high quality architectural design, the development has increased the ceiling heights to the apartments. This approach increases the infiltration of natural light, as well as creating the perception of a more spacious interior capitalising on key views. Inevitably, increasing the ceiling heights has increased

the overall height of the development, however the building generally remains less than 9m above natural ground level (with some minor variations).

With regard to deviations from the development standards, clause 4.6(2) of the LEP notes that development consent may be granted despite the development contravening a development standard. The matters to be considered in granting consent to a variation are addressed in the supporting Clause 4.6 variation reports, and summarised in Table 12 below.

Table 12 Exceptions to Development Standards

| Exception Requirement | Details |
|---|---|
| <i>(3) 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—</i> | |
| <i>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case</i> | As demonstrated in Section 3.2 of this report, the scale of development is consistent with similar recent developments in the area. This precedence demonstrates that it is reasonable to vary development standards in order to deliver an exceptional development design, and respond to changes in site topography. In this instance, the proposed development increases building height to deliver benefits from higher ceiling heights, and does not represent overdevelopment of the site. |
| <i>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</i> | Approval precedent has demonstrated that variations to height and FSR requirements may be considered where the development does not impact on overshadowing or the character of the public realm. Given the substantial verge setbacks from Milton Street, and the minor nature of the variations, the proposed |
| <i>(4) Development consent must not be granted for development that contravenes a development standard unless—</i> | |
| <i>(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out</i> | The development is consistent with the objectives of the Medium Density Residential zone, which seeks to deliver housing to meet the needs of the community. In this instance, the delivery of larger 3 bedroom dwellings is found to meet local market demands, resulting in the delivery of larger floorplate apartments. Increases in FSR are the direct result of delivering this larger dwelling product. |
| <i>(5) In deciding whether to grant concurrence, the Planning Secretary must consider—</i> | |
| <i>(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning</i> | The minor variation to height and FSR will not contravene any matters of significance for State or regional planning. |

| Exception Requirement | Details |
|--|--|
| <i>(b) the public benefit of maintaining the development standard</i> | The development layout has also structured around the retention of key vegetation within the site, and the development will include 102 replacement trees to supplement the native trees removed on site. These improvements more than offset the visual impact of a minor increase in height and FSR. |
| <i>(5)(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.</i> | No additional matters of relevance have been identified. |

6.8.2. Byron Local Environmental Plan 1988 (LEP 1988)

The land zoned 'Deferred Matters' under the 2014 LEP (being the northern section of the site) reverts to the *Byron Local Environmental Plan 1988* (LEP 1988) for zoning, land use and development controls. The subject site is located within the '7(f2) (Urban Coastal Land Zone)' under this LEP 1988, as demonstrated in **Figure 9** below.

A residential flat building is not listed as a prohibited land use within the 7(f2) Urban Coastal Zone, and is therefore capable of achieving development consent.



Figure 13 - LEP1988 Zoning Map

Source: Byron Local Environmental Plan 1988 Zoning Maps

The objectives of the Urban Coastal Land Zone are primarily to identify land likely to be influenced by coastal processes, but permit development subject to due consideration of the likelihood of such development being adversely affected by, or adversely affecting, coastal process.

In accordance with the zone objectives, urban development is only permitted in the zone where due consideration is given to the matters outlined in **Table 13** below.

Table 13 Zone No, 7(f2) (Urban Coastal Zone) considerations

| Consideration | Proposed | |
|--|---|------------------|
| 32 Development within Zone No 7 (f2) (Urban Coastal Land Zone) | | |
| <i>(i) the need to relocate buildings in the long term,</i> | The preliminary civil package demonstrates the coastal processes will not impact the structural integrity of the development, and a time limited approval is not required. Civil works including retaining walls and basement shoring system will prevent erosion. | ✓ |
| <i>(ii) the need for development consent to be limited to a particular period,</i> | The coastal processes will not impact the structural integrity of the development, and a time limited approval is not required. | ✓ |
| <i>(iii) the form, bulk, intensity and nature of the development, and</i> | The Civil Report provided at Appendix H demonstrates the Preliminary works being undertaken to support the development. | ✓ |
| <i>(iv) continued safe public access to the site, and</i> | All access points are obtained via existing streets outside the coastal land use zone. | ✓ |
| <i>(d) to allow detailed provisions to be made, by means of a development control plan, to set aside specific areas within the zone for different land uses and intensities of development.</i> | Not required in this instance. | ✓ |
| Division 4 – General Provisions | | |
| <u>40 – Height</u> <i>(2) The council must not consent to the erection of any building—</i> ... <i>(b) on land within any other zone, if—</i> <i>(i) the floor of the topmost floor level of the building exceeds 4.5 metres above the existing ground level, or</i> <i>(ii) the vertical distance between the topmost part of the building and the existing ground level below exceeds 9 metres.</i> | <p>The building is generally less than 9.0m above natural ground level, with exception of some areas where a variation is sought. Height exceedances are generally only required to enable glass balustrading and lift overruns.</p> <p>It is noted that a 4.5m topmost floor level requirement is established under the BLEP 1988. This aspect of clause 40 has been achieved by the proposal.</p> | Variation |

As identified in the table above, the proposed development will result in a variation to the building height standards of the 1988 LEP. Clause 64A(2) of the 1988 LEP provides the head of power for a variation to the LEP standards to be considered. Subsequent Clauses 64A(3) – 64(5) outline the circumstances and prerequisites for considering the LEP variation.

These considerations replicate the matters to be considered of the 2014 LEP, which is discussed in detail within **Section 6.8.1.2** of this report. In summary, the height variation is justified for the following reasons:

- The scale of the development is consistent with similar recent developments in the area. This precedence demonstrates that it is reasonable to vary development standards in order to deliver an exceptional development design, and respond to changes in site topography. In this instance, the proposed development increases building height to deliver benefits from higher ceiling heights, and does not represent overdevelopment of the site.
- Approval precedent has demonstrated that variations to height and FSR requirements may be considered where the development does not impact on overshadowing or the character of the public realm.
- Given the substantial verge setbacks from Milton Street, and the minor nature of the variations, the proposed height variations will not produce a noticeable overshadowing impact, or change the overall character of the public realm.
- The development is consistent with the objectives of the Medium Density Residential zone, which seeks to deliver housing to meet the needs of the community. In this instance, the delivery of larger 3 bedroom dwellings is found to meet local market demands, resulting in the delivery of larger floorplate apartments. Increases in FSR are the direct result of delivering this larger dwelling product.
- The minor variation to height and FSR will not contravene any matters of significance for State or regional planning.
- The development layout has also structured around the retention of key vegetation within the site, and the development will include 102 replacement trees to supplement the native trees removed on site. These improvements more than offset the visual impact of a minor increase in height and FSR.

