

Statement of Environmental Effects &
DCP Modification Request

HABITAT

Stage 5

Part Lot 1 & Part Lot 10 DP 271119
being the 2 Community Title Blocks bounded by Wallum
Place, Gallagher Street, Easy Street, the walkway at the
rear of 2-20 Porter Street and Penny Lane, Byron Bay

PLANNERS NORTH, February, 2020

COMPLIANCE AND USAGE STATEMENT

This Statement of Environmental Effects & Development Control Plan Modification Request has been prepared and submitted under the *Environmental Planning and Assessment Act 1979* by:

Preparation

Name: Stephen Connelly
Company: PLANNERS NORTH
Address: 6 Porter Street, Byron Bay, NSW, 2481
Postal Address: P.O. Box 538, Lennox Head NSW 2478
In respect of: Stage 5 at HABITAT

Application

Proponent: Bayshore Development Pty Ltd
Address: C/ - PLANNERS NORTH
P.O. Box 538, Lennox Head NSW 2478
Land to be developed: Part Lot 1 & Part Lot 10 DP 271119, Byron Bay
Proposed development: Stage 5 at HABITAT, entailing a mixed use development with a basement car park and three levels above over 2 HABITAT Community Title blocks and part of Penny Lane. The mixed use entails commercial premises, hotel or motel accommodation, serviced apartment, high technology industry, function centre, information and education facility, medical centre, recreation facility (indoor), and food and drink premises. Consent is sought to run the food and drink premises associated with the accommodation as a Licensed Restaurant.
Environmental Assessment: Statement of Environmental Effects

Certificate

I certify that I have prepared the content of this Development Application and Development Control Plan Modification Request and to the best of my knowledge:

- it is in accordance with the Act and Regulations, and
- it is true in all material particulars and does not, by its presentation or omission of information, materially mislead.

Notice

The plans to this document were prepared for the exclusive use of the proponent and are not to be used for any other purpose or by any other person or corporation. PLANNERS NORTH accepts no responsibility for any loss or damage suffered howsoever arising to any person or corporation who may use or rely on this document for purposes other than the proposed development.

Plans accompanying this document may not be reproduced, stored or transmitted in any form unless this note is included.

For abundant disclosure, we advise that superannuation funds associated with the Partnership Principals of PLANNERS NORTH hold property at 6 Porter Street HABITAT, Byron Bay. PLANNERS NORTH declares that it does not have, nor expects to have, a beneficial interest in the subject project. Nor does it have any reportable political donations within the meaning of Section 10.4 of the Act to declare.

No extract of text from this document may be reproduced, stored or transmitted in any form without the prior consent of PLANNERS NORTH.



Stephen Connelly RPIA (Fellow)

Partnership Principal



ABN 56 291 496 553
6 Porter Street,
Byron Bay NSW 2481

T: 1300 66 00 87
E: steve@plannersnorth.com.au
W: plannersnorth.com.au

Ref: 1017.3014

Date: February 2020

HABITAT • STAGE 5

EXECUTIVE SUMMARY

i

PLANNERS NORTH has been engaged by Bayshore Development Pty Ltd to provide Town Planning advice with respect to the preparation and lodgement of a Development Application, Statement of Environmental Effects and Development Control Plan Modification Request with Byron Shire Council in regard to land described as Part Lot 1 & Part Lot 10 DP 271119, Byron Bay.

This Development Application relates to “Stage 5” of the HABITAT development. It entails a mixed use development with a basement car park and three levels above over 2 HABITAT Community Title blocks and part of Penny Lane. The mixed use entails commercial premises, hotel or motel accommodation, serviced apartment, high technology industry, function centre, information and education facility, medical centre, recreation facility (indoor), and food and drink premises. Consent is sought to run the food and drink premises associated with the accommodation as a Licensed Restaurant.

Stage 5 at HABITAT is part of the continued evolution of the HABITAT project site. The project proposed occurs as a consequence of:

- the success of HABITAT as a vibrant Live/ Work environment;
- lessons learnt in the earlier stages and the suggestions received from various people in the community and as a consequence of the community consultation process.
- policies of all levels of government to promote the orderly development and use of land which can be demonstrated to be suitable for mixed use development;
- strong demand for a special function centre to meet the needs of sophisticated photography, mini-product launches, mini-theatrical performances, TED talks and the like;
- the urgent Byron Bay need to supply more product lawfully suitable for short term accommodation in the face of mounting AirBnB style pressure on valuable family housing;
- strong demand for business and retail accommodation, as well as additional wellness facilities; and
- the site planning opportunities presented by the HABITAT site.

The proposed development application is permissible under the BLEP14 and is consistent with relevant SEPPs.

In our opinion the development can be seen to satisfy a legitimate need and is capable of construction and use in a manner which mitigates potential adverse impacts consistent with the zone objectives detailed in Council's LEP.

We submit its approval would be in the public interest within the meaning of Section 4.15(1)(e) of the Act.

TABLE OF CONTENTS

1.	INTRODUCTION	1
1.1	Background	1
1.2	Structure of Report and its Scope	1
1.3	Specialist Technical Advice	2
1.4	Consultation	2
1.5	Consent Authority	2
1.6	Further Information	2
2.	THE SITE AND ITS CONTEXT	3
2.1	Cadastral Description	3
2.2	Development Approval History	3
2.3	Bushfire	5
2.4	Site Analysis	5
2.5	Car Parking	5
3.	THE DEVELOPMENT PROPOSAL	6
3.1	Site Planning Objectives	6
3.2	Description of Development Application Proposal	6
3.2.1	General Description	6
3.2.2	Statutory planning description of the Development Application proposal.	8
3.2.3	Element description of the Development Application proposal	8
3.3	Landuse Budget	10
3.4	Hours Of Construction	10
3.5	Description of Development Control Plan Modification Proposal	10
4.	STATUTORY AND POLICY PLANNING	11
4.1	Statutory Considerations	11
4.1.1	Deemed Environmental Planning Instruments	11
4.1.2	Local Environmental Plans	11
4.1.3	Development Control Plans	16
4.1.4	State Environmental Planning Policies	20
4.1.5	Certified Draft Plans	21
4.1.6	Specific Environmental Planning & Assessment Act Requirements	22
4.1.7	Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994	22
4.1.8	Integrated Development Considerations	22
4.2	Contribution Plans	24
4.3	Local Policy Controls	24
4.4	Ancillary Legislation	24
5.	ENVIRONMENTAL INTERACTIONS	25
5.1	Context and Setting	25
5.2	Waste Management	25
5.3	Sustainability	26
5.4	Noise and Vibration	28
5.4.1	Construction hours	28
5.4.2	Acoustic Assessment	28
5.5	Services	32
5.5.1	Water Supply	32
5.5.2	Sewerage	32
5.5.3	Electricity	32
5.5.4	Telecommunications	32

HABITAT • STAGE 5

iii

5.6	Access and Parking	33
5.7	Amenity	34
5.7.1	Relationship to Adjoining Development	34
5.7.2	Overshadowing	34
5.7.3	Neighbourhood Amenity	35
5.8	Construction Considerations	35
5.9	Cumulative Impacts	35
6.	CONCLUSION	37
	REFERENCES	38

LIST OF PLANS

Plan 2.1	Site Plan	4
Plan 5.1	Landscaping Proposals	36

LIST OF TABLES

Table 3.1	Land Use budget	10
Table 5.1	Background Sound Pressure Levels	29
Table 5.2	Noise Source	30
Table 5.3	Predicted noise levels. Levels are in dB(A) Leq.	31

LIST OF APPENDICES

APPENDIX A	Development Application Form & Land Owners Authority	39
APPENDIX B	Proposed Development Control Plan Modification	52
APPENDIX C1	Clause 4.6 Objection to Height Standard	76
APPENDIX C2	Clause 4.6 Objection to FSR Standard	92

BUNDLE OF TECHNICAL REPORTS LIST

1. Architectural Statement
2. Community Consultation Report
3. Civil Engineering Report
4. Traffic Report
5. BCA Assessment
6. Construction Waste Management Plan
7. Operational Waste Management Plan
8. Quantity Surveyors Report
9. Mobility Access Report
10. Bushfire Assessment
11. BASIX and Section J Certification
12. Acoustic Assessment
13. Social Impact Assessment

1. INTRODUCTION

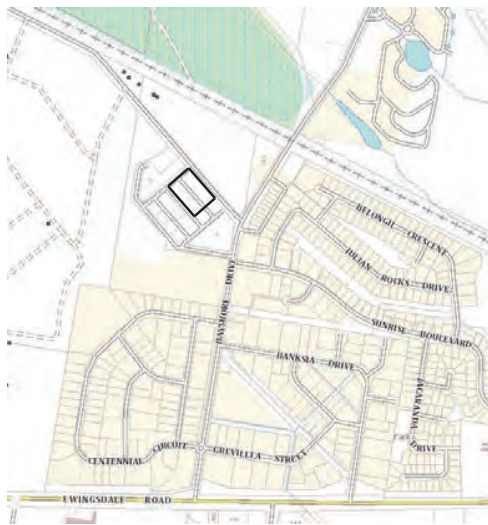
This section of the report identifies the nature of client instructions, relevant background information and the structure of the report.

1.1 BACKGROUND

PLANNERS NORTH has been engaged by Bayshore Development Pty Ltd to provide Town Planning advice with respect to the preparation and lodgement of a Development Application, Statement of Environmental Effects and Development Control Plan Modification Request with Byron Shire Council in regard to land described as Part Lot 1 & Part Lot 10 DP 271119, Byron Bay.

This Development Application relates to “Stage 5” of the HABITAT development. This is the last construction stage at HABITAT.

The below graphic illustrates a locality plan generally identifying Stage 5.



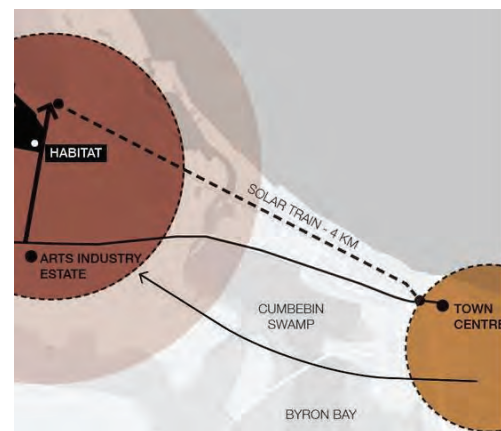
Site Locality Plan

The site comprises two Community Title blocks bounded by Wallum Place, Gallagher Street, Easy Street and the walkway at the rear of 2-20 Porter Street and includes the whole of Penny Lane, Byron Bay.

1.2 STRUCTURE OF REPORT AND ITS SCOPE

Section 2 of this report describes the physical characteristics of the subject land and its

planning context. Section 3 describes in detail the development proposal and the Development Control Plan Modification Request. Having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979 (EPAA), Section 4 sets out an examination of the statutory and policy planning status relating to the land, with particular regard to the development proposal described in Section 3. Section 5 looks at the environmental interactions of the proposal, particularly as specified by Section 4.15(1)(b) and (c) of the EPAA Act. The final section of the report undertakes a general review of the project and summation as to the appropriateness of the project considering the planning controls applying to the land, land use needs in the locality and matters set out for consideration in Section 4.15(1)(e).



The HABITAT site in the context of Byron Bay

The Development Application form and landowner authorities for Lots 1 and 10 authorising lodgement of the subject application are contained in **Appendix A** to this report. Details in relation to the DCP modification sought are set out at **Appendix B**. Our objections concerning the Height and Floor Space Ratio standards prescribed by BLEP14 are contained at **Appendix C**.

This Statement of Environmental Effects is accompanied by a **Bundle of Technical**

Reports and a **Plan Set** prepared by DFJ Architects.

1.3 SPECIALIST TECHNICAL ADVICE

Specialist advice was sought from:

- **DFJ Architects** in relation to the preparation of architectural design and plans for this application;
- **East Coast Certification Group** with respect to Building Code of Australia assessment;
- **National Access** in relation to Accessibility assessment;
- **Ardill Payne and Partners** concerning civil engineering matters;
- **Bushfire Certifiers**, with respect to the assessment of the project concerning bushfire risk;
- **Rytenskild Traffic Solutions** in relation to traffic and parking considerations arising from this application;
- **Mitchell Brandtman quantity surveyors** with respect to building cost estimation
- **Partners Energy** in relation to BASIX and BCA Section J Assessment;
- **Tim Fitzroy & Associates** concerning acoustic considerations; and
- **PLANNERS NORTH** in relation to the Social Impact Assessment for the restaurant component of the development, Construction Waste Management Plan and Community Consultation reporting.

1.4 CONSULTATION

In accordance with Byron DCP 2014, Part A, Clause A13.4 a development for a *community significant* project is required to hold a pre-lodgment community consultation. Further, because the proposal includes a new restaurant facility, which is proposed to be licensed, Social Impact Assessment (SIA) community consultation must be carried out pursuant to DCP Chapter B12 of Council's DCP.



Artist's render of the development looking from Easy Street at the co-retail and hotel accommodation reception.

The consultation carried out has included:

- Publication of a notice in the Echo Newspaper and signs erected on the site;
- Letter drop to all premises within a 500m radius of the subject site;
- Establishment of a website for the exhibition of pre-lodgement plans and documentation;
- Conducting a community consultation meeting session and one-on-one meetings with people who sought a more intimate situation to discuss the project; and
- The preparation of a report describing the consultation process and certifying the completion of all the mandatory items under Council's Development Control Plan.

1.5 CONSENT AUTHORITY

As a consequence of the provisions of Clause 20 and Schedule 7, Item 2 of State Environmental Planning Policy (State and Regional Development), projects with an estimated cost exceeding \$30m must be referred to the Northern Regional Planning Panel (NRPP) as the consent authority for the development. This estimated cost of the HABITAT Stage 5 project is \$42.05 million (see **Volume 8** of the **Technical Reports Bundle**). Byron Shire Council will process the application and prepare an assessment for consideration by the NRPP.

1.6 FURTHER INFORMATION

Should Council require any additional information, or wish to clarify any matter raised by this proposal or submissions made to same, Council is requested to consult with **Steve Connolly** prior to the determination of this application.

2. THE SITE AND ITS CONTEXT

This section of the report identifies the subject site and describes its environmental planning context.

2.1 CADASTRAL DESCRIPTION

The site, as illustrated in **Plan 2.1**, is described in Real Property terms as Part Lot 10 DP 271119 and Penny Lane (part of Lot 1 DP 271119). The site has an area of 7301.5m² and is irregular in shape (see **Plan 110** in the **Plan Set**). The site is bounded by Wallum Place, Gallagher Street, Easy Street and the walkway at the rear of 2-20 Porter Street and includes the whole of Penny Lane.