Overall, this concludes that the building height variation is the direct result of delivering an exception architectural design on the site.

6.9. DEVELOPMENT CONTROL PLANS

The subject site is also subject to two Development Control Plans, being:

- *Byron Development Control Plan 2014* (DCP 2014)
- *Byron Development Control Plan 2010* (DCP 2010)

These Development Control Plans provides detailed planning controls relevant to the site and the proposal. An assessment against the relevant controls is provided in the following sections.

6.9.1. Byron Development Control Plan 2014 (DCP 2014)

The table below provides a compliance assessment of the proposal against relevant controls and provisions of the DCP 2014.

Table 14 DCP 2014 Compliance Table

| REQUIRED | PROPOSED | COMPLIES |
|--|---|----------|
| Chapter B1 – Biodiversity | | |
| B1.2.4 – Ecological Assessment | The subject site contains an area identified as Littoral Rainforest. Refer to Appendix O for the Ecological Assessment report. | ✓ |
| Chapter B2 – Tree and Vegetation Management | | |
| <i>The following vegetation is declared under Part 3 clause 9(1), (2) of the State Environmental Planning Policy</i> | As outlined in the Arboricultural Impact Assessment Report (refer Appendix P and Section 4.5 of this report), a total of 15 native trees with a diameter greater than 150cm have been identified within the site. | ✓ |

| REQUIRED | PROPOSED | COMPLIES |
|---|---|----------|
| <p>(Vegetation in non-rural areas) 2017;</p> <p>...</p> <p>6. All native trees within a non-rural area >150cm diameter at breast height (DBH);</p> | <p>The remaining trees are identified as low value and suitable for removal to facilitate construction, or are required to be removed as a result to changes in site levels.</p> <p>A further tree removal permit will be obtained prior to clearance of declared vegetation.</p> | |
| Chapter B3: Services | | |
| 1. <u>Water Supply</u> | <p>The development will be provided with incoming water supply via the water main located on Shirley Street. Refer to Appendix Q for a summary of service specifications.</p> | ✓ |
| 2. <u>Electricity Supply</u> | <p>The development will be provided with an electrical connection to the grid, with a substation to be located on Milton Street.</p> <p>It is worth noting that electrical will be the only source of power within the development, with no gas connection being provided.</p> <p>Refer to Appendix Q for a summary of service specifications.</p> | ✓ |
| 3. <u>Telecommunications Infrastructure</u> | <p>NBN communications will be provided, with each apartment provided with a NBN network terminating device. Incoming NBN fibre services shall reticulate from the main communications room to the street network.</p> <p>Refer to Appendix Q for a summary of service specifications.</p> | ✓ |
| 4. <u>Sewage Management</u> | <p>The development will be provided with reticulated sewerage.</p> | ✓ |
| 5. <u>Stormwater and Drainage</u> | <p>Refer to Appendix H - Stormwater Management Plan.</p> | ✓ |
| Chapter B4: Traffic Planning, Vehicle Parking, Circulation and Access | | |
| <u>B4.2.1 Traffic Impact</u> | <p>The development is expected to generate less than 50 peak hour trips, requiring a Traffic Impact Statement (TIS).</p> <p>Refer to Appendix G for the Traffic Impact Statement</p> | ✓ |
| <u>B4.2.2 Parking Layout Standards</u> | <p>All parking designed to AS 2890 standards.</p> | ✓ |

| REQUIRED | PROPOSED | COMPLIES |
|--|--|----------|
| <u>B4.2.3 Vehicle Access and Manoeuvring Areas</u> | <p>All driveways and manoeuvring areas are designed in accordance with AS 2890 standards. Swept path analysis is provided within the TIA at Appendix G.</p> <p>A 6.1m two way driveway is provided, exceeding the 5.5m minimum requirement.</p> | ✓ |
| <u>B4.2.4 Structures Adjacent to Driveways</u> | No structures are located adjacent to the driveway. | ✓ |
| <u>B4.2.5 Car Parking Requirements</u> | <p>Residential Flat Buildings require 2 spaces per 3 or more bed unit, plus 1 visitor space per 4 dwellings. With 25 dwellings, 59 bays are required.</p> <p>A total of 69 bays (mix of 2 and 3 per dwelling) are provided on site, exceeding the minimum requirement. This includes 7 visitor spaces.</p> <p>All bays are covered in the basement level.</p> | ✓ |
| <u>B4.2.6 Underground / Basement Car Parks</u> | <p>Milton Street is utilised for vehicle access to reduce the visual impact of the access, and minimise conflict with pedestrians travelling on Shirley Street. The development provides a total of 69 spaces (57 prescribed) including 7 visitor spaces.</p> <p>All earthworks required to support the basement will occur on site.</p> <p>The basement is located above the flood planning level, and basement access is designed to prevent entry of stormwater (refer Appendix H for Stormwater Management Plan).</p> | ✓ |
| <u>B4.2.8 Bicycle, Motor Cycles and Coach Parking</u> | <p>Bicycle Parking – no bicycle space rate is specified under Table B4.2 for residential flat buildings.</p> <p>Regardless, storage areas suitable for bike storage are provided for each unit at the basement.</p> | ✓ |
| <u>B4.2.9 – Loading Bays</u> | A designated loading bays is provided in the basement level, screened from public view. | ✓ |
| Chapter B5: Providing for Cycling | | |
| <u>B5.2.1 Transport Management and Access Assessment</u> | <p>Storage suitable for bicycle storage are provided at the basement level. These stores are directly accessible via the basement access driveway, providing convenient access.</p> <p>The basement will be a low traffic volume area, resulting in low risk of conflict with vehicles.</p> | ✓ |

| REQUIRED | PROPOSED | COMPLIES |
|--|---|--|
| <u>5.1.4 Provision of Bicycle Storage, Parking and End of Trip Facilities</u> | Storage suitable for bike storage are provided at the basement level. Given the residential development, further dedicated end of trip facilities are not required. | ✓ |
| Chapter B8: Waste Minimisation and Management | | |
| <u>B8.2 – Submission Requirements for DA's</u> | A Site Waste Minimisation and Management Plan (SWMMP) is provided at Appendix L of this report, addressing all requirements of Chapter B8. | ✓ |
| Chapter B9: Landscaping – 9.4 Multi Dwelling Housing, Attached Dwellings and Residential Flat Buildings | | |
| <u>9.4.1.1 Residential Flat Building requirements</u> | <p>Section 4.5 and Appendix F and P demonstrate all tree of ecological value and suitable health are being protected and accommodated in the development design. 71 additional trees are to be planted on site to replace trees being removed. 90% of these are to be native and endemic species.</p> <p>Large Shade trees and feature palms are planted in the Shirley Street verge and adjacent to the neighbouring property boundary to privacy and to improve pedestrian amenity. The central open space area provides a large and high quality area for the enjoyment of residents.</p> | ✓ |
| <u>9.4.1.2 Common Landscaped Areas</u> | <p>All 25 dwellings have a dwelling size greater than 85sq.m, requiring a total common landscape area of 2,250sq.m.</p> <p>The development incorporates a total of 411.7sq.m of landscaping within the communal space that is situated within the middle portion of the development. A further 527.32sq.m of deep soil planting areas is included around the perimeter of the site.</p> <p>Whilst the development proposes less than 2,250sq.m of total common landscaped areas, the development incorporates:</p> <ul style="list-style-type: none"> - A substantial communal space of 1,392sq.m within the middle of the site; - Private balconies of 1,296sq.m; - Additional landscaping throughout the private external courtyards of 1,169.8sq.m; and - Additional landscaping within the private roof tops of 1,570.9sq.m. <p>While the proposal does not include 2,250sq.m of landscaping within the communal areas, the</p> | <p>Minor variation</p> <p>A minor variation is sought for the short-fall of common landscaping areas. Additional landscaping has however been incorporated within the private courtyards and roof top terraces.</p> |

| REQUIRED | PROPOSED | COMPLIES |
|---|---|------------------------|
| | <p>development proposes additional landscaping within the private spaces as mentioned above, equivalent to 2,750sq.m (courtyards and roof top terraces). This addresses the above short-fall through additional private landscaping.</p> <p>Altogether, the development proposes 4,036.7sq.m of private open space with landscaping included. Including the communal open space, the development provides 5,428.7sq.m of communal open space, balconies, courtyards and roof top terraces inclusive of landscaping.</p> <p>Furthermore, given that the design utilises underground car parking, the development maximises the allowable building footprint to ensure a high level of communal open space, common landscaping areas, and private open spaces are provided. This is particularly evident through the inclusion of the roof top terraces which incorporate additional landscaping.</p> <p>The substantial private open space allowances included seeks to provide a high quality and aesthetically attractive environment for long-term residents of the development.</p> <p>The substantial private open space and additional landscaping throughout these areas provides a pleasant landscape setting for residents to enjoy, in addition to the communal amenities. The substantial private open spaces with landscaping means the future residents are not reliant on the communal open space alone for enjoyment.</p> | |
| B9.4.2.2 – minimum of 75% of the total common landscaped area of the site must consist of deep soil areas | <p>The communal area of the site is 1,392sq.m, As this communal area is located above the basement car parking structure, the majority of the area does not comprise deep soil areas.</p> <p>Regardless, a total of 527.32sq.m of deep soil landscaping is provided across the subject site, with a deliberate focus on providing opportunities on the perimeter of the site for greatest benefit for privacy and shade of the public realm.</p> | Minor Variation |
| B9.4.2.3 Landscape Design | Section 4.4 of this report outlines the landscape design concept. | ✓ |
| B9.12.3 Climate and Microclimate | | |

| REQUIRED | PROPOSED | COMPLIES |
|---|---|--|
| <i>In summer the western elevations of buildings should be protected from the afternoon sun with trees of suitable mature height.</i> | Timber horizontal louvres and performance glazing are provided to the western façade where practical to protect from western afternoon sun. | ✓ |
| B9.12.5 Planting Size, Density and Species | | |
| <p>B9.12.5.1 – Minimum Planting Sizes:</p> <p>a) street and feature trees: 45 litre minimum</p> <p>b) trees: 300mm minimum pot size</p> <p>c) large shrubs: 200mm minimum pot size</p> <p>d) groundcovers: 140mm minimum pot size</p> | <p>The landscape plans at Appendix B outline the general landscape layout proposed for the site. This includes the planting of 71 trees on site.</p> <p>The associated pot size of plants will be determined at detailed design.</p> | To be determined at detailed design |
| B9.12.5.2 – Minimum 90% of plants to be locally indigenous | The planting palette outlined in the Statement of Landscape Intent details that the total number of plantings will be a mix of 90% native species and 10% exotic species. | ✓ |
| B9.12.5.3 - No species listed as undesirable in Chapter B2 Preservation of Trees and Other Vegetation shall be used in landscaping on any site | No undesirable species proposed. | ✓ |
| B9.12.5.3 - Species listed as threatened species under the Threatened Species Conservation Act 1995 should not be used for landscaping purposes unless the genetic provenance can be demonstrated in terms of locally sourced seed stock. | No threatened species proposed. | ✓ |

| REQUIRED | PROPOSED | COMPLIES |
|---|--|----------|
| B9.12.5.5 - In new developments, consideration will be given to the provision of dedicated areas for the growing of vegetables, fruit trees and other edible species as part of the landscaped areas. | Oversized ground floor courtyards and balcony spaces provide sufficient space for vegetable gardens, if desired by future residents. | ✓ |

| Chapter B11: Planning for Crime Prevention | | |
|--|---|---|
| Prescriptive Measures | CPTED principles have been addressed in the architectural design and layout. | ✓ |
| Chapter B13: Access and Mobility | | |
| <u>B13.1.6 Special Requirements for Development Applications</u> | The BCA and Accessibility Report provided at Appendix Q of this report demonstrates the requirements of the Disability and Discrimination Act are met in the development design. | ✓ |
| <u>B13.2.2a) Dwelling Units</u> - minimum of 10% adaptable housing. | A minimum of 3 dwellings are adaptable housing. | ✓ |
| <u>B13.2.2b) Access:</u> continuous accessible path of travel. | Continuous travel paths are provided throughout the development. Level differences are overcome with ramps or lift access. | ✓ |
| <u>B13.2.2c) Car Parking</u> 1 accessible car parking space for each adaptable housing unit | A mix of 2 or 3 car parking spaces are provided per unit in the basement level. All parking bays are provided with access to the basement level lift. | ✓ |
| Chapter B14: Excavation and Fill | | |
| <u>B14.2.3 – Excavation and Fill for Car Parking</u> | All batters will be landscaped for erosion control. Refer Appendix B - Landscape Plans and Appendix H - Civil Plans | ✓ |
| <u>B14.2.3 – Pool on Level Land</u> | The maximum height of earthworks for the pool is 2m. This may be reflected as a condition of approval if required. | ✓ |
| Chapter E5 – Certain Locations in Byron Bay and Ewingsdale | | |
| <u>E5.4.1 Development and Servicing of Land Affected by Predicted Coastal Hazards</u> | The Civil Plans at Appendix H of this report demonstrate the proposed servicing to support development within the site. Services will be protected | ✓ |

from coastal erosion processes via the exiting rail corridor and retaining works within the site.