HABITAT is managed pursuant to a Community Management Statement which sets out:

- the Community Management Statement objectives;
- architectural and landscape standards;
- restricted Community Property provisions;
- mandatory matter provisions;
- optional matter provisions;
- bylaws required by authorities;
- definitions and interpretation; and
- plans.

The Management Statement is binding on the Community Association as well as subsidiary body corporates. By resolution of 16th of December 2019, the Community Association resolved to permit closure of Penny Lane, enter into various leases; approve various easements; and alter street furniture generally in accordance with concept plans tabled for the Community Association meeting.

2.2 DEVELOPMENT APPROVAL HISTORY

Initial Works

The initial construction of roadworks, implementation of utility services and environmental enhancement works was undertaken pursuant to DA consents 2008/360 and 2011/162.

Stage 1

DA 2015/353 provided for the mixed-use development comprising residential dwellings, commercial and retail units, recreation facilities, associated infrastructure and subdivision.

Alterations to the physical form of the Stage 1 approval have related mainly to enhancements to the recreation facilities approved pursuant to DA 2016/617 and alterations to the Barrio Cafe and service access under DA 2019/375.

Stage 2

Stage 2 involved the erection of a residential flat building with associated light industry, approved pursuant to DA 2017/4. This Development Application provided for two additional live/work buildings extending on the two buildings approved at Stage 1.



View of the eastern part of Stage 4 from Easy Street towards Fullerton Lane.

Stage 3

DA 2017/628 provided for the construction of 60 “pocket living” apartments. This stage has recently been completed and is now referred to as “Easy Street Living”.

Stage 4

DA 2019/517 was lodged with Council in September 2019. It provides for the erection of a Part 2 and Part 3 storey level complex.



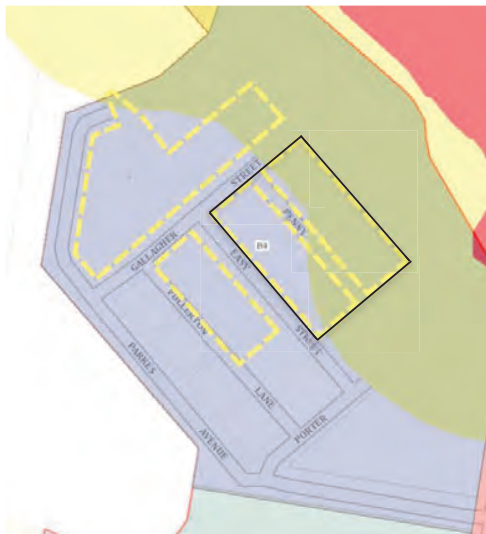
**PLANNERS
NORTH**

1017.3014

providing retail premises, restaurant / café and recreation facility (indoor) land uses, together with 37 car parking spaces. The Stage 4 Development Application was undetermined at the time of the lodgement of this application.

2.3 BUSHFIRE

Part of Stage 5 is mapped as buffer to bushfire prone land.



Bushfire Prone Land

- Vegetation Category 1
- Vegetation Category 2
- Vegetation Category 3
- Vegetation Buffer

Extract from Bushfire Mapping



Artist's depiction of part of the central "Pocket Park" with a view of one of the meeting rooms located within the park.

2.4 SITE ANALYSIS

The below thumbnail style site analysis graphic shows the subject site and major landuses in the neighbourhood. To the south-east of the subject site between Fullerton Lane and Parkes Avenue Strata Plans (SP's) 97199, 97200, 99011, 99012 have been developed for Live/Work purposes.



Site Analysis Sketch

To the north-west 60 "Pocket Living" apartments have recently been completed. These apartments are now referred to as "Easy Street Living".

To the south-east SP's 96640 & 96641 were developed as part of Stage 1 as commercial terraces and further south-east Lot 2 is the commercial hub of HABITAT.

The relevant utility services are available to the subject site.

2.5 CAR PARKING

With respect to the overall HABITAT Precinct, Stages 1-3 have completed and a proposal for Stage 4 has been lodged with Council for determination. Stages 1-4 will operate with a car parking surplus of 7 spaces. The general HABITAT car parking spaces attributable to Stage 5 are 3 spaces, leaving a residual surplus of 4 spaces for the HABITAT development site generally.

3. THE DEVELOPMENT PROPOSAL

This section of the report defines the site planning objectives utilised in schematic design. Further, this section describes the project by way of text, mapping and statistical information.

3.1 SITE PLANNING OBJECTIVES

The following site planning objectives have been adopted for Stage 5:

- Provide an architectural form that relates well with the existing land use pattern and built form at HABITAT;
- Ensure that waste from both construction and the commercial utilisation of Stage 5 is appropriately managed;
- Incorporate best practice sustainability principles in both the design and the long-term utilisation of the mixed use of Stage 5;
- Ensure that noise and vibration associated with both the construction and the operation of the new mixed use premises and the HABITAT neighbourhood generally is appropriately managed.;



South-Eastern view from Fullerton Lane of 1 Porter Street.

- Ensure that adequate utility services are available;
- Ensure that the proposed mixed use conforms with the HABITAT road network hierarchy and that adequate parking is provided;
- Carry out development in a manner which protects the existing mixed use/residential amenity of the locality;
- Ensure that construction works are appropriately managed; and

- Review potential for any cumulative impacts associated with the implementation of Stage 5.

3.2 DESCRIPTION OF DEVELOPMENT APPLICATION PROPOSAL

3.2.1 GENERAL DESCRIPTION

Development Consent is sought for a mixed use development entailing a basement car park and three levels above over 2 HABITAT Community Title blocks and part of Penny Lane. The mixed use entails commercial premises, hotel or motel accommodation, serviced apartment, high technology industry, function centre, information and education facility, medical centre, recreation facility (indoor), and food and drink premises. Consent is sought to run the food and drink premises associated with the accommodation as a Licensed Restaurant.

Details in relation to the project are illustrated in a comprehensive **Plan Set** which accompanies this Statement of Environmental Effects.

Basement Level

At the basement parking level (Level -01), 200 parking spaces are proposed (including 8 disabled parking spaces, up to 5 x carshare spaces and 5 x electric car-charging stations). Lift and stairwell access to the upper levels is provided from the basement parking. Vehicular access to the car parking area is achieved via a driveway, from Wallum Place accessed from the northeastern part of the site.

Level 00

At the ground floor (Level 00), a communal "Pocket Park" open space area is located in the middle and western part of the development footprint. 12 serviced apartments of approximately 36m² in size are proposed with individual terraces fronting Wallum Place.

HABITAT • STAGE 5

7

A Wellness Centre totalling 344m² in floor space is proposed south of the Serviced apartments and north of the Pocket Park. In the western section of the Pocket Park, a Studio Space unit of 132m² in area for indoor recreation and health-related training is located.

Smaller meeting rooms are also proposed within the grounds of the park for use by Stage 5 tenants. South of the Pocket Park are new retail units deliberately designed to foster opportunities for businesses largely marketing on the Internet but also needing 'showroom' or 'flagship store' style street exposure. This use has a total area of 580.6m². Also, in this location, there is a Bike shop unit of 256m².

To the east of the new retail units is a unit for hotel reception and administrative functions. In addition to hotel reception functions, this unit includes offices for the hotel manager, strata manager and hotel reservations team. Further, communication and utility rooms are proposed to be located within this unit.

In the north-east at Level 00 is the access to the basement car parking. To the west of that access is an at grade loading bay which will provide HRV service truck access to the Level 00 back of house area. The back of house area includes facilities for generator and pumping equipment, bin storage, engineering, laundry and the like.

South of the back of house is proposed a double-height Special Function Centre. The Special Function Centre will provide opportunities for land uses requiring a specialised built form to facilitate multi-media activities. It has an overall area of 369.44m². To the west of the Special Function Centre is soft landscaping and circulation space.

South of the Special Function Centre is a 59.87m² Catering Kitchen, and south of that again is a unit of 220.68m² for Co-Retail use designed to support small fledgling retailers. In addition to the above described Level 00 uses, floor space is provided for various back of house and utility rooms.

At this level, some 2,075m² provided in terms of soft landscaping and hard landscaping amounts to about 975m².



Graphic illustrating level 00

Level 01

At Level 01, hotel accommodation is provided in the form of 26 × type "T1" rooms (36m² + 10m² balcony), 19 × type "T2" rooms (27m² + 7m² balcony and 45m² + 15m² balcony) and 2 × type "T3" rooms (78m² + 42m² balcony) north and south of the Level 00 Pocket Park. At this level, east of the void above the Level 00 Pocket Park, there are various back of house and utility rooms as well.



Graphic illustrating Level 01

as a breakout area of 106m² as well as a Networking Space of 204m² + 40m² balcony which includes a small associated bar north of the break out area (13m²).

Level 02

At Level 02, hotel accommodation is provided in the form of 26 × type "T1" rooms (36m² + 10m² balcony), 19 × type "T2" rooms (27m² + 7m² balcony and 45m² + 15m² balcony) and 2 × type "T3" rooms (78m² + 42m² balcony) north and south of the Level 00 Pocket Park. On the

eastern side of Level 02, are a small and large pool with associated guest cabanas and pool amenities. The northern (smaller) pool will be for the exclusive use of guests of the hotel. The southern (larger) pool will be available for use by guests of the hotel and tenants of the commercial premises within the building generally. To the south of the pool is a restaurant of 312m² covered area and associated patron amenities. The restaurant is proposed to cater to the guest of the hotel and be open to the general public.



Graphic illustrating Level 02

Roof

Roofing is proposed generally over the structure north and south of the Level 00 Pocket Park. Both pools are intended to be generally open to the elements. On the roof, it is intended to install photovoltaic cells and certain plant equipment.

3.2.2 STATUTORY PLANNING DESCRIPTION OF THE DEVELOPMENT APPLICATION PROPOSAL.

The "shorthand" land use descriptions shown in the drawings and described above are defined within the meaning of Byron Local Environmental Plan 2014 (BLEP14) as follows:

- **Serviced apartments;** *serviced apartment*
- **Wellness centre;** commercial premises and medical centre
- **Studio Space;** recreation facility (indoor) and information and education facility
- **Meeting Rooms;** business premises and office premises
- **New Retail;** commercial premises
- **Bike Shop;** commercial premises
- **Hotel;** hotel or motel accommodation
- **Back of house;** hotel or motel accommodation and overall mixed use generally
- **Special Function centre;** high technology industry and function centre and office premises and information and education facility
- **Commercial Kitchen;** food and drink premises
- **Co-Retail;** retail premises
- **Breakout area;** overall mixed use generally
- **Restaurant;** food and drink premises

3.2.3 ELEMENT DESCRIPTION OF THE DEVELOPMENT APPLICATION PROPOSAL

Characteristics of the various elements are described as follows:

The Pocket Park

This space is designed to be both "part of" (to enjoy the ambience of a beautifully landscaped area providing respite from the commercial activities) and "viewed from above" as an expanse internal landscaped area with the affect of a super-sized lightwell. Integrated with the landscape design will be open swales that form part of the stormwater management system as well as bookable meeting rooms for use by the commercial occupants of Stage 5 and the broader HABITAT community.

Wellness Centre

This facility is intended to provide a very broad range of health practitioners including conventional western medicine and complementary therapies. The Wellness Centre will collaborate with the accommodation provider to facilitate holistic treatments over an extended period.

Opening Hours: 7am – 8pm

Studio Space

This free-standing building to the west of the central courtyard is proposed to be used for yoga, Pilates, meditation and the like. Within the

HABITAT • STAGE 5

9

Studio space, health programmes in the form of classes and workshops will be conducted.

Opening Hours: 6am – 8pm

Meeting Rooms

3 small, but well equipped, meeting rooms are proposed within the grounds of the Pocket Park for use by Stage 5 tenants.

Opening Hours: 7am – 8pm

New Retail

The new retail units are deliberately designed to foster opportunities in the internet economy. These premises are notionally “retail” on their southern, Easy Street, frontage with the rear utilised for “Business and Office” to service internet ordering fulfilment. These new retail units are intended to be for businesses that largely market on the Internet but also need ‘showroom’ or ‘flagship store’ style street exposure.

Opening Hours: 7am – 8pm

Restaurant

The restaurant is proposed mainly for use in association with the accommodation but is intended to be available for use by the general public. The restaurant and hotel facilities adjacent to the restaurant, including the pool forecourt, are intended to be licensed.

Opening Hours: 6am – midnight

Patron seating: 125

Accommodation

The Hotel accommodation is deliberately designed to provide short, medium and long term accommodation forms. The Level 00 serviced apartments are notionally allocated to the ‘long-term’ (7-90 days stay) visitors, the Level 01 hotel rooms the ‘medium-term’ (5-7 days stay) visitors and the Level 02 hotel rooms the ‘short term’ (1-5 days stay) visitors.

Hours of Operation: 24 hours

Staff numbers: Maximum 16 at any one time

Business Networking Spaces

This unit is designed to cater to the needs of very small conference spaces. The space is divisible to hold talks, seminars, workshops,

meetings and events.

Opening Hours: 7am – 8pm

Special function centre

The Special Function Centre will provide opportunities for land uses requiring specialised photography, film, sound, television or multi-media activities, including activities used in a science or technology-related fields. This unit will be designed to be capable for use in relation to, for example, product launches or TED type conference sessions.

Opening Hours: 7am – midnight



A montage of photographs drawn from the project architect's report illustrating the breadth of the mixed usage proposed.

Co-retail

A ‘co-retail’ space is proposed as an enhanced version of the “HABITAT COLLECTIVE” which supports small fledgling retailers (one step above a market stall and one step below their own shop) working and marketing in the style of a collective.

Opening Hours: 7am – 8pm

The bike shop

Further to the carshare initiatives, Stage 5 will contain an E-Bike emporium. The bike shop will enhance the HABITAT ‘bikes over cars’ message. E-bikes would be available for all visitors and tenants of Stage 5 on a free or minimal cost basis and for others in HABITAT on a standard rental basis.

Opening Hours: 7am – 8pm



**PLANNERS
NORTH**

1017.3014

3.3 LANDUSE BUDGET

Tabulated below is the land use budget in relation to Stage 5.

TABLE 3.1 LAND USE BUDGET

USE	Area (m²)
Amenities	217.13
Back of house	123.29
Bike shop	259.65
Co-retail	220.68
Commercial kitchen	59.87
Gym	33.45
Hotel	3,254.22
Networking	208.53
New retail	508.58
Office	165.08
Restaurant	312.17
Retail	44.95
Sauna	27.44
Serviced apartments	434.98
Special Function centre	369.44
Studio	132.00
Wellness	344.67
TOTAL	6716.09

3.4 HOURS OF CONSTRUCTION

Construction work would be undertaken during standard daytime construction hours in accordance with the Interim Construction Noise Guidelines (ICNG) (DECC, 2009) as follows:

- Monday to Friday: 7 am to 6 pm.
- Saturday: 8 am to 1 pm.
- Sunday and public holidays: No work.

Out of hours work is not proposed for the project.

3.5 DESCRIPTION OF DEVELOPMENT CONTROL PLAN MODIFICATION PROPOSAL

Full details in relation to proposed BDCP14 changes are set out in **Appendix B**. These changes assumed the adoption of the amendments to Precinct 4 on exhibition at the time of the lodgement of this application.

In the In summary, the changes sought provide for:

- changes to Clause E5.5.3.4(c)(i) and 2(b)(i) to provide for mixed use in Precinct 1A;
- changes to Table E5.1 to provide for mixed uses in Precinct 1A;
- change to Table E5.2 to provide for a 2m setback to external roads and lot boundaries and 7m to boundary roads;
- alterations to Table E5.3 to set out appropriate parking standards for proposed Precinct 1A; and
- alterations to Map E5.3 with respect to access points and direction.

4. STATUTORY AND POLICY PLANNING

Section 4.1 documents the range of planning controls applicable in the subject case pursuant to Section 4.15 (1)(a) of the Act and tabulates the effect of these instruments in the circumstances of the development proposal described at Section 3. Section 4.2 examines policy adopted by Council or other authority applicable in the subject matter which, whilst relevant, are not controls within the meaning of Section 4.15 (1)(a).

4.1 STATUTORY CONSIDERATIONS

Pursuant to the Environmental Planning & Assessment Act, 1979, a number of statutes are potentially applicable to any single development proposal. This section reviews the range of instruments and notes their application in terms of the subject development application proposal.

4.1.1 DEEMED ENVIRONMENTAL PLANNING INSTRUMENTS

No deemed environmental planning instruments apply to the subject land.

4.1.2 LOCAL ENVIRONMENTAL PLANS

Name: Byron Local Environmental Plan 2014, (BLEP14)

Application in Subject Case:

Zone: The land is zoned B4 - Mixed Use.

Land Zoning



Legend  B4 - Mixed Use

Format of above title / legend

Key Land Uses: Key land use definitions relevant to this application include:

commercial premises means any of the following:

- (a) business premises,
- (b) office premises,
- (c) retail premises

business premises means a building or place at or on which:

- (a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or
- (b) a service is provided directly to members of the public on a regular basis,

and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.



View of the northern part of the recreation building looking west towards Stage 5.

food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

function centre means a building or place used for the holding of events, functions, conferences and the like,

and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.

high technology industry means a building or place predominantly used to carry out an industrial activity that involves any of the following—

- (a) electronic or micro-electronic systems, goods or components,
- (b) information technology (such as computer software or hardware),
- (c) instrumentation or instruments of a scientific, industrial, technological, medical or similar nature,
- (d) biological, pharmaceutical, medical or paramedical systems, goods or components,
- (e) film, television or multi-media technologies, including any post production systems, goods or components,
- (f) telecommunications systems, goods or components,
- (g) sustainable energy technologies,
- (h) any other goods, systems or components intended for use in a science or technology related field,

but does not include a building or place used to carry out an industrial activity that presents a hazard or potential hazard to the neighbourhood or that, because of the scale and nature of the processes involved, interferes with the amenity of the neighbourhood.

Note.

High technology industries are a type of **light industry**—see the definition of that term in this Dictionary.

hotel or motel accommodation means a building or place (whether or not licensed premises under the [Liquor Act 2007](#)) that provides temporary or short-term accommodation on a commercial basis and that—

- (a) comprises rooms or self-contained suites, and
- (b) may provide meals to guests or the general public and facilities for the parking of guests' vehicles,

but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.

Note.

Hotel or motel accommodation is a type of **tourist and visitor accommodation**—see the definition of that term in this Dictionary.

information and education facility means a building or place used for providing information or education to visitors, and the exhibition or display of items, and includes an art gallery, museum, library, visitor information centre and the like.

medical centre means premises that are used for the purpose of providing health services (including preventative care, diagnosis, medical or surgical treatment, counselling or alternative therapies) to out-patients only, where such services are principally

provided by health care professionals. It may include the ancillary provision of other health services.

office premises means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

recreation facility (indoor) means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club.

restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.

retail premises means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following:

- (a) (Repealed)
- (b) cellar door premises,
- (c) food and drink premises,
- (d) garden centres,
- (e) hardware and building supplies,
- (f) kiosks,
- (g) landscaping material supplies,
- (h) markets,
- (i) plant nurseries,
- (j) roadside stalls,
- (k) rural supplies,
- (l) shops,
- (la) specialised retail premises,
- (m) timber yards,
- (n) vehicle sales or hire premises,

but does not include highway service centres, service stations, industrial retail outlets or restricted premises.

serviced apartment means a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is



regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents.

Permissibility: The land uses proposed by this Development Application are permissible with consent.

Concurrence: No concurrence from any Government Department is required in relation to this application.

Advertising: Advertising of this development is not required by BLEP14 but mandatory pursuant to Council's Development Control Plan.

Special Provisions Applicable: The following provisions of BLEP14 are applicable to Council's consideration of the subject proposal:

Clause 2.3 - Zone Objectives: The objectives of the relevant zones are set out below.

B4 - Mixed Use

1 Objectives of zone

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

2 Permitted without consent

Environmental protection works; Home-based child care; Home occupations

3 Permitted with consent

Bed and breakfast accommodation; Boarding houses; Centre-based child care facilities; Commercial premises; Community facilities; Dual occupancies; Dwelling houses; Educational establishments; Entertainment facilities; Function centres; Hostels; Hotel or motel accommodation; Information and education facilities; Light industries; Medical centres; Multi dwelling housing; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Residential flat buildings; Respite day care centres; Restricted premises; Roads; Seniors housing; Serviced apartments; Shop top housing; Any other development not specified in item 2 or 4

4 Prohibited

Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Exhibition homes; Exhibition villages; Extractive industries; Farm

buildings; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Recreation facilities (major); Recreation facilities (outdoor); Research stations; Residential accommodation; Rural industries; Sewage treatment plants; Sex services premises; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Waste or resource management facilities; Water recreation structures; Water recycling facilities; Water supply systems; Wharf or boating facilities; Wholesale supplies

Comment:

Land uses proposed in Stage 5 project are all permissible with the consent of the Council and the uses are consistent with the zone objectives.



Artist's rendering from within the Pocket Park looking east.

6.2 Earthworks

(1) The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

(2) Development consent is required for earthworks unless the earthworks are exempt development under this Plan or another applicable environmental planning instrument.

(3) In deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—

- the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,
- the effect of the development on the likely future use or redevelopment of the land,
- the quality of the fill or the soil to be excavated, or both,
- the effect of the development on the existing and likely amenity of adjoining properties,



PLANNERS
NORTH

1017.3014

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

(f) the likelihood of disturbing relics,

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

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

Note.

The National Parks and Wildlife Act 1974, particularly section 86, deals with harming Aboriginal objects.

Comment:

Significant Earthworks are proposed for the development involving the construction of a basement car parking level. Details in relation to this aspect of the project are described in more detail in the Civil Engineering report **Volume 3** in the **Bundle of Technical Reports**. The proposed works will not have any long term impact on drainage and soil stability. The affect of the development on adjoining properties will be short term only. The extracted material will be taken to an approved fill site. There is no likelihood of disturbing relics and the works are well away from waterways and environmentally sensitive areas.

Height of Buildings

Clause 4.3 of the BLEP14 specifies a maximum building height.



Legend J - 9.0 m : Range [9.0 - 9.9 m]

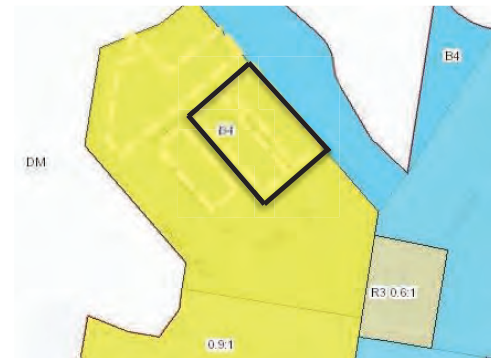
Comment:

As illustrated in the architectural drawing **DA800**, the proposal exceeds the 9m height

specified by Clause 4.3 of BLEP14. We respectfully seek the relaxation of that standard in the special circumstances of the subject case. Those circumstances are described in more detail at **Appendix C1**.

Floor Space Ratio

Clause 4.4 of BLEP14 specifies a maximum Floor Space Ratio for the subject site.



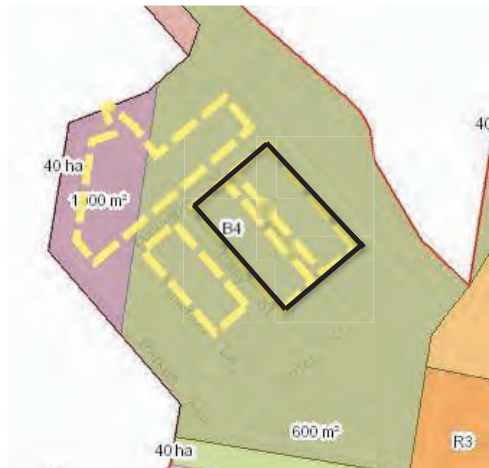
Legend L - 0.90 Ratio: Range [0.90-0.94]

Comment:

Plan DA 800 in the **Architectural Plan Set** bundle tabulates the Gross Floor Area (GFA) of the park at 6,711.82m². Given the site area of 7,301.5m², the 0.90:1 Floor Space Ratio for the land permits a maximum GFA of 6,571.35 m². This FSR proposed by this application exceeds that prescribed by Clause 4.4 by 2.1%. We seek the relaxation of that Standard in the circumstances of the subject case. Those unique circumstances are described in more detail at **Appendix C2**.

Lot Size

Clause 1 of BLEP14 specifies a minimum subdivision size.



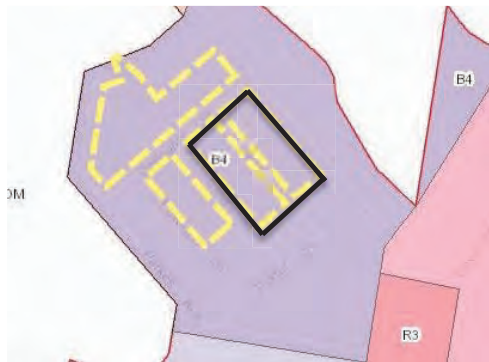
Legend  600 – 624sqm

Comment:

No subdivision is proposed by this Development Application. At a future time, it is intended to lodge a separate application to excise the Stage 5 part from the existing residual development site.

Acid Sulfate Soils

Clause 6.1 of BLEP14 specifies considerations in relation to Acid Sulfate Soil management. The site is Class 3.



Legend  Class 4

Comment:

An *Acid Sulfate Soils and Contamination Assessment* (Geolink, April 2007) was completed for the HABITAT Site prior to the initial civil construction works. Sampling and testing completed as part of this investigation indicated

that no Acid Sulfate Soils (ASS) or Potential Acid Sulfate Soils (PASS) was evident on site in the depth ranges tested.

Previous geotechnical site investigations indicate that the underlying soils encountered beyond the depth of the Geolink investigation are clean sands becoming very dense and cemented. It is therefore highly unlikely any ASS/PASS will be encountered. However, to address the potential for encountering these soils at these depths *Ardill Payne and Partners* (APP) have prepared an Acid Sulfate Soils Contingency Plan (ASSCP) (see **Attachment 9** to **Volume 3** in the **Technical Reports Bundle**).

This contingency plan to address ASS/PASS has been prepared. The plan proposes further sampling during the excavations for the installation of sheet piling. Should any ASS or PASS be identified in the samples management should be undertaken in accordance with this Contingency Plan. Any excess excavated soil is to be classified and disposed of in accordance with NSW EPA Waste Classification Guidelines (Parts 1 & 4) (NSW EPA, 2014).

4.6 Exceptions to development standards

(1) *The objectives of this clause are as follows:*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(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:*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (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, and
 - (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

Comment:

Having regard to the considerations specified in Clause 4.6, we are of the opinion that the height and FSR variations proposed are consistent with the objectives of this clause; achieve a better planning outcome and the variation is in line with the decisions of the Land and Environment Court in *Wehbe -v- Pittwater Council and Winten Developments -v- North Sydney Council*.

Full details with respect to this aspect are described in **Appendix C**.

6.6 Essential services

Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are

essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage,
- (d) stormwater drainage or on-site conservation,
- (e) suitable vehicular access.

Comment:

As described in more detail in the *Ardill Payne and Partners Civil Engineering Report* contained in **Volume 3** of the **Technical Reports Bundle**, all relevant essential services are provided to the Stage 5 land and are satisfactory to meet the needs of this project.

4.1.3 DEVELOPMENT CONTROL PLANS

Name: Byron Development Control Plan 2014 (BDCP14)

Application in Subject Case:

Relevant provisions of BDCP14 are set out below with brief comments in relation to applicable DCP sections and concise comments relevant to the specific part.

Part A	Preliminary
A13.4	Community Consultation prior to development application lodgement.

Comment:

Community Consultation has been carried out in accordance with the requirements of this clause. **Volume 2** of the **Technical Reports Bundle** provides the documentation required in accordance with Clause A13.4.2.

Part B	Controls Applying Generally to Development Applications
Chapter B2	Preservation of Trees and Other Vegetation

Comment:

No trees planted as part of the original landscaping work are intended to be removed for Stage 5.



**PLANNERS
NORTH**

1017.3014



Artist's view from within the Pocket Park looking at the Special Function Centre to the left of the graphic.

Chapter B3 Services

Comment:

As described in more detail in the *Ardill Payne and Partners* Civil Engineering Report contained in **Volume 3** of the **Technical Reports Bundle**, all relevant essential services are provided to Stage 5. They are satisfactory to meet the needs of this project.

Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access

Comment:

Development Traffic and Parking

This Development Application is accompanied by a specialist report in relation to access and car parking by Ryterskild Traffic Solutions (see **Volume 4** of the **Bundle of Technical Reports**). That report concludes that in accordance with BDCP14, the proposed development requires car parking provision of 223 spaces. The proposal provides that equivalent, by utilisation of surplus car parking capacity within HABITAT generally, and implementing car share at the rate of 1 car share space per 5 conventional vehicle spaces.

The geometric layout of the proposed parking has been designed to comply with the relevant Australian Standards.

Construction Traffic Management

RMS accredited consultants from Ardill Payne and Partners (APP) have prepared a Traffic Management Plan (TMP) to support development application for the proposed Stage 5 at the HABITAT (see **Attachment 7** to **Volume 3** in the **Technical Reports Bundle**).