Overall, this demonstrates that coastal erosion processes will impact the serviceability of the development, and the erosion escarpment is not expected to encroach within 50m of the building.

The additional requirements under Chapter D1: Residential Accommodation in Urban, Village & Special Purpose Zones, applicable to the R3 zone, are addressed in **Table 15** below.

Table 15 Chapter D1 Additional Requirements for R3 Zone

| PROVISION | PROVIDED | |
|--|---|--|
| D1.2 General Provisions | | |
| <p><u><i>D1.2.1 Building Height Plane</i></u></p> <p><i>The building height plane in combination with boundary setbacks prescribed in this DCP, and building height prescribed in the Byron LEP 2014, form the maximum building envelope for all residential development other than for shop top housing and ancillary dwellings in Zones IN1, IN2 and B7.</i></p> | <p>The building height plane defines the side and rear setbacks, in accordance with Clause D1.2.2.4b.</p> <p>The 4m setback to the eastern boundary achieves this building plane, with only minor encroachments of balcony areas (refer DA 7.01).</p> <p>The 4.8m western setback to the existing dwellings also achieves the building plane with only minor encroachments for balcony areas (refer DA7.06).</p> <p>The western elevation to the existing development also seeks variation for balcony encroachments (refer DA 7.05).</p> <p>The 6.6m rear setback fully accommodates the building height plane (refer DA 7.05).</p> <p>Building height is addressed in Section 6.8.1.2 of this report.</p> <p>All other setback requirements are addressed below.</p> | <p>Minor Variation</p> <p>A minor variation is sought for:</p> <ul style="list-style-type: none"> - the minor encroachments of balcony areas within the eastern setback (4m setback to boundary) - the minor encroachments of balcony areas within the western setback (4.8m setback to boundary) |
| D1.2.2 Setbacks from Boundaries | | |

| PROVISION | PROVIDED | |
|---|---|--|
| <p><u>D1.2.2.1 Minimum Street Frontage Setbacks</u></p> <p>Classified Road – 9m minimum setback from primary front boundary</p> <p>...</p> <p>d) Corner Allotments, secondary roads – 3m</p> | <p><u>Primary Street (Shirley Street)</u> – 5.1m setback provided.</p> <p>The substantial verge planting will reduce the noise impacts of proximity to Shirley Street. The reduced setback also assists in providing informal surveillance over Shirley Street.</p> <p><u>Secondary Street (Milton Street)</u></p> <p>1.7m setback to balcony for southern building. This reduced setback is the direct result of the irregular lot boundary alignment. The building is substantially setback from the street due to the large verge area, and does result in the perception of building bulk.</p> <p>3m for northern building.</p> | <p>Minor Variation</p> <p>A minor variation is sought for the reduced front boundary setback.</p> <p>Minor Variation</p> <p>A minor variation is sought for the reduced secondary road setback.</p> |
| <p><u>D1.2.2.4 Minimum Setbacks for Residential Flat Buildings and Multi-Dwelling Housing</u></p> <p>Side and rear setback – 1.5 metres for single storey, otherwise governed by the building height plane.</p> <p>c) Between buildings on a site – 3 metres.</p> | <p>b) The typical side and rear setbacks are as follows:</p> <ul style="list-style-type: none"> North Boundary – 6.66.6m East Boundary – min. 4m to southern building, 4.5m to northern building. <p>Refer to D1.2.1 above for assessment of building height plane, which demonstrates the building is largely compliant with the building height plane.</p> <p>3m separation is provided between the east and west buildings fronting Shirley Street however, these buildings are designed to be linked only by a pedestrian pathway. Given the orientation of dwellings, this will not result in a compromised amenity outcome.</p> | <p>Minor Variation</p> <p>Whilst the proposal incorporates sufficient side and rear setbacks as outlined, they marginally encroach within the building height plane via the balconies.</p> <p>A minor variation is sought for the marginal encroachment within the building height plane.</p> |
| <p><u>D1.2.2.4 Minimum Setbacks for Swimming Pools and Spas</u></p> <p>The outer edge of the pool concourse or coping must be set back a minimum of one (1) metre from the side or rear boundaries, with the water line being a</p> | <p>All private pools are located within the property backyard.</p> <p>The location of the pool pumps will be determined at detailed design. Corresponding acoustic shield</p> | <p>Minor Variation</p> <p>A minor variation is sought for the proposed pool at Unit 1 with a separation of 950mm</p> |

| PROVISION | PROVIDED | |
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| <p>minimum of 1.5 metres from those boundaries.</p> <p>Pools should not be located within the street frontage setback, except on sites where private open space can be accommodated only in this location or other site attributes support this outcome.</p> <p>Pool pumps shall be located as far back from a side or rear boundary as practical and if closer than 3 m from either it shall be acoustically shielded.</p> | <p>requirements may be provided as a condition of approval.</p> | <p>from the coping and less than 1.5m from the water line.</p> <p>All other pools are compliant with the 1m from the side setback, and 1.5m from the waterline.</p> |
| D1.2.3 Privacy | | |
| <p><u>D1.2.3.1</u></p> <p>Where a direct view exists into the private open space of an adjoining dwelling, the outlook from windows, landing stairs, terraces, decks and balconies must be screened by privacy screens which achieve at maximum 50% transparency, or obscured by landscaping.</p> | <p>The proposal incorporates timber horizontal louvers located along the eastern façade of the south building. The louvers will increase privacy for both the proposed development and the adjoining dwelling. The louvers, which act as privacy screening, achieve at maximum 50% transparency.</p> | ✓ |
| <p><u>D1.2.3.2</u></p> <p>Decks, terraces, balconies and other external living areas within 4 metres from a side or rear boundary and with a floor level greater than 1.0m above ground level (existing) will require a privacy screen unless it can be demonstrated that there will be negligible overlooking and/or privacy impacts.</p> | <p>The proposed buildings do not comprise of any decks, terraces, balconies or other external living areas situated within 4m from the side boundaries. Regardless, the development comprises of privacy screening throughout to maintain privacy to the development and the adjoining lots.</p> | ✓ |
| D1.2.4 Solar Access | | |
| <p><u>D1.2.4.1</u></p> <p>Except where there is no possibility of overshadowing, proposed development comprising two storeys or greater must be accompanied by shadow diagrams over the subject and adjoining sites for the summer solstice (21st December) and winter solstice (21 June) at the times of 9am, 12pm and 3pm. Shadow cast by fences, roof overhangs and changes in level are to be considered and should be indicated on shadow diagrams submitted. Plans must clearly differentiate the</p> | <p>A Shadow Analysis has been provided within the Architectural Drawings prepared by Hayball (Reference DA 9.11 – 9.16).</p> | ✓ |