Chapter B5 Providing for Cycling

Comment:

Provision has been made for 68 bicycle parking spaces. (See **DA 150** in the **Plan Set**)

Chapter B8 Waste Minimisation and Management

Comment:

Accompanying this Development Application in **Volumes 6** and **7** of the **Bundle of Technical Reports** are 2 Waste Management Plans. The plan drafted by PLANNERS NORTH, deals with waste generated by construction activity. The plan prepared by *DFJ Architects* relates to servicing waste generated by the development when it is operational. This is supplemented by the details illustrated on the **Plan 150** in the **Plan Set**.

Chapter B9 Landscaping

Comment:

DA level landscaping proposals are set out at **Drawing DA 150 External Works**. That plan illustrates landscaping areas and massing but does not nominate species. At Construction Certificate stage, full landscape architecture drawings will be prepared.

Chapter B10 Signage

Comment:

No special signage proposals are submitted with this application. All signs erected in relation to the completed built form are envisaged to be within the parameters of Exempt or Complying Development within the meaning of BLEP14.

Chapter B11 Planning for Crime Prevention

Comment:

Crime considerations have been foremost in the mind of the architect in the preparation of this Development Application. The proposal implements the following CPTED considerations:

- The buildings have been designed to eliminate dead ends and ensure clear sight lines through the development. All points of entry and exit are open, well connected to public spaces that are clearly visible from the surrounding road network and lots.

- Carpark lighting will eliminate dead spots and ensure high visibility.
- External lighting will be installed throughout the precinct ensuring coverage of all external spaces. Lighting will be permanently lit until 10pm and linked to motion/ infrared sensors from 10pm to sunrise.

Plans DA 985-987 in the **Plan Set** illustrate the above described CPTED considerations.

Chapter B12 Social Impact Assessment

Comment:

Because the proposal includes an application for a licensed restaurant, a Social Impact Assessment has been completed for this Development Application. See **Volume 13** of the **Technical Reports Bundle**.

Chapter B13 Access and Mobility

Comment:

In relation to access and mobility, an Accessibility Report prepared by *National Access* is contained in **Volume 9** of the **Technical Reports Bundle**. That report provides an assessment against the provisions of the National Construction Code BCA 2019 and the Premises Standard Access Code as relevant for people with disabilities. The full report provides details of the items to be included in the construction documentation to achieve full compliance with the relevant standards.



Artist's rendering of a meeting room within the Pocket Park and entry to Wellness Centre.

Part D *Further Controls Applying to Specific Land Uses*

Chapter D4 *Commercial and Retail Development*

Comment:

The proposal is consistent with the design criteria specified at Chapter D4. In particular:

- Stage 5 has been designed to promote and encourage safe, convenient pedestrian and cycle access to and from the Stage 5 site and surrounding HABITAT precinct.
- The development is compatible with the diversity and multifunction character of the locality.
- The retail areas have been designed to promote visual interest and to maximise shop front window access, minimising blank walls along street frontages.
- The development respects the Shire's subtropical climatic conditions and provides appropriate protection.
- The development is compatible with and reinforces the role of HABITAT within the commercial centres hierarchy of Byron Shire generally.
- Pedestrian areas, community areas and car parking are all paved, furnished and landscaped in accordance with Council's guidelines and good practice.
- With respect to Clause D4.2.2, the new buildings reflect and enhance existing character of the HABITAT precinct. The design, scale, bulk, and operation of the premises will be compatible with the streetscape and aesthetic characteristics of HABITAT.
- The Stage 5 provides for safe and effective vehicular access, manoeuvring and parking.
- Careful consideration has been given in the Stage 5 Development Application for loading and service areas for garbage and bin storage.
- The proposed cafés have been designed and located to be compatible with the surrounding HABITAT land use.
- The hours of operation are well within the prescriptive measures set out in Council's DCP.

HABITAT • STAGE 5

19

Chapter D8 Public Art

Comment:

The proponent is committed to the implementation of high quality public art at HABITAT. Accordingly, the public art piece or pieces are a matter which require considerable community consultation and approval. The proponent would be pleased if the development consent for this project could be conditioned to require the implementation of public art consistent with the terms of Council's DCP.

Part E Further Controls Applying to Specific Localities

Chapter E5 Certain Locations in Byron Bay and Ewingsdale

E5.5 HABITAT

E5.5.2 Objectives of this Section

Comment:

HABITAT Stage 5 is consistent with the objectives specified in E5.5.2 adopting ESD approach, blending a compatible mix of business, office and retail as well as recreational opportunities. The siting, scale and intensity of HABITAT Stage 5 responds to local and regional values and reflects the Byron Bay character and scale. The architectural approach adopted will contribute to the identity of West Byron.

E5.5.3 Desired Future Character and Development Principles

E5.5.3.1 Statement of Desired Future Character

Comment:

The HABITAT Stage 5 is consistent with the commercial aspects of the Statement of Design Future Character as described in Section E5.5.3.1

E5.5.3.2 Planning Principles

Comment:

HABITAT Stage 5 adopts all of the key planning principles in relation to social equity, economic vitality, environmental performance and cultural expression as described in DCP Clause E5.5.3.2.

E5.5.3.3 Achieving the Desired Future Character

Comment:

Clause E5.5.3.3 is sought to be amended to facilitate the subjected scheme.

E5.5.3.4 Precinct Plan

Comment:

Consistent.

E5.5.4 Design and Development Controls

Comment:

HABITAT Stage 5 complies with the objectives and performance criteria for this clause. The modifications sought to the DCP pursuant to this application refine Table E5.1.

E5.5.4.1 Land Use, Management and Environmental Assessment

Comment:

Clause E5.5.4.1 is sought to be amended to facilitate the subjected scheme.

E5.5.4.2 Car Parking

Comment:

The car parking provision is consistent with DCP controls and contemporary practice.

E5.5.4.3 Building Design

Comment:

The building design complements existing site structures and avoids becoming a repetition of earlier stages in terms of its built form.

E5.5.4.4 Site and Open Space Design

Comment:

HABITAT Stage 5 is consistent with the terms of this section of the DCP.

E5.5.4.6 Water Cycle Management

Comment:

This HABITAT Stage 5 continues the best practice water quality management approach adopted elsewhere in the development.

E5.5.4.7 Ecological Enhancement

Comment:

HABITAT Stage 5 does not involve any ecological enhancement lands.



**PLANNERS
NORTH**

1017.3014



View of the swimming pool and recreation building.

4.1.4 STATE ENVIRONMENTAL PLANNING POLICIES

A search undertaken on the NSW Planning Portal on 20th January 2020 indicated that the following SEPPs as being applicable to the land.

- State Environmental Planning Policy (Affordable Rental Housing) 2009
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Coastal Management) 2018
- State Environmental Planning Policy (Concurrences) 2018
- State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007
- State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007
- State Environmental Planning Policy (Primary Production and Rural Development) 2019
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- State Environmental Planning Policy No 1—Development Standards
- State Environmental Planning Policy No 21—Caravan Parks
- State Environmental Planning Policy No 33—Hazardous and Offensive Development
- State Environmental Planning Policy No 36—Manufactured Home Estates
- State Environmental Planning Policy No 44—Koala HABITAT Protection
- State Environmental Planning Policy No 50—Canal Estate Development
- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 64—Advertising and Signage
- State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

Of these, the following SEPPs require noting or are of particular relevance to the subject application.

Title: State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP)

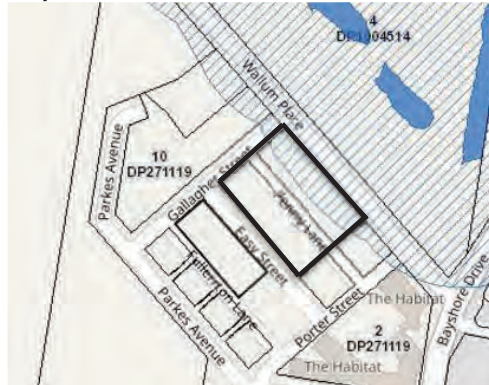
Gazetted: 25 March 2019

Abstract

The aim of this Policy is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016, including the management objectives for each coastal management area, by:

- (a) managing development in the coastal zone and protecting the environmental assets of the coast, and
- (b) establishing a framework for land use planning to guide decision-making in the coastal zone, and
- (c) mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the Coastal Management Act 2016.

Coastal Wetlands and Littoral Rainforest Map



Comment:

As illustrated in the above plan, part of Stage 5 is located within a “proximity area” for Coastal Wetlands. Clause 11 of the CM SEPP is triggered by development within the Proximity Area.

11 Development on land in proximity to coastal wetlands or littoral rainforest

(1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on—

(a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or

(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

(2) This clause does not apply to land that is identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map.

Comment:

The subject site is located well away from mapped wetlands and the construction work involved will not alter the biophysical

characteristics of the site or the immediate locality. One of the core principles of HABITAT has been to achieve best practice standards in terms of water quality and quantity flowing from the site. This principle is intended to be maintained through Stage 5.

Title: SEPP No. 55 - Remediation of Land

Gazetted: 28.08.98

Abstract

This SEPP Introduced state-wide planning controls for the remediation of contaminated land. The policy states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. The policy makes remediation permissible across the State, defines when consent is required, requires all remediation to comply with standards, ensures land is investigated if contamination is suspected, and requires councils to be notified of all remediation proposals.

Comment:

This application relies on the contamination assessment submitted with DA 2008/360.

Title: SEPP No. 65 - Design Quality of Residential Flat Development

Gazetted: 26.07.02

Abstract

Raises the design quality of residential flat development across the state through the application of a series of design principles. Provides for the establishment of Design Review Panels to provide independent expert advice to councils on the merit of residential flat development. The accompanying regulation requires the involvement of a qualified designer throughout the design, approval and construction stages

Comment:

Pursuant to the provisions of Clause (4) of SEPP 65, the policy does not apply to a Serviced Apartment.

4.1.5 CERTIFIED DRAFT PLANS

No draft plan is known to exist which would impinge upon the subject proposal.

4.1.6 SPECIFIC ENVIRONMENTAL PLANNING & ASSESSMENT ACT REQUIREMENTS

Development in the manner proposed is not Designated Development under the Act and no reliance is placed on any existing use rights applicable to the land. The proposal is not Exempt of Complying Development and does not trigger any State Significant Development considerations.

4.1.7 PART 7 OF BIODIVERSITY CONSERVATION ACT 2016 AND PART 7A OF FISHERIES MANAGEMENT ACT 1994

Pursuant to Section 1.7, *"This Act has effect subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994 that relate to the operation of this Act in connection with the terrestrial and aquatic environment."*

The subject site is not identified in the relevant biodiversity mapping and no native species are to be removed as a consequence of construction activity.



View of Easy Street looking east, showing part of the Stage 5 site on left hand sides of the image.

4.1.8 INTEGRATED DEVELOPMENT CONSIDERATIONS

Bushfire and Water Management Acts integrated approvals within the meaning of Section 4.46 apply to this project.

Water Management Act

Shaw Urquhart's geotechnical investigation 11692/1-E dated 13 December 2011 encountered groundwater consistently at approximately 0.6m below natural ground level (approximately RL 3.9m AHD). It is expected that there will be a natural variation in the

groundwater table (as observed in on-site stormwater treatment devices).

The proposed excavation has an average level of RL 1.9m AHD. The excavation is therefore likely to intercept the groundwater table by at least 2.0m.

Ardill Payne and Partners (APP) has prepared a Preliminary Dewatering Management Plan (PDMP) for a proposed development (see Attachment 10 to Volume 3 in the Technical Reports Bundle).

The primary objective of the PDMP is to ensure that the proposed dewatering operations do not impact on the quality of the receiving environment.

A treatment train has been proposed which is able to effectively remove contaminants and provide water equal to or of better quality than the average measured in the receiving environment and meets the discharge criteria set out in this plan. Continuous monitoring will be undertaken of all discharges using a multi-parameter water quality analyser or approved equivalent system. Records of all monitoring will be available for review by relevant government Officers.

The plan addresses:

Subsurface Conditions

- Soil conditions
- Groundwater conditions
- Hydraulic Conductivity

Environmental Impacts

- Receiving Environment
- Discharge Criteria

Dewatering Management Plan

- Dewatering Process
- Treatment Process including pH Correction, Flocculation Assisted Gravity Separation, Hydrocarbon Flotation / Air Sparging, Activated Carbon Filtration and Ferrous Oxide

Water Quantity / Quality Management

- Details of Water Sampling Methodology
- Continuous Water Quality Logging

- Physical Inspection – Visual / Odour
- Laboratory Sampling
- Discharge Volume
- Non Compliance
- Record Keeping
- Complaints
- Contingency Equipment and Disposal Options

Environmental Management of Dewatering

- Other Environmental Effects
- Dewatering Management – Responsible Party

Bushfire Act

A bushfire assessment to address Integrated Development approval considerations under the Bushfires Act accompanies this Statement of Environmental Effects as **Volume 10** in the **Bundle of Technical Reports**.

The report by *Bushfire Certifiers* establishes the proposed development is capable of complying with the acceptable solutions of Planning for Bushfire Protection 2006 with exception to the Asset Protection Zone requirements which is subject to a performance solution as provided in the Bushfire Certifiers report.

A Bushfire Design Brief was prepared as a pre-lodgement discussion paper for the development and submitted to the Rural Fire Service for consultation in order to comply with the performance criteria.

'Radiant heat levels of greater than 10kW/m² will not be experienced by occupants or emergency services workers entering or exiting a building'.

The brief provided the methodology as follows:

1. Acceptance criteria is the performance criteria of PBP2006 being no more than 10kW/m² to the exits. The flame temperature being 1200K. Following the initial brief and meeting undertaken with NSW RFS 30th January 2020 confirmed that provided the development application is lodged before the 1st March 2020 then measurement can be to the exit as outlined in the performance criteria for PBP2006;
2. The closest part of the building will be located outside the flame zone and will not receive radiant heat greater than 29kW/m². In this regard compliance with Table 2.4.3 AS 3959-2009 will be achieved and the building constructed to BAL 29 + PBP2006;
3. Modelling the specific exit location and path of travel to include the shielding of the proposed building itself which will be construction to meet the requirements of AS 3959-2009;
4. Discussion also required as to whether the entire building is to be constructed to a Bushfire Attack Level pursuant to AS 3959-2009 or only the residential component. In this regard the meeting undertaken with NSW RFS 30th January 2020 confirmed the entire building is to be constructed to BAL 29 + Addendum to Appendix 3 PBP2006. This includes non-residential areas of the building/s;

The expert bushfire consultant has recommended that development consent be granted subject to the following conditions.

1. The proposed building/s is to be constructed to BAL 29 AS 3959-2009 + Appendix 3 Addendum PBP 2006 in entirety.
2. At the commencement of works and in perpetuity the entire property of Part Lot 10 DP 271119 is to be managed and maintained as an Inner Protection Area (IPA) to prevent the spread of a fire towards the building/s in accordance with the requirements of Standards for Asset Protection Zones (RFS 2005). A minimum 4m front building line is required.
3. Landscaping is to be undertaken in accordance Appendix 5 of Planning for Bushfire Protection 2006 and managed and maintained in perpetuity.
4. Fire hydrants are to be installed to comply with AS 2419-2005 and s4.2.7 PBP2006.
5. Compliance with NSW Fire and Rescue Fire Safety Guideline – Access for fire brigade vehicles and firefighters” Version 05 Issued 4th October 2019.
6. New electrical supply is to comply with section 4.2.7 of PBP2006.



7. Should a gas service be installed specific requirements will need to be observed;
8. An emergency evacuation procedure and detailed plans of all Emergency Assembly Areas (onsite and offsite) are to be prepared in accordance with the RFS Guidelines for the Preparation of Emergency/Evacuation Plan and AS 3745.
9. The property owner and occupants be familiarised with the relevant bushfire preparation and survival information.

4.2 CONTRIBUTION PLANS

The Byron Shire Contribution Plan applies to development of this land. Under this plan Council may condition a consent for a 1% levy in relation to the cost of implementing the development.

In addition, contributions to both Byron Shire Council and Rous County Council are payable in relation to water and sewerage headworks.

4.3 LOCAL POLICY CONTROLS

Other than the provisions described in the above, it is understood that no specific policy of Council is applicable to the subject project.



Artist's rendering of the ground floor commercial and two levels of hotel accommodation as viewed from Easy Street.

4.4 ANCILLARY LEGISLATION

The applicant is aware that, in addition to the consent authority's approval of the subject application, the provisions of the following statutes may regulate development in the manner proposed:

- Disability Inclusion Act 2014
- Food Act 2003
- Protection of the Environment Operations Act 1997

- Protection of the Environment Operations (General) Regulation 2009
- Protection of the Environment Operations (Waste) Regulation 2005
- Waste Avoidance and Resource Recovery Act 2001
- Contaminated Land Management Act 1997
- National Greenhouse and Energy Reporting Act 2007
- Noxious Weeds Act 1993
- Environmentally Hazardous Chemicals Act 1985
- Energy Efficiency Opportunities Act 2006
- Clean Energy Act 2011
- Local Government Act 1993
- Long Service Leave Act 1955
- Retail Trading Act 2008

5. ENVIRONMENTAL INTERACTIONS

This section of the report expands on the contextual description of the physical environment given in Section 2, and undertakes an analysis of environmental interactions (particularly those at aspects of S.4.15 (1) (b) and (c) relevant in the subject circumstances) applicable to the proposed development with specific reference to the site planning objectives specified in Section 3.1 of the report. Further, this section reviews a range of comprehensive environmental management measures, again aimed at specifically addressing adopted site planning objectives.

5.1 CONTEXT AND SETTING

Objective

Provide an architectural form that relates well with the existing land use pattern and built form at HABITAT.

The objective of Stage 5 is to develop a quality piece of architecture that complements existing site structures and avoids becoming a repetition of the earlier stages built form.

In Stage 5 HABITAT native, subtropical landscaping is an integral part of the projects overall aesthetic and environmental quality. Selecting materials have been chosen because of their low-maintenance, unfinished character that will stand the test of time.



Stage 5 is located partly at the corner of Easy Street and Gallagher Street. This photo shows part of the recently completed pocket living development (now known as "Easy Street Living").

Blockwork walls, concrete slabs and concrete columns will form the basis of the structure. Similar construction exists elsewhere at HABITAT and has proven to be an efficient and effective approach. Given the classification of the spaces and Type of construction, block and concrete address many of the BCA requirements for fire separation and acoustic performance, without the need for additional linings, materials and finishes.

The raw, unfinished nature of concrete is also very popular amongst the target demographic. The roof on the upper levels will be light-weight, steel construction.

The primary material palette is as follows;

1. Bricks (external walls)
2. Timber (roof structure, balustrades and cladding)
3. Concrete (structural slabs and walkways)
4. Steel (structural steel, balustrades and screens)
5. Compressed fibre cement (CFC) cladding (lining)
6. Danpalon (roof over external spaces)
7. Metal roof sheet (non-visible roofs)
8. Blockwork and concrete (boh)
9. Cobblestones (floor finish used throughout the external public spaces)
10. Native sub-tropical landscape throughout.

5.2 WASTE MANAGEMENT

Objective

Ensure that waste from both construction and the commercial utilisation of Stage 5 is appropriately managed.

Two Waste Management Plans have been prepared for the subject development. The first plan deals with the management of construction waste. The second plan looks at the management of waste generated by the development when it is operational. Both plans are consistent with contemporary best practice. The two Waste Management Plans accompany

this SEE as **Volumes 6 and 7** of the **Bundle of Technical Reports**.

5.3 SUSTAINABILITY

Objective

Incorporate best practice sustainability principles in both the design and the long-term utilisation of the mixed use of Stage 5.

The following is a list of key design features incorporated into HABITAT Stage 5 to assist in achieving sustainability:

Design

Good urban planning and sub-tropical architectural design principles are at the core of the design; large eaves over the balconies, good building orientation, cross ventilation, good insulation and large, protected openings ensure buildings stay cool in summer and warm in winter.

Simplicity

The simple, pared-back design and limited material palette compliment our philosophy of building only what is needed. External walkways, shared facilities and outdoor meeting spaces limit the need for conditioned space while also encouraging a healthy outdoor lifestyle.

Quality

High-quality, natural and long-lasting materials are proposed throughout in order to increase longevity, reduce maintenance and generally stand the test of time.

Solar Access

Large openings and good building orientation ensure maximum solar access and natural light to all spaces, reducing the need for artificial lighting.

Roofing

Light coloured, reflective roofing will minimise solar heat gain and limit the need to cool spaces.

Ventilation

Front and rear elevation louvres are utilised throughout the commercial spaces to promote passive cross ventilation. This natural cooling reduces the need for air conditioning. The hotel rooms will also be fitted with fans and louvres. The air-conditioning will be linked to sensors with automatic shut-off when windows are open;



Graphic illustrating some aspects of the existing commercial precinct.

Landscaping

Continuing the HABITAT commitment to sub-tropical, native landscaping throughout this stage will provide a natural HABITAT for local animals to live and thrive, while also providing clean air and shade for residents and guests.

Biomimicry

The dry creek bed swales within the Pocket Park naturally reduce erosion and drain excess water in a way that mimics the natural hydrology of the site.

Filtration Beds

The swales direct water to the large filtration beds, located throughout the HABITAT site. These capture storm-water, stabilise the PH balance of the water and release it back into the natural wetlands bounding the site.

HABITAT • STAGE 5

27

Green Waste

HABITAT will continue to deal with green waste on site via use of the Subpod system (worm-farm / veggie gardens). The Subpods will be located centrally within the pocket park to ensure easy access for all tenants.

Water Conservation - Grey water

HABITAT's agreement to purchase recycled water from council will continue in Stage 5. The recycled water will be used for both landscape irrigation and to service the toilets.

Water Conservation - OSD

On-site Storm-water Detention (OSD) tanks capture storm-water and release it back into the landscape slowly over time. This helps reduce the velocity of the water and limit erosion.

Water Conservation - RWT

2x large 12,500 litre rainwater tanks are located within the central courtyard. These tanks will harvest rainwater from the roofs of the buildings for use in irrigation and topping up of the pond.

Solar

Stage 5 will form part of HABITAT's Embedded Energy Network (EEN). Electricity generated by the solar power is distributed to the community via the EEN to enable efficient use in peak periods, directly reducing the amount of electricity imported from external sources. Solar is purchased by the community at reduced rates. Stage 5 is aiming to install a 100kW (min) system. There are plans for in excess of 400kW of solar to be installed across site as a whole.

Lighting

LED lighting and low energy fittings will be used throughout the development. The lights in shared facilities are on timers, maximising energy efficiency.

Re-use

Where possible, we will source recycled or reclaimed materials. We have already identified sources to supply adequate quantities of both the bricks and timber

Source Local

Where possible, materials will be sourced locally, reducing the energy embodied in transport.

Support Local

Where possible, local trades will be engaged for construction.

Bikes

Dedicated bicycle storage facilities are nominated within Stage 5, promoting the use of bicycles as the main mode of transport.

e-bikes

The bike emporium will offer tenants of Stage 5 and guests of the hotel access use of the electric bikes.

Carshare

Up to 5x car-share spaces will be provided within the basement carpark. Tenants and guests will both be provided access to use these services. Car-share will be provided by Popcar.



View of the south-west part of the commercial precinct on the eastern side of Porter Street.

Car Charging Stations

5x car charging stations will be provided within the basement carpark - promoting use of electric cars. The car charging stations are

located in a premium location near the entrance to the carpark and the main lift core.

Solar Train

HABITAT is located a short 5-minute walk from the world's first-ever solar-powered train offering direct access into Byron town centre, further reducing the reliance on car transportation.

Shared Facilities

Spaces that are used infrequently - meeting rooms, toilets, recreation facilities and green space are shared between the tenants of Stage 5. This strategy has been implemented throughout HABITAT and proven to be highly successful. This 'shared approach' removes the need for each tenant to build their own.

Natural Pool

The proposed pool will provide much needed respite for the occupants of Stage 5. The pool will be a chemical free, natural pool.

Product Selection

Low VOC / FSE timber - sustainably and responsibly sourced materials will be used throughout the development.

Double Glazing

Hotel rooms, reducing the impacts of solar gain and minimising the need for air-conditioning.

Breezeway

The corridors to the hotel rooms are unconditioned, naturally ventilated spaces. No air-conditioning will be provided within these spaces.

Water Quality

The objectives of the HABITAT Stormwater Management Plan are:

- Reduce post-development stormwater flows to pre-development rates;
- Mimic the pre-development runoff regime where minor rainfall events infiltrate with runoff only occurring during significant events;
- Provide post-development stormwater quality and maintain low pH for acid frogs;

- Provide aesthetic integration of stormwater infrastructure into the built environment; and
- Provide a stormwater management system that embodies the principles of ESD, WSUD and industry best practices.

Modelling of Stage 5 by APP (see **Volume 3** in the **Technical Reports Bundle**) demonstrates the above described objectives met of Stage 5.



Artist's rendering of the natural pool and associated cabanas.

5.4 NOISE AND VIBRATION

Objective

Ensure that noise and vibration associated with both the construction and the operation of the new mixed-use premises and the HABITAT neighbourhood generally.

5.4.1 CONSTRUCTION HOURS

Construction work would be undertaken during standard daytime construction hours in accordance with the Interim Construction Noise Guidelines (ICNG) (DECC, 2009) as follows:

- Monday to Friday: 7 am to 6 pm.
- Saturday: 8 am to 1 pm.
- Sunday and public holidays: No work.

Out of hours work is not proposed for the project.

5.4.2 ACOUSTIC ASSESSMENT

An acoustic assessment has been undertaken for Stage 5 (see **Volume 12** of the **Technical Reports Bundle**). That assessment has been completed in the context of an overarching acoustic management policy for HABITAT.

HABITAT • STAGE 5

29

Existing Noise Environment

The existing noise environment of HABITAT was established in the Environmental Noise Impact Assessment (ENIA) of February 2018 by Tim Fitzroy & Associates. It is described below:

The noise observed while on site without Barrio Café operating emanates from:

- Vehicles during the day travelling along Bayshore Drive and operations from the neighbouring industrial precinct interspersed with bird calls;
- During the early evening (6pm to 8:30pm) vehicles travelling along Bayshore Drive;
- During the late evening period (8:30pm to 10:00pm) ocean, insects, cicadas. Secondary noise sources impacting on the subject site were bird calls; and
- During the night period (between 10pm and 7am) vehicle movement gradually desist and the dominate noise induces natural sounds including the ocean and insects.

The noise observed while on site with Barrio Café operating emanates from:

- During the day emanates from vehicles travelling along Bayshore Drive and operations from the neighbouring industrial precinct interspersed with bird calls and patrons at Barrio;
- During the early evening (6pm to 8:30pm) vehicles travelling along Bayshore Drive, interspersed with patrons from Barrio;
- During the late evening period (8:30pm to 10:00pm) patrons from Barrio, intermittent vehicles, ocean, insects, cicadas;
- Secondary noise sources impacting on the subject site were bird calls; and
- During the night period (between 10pm and 12am) patrons from Barrio, vehicle movement gradually desist and the dominate noise induces natural sounds including the ocean and insects.

A summary of the results obtained from analysis of data from the background day, evening and night time noise monitoring is provided below in **Table 5.1**

TABLE 5.1 BACKGROUND SOUND PRESSURE LEVELS

Period	LAeq (period)*	RBL*	Amenity Criteria Suburban	RBL+5 dB	Project Specific Noise Criteria (PSNC) = lowest of column (4) and (5)
(1)	(2)	(3)	(4)	(5)	
Day	54	40	55-60	45	45
Evening	49	43	45-50	48	45
Night	48	36	40-45	41	41



Compilation of photographs from the live/work component of HABITAT.

As can be seen from the above table, the project specific noise criteria for External Sensitive Receivers are determined by the intrusive noise criteria in the day period. The evening period PSNC cannot be more than the day period, therefore the evening period has been reduced to 45 dB whilst the night period is determined by the intrusiveness criteria.

Noise Modelling

Noise levels from the expected activities from HABITAT have been predicted to the closest sensitive dwellings using SoundPLAN v8.0 and the prediction methodology ISO 9613-2: 1996.

Noise Source Levels

Cumulative noise levels from Barrio Café, Stage 4 and Stage 5 of the development are represented by the noise sources described in the **Table 5.2** below. Internal noise from relevant buildings is represented by an internal SPL emanating through opened doors and windows (where openable), and through fixed glazing of a nominal 34Rw.

HABITAT • STAGE 5

30

TABLE 5.2 NOISE SOURCE

Stage	Description	Sum dB(A)	Noise Source Timing		
			Day	Evening	Night
Barrio	Patrons - Voice Level, Normal	70 SWL	100%	100%	100%
Barrio	Mechanical Plant	74 SWL	100%	100%	100%
Barrio	Truck Movements	95 SWL	2vph 20kph	0vph	0vph
4	Patrons - Voice Level, Normal	70 SWL	100%	100%	50%
4	Truck Movements	95 SWL	4vph 20kph	4vph 20kph	0vph
4	Deliveries / Loading	80 SWL	25%	25%	0%
4	Café Patron Noise	70 SWL	100%	100%	0%
4	Café Internal Noise	75 SPL	100%	100%	0%
4	Café Live Music	90 SWL	100%	100%	0%
4	Rec Facility Internal Noise	80 SPL	100%	100%	0%
4 & 5	Vehicle Movement	85 SWL	95vph 20kph	92vph 20kph	46vph 20kph
4 & 5	Mechanical Plant	74 SWL	100%	100%	100%
5	Patrons (Except Pool)	70 SWL	100%	100%	50%
5	Patrons (Pool)	70 SWL	100%	100%	0%
5	Special Function Internal Noise	80 SPL	100%	100%	100%
5	Function / Breakout Internal Noise	80 SPL	100%	100%	100%
5	Restaurant Internal Noise	80 SPL	100%	100%	100%

Sensitive Receptors

Three receptor points have been placed to represent the surrounding dwellings. The receptor points are placed on the property boundary closest to the noise source at a height of 1.5m above ground and predicted levels are free-field. Receptor locations are presented by yellow dot in the below graphic.