| PROVISION | PROVIDED | |
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| existing situation with the proposed situation to fully demonstrate the extent of the proposed overshadowing. | | |
| <p><u>D1.2.4.2</u></p> <p>Shadow diagrams must demonstrate that proposed dwellings are to achieve a minimum of:</p> <ol style="list-style-type: none"> Two hours sunlight between 9am and 3pm on June 21 for private open spaces; and Three hours sunlight between 9am and 3pm on June 21 over a portion of their north-facing living areas (decks, living rooms, bedrooms, kitchens etc) | <p>A Shadow Analysis has been provided within the Architectural Drawings prepared by Hayball (Reference DA 9.11 – 9.16).</p> <p>The Shadow Analysis demonstrates that all apartments living and outdoor private space receive a minimum of 3 hours direct sunlight between 9am and 3pm on 21 June.</p> | ✓ |
| <p><u>D1.2.4.3</u></p> <p><u>Shadow diagrams must demonstrate that neighbouring dwellings are to achieve a minimum of:</u></p> <ol style="list-style-type: none"> <u>Two hours of sunlight to at least 50% of private open spaces between 9am and 3pm on June 21; and</u> <u>Three hours of sunlight between 9am and 3pm on June 21 over a portion of north-facing living areas (decks, living rooms, bedrooms, kitchens etc).</u> <u>Where overshadowed by existing buildings is greater than the abovementioned, sunlight is not to be further restricted.</u> | <p>A Shadow Analysis has been provided within the Architectural Drawings prepared by Hayball (Reference DA 9.11 – 9.16).</p> <p>The Shadow Analysis demonstrates that all neighbouring dwellings maintain sunlight to private open spaces and north-facing living areas between the hours of 9am and 3pm, specifically on June 21.</p> <p>The Shadow Analysis prepared by Hayball has included the shadow diagrams with relevance to the neighbouring dwellings. It is demonstrated through these shadow diagrams that the neighbouring dwellings will retain sunlight during the specified hours.</p> | ✓ |
| <p><u>D1.2.4.4</u></p> <p><u>New dwelling design should minimise overshadowing on existing adjacent solar panels where other reasonable design alternatives are possible.</u></p> | <p>The adjoining lots at 27 Shirley Street to the eastern boundary, and 1 Cavvanbah Street to the western boundary, do not have existing solar panels.</p> | ✓ |

| D1.2.5 Fences | | |
|---|---|--|
| <p><u>D1.2.5.1 – Height of Fences</u></p> <p>Front – 1.2m</p> | <p><u>Front: Shirley Street Boundary Wall –</u></p> | <p>Minor Variation</p> <p>Whilst a minor variation is</p> |

| | | |
|--|---|--|
| Side – 1.2m within the building line setback and 1.8 metres for the remainder Rear – 1.8m | The fence height fronting Shirley Street is generally 1.63m high from floor level of AHD 5.0. | requested, the proposed front fence height relaxation will not impair driver or pedestrian visibility and will contribute positively to the streetscape via the use of quality building materials and complementary landscaping. |
| <u>D1.2.5.1 – Corner Allotments</u> Secondary Frontage – 1.8m | <u>Milton Street Boundary Wall –</u> The front fence which faces Milton Street is 1.2m in height. | ✓ |
| <u>D1.2.5.3 – Sight Lines at Intersections</u> A minimum corner splay of 4m x 4m must be provided in the fence | Minimum distance to intersection of 7m is provided. | ✓ |
| D1.2.9 Energy Efficiency | | |
| <u>D1.2.9.1 – Energy Efficiency</u> | Refer to Appendix D for BASIX certificate. | ✓ |
| D1.6 MULTI DWELLING HOUSING (INCLUDING MANOR HOUSES AND TERRACES), RESIDENTIAL FLAT BUILDINGS AND ATTACHED DWELLINGS | | |
| D1.6.2 Landscaping | | |
| D1.6.1 – Private Open Space Courtyards | | |
| <i>D1.6.1.1 - Each dwelling must have access to an individual courtyard at ground level having a minimum area of 30m² and a minimum length and width each of 4 metres, not including any area used exclusively for the circulation or parking of vehicles. The courtyard must be designed to facilitate access to winter sunshine and must be landscaped to Council's satisfaction.</i> | The proposed courtyards all achieve the minimum width and length of 4m x 4m. The smallest courtyard proposed is 37.5m in size. All courtyards have minimum dimensions of 4m x 4m. | ✓ |
| D1.6.2 Open Space Balcony | | |
| <i>D1.6.2.2 - A private open space balcony must have a minimum area of 15m² and a minimum length and width of 2.4 metres. A private open space balcony must be demonstrated to have appropriate orientation and adequate</i> | The minimum balcony area is 33.9sq.m. The minimum 2.4 x 2.4m area is achieved within all balconies. | ✓ |