Receptor locations utilised for modelling are shown by way of yellow dot in this graphic.

Additional receptor points are placed 1m from the façade of accommodation within the development. Note that accommodation within Stage 5 is not considered to be sensitive to noise from within Stage 5, therefore receptor points are placed on the most exposed outward facing facades only. Predicted noise levels for these receptors are façade-affected.

External receptor locations representing *suburban receivers* as well as internal receptor locations (within the HABITAT Development) including *urban residential receivers* and *commercial interface receivers* have been considered.

Calculation of Noise Levels

Noise levels from the development have been predicted to each receptor with all noise sources from Barrio Café, Stage 4 and Stage 5 operating simultaneously. Predicted noise levels include screening from topography, as well as existing and proposed structures, as indicated in development plans. Predicted noise levels are presented in **Table 5.3**.

HABITAT • STAGE 5

31

TABLE 5.3 PREDICTED NOISE LEVELS. LEVELS ARE IN DB(A) LEQ.

Receiver	Floor	Façade	Predicted Noise Level			Applicable Criteria	Criteria			Assessment
			D	E	N		D	E	N	
R1	G	-	41	38	36	External	45	45	41	Pass
R2	G	-	42	37	36	External	45	45	41	Pass
R3	G	-	39	34	33	External	45	45	41	Pass
CT-A	G	NW	39	39	35	Commercial Interface	65	55	50	Pass
CT-B	G	NW	47	47	39	Commercial Interface	65	55	50	Pass
PL-A	G	SE	45	45	40	Urban Residential	60	50	45	Pass
PL-A	L1	SE	45	45	41	Urban Residential	60	50	45	Pass
PL-B	G	SE	48	48	43	Urban Residential	60	50	45	Pass
PL-B	L1	SE	48	48	43	Urban Residential	60	50	45	Pass
PL-C	G	S	40	40	36	Urban Residential	60	50	45	Pass
PL-C	L1	S	41	41	38	Urban Residential	60	50	45	Pass
PL-D	G	SE	47	47	44	Urban Residential	60	50	45	Pass
PL-D	L1	SE	47	47	45	Urban Residential	60	50	45	Pass
S5-C	G	SW	52	51	45	Commercial Interface	65	55	50	Pass
S5-C	L1	SW	51	51	45	Commercial Interface	65	55	50	Pass
S5-C	L2	SW	51	51	46	Commercial Interface	65	55	50	Pass
S5-D	G	SW	54	54	47	Commercial Interface	65	55	50	Pass
S5-D	L1	SW	54	54	47	Commercial Interface	65	55	50	Pass
S5-D	L2	SW	54	54	48	Commercial Interface	65	55	50	Pass
WL-A	G	NE	51	50	46	Commercial Interface	65	55	50	Pass
WL-B	G	NE	54	54	48	Commercial Interface	65	55	50	Pass
WL-C	G	NE	53	53	46	Commercial Interface	65	55	50	Pass
WL-D	G	NE	49	49	45	Commercial Interface	65	55	50	Pass



Photomontage illustrating aspects of the recreation facility component of HABITAT.

Following the acoustic consultant's review of the background noise levels and previous attended noise measurements coupled with fresh additional noise modelling it is the view of the expert acoustic consultant that the noise levels from the specified sources are predicted to be within criteria at all receptors during all time

periods from proposed HABITAT Stage 5. It is noted that noise from the Special Function Centre and Function Breakout area is likely to cause exceedances of criteria at the Pocket Living dwellings if the internal noise level is above 80 dBA SPL and accordingly, doors to the special function centre will remain closed during activities above 80 dBA SPL.

In accordance with best practice, a specific Noise Management Plan will be prepared for both the Restaurant and Special Function Centre to ensure adequate measures, roles and responsibilities are in place to achieve the project specific noise criteria.

Analysis

Having regard to the historic analysis and fresh modelling prepared for Stage 5, it is concluded that –

- Noise levels are predicted for all sources operating simultaneously. Noise sources within buildings (e.g. café noise, sound stage, etc) are presented with internal noise emanating through opened doors and fixed glazing of a nominal 34Rw.
- Noise levels from the specified sources are predicted to be within criteria at all receptors during all time periods.
- It is noted that noise from the Special Function Centre and Breakout area is likely to cause exceedances of criteria at the Pocket Living dwellings if the internal noise level is above 80 dBA SPL and that doors will remain closed during activities above 80 dBA SPL.

5.5 SERVICES

Objective

Ensure that adequate utility services are available.

A detailed report has been prepared by *Ardill Payne & Partners* (APP) describing servicing and other matters. That report accompanies this Development Application as **Volume 3** of the **Technical Reports Bundle**.

5.5.1 WATER SUPPLY

Changes anticipated to peak daily water demands are in the order of 1.8ET. The original proposal [DA 2011.162] anticipated 16ET and the current proposal is estimated to be 75.12ET.

APP confirmed that water supply can be appropriately provided to Stage 5.

5.5.2 SEWERAGE

The site is serviced by a combination of gravity and pressure sewerage systems. APP have reviewed the sewerage loads for the proposed Stage 5 against the original proposal [DA 2011.162] of 20ET in accordance with Council's water and sewerage Equivalent Tenements policy. The Stage 5 daily and peak loads show a discharge of 75.19ET. APP confirm that the

sewerage reticulation system is able to satisfactorily meet the demands of Stage 5.

5.5.3 ELECTRICITY

APP advised that communications and power infrastructure were installed with the construction works associated with CC2011/162. These provisions are generally suitable for the proposed development. However, APP note that minor alterations such as "lead in" location changes may be required.

A potential pad mount transformer has been located close to the existing high voltage lines connecting the existing pad mount transformer at the rear of the site to the external Essential Energy power network. This would allow installation without major high voltage works.

Further, the design has a spatial provision for a generator to service a portion of the stage 5 site in case of power outage.

In addition to the mains connection and generator backup it is proposed that photovoltaic solar panels will be installed on the roof of the development to reduce the overall power consumption from the external grid.

Detailed electrical calculations and reticulation design will be completed at the Construction Certificate stage.

5.5.4 TELECOMMUNICATIONS

The HABITAT Development has been serviced with pit and pipe NBN infrastructure. This was installed as part of the civil infrastructure works under the 2011.162 DA. An existing FDH is located adjacent to the Porter Street and Wallum Place intersection.

Previous stages have been serviced with fibre to the premises services on the NBN network. It is expected that this will be the delivery technology also used to service this stage of the development. Augmentation and upgrade of the existing system may be required due to the increased demand. This will be determined at CC Stage.5.



5.6 ACCESS AND PARKING

Objective

Ensure that the proposed mixed use conforms with the HABITAT road network hierarchy and that adequate parking is provided.

Specialist reports have been prepared dealing with both development traffic and parking as well as construction traffic management.

Development Traffic and Parking

A traffic and parking report has been prepared by Rytenskild Traffic Engineers (RTE). That report is to be found at **Volume 4** of the **Technical Reports Bundle**.

The RTE report assessed:

- Adequacy of the proposed car parking supply;
- Proposed car parking layout and dimensions;
- Provision for safe access;
- Provision for service vehicles to access and manoeuvre within the site; and
- Provision for pedestrians and cyclists to safely access the development.

The proposal plan for Stage 5 comprises of various commercial uses including short term accommodation. It is proposed that 200 car parking spaces be provided with parking provided at ground and basement levels. Access to ground level car parking will be gained via the existing internal road network. Access to the basement car parking facilities will be gained from a new driveway to be located at the eastern end of the Wallum Place frontage. An adjacent driveway will provide access to the proposed loading facilities.

Traffic modelling completed by RTE indicates that traffic generated by the proposal will not adversely impact upon the performance of the surrounding road network.

RTE calculates a total of 223 car parking spaces as being required under the Byron Shire DCP 2014. RTE are of the opinion that the proposal for an additional 200 car parking spaces is satisfactory given the current surplus in on site parking, the proposed mix of uses, integration

of the site with the rest of the HABITAT precinct, proposed transport arrangements including the implementation of the car sharing and enhanced bicycle arrangements, and accessibility of the site by tourists and other visitors. With respect to car sharing arrangements, RTE opines that a ratio of 1:5 is and appropriate demand adjustment for the HABITAT site.

RTE confirm that the design of the proposed access and parking arrangements are generally in accordance with the Byron DCP 2014 and AS2890.1: 2004. The proposed loading facilities will allow for the required design vehicles to service the site, and satisfy the requirements of the Byron DCP 2014 and AS2890.2.

Construction Traffic Management

RMS accredited consultants from APP have prepared a Traffic Management Plan (TMP) to support development application for the proposed Stage 5 at the HABITAT (see **Attachment 7** to **Volume 3** in the **Technical Reports Bundle**).

The TMP has been prepared in accordance with the general principles of the following documents:

- 'Traffic Control at Work Sites Technical Manual', Version 5.0, July 2018, (RMS)
- AS 1742.3-2009 'Manual of Uniform Traffic Control Devices Part 3: Traffic Control Devices for Works on Roads'

The aim of the TMP is to control construction traffic, general traffic and pedestrian movements past the proposed site. The proposed development will require the general excavation of the site to approximately RL1.9 to allow for the construction of the proposed basement carpark and construction of site access to Wallum Place. The magnitude of excavation is approximately 27,300m³.

Traffic management in the vicinity of the site will be required in order to minimise disturbance to nearby residents and through traffic, and maintain safety for the pedestrians and workers.

Work activities covered by the TMP include:

- Bulk excavation and surplus material removal;
- Deliveries and removals to and from the subject site;
- Temporary works zones for construction works such as drainage and concrete pumping; and
- Works within the road reserve (driveway construction and connection of services).

Due to the expected number of truck movements during bulk excavation being >20 per shift, a Vehicle Movement Plan (VMP) is required in addition to Traffic Control Plans (TCP).

The VMP addresses:

Construction Traffic

- Bulk Earthworks Traffic
- Construction Vehicle Traffic
- Sub-Contractors
- Deliveries and Access to the Site
- Parking

Vehicle Management Plan

- Proposed vehicle Route
- Driver Code of conduct
- The induction process for vehicle operators and regular toolbox meetings
- Complaint resolution and disciplinary procedure

Traffic Control Plans

- Traffic Controllers
- Emergency Contacts and Responsibilities
- Signage and Barriers
- Traffic Control Signage
- Inspections, Record Keeping and Reporting

5.7 AMENITY

Objective

Carry out development in a manner which protects the existing mixed use/residential amenity of the locality.

5.7.1 RELATIONSHIP TO ADJOINING DEVELOPMENT

In addition to meeting demand, the delivery of a “critical mass” of commercial uses across the site supports and sustains the businesses of HABITAT in the long term. Wellbeing and associated facilities will likely increase foot traffic and patronage within the site. We submit that this will reinforce the amenity of the locality by supporting a healthy and active lifestyle that is already available at the community.

In physical terms, Stage 5 is located centrally within the HABITAT development. Buildings and uses have been designed to engage directly with both Easy Street and the recreation precinct extending the public realm through the site and activating important community spaces. The form and positioning of the buildings prevents overlooking of commercial terraces.



This photo illustrates the sub pod implemented in Easy Street to provide for composting for the residents of HABITAT.

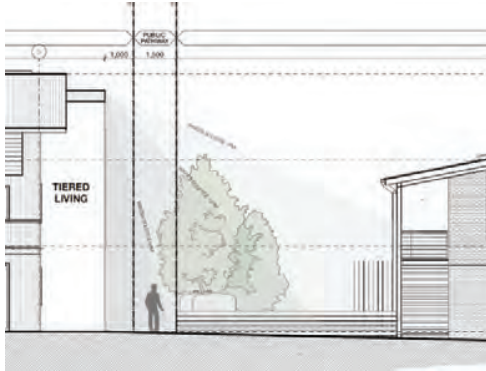
5.7.2 OVERSHADOWING

As a generality, the overshadowing occasioned by Stage 5 does not adversely impact on adjoining development more than that anticipated by the site specific DCP chapter.

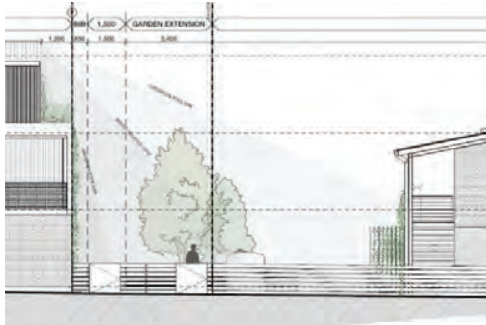
Shadows cast by the development in relation to the Commercial Terraces at 2-20 Porter Street are illustrated in the below thumbnail drawing extracts below (taken from **Plan Set Drawings DA 925 to 940**).

As depicted in these graphics, the project architect has sought to set the Stage 5 building sufficiently westward to approximate the winter 3pm overshadowing occasioned by the implementation of the current DCP the

shadows cast by the building bulk proposed for Stage 5.



Shadow lines elevation under the current DCP controls



Shadow lines elevation under the Stage 5 architecture

5.7.3 NEIGHBOURHOOD AMENITY

In terms of neighbourhood amenity, the properties 2-20 Porter Street have the potential for the most adverse amenity impacts. To mitigate those impacts, the proposal provides for the building to be set some 4m back from the boundary to provide a landscaped buffer to premises 2-20 Porter Street and provides for the reconfiguration of the road between the two commercial terrace blocks for use as a mini-neighbourhood park. These proposals are illustrated in **Plan 5.1**.

During the formal pre-lodgement consultation process, concerns were raised in relation to noise and smells emanating from the pool and restaurant, exhaust from the restaurant, and noise from the pool filter system and refrigeration. The design team is confident that these matters have been appropriately addressed to "DA level" resolution and with design development associated with Construction Certificate preparation, these

concerns will be appropriately addressed and will not have an adverse impact on neighbourhood amenity.

5.8 CONSTRUCTION CONSIDERATIONS

Objective

Ensure that construction works are appropriately managed.

Construction hours

Construction work would be undertaken during standard daytime construction hours in accordance with the Interim Construction Noise Guidelines (ICNG) (DECC, 2009) as follows:

- Monday to Friday: 7 am to 6 pm.
- Saturday: 8 am to 1 pm.
- Sunday and public holidays: No work.

Out of hours work is not proposed for the project.

Construction staging

Stage 5 Construction is anticipated to take around 12 -18 months. Construction is currently scheduled to commence in mid-2021.