| | | |
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| <i>provision for winter sun and summer shade</i> | The total balcony, courtyard and roof top terrace spaces amount to approximately 4,036.7sq.m, far exceeding the minimum requirement of 375sq.m. | |
| D1.6.3 Landscaping | | |
| D1.6.3.2 - At least 25% of the site must consist of deep soil areas. | <p>Deep soil areas will comprise 527.32sq.m (8.88%) of the site area.</p> <p>The shortfall is the direct result of delivering a basement level car park. The minor shortfall does not compromise the landscape outcomes of the site, as a depth of planting of 1.2m is still provided for planting above the basement car park, enabling various trees species to be planted on structure.</p> | Minor Variation |
| D1.6.5 Sound Proofing | | |
| D1.6.5.1 - Division walls between dwellings must be of sound-resisting construction to Council's satisfaction. | Refer to Section 4.6 and Appendix E for summary of acoustic outcomes. | ✓ |
| D1.6.6 Clothes Drying Facilities | | |
| <i>The minimum provision of clothes drying facilities must be at the rate of 7.5 metres of line per dwelling, located in suitably screened external drying areas.</i> | Each unit is provided with a dedicated drying area of at least 7.5sq.m. Refer plans DA1.21 to 1.24 of Appendix A . | ✓ |
| D1.6.8 Pipes and Vents | | |
| D1.6.8.1 - All service pipes and vents must be concealed within the walls of residential flat buildings, multi-dwelling housing and attached dwellings. | <p>Refer to Appendix P – Return Services Brief for a summary of services.</p> <p>Detailed design of service vents can be addressed as a condition of approval.</p> | ✓ |
| D1.6.9 TV Antennae | | |
| <i>Each development must be provided with a common television reception system designed to minimise adverse visual impacts whilst enabling high quality reception for each dwelling.</i> | To be confirmed at detailed design. | ✓ |
| D1.6.10 Character | | |

| | | |
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| <i>To facilitate good design a Design Verification Statement will be required.</i> | The architectural package at Appendix A details how the architecture response to local character. | ✓ |
|--|--|---|

As identified in the table above, the proposal seeks a series of minor amendments to the DCP requirements. It is considered each of the proposed non-compliances is appropriate based on and can be supported by Council for the reasons outlined against each provision.

6.9.2. Byron Development Control Plan 2010

The Byron DCP 2010 applies to the 'Deferred Matter' land, where the Byron LEP 1988 is applicable. However, is noted that the majority of the DCP 2010 controls applicable to the Residential Flat Building land use and other general development provisions have been superseded by the 2014 DCP, as addressed in **Section 6.9.1** above.

As a result, the assessment against DCP 2010 has been limited to site specific controls, which are identified as:

- Chapter 1: Part C – Residential Development: with the subject site located within Precinct 1 (Refer **Figure 16** below).
- Chapter 1: Part J – Coastal Erosion Land: given the subject site is identified between the 'Immediate Impact Line' and '50 Year Erosion Line' under Map 9 (Refer **Figure 17** below).

The corresponding assessment is summarised in **Table 16** below.