5.9 CUMULATIVE IMPACTS

Objective

Review potential for any cumulative impacts associated with implementation of Stage 5.

There will be a construction-type impact during the building phase of Stage 5. This impact will be most acute in relation to the Commercial Terraces and the Easy Street Living apartments. Once completed, cumulative impacts, (i.e. repetitious or individual impacts which have the potential to erode environmental conditions) will cease.

6. CONCLUSION

This section sets out our concluding remarks in relation to the Development Application for Stage 5 of HABITAT.

The proposal by Bayshore Developments Pty Ltd to carry out a further stage of mixed-use development entailing commercial premises, hotel or motel accommodation, serviced apartment, high technology industry, function centre, information and education facility, medical centre, recreation facility (indoor), and food and drink premises.



Artist's view from the Pocket Park looking east.

Stage 5 at HABITAT is part of the continued evolution of the HABITAT site. The proposal has developed as a consequence of:

- the success of HABITAT as a vibrant Live/Work environment;
- lessons learnt in the earlier stages and the suggestions received from various people in the community and as a consequence of the community consultation process.
- policies of all levels of government to promote the orderly development and use of land which can be demonstrated to be suitable for mixed use development;
- strong demand for a special function centre to meet the needs of special photography, mini-product launches, mini-theatrical performances, TED talks and the like;
- the urgent Byron Bay need to supply more product lawfully suitable for short term accommodation in the face of mounting Airbnb style pressure on valuable family housing;
- strong demand for business and retail accommodation, as well as additional recreation facilities; and
- the site planning opportunities presented by the HABITAT site.

The proposed development application is permissible under the BLEP14 and is consistent with relevant SEPPs.

In our opinion the development can be seen to satisfy a legitimate need and is capable of construction and use in a manner which mitigates potential adverse impacts consistent with the zone objectives detailed in Council's LEP.

We submit its approval would be in the public interest within the meaning of Section 4.15(1)(e) of the Act.

Stephen Connelly RPIA (Fellow)
PLANNERS NORTH

REFERENCES

- | | |
|----------------------|--|
| A/NZ Standards, 1987 | <i>Internal noise limits from Australian/New Zealand Standard AS/NZS 2107:1987.</i> |
| RTA, 1993. | <i>Guide to Traffic Generating Development.</i> Roads and Traffic Authority. |
| WHO 1999 | <i>Guidelines for Community Noise</i> , World Health Organisation, (Editor B Berglund et al Geneva Switzerland 1999) |
| NSW EPA 2000 | <i>Industrial Noise Policy</i> , Environment Protection Authority, Sydney |
| DECC, 2009 | <i>Interim Construction Noise Guidelines (ICNG)</i> , Department of Environment and Climate Change (DECC) 2009 |
| NSW DECC, 2009 | <i>Noise Guide for Local Government</i> , Department of Environment, Climate Change & Water, Sydney |
| BLEP, 2014 | <i>Byron Local Environmental Plan 2014</i> , Byron Shire Council, 2014 |
| BDCP, 2014 | <i>Byron Development Control Plan 2014</i> , Byron Shire Council, 2014 |
| DPE, 2017 | <i>North Coast Regional Plan 2036</i> , Department of Planning & Environment, March 2017 |

APPENDICES

39

APPENDIX A

Development Application Form and
Land Owners Authority



BYRON SHIRE COUNCIL

PO Box 21940
Mullumbimby NSW 2482
DX 20007 MULLUMBIMBY
Ph : (02) 6626 7000
E-mail: council@byron.nsw.gov.au
Web: www.byron.nsw.gov.au

Office Use Only

DA No: **10.** **1** Date
Concurrent application/s ☐ YES ☐ NO see Step 5
Parcel No(s):
Zoning:
Notations: FPL DIP ASS BPL HCV HER (item / area)
PR123 (Precinct:.....)
Record No: #...../.....Container:

E2018/61985

Development Application Form

Issued under Section 4.12 of the Environmental Planning and Assessment Act 1979

Use this form to apply for **consent to carry out development**. Please ensure you have submitted all relevant information to minimise delays. Once your application has been assessed the applicant will be advised in writing of Council's Determination.

Step 1 Description of Land you propose to Develop

Unit No.	House No.	Street
----------	-----------	--------

site is bounded by Wallum Place, Gallagher Street, Easy Street and the walkway at the rear of 2-20 Porter Street and includes the whole of Penny Lane

Suburb or Town **Byron Bay**

Lot / DP / SP No. / Sec No. **Part Lots 1 & Lot 10 DP 271119**

Owner/s Name **Bayshore Development Pty Ltd**

Owner/s Email **c/o steve@plannersnorth.com.au**

Step 2 Details of the Applicant/s

Anyone can submit an application but if the applicant is not the owner of the land, the Owner(s) written consent to lodge the application is required. All correspondence will be sent to the applicant. It is important to notify Council of any change of address and/or telephone number if this occurs during the processing of the application.

Name/ Company Name **PLANNERS NORTH**

Contact Name (in the case of a Company) **Steve Connelly**

Postal address **P.O. Box 538, Lennox Head NSW 2478**

Email **steve@plannersnorth.com.au**

Mobile **0419237982**

Daytime Telephone **1300 66 00 87**

Step 3 Describe the Development you wish to carry out

You may select more than one - will this work involve:

- | | | |
|---|--|--|
| ☒ New Construction (vacant) | ☐ Fit-Out of Existing Building | ☐ Change of Use – No Building Works |
| ☐ Alterations and / or Additions | ☐ Demolition of Existing Building | ☐ Change of Use – Building Works |
| ☐ Subdivision of Land | ☐ Relocation of Existing Building | ☐ Tree Removal |
| ☐ Other | | |

Description of Proposal: Describe briefly everything you want approved by Council

Development Consent is sought for a mixed use development entailing a basement car park and three levels above over 2 HABITAT Community Title blocks and part of Penny Lane.

Genuine and accurate estimated cost of Development (inc GST) **\$ 42,048,717**

You must provide a cost summary report to lodge the DA depending on the estimated cost of works. For further information refer to the **Fact Sheet – Estimating the Cost of Development:**

- | |
|---|
| ☐ \$0 - \$150,000 - a cost summary report prepared by the applicant or a suitably qualified person * |
| ☐ > \$150,000 - \$3 million - cost summary report prepared by a suitably qualified person * |
| ☒ > \$3 million - cost summary report prepared by a suitably qualified person * |

* Refer Page 10

Floor area of proposed development	6716.09 m²	Volume of pool where relevant	172 + 35 m²
------------------------------------	------------------------------	-------------------------------	-------------------------------

Step 4 Concept Development Application

Your development application can set out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications. Refer to section [4.4 of the Environmental Planning and Assessment Act 1979](#)

Are you lodging a Concept Development Application?

No ☒ Go to next question

Yes ☐ Please describe stages:

Warning: If “Yes” is ticked, then all stages might need to be the subject of a separate development application/s. If all stages are to be approved under one consent, then it might be more appropriate to tick “No” in answer to this question and simply describe the staging of the development in your SEE or EIS.

Step 5 Other Approvals from Council

Certain types of development may include activities that also require other approvals from Council in addition to development consent. These additional approvals are required by the Local Government Act 1993 and the Roads Act 1993. You can apply for consent as part of the DA process, or apply separately once your development has been approved. If you are applying for any other approval, you will need to supply additional documentation as outlined on the relevant forms below. Additional fees will also be required.

Are you applying for other approvals from Council as part of this DA?

☐ Yes (refer to forms below)

☒ No

- Please complete a separate [Activity\(s\) Approval Application Form](#).
- Where the approval is to install a new Onsite Sewage Management System (OSMS) or upgrade an existing system, a [On-Site Sewage Management System Application Form](#) is required

Office use only

Works in Council Road Reserve (ie. driveway) (Roads Act 1993)	51.
Plumbing, Water Supply, Trade Waste or Sewer Drainage Connected to Council Infrastructure (LGA 1993)	60.
Stormwater connected to Council Infrastructure or On-Site Detention (LGA 1993)	55.
Onsite Sewage Management System (LGA 1993)	70.
Other Local Government Act Approvals – Please Specify:	

Step 6 Environmental Effects of your Development

All applications are to be supported by a Statement of Environmental Effects (in some cases a more detailed Environmental Impact Statement may be required (see below).

6a A Statement of Environmental Effects is a report that details and explains the likely impacts of the development both during and after development, and the proposed measures that will mitigate impacts. It also includes a detailed assessment of the proposed development having regard to all the planning controls that apply to the land or type of development. Refer to Council’s Fact Sheet ‘Preparing a Statement of Environmental Effects’.

I have prepared a Statement of Environmental Effects

☒ Yes

☐ No The proposal is Designated Development or is part of Critical Habitat and requires detailed assessment.
Go to Step 6B

6b **Designated Development** refers to developments that are high impact (eg likely to cause pollution) or are located in or near an environmentally sensitive area (eg wetland).

Is your development Designated Development?

☐ Yes I have prepared an Environmental Impact Statement.

☐ No

6c A Species Impact Statement is required where the development is proposed on land that is part of a **critical habitat**, or is likely to have significant impact on threatened species, populations, ecological communities or their habitats?

Is the development on land that is part of a Critical Habitat or is it likely to have significant impact as above?

☐ Yes A Species Impact Statement has been prepared.

☐ No

6d Does your proposal require works to a **heritage item**?

☐ Yes Please attach a **heritage impact statement** ⁴²

☒ No

6e Does your proposal involve a variation to a development standard(s) (as contained within the Byron LEP 1988 or Byron LEP 2014) or a variation to a development control(s) (as contained within the Byron DCP 2014)?

☐ No

☒ Yes, variation to a development standard - attach a written application for variation to development standard

☒ Yes, variation to a development control - attach a written application for variation to development control(s)

Step 7 Concurrence from State Agencies

Council may need the agreement or concurrence of a State Government Agency before it can give you a consent to carry out your development. The need for Council to obtain that agreement is specified in various regulations and environmental planning instruments affecting your land. Council can tell you whether it needs to refer your application to a Government Agency for concurrence.

Does the proposed development require Concurrence?

☒ No

☐ Yes - please indicate from whom Concurrence is required

NSW Government Planning and Environment

NSW Government Roads and Maritime Service

NSW Government Environment and Heritage

Other

A cheque made payable to each agency for the applicable fees and additional copies of all supporting documents is required to be lodged.

Step 8 Approvals from State Agencies – Integrated Development

Integrated development is development that requires licences or approvals from a NSW Government agency. Council will refer the application to the necessary agency/ies so that there is an integrated assessment of the proposal. Most forms of development will not be “integrated”.

Does this proposal require additional approval as Integrated Development?

☐ No

☒ Yes - Please tick the relevant box

Fisheries Management Act

☐ s144

☐ s201

☐ s205

☐ s219

Heritage Act 1977

☐ s58

Mine Subsidence Compensation Act 1961

☐ 1544

Mining Act

☐ ss63, 64

National Parks and Wildlife Act 1994

☐ s90

Petroleum (Onshore) Act 1991

☐ s9

Protection of the Environment Operations Act 1997

☐ ss43(a), 47, 55

☐ ss43(a), 47, 55

☐ ss43(a), 47, 55

Roads Act 1993

☐ s138

Rural Fires Act 1997

☒ s100B

Water Management Act 2000

☒ ss89, 90, 91

For further information, refer to the [Integrated Development Checklist](#).

A cheque made payable to each agency for applicable fees and additional copies of the application and all supporting documentation is required.

Step 9 BASIX Certificate

BASIX stands for Building Sustainability Index. BASIX is an initiative that was introduced by the NSW Government to ensure homes are designed to be more energy and water efficient. BASIX applies to:

- New residential dwellings with a total cost of \$50,000 or more.
- Alterations or additions to existing residential dwellings with a total cost of \$50,000 or more.
- Swimming pools with a capacity greater than 40,000 litres.

If your proposal falls into of the above three categories, then you will need to submit a BASIX Certificate with your Development Application or application for a Complying Development Certificate.

If a BASIX Certificate must be less than 3 months old at the date of DA lodgement. All details indicated on the BASIX Certificate as “show on DA plans” must be shown on the plans.

Is a BASIX Certificate required?

- ☐ No – Go to Step 8
- ☒ Yes - BASIX Certificate No: 1074714M

Step 10 Construction Certificate

If your proposal involves construction or structural work, you may need a Construction Certificate. You can apply for a Construction Certificate now, or at a later date, either from Council’s Building and Construction Services Team or from a Private Certifier.

Is a Construction Certificate application to be lodged with Council at the same time as this application?

- ☒ No
- ☐ Yes *Please complete separate [Construction Approval Application Form](#) and submit along with the two (2) hardcopies of the associated plans/documentation, one digital copy and payment of the required fees.*

Step 11 Privacy Policy

The information you provide in this application will enable your application to be assessed by Council and any relevant state agency. If the information is not provided, Council can refuse the application. Your application may be notified or advertised to the public for comment. Council will keep the application in a Register that can be viewed by the public at any time. Please contact the Council if the information in your application is incorrect or if it changes. Information collected will be used in accordance with Council’s Privacy and Personal Information Management Plan.

Step 12 Political Donations and Gifts

Please be aware of the Statutory obligations to disclose **Political Donations and Gifts** that may apply to you or associated people if you are lodging a Development or S4.55 Application. A failure to meet your obligations is an offence. Links to information and resources on this topic are available from Council’s website. All Political Donations and Gifts Disclosure Statements will be public documents.

Does a Political Donations and Gifts Disclosure Statement accompany this application?

- ☒ No
- ☐ Yes – You will need to lodge a [Political Donations and Gifts Disclosure Statement](#)

Step 13 Payment Options

Council accepts payments by cash, cheque, money order, eftpos or credit card (Visa and Master only) at Council’s Administration Office. All cheques are to be made payable to **Byron Shire Council**. Should you wish to mail your application package to Council and wish to use the credit card facility, please download an [Authority to Charge Credit Card](#) form which can be found on Council’s website or alternatively enclose a cheque or money order.

Step 14 Signature of all Owner/s

All owners of the land to be developed must sign the application prior to the application being submitted.

- If you are not the owner of the land, you must have all the owner/s sign the application. You can only sign on behalf of the owner/s if you have power of attorney or a letter of authority. Refer to Council's **Factsheet regarding Owners Consent** for more information.
- If signing on behalf of a company, a statement beside each signature clearly identifying the position of the person signing is required. (If the signatures or seal as per the Fact Sheet in relation to corporation are NOT given on the Development Application form it MUST be given on a business letter (ie on a letterhead) that states the Australian Company Number (CAN) or if the last 9 digits of the CAN are the same, then the Australian Business Number (ABN)).
- If Council is the owner of the land, you will need to obtain owners consent prior to lodging the development application. Complete a [Request for owners consent to lodge an application on Council owned land](#) and submit it to Council with any of the required information. If owners consent is granted, this is to be attached to the development application on lodgement of the development application.