Figure 14 - Precinct Boundaries

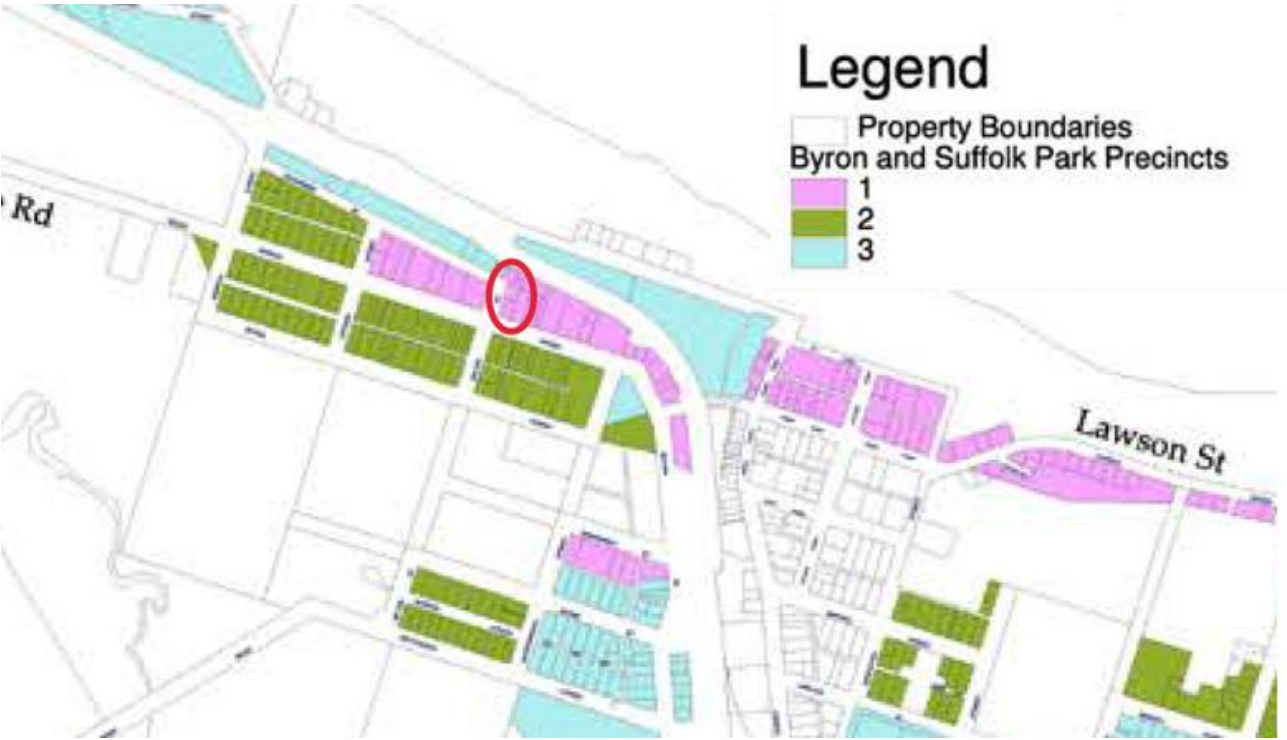


Figure 15 - Map of Coastal Erosion Land

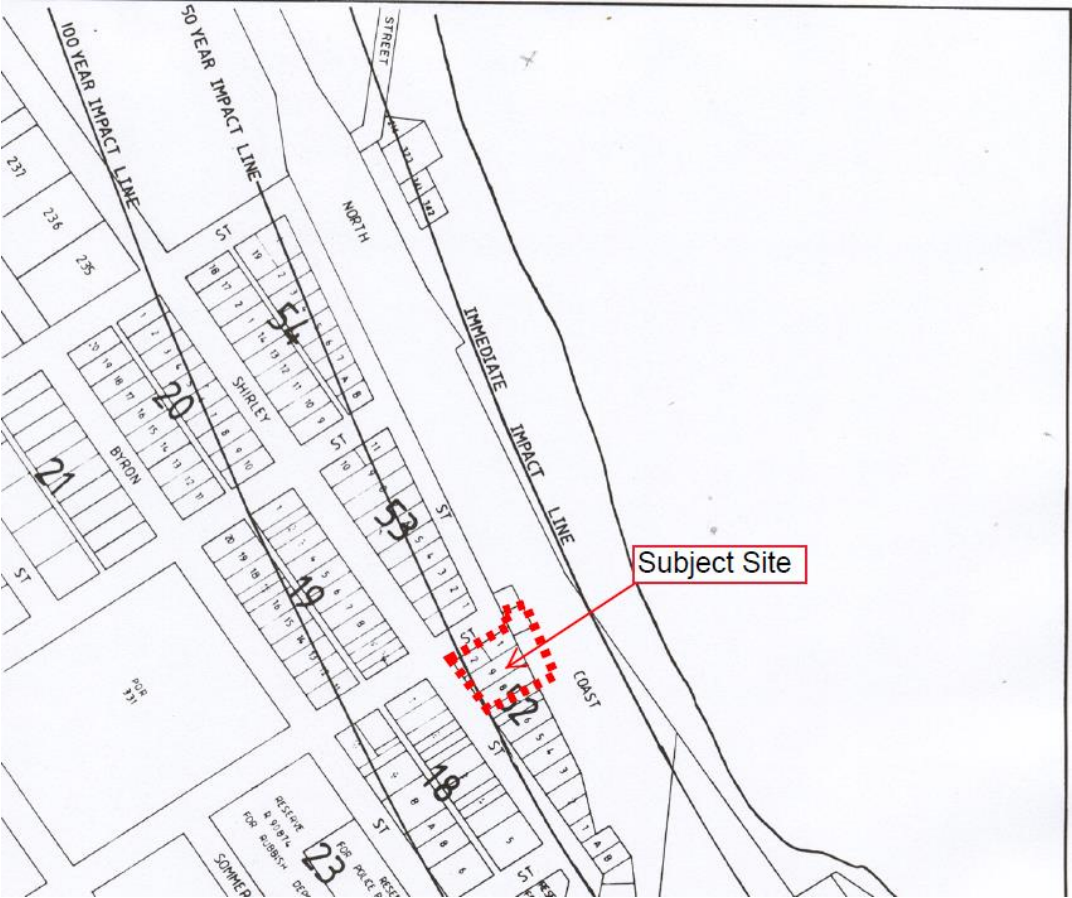


Table 16 Byron Development Control Plan 2010

| Provision | Provided | |
|--|--|-------------------------------|
| C7.2 – Dwelling Densities in Byron Bay and Suffolk Park | | |
| <p><i>The maximum number of dwellings which Council will approve in Zones Nos 2(a), 2(v) and 7(f2) in Byron Bay and Suffolk Park can be determined by dividing the minimum area of the land required per dwelling into the site area in accordance with the table below. The precincts referred to in the table below are shown on the Residential Precinct Map for Byron Bay and Suffolk Park</i></p> | <p>Precinct 1, Large Dwellings – 300sq.m per dwelling. Based on the area of the site in the 7(f2) Zone, the site can accommodate 8.21 dwellings in this northern portion. The proposal seeks to provided meaning the proposed 10 dwellings in this portion of the site on the basis that it does not result in over development of the site and:</p> <ul style="list-style-type: none"> - Sufficient capacity is provided within the service infrastructure. Refer to Appendix P for a summary of services. - The proposed scale is in line with the contemporary density standards for 2014 DCP, demonstrating the development is in line with the neighbourhood character. - The Ecological Assessment at Appendix F demonstrates the development does not substantially impact on ecologically significant vegetation. - The lot configuration and design of the development results in minimal overshadowing of the public realm, and maximises privacy for existing and proposed development. | <p>Minor Variation</p> |
| Chapter 1: Part J Coastal Erosion Lands (J2.2 - Between The Immediate Impact Line And The 50 Year Erosion Line) | | |
| <p><i>Development within this precinct will be granted on the understanding that any consent granted will be subject to the proviso that must the erosion escarpment come within 50 metres of any building then the development consent will cease.</i></p> | <p>Currently the development footprint is located approximately 80 metres from the Belongil coastal escarpment. The structural solution proposed will ensure that the development will not have an impact on coastal processes and further, coastal processes will not impact on the future building. Whilst unlikely</p> | <p>Complies</p> |

| Provision | Provided | |
|---|---|-----------------|
| | given the Site's current separation from the escarpment line and the presence of the railway corridor outside of its northern boundary, a condition is accepted on the consent to restrict the future land use on the site should the escarpment line come within 50 metres of the future building. | |
| <i>Prior to lodging an application with Council, the developer of the land must determine whether buildings are to be relocatable or demolished, should the consent cease.</i> | Buildings will be demolished in the event the development consent should cease. | Complies |
| <p><i>Conditions of consent likely to apply to dwellings(D) on land within Precinct 2 are as follows:</i></p> <p>a) <i>(Prior to issue of a Construction Certificate) A certificate is to be provided from a practising structural engineer as to the adequacy of this building to be easily dismounted and readily removed from the site by road vehicle.</i></p> <p>b) <i>(Prior to issue of a Construction Certificate) A restriction as to user must be placed on the title pursuant to the provisions of section 88E of the Conveyancing Act 1919, stating:</i></p> <p><i>"The subject land and any improvements erected thereon must not be used for the purpose of (land use) in the event that the erosion escarpment, as defined by the Works and Services Director of the Council of the Shire of Byron from time to time, comes to within 50 metres of any buildings or any part thereof at any time erected on the said land."</i></p> <p>c) <i>Subsequent to any approval being given for a relocatable dwelling, no works must be carried out on the property which might hinder the ready relocation of the building. Such works might include the construction of walls, fences, screens, enclosures, brick veneering, landscaping or the fixing of joints or structural members by welding or other means.</i></p> | A condition on the consent is accepted. | Complies |

| Provision | Provided | |
|--|----------|--|
| d) <i>This development consent must cease if at any time the erosion escarpment, as defined by the Works and Services Director of the Council of the Shire of Byron, comes to within 50 metres of any building associated with this development. The owner of the land must then remove that building.</i> | | |

7. SECTION 4.15 ASSESSMENT

The proposed development has been assessed in accordance with the relevant matters for consideration listed in Section 4.15 of the EP&A Act 1979.

7.1. ENVIRONMENTAL PLANNING INSTRUMENTS

The proposed development has been assessed in accordance with the relevant State and local environmental planning instruments in **Section 6.9**.

The proposal will result in a variation to the following clauses under the Byron Local Environmental Plan 2014

- Clause 4.3 – Height of Buildings
- Clause 4.4 – Floor Space Ratio

The proposal also seeks variation to the following clauses under the Byron Local Environmental Plan 1988:

- Clause 40 – Height

The proposed variation is supported by a clause 4.6 exception to development standard and is considered appropriate based on the particular circumstances of this proposal.

7.2. DEVELOPMENT CONTROL PLAN

Development Control Plan 2014 (the DCP) provides detailed planning controls relevant to the site and the proposal. An assessment against the relevant controls is provided in **Sections 6.9.1 and 6.9.2**.

The proposal seeks to vary the following development standards:

- D1.2.1 Building Height Plane
- D.2.2.1(d) Minimum Street Frontage for Secondary Roads (Milton Street).
- D1.2.2.4 Minimum Setbacks for Swimming Pools and Spas.
- D1.2.5.1 – Height of Fences.

Each of these matters has been assessed in detail and the proposed non-compliances are considered appropriate and can be supported by Council for the reasons outlined above.

7.3. REGULATIONS

This application has been prepared in accordance with the relevant provisions of the Environmental Planning and Assessment Regulations 2000.

7.4. LIKELY IMPACTS OF THE PROPOSAL

The proposed development has been assessed considering the potential environmental, economic and social impacts as outlined below:

- **Built Environment:** The development is a high quality built form which priorities natural light infiltration, cross ventilation, whilst minimising overlooking. The development will feature double glazed units and aim for 8 stars environmental certification.
- **Social:** The development delivers high quality communal space central to the development, encouraging casual interactions between residents and their visitors.
- **Economic:** The development has a construction value of \$45,475,000, delivering substantial employment opportunities for local trades.

7.5. SUITABILITY OF THE SITE

The site is considered highly suitable for the proposed development for the following reasons:

- The majority of the site is zoned R3 – Medium Density Residential, suitable for delivery of infill residential development.
- The remainder of the site is a Deferred Matter zone, revering to the 1988 LEP 'Urban Coastal Land' zoning. This report has demonstrated that the
- The proposed variations to height and floor space ratio are in line with recent approvals delivered in the area, and will deliver a higher quality of development overall.
- As a corner lot, the site has the opportunity to capitalise on multiple outlooks and separation of transport modes, whilst maintaining privacy to existing neighbouring properties.

7.6. PUBLIC INTEREST

The proposed development is considered in the public interest for the following reasons:

- The proposal is consistent with relevant State and local strategic plans and substantially complies with the relevant State and local planning controls.
- No adverse environmental, social or economic impacts will result from the proposal.
- Provide for much needed flood free residential accommodation.

The proposal will also deliver significant public realm upgrades in Milton Street and Shirley Street through, sewer diversion of council owned infrastructure away from privately owned land. Landscaping and shade trees will also be provided around the development, improving the appearance and amenity along the street frontage and greatly contributing to the existing character of the area.

8. CONCLUSION

The proposed development has been assessed in accordance with section 4.15 of the EP&A Act and is considered appropriate for the site and the locality:

- The proposal satisfies the applicable planning controls and policies: the proposal satisfies the objectives of all relevant planning controls despite non-compliance, as demonstrated in the supporting Section 4.6 assessments.
- The proposal will not result in any adverse environmental impacts: it has been demonstrated that the proposal replace removed trees with a substantial native replanting regime.
- The proposal will result in positive social and economic impacts: the proposal is designed to encourage resident interaction within a central communal space, and will deliver construction employment opportunities during construction.
- The proposal is highly suitable for the site: the proposal is permitted within the Medium Density Residential and Urban Coastal Land, and is consistent with the zone objectives.
- The proposal is in the public interest: the proposal is in the public interest and has received support from the community as part of early consultation as it will deliver upgrades to the public realm.

Having considered all relevant matters, we conclude that the proposed development is appropriate for the site and approval is recommended, subject to appropriate conditions of consent.

DISCLAIMER

This report is dated 18 September 2023 and incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of Urbis Pty Ltd (**Urbis**) opinion in this report. Urbis prepared this report on the instructions, and for the benefit only, of 29 Shirley Street Pty Ltd (**Instructing Party**) for the purpose of Development Application (**Purpose**) and not for any other purpose or use. To the extent permitted by applicable law, Urbis expressly disclaims all liability, whether direct or indirect, to the Instructing Party which relies or purports to rely on this report for any purpose other than the Purpose, and to any other person which relies or purports to rely on this report for any purpose whatsoever (including the Purpose).

In preparing this report, Urbis was required to make judgements which may be affected by unforeseen future events, the likelihood and effects of which are not capable of precise assessment.

All surveys, forecasts, projections and recommendations contained in or associated with this report are made in good faith and on the basis of information supplied to Urbis at the date of this report, and upon which Urbis relied. Achievement of the projections and budgets set out in this report will depend, among other things, on the actions of others over which Urbis has no control.

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This report has been prepared with due care and diligence by Urbis and the statements and opinions given by Urbis in this report are given in good faith and in the reasonable belief that they are correct and not misleading, subject to the limitations above.

APPENDIX A **ARCHITECTUAL DRAWINGS**

APPENDIX B **LANDSCAPE PACKAGE**

APPENDIX C **CERTIFICATE OF TITLE AND ENCUMBRANCES**

APPENDIX D **BASIX CERTIFICATE AND NATHERS CERTIFICATE**

APPENDIX E **NOISE IMPACT ASSESSMENT**

APPENDIX F **ECOLOGICAL ASSESSMENT**

APPENDIX G **TRANSPORT IMPACT ASSESSMENT**

APPENDIX H **CIVIL REPORT, STORMWATER MANAGEMENT PLAN, GEOTECH, AND ACID SULFATE SOIL ASSESSMENT**

APPENDIX I **BUSHFIRE MANAGEMENT PLAN.**

APPENDIX J **APARTMENT DESIGN GUIDE ASSESSMENT**

APPENDIX K **HERITAGE MANAGEMENT REPORT**

APPENDIX L **SITE WASTE MINIMISATION PLAN**

APPENDIX M **CONSULTATION REPORT**

APPENDIX N **QUANTITY SURVEYORS REPORT**

APPENDIX O **ARBORICULTURAL IMPACT ASSESSMENT REPORT**

APPENDIX P **RETURN SERVICES BRIEF**

APPENDIX Q **BCA AND ACCESSIBILITY REPORT**

APPENDIX R **HERITAGE ASSESSMENT**