As the owner/s of the above property, I/we consent to this application and consent to the Council, its servants or agents entering upon the property without first having given notice, for the purpose of carrying out all or any inspections which the Council may deem appropriate in connection with the processing of this application.

Conflict of Interest declaration

To ensure transparency in Council's decision making process and to avoid potential conflicts of interest owners are to make a declaration as to whether they are a Council employee or Councillor or are a friend/relative/associate to a Council employee or Councillor.

I am a Council employee or Councillor

☒

No

☐

Yes

I am a friend, relative or associate to a Council employee or Councillor

☐

No

☒

Yes (state relationship below)

– Relationship: **OWNERS SEEK GOOD COUNCIL**

Signature

Signature

Abel East on behalf of Bayshore Development

Name Abel East on behalf of Bay. Dev.

Name

Date 18/2/20

Date

Step 15 Signature of all Applicant/s

By signing this application,

1. I confirm that the application form is completed and the information (e.g. Number and type of plans, etc) required by Council is attached.
2. I licence Council to make all documents lodged with this application of which I am the copyright owner publicly available on Council's website both during the assessment of this application and thereafter, and further licence Council to reproduce all such documents for any purpose associated with the exercise of its functions under the Environmental Planning & Assessment Act 1979 in respect of this application, and for the purpose of complying with its obligations under the Government Information (Public Access) Act 2009.
3. I warrant that to the extent that I do not own the copyright in any documents lodged with this application, the Council is licensed by the copyright owner to use the documents lodged with this application in accordance with paragraph 2 above.
4. I indemnify the Council against all claims and actions in respect of a breach of copyright arising from any unauthorised use of any documents lodged with this application."

Note: ALL correspondence will be forwarded to the applicant, including the determination.

Conflict of Interest declaration

To ensure transparency in Council's decision making process and to avoid potential conflicts of interest applicants are to make a declaration as to whether they are a Council employee or Councillor or are a friend/relative/associate to a Council employee or Councillor.

I am a Council employee or Councillor

☒

No

☐

Yes

I am a friend, relative or associate to a Council employee or Councillor

☐

No

☒

Yes (state relationship below)

– Relationship: **WE SEEK GOOD COUNCIL RELA**

Signature

Signature

Name STEVE CONNELLY

Name

Date 18/2/20

Date

☐

Application Requirements

45

The following matrix and checklist will assist you with the preparation of your application. In providing the information outlined below, you will be assisting Council staff to process your application in a timely manner.

The matrix identifies the **minimum** information (plans and supporting documents) required for common types of developments. Please note that if any other plans or documents relate to your proposal that are not listed in the matrix they may still be submitted to Council for assessment.

Legend  Document required  Document may be required  Document not required	New Residential Dwellings	Alts / Adds to Residential Dwelling	Garage, Outbuilding, Awning, Carport, etc	Secondary Dwelling	Farm Building	Swimming Pool	Dual Occupancy	Multi Dwelling Housing	Commercial / Industrial Buildings	Subdivision
Statement of Environmental Effects	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Site Plan	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Floor Plan	✓	✓	✓	✓	✓	✓	✓	✓	✓	●
Elevations	✓	✓	✓	✓	✓	●	✓	✓	✓	●
Section Plans	✓	✓	✓	✓	✓	✓	✓	✓	✓	●
BASIX (correct type of certificate)	✓	●	n/a	✓	n/a	●	✓	✓	n/a	n/a
BASIX stamped plans & Certificate	✓	●	n/a	✓	n/a	●	✓	✓	n/a	n/a
Landscaping Plan	●	●	●	●	●	●	●	●	●	●
Erosion & Sediment Control	✓	●	●	✓	●	✓	✓	✓	✓	✓
Driveway Plan & Section	✓	●	●	●	●	n/a	✓	✓	✓	✓
Stormwater Plan & Calculations	●	●	●	✓	●	n/a	✓	✓	✓	●
OSMS Report / Plans	●	●	●	●	●	n/a	●	●	●	●
Waste Minimisation Plan	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
External Finishes & Materials	✓	●	✓	✓	✓	✓	✓	✓	✓	●
Heritage Management Document	●	●	●	●	●	●	●	●	●	●
SEPP 55 Contamination Report	●	●	●	●	●	●	●	●	●	●
Car parking Plan	✓	●	●	●	●	n/a	✓	✓	✓	●

Checklist of documentation to accompany your application

This checklist will assist with the lodgement of your application by ensuring you have included all the necessary details. This will prevent delays in processing your application.

- Please do not lodge your Development Application until you have checked each items on this checklist and indicated whether you have included the required information.
- All documentation, including plans, must be prepared to a scale which will enable easy assessment, A3 in size and a scale of 1:100 is generally preferred.
- The following information should be included on all plans and documents:
 - Applicant name, block / house / shop / flat number, street / road name, town or locality.
 - Lot number, section number, DP number.
 - Measurements in metric.
 - The position of true north.
 - Building or parts of building to be demolished to be indicated in outline.
 - Author name and date of plan
- Two (o) copies of the application form, all plans and supporting documents are required to be provided, along with a digital copy (preferably on CD or USB drive) in accordance with Council's digital requirements. All documents should be labelled correctly to reflect the type of documentation submitted.
- Be aware that if the required information is not provided, your application will not be accepted by Council.

	REQUIRED INFORMATION	SUPPLIED
Application form	a. Have mobile phone numbers and email addresses been provided for the Applicant at Step 2?	☒ Yes
	b. Has the proposed development been adequately described and the cost of works provided at Step 3?	
	c. Is Concurrence from State Agencies noted at Step 9? If so please ensure that the application fee to each of the relevant State Authorities has been provided and the required administration fee/s paid.	
	d. Is the application Integrated Development as noted at Step 10? If so please ensure that the application fee to each of the relevant State Authorities has been provided and the required administration fee/s paid.	
	e. Have ALL owner/s provided consent at Step 13? <i>Note if owner is a company then two (2) directors or one (1) director and one (1) company secretary must sign. If the owner is a Strata then a Strata Seal is required.</i>	
	f. Have ALL applicant/s provided consent at Step 14? <i>Note if applicant is a company then two (2) directors or one (1) director and one (1) company secretary must sign.</i>	
	g. Estimating the cost of development The following people are recognised as suitably qualified persons: – a builder who is licensed to undertake the proposed building works – a registered quantity surveyor – a registered land surveyor – a registered architect – a practising qualified building estimator – a qualified and accredited building designer – a person who is licensed and has the relevant qualifications and proven experience in costing of development works at least to a similar scale and type as is proposed.	
Statement of Environmental Effects	a. Environmental impacts of the development described?	☒ Yes
	b. Have the environmental impacts of the development have been identified?	
	c. Have the steps to be taken to protect the environment or to lessen the expected harm to the environment been described?	
	d. Relevant provisions of the following addressed:	
	1. Environmental Planning and Assessment Regulation 2000	
	2. State Environmental Planning Policies	
	3. Byron Local Environmental Plan (LEP 1988 and / or LEP 2014)	
	4. Byron Shire Development Control Plan (DCP 2010 and / or DCP 2014)	
	e. If the proposal relates to residential flat developments to which State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development, have all details as described in the State Policy been provided?	

Environmental Impact Statement	If the development was identified in Step 6c as requiring an Environmental Impact Statement (EIS), have the required copies been provided? <i>Note: For full details regarding the requirements for an EIS, please contact NSW Planning and Environment or see their website as follows: www.planningportal.nsw.gov.au/understanding-planning/assessment-systems/local-development.</i>	☐ Yes ☒ N/A
Species Impact Statement	If the development was identified in Step 6 as requiring a Species Impact Statement, have the required copies been provided?	☐ Yes ☒ N/A
Site Plan	a. Location, boundary dimensions, site area and north point clearly shown? b. Existing vegetation and trees on the land indicated? c. Location and uses of existing buildings on the land listed? d. Existing levels of the land in relation to buildings and roads provided? e. Location and uses of buildings on sites adjoining the land provided? f. If the property is flood affected, are the existing contours or spot heights to be provided in A.H.D?	☒ Yes
Plans / Sketches	a. Floor plans of existing and proposed building indicating layout, partitioning, room sizes and intended uses of each part of the building provided? b. Elevations and sections showing existing and proposed external finishes and heights of any proposed buildings provided? c. Proposed finished levels of the land in relation to existing and proposed buildings and roads provided? d. If the property is flood affected, are the existing and proposed finished floor levels provided in A.H.D? e. Proposed parking arrangements, entry and exit points for vehicles and provision for movement of vehicles within the site provided, including dimensions? f. Proposed landscaping and treatment of the land provided including plant type, height and maturity? g. Proposed methods of draining the land provided? h. For BASIX affected and BASIX optional development, are all BASIX requirements indicated on plans? i. Do the plans contain details of existing and proposed subdivision pattern, including the number of lots and location of roads? j. For proposals involving subdivision, have the appropriate engineering details and plans been provided?	☒ Yes
BASIX Certificate	A BASIX certificate is required for all new dwellings (including secondary dwellings), dwelling alterations and additions (where the cost of works exceeds \$50,000.00) and swimming pools over 40,000 litres. a. For BASIX affected and BASIX optional development has certificate/s issued no earlier than 3 months before the date of lodgement has been provided? b. Have the required details been included on the plans?	☐ Yes ☒ N/A
Fire Safety Schedule	a. If the proposal includes change of use of a building, has a list of category 1 fire safety provisions been provided for both current provisions and provisions that apply following the change of use? b. For commercial, retail and industrial development, has a list of category 1 fire safety provisions been provided?	☐ Yes ☒ N/A
Specific Use Requirements	If the proposal involves the use of a building as an entertainment venue or a function centre, pub, registered club or restaurant , has a statement that specifies the maximum number of persons proposed to occupy, at any one time, that part of the building to which the use applies been provided?	☐ Yes ☒ N/A
Other Required Documents	a. If applicable, have details regarding the access to and impact of the development upon infrastructure including water, sewerage, electricity, stormwater disposal and vehicular access, noting in particular the requirements of Council Policy 4.20 "Building over pipelines and other underground structures" been provided? b. If the property is not in a sewered area, have details of the proposed on site sewage management system been provided? c. If stormwater works are proposed, have engineer's plans and calculations been provided? d. Where the property is identified as having contaminated soil, have details addressing the requirements of State Environmental Planning Policy 55 – Remediation of Contaminated Land been provided? e. For residential building works, has a schedule of the building materials and colours, in accordance with the provisions of Chapter D1.2.4 of Council's Development Control Plan 2014 been provided? f. For works in a Heritage Conservation Area or Heritage Item, has a Heritage Impact	☐ Yes ☒ N/A

	Statement addressing the requirements of Chapter C1 of Council's Development Control Plan 2014 been provided?	
	g. Has a Site Waste Minimisation Plan been provided?	
	h. Where the property is identified as being bushfire effected, have bushfire requirements been addressed in accordance with NSW Rural Fire Service?	
	i. Stormwater Concept Plan checklist (see below)	
Documents Provided	a. Have TWO (2) copies of the SEE, all plans and all supporting documents been provided? It is preferred that plans and supporting documents are not bound and that all documents are stapled / bundled as required.	☒ Yes ☐ N/A
	b. Has an digital copy of the application form, SEE, all plans and all supporting documents been provided? Additional fees will apply if not.	
	c. Have additional copies of the application form, SEE, all plans and all supporting documents been provided for any referral bodies noted at Steps 8 and 9.	

Is additional information required for this application?

☐ No ☐ Yes

Advertising level

□ Level 0

□ Level 1

☐ Level 2

Development Support Officer

Date _____



PLANNERS NORTH

LAND OWNER AUTHORITY

TO WHOM IT MAY CONCERN

This is to advise that PLANNERS NORTH abn: 56 291 496 553 has been engaged by:

Client Name:	Community association DP 271119		
Client Address:	48/117 Old Pittwater Road Brookvale NSW 2100		
Dated:	17/02/2019		
in respect to land described as:	Habitat Byron Bay		
No:	1	Street:	Porter Street
Locality/Suburb:	Byron Bay 2481		
Real Property Description:	LOT/SECTION/DP DP 271119		

The owner of the abovementioned land hereby authorises PLANNERS NORTH or its agents to:

1. Inspect Records
2. Carry out searches and site inspections
3. Take Site Samples
4. Lodge applications, objections or appeals

The owner confirms that no Reportable Political Donations have been made in the last 2 years by persons or companies associated with the subject land. We will immediately notify PLANNERS NORTH if the Reportable Political Donation situation changes.

Signed:

PRINT NAME Paul Bakker

POSITION (if applicable) Strata Manager

PRINT NAME

POSITION (if applicable)

PRINT NAME

POSITION (if applicable)



*This form needs to be completed and signed by all persons who own the subject land. If the land is owned by a company, please ensure that at least **two Directors** of that company sign the form, unless a sole director company.*

20th March 2018

To Whom It May Concern,

As Directors of the following companies, we hereby authorise Mr Abel East, as Project Manager, to sign documents in relation to development projects and other related interests of the for and on behalf of the following companies:

1. Bayshore Developments Pty Ltd (ABN: 68 148 921 886)
2. Habitat Workspace Pty Ltd (ABN: 35 620 463 541)

Yours Sincerely



Brandon Saul
Director



David Knappick
Director



Ian Callow
Director

APPENDIX B**Proposed Development Control Plan Modification**

This appendix sets out changes to the Byron DCP 2014 to facilitate the Stage 5 proposal. Clauses sought to be changed are recited with deletions shown ~~struck through~~ and proposed provisions illustrated in **red font**. This attachment assumes the changes proposed associated with the Stage 4 modification of BDCP14 Chapter E5 are adopted in full.



Byron Shire Development Control Plan 2014

Chapter E5 Certain Locations in Byron Bay and Ewingsdale



PO Box 219 Mullumbimby NSW 2482
70-90 Station Street
DX20007 Mullumbimby
P: 02 6626 7000 F: 02 6684 3018

E: council@byron.nsw.gov.au W: www.byron.nsw.gov.au

E5.5 Habitat

54

E5.5.1 Where this Section Applies

This section applies to the land defined by a heavy black line on Map E5.2 known as Habitat, and identified as Lot 3 DP1004514, Bayshore Drive, Byron Bay. It is bounded by the Byron Bay Arts and Industry Estate to the south, the West Byron Sewage Treatment Plant to the west, regenerating heathland, shrubland and low woodland to the north, and the Sunrise Beach residential estate to the east.

In the event of any inconsistency between Section E5.5 and other Chapters of this DCP, the provisions of Section E5.5 shall prevail.

E5.5.2 Objectives of this Section

The primary purpose of this Section is to provide standards for the future development of the site. To assist in this regard, the objectives of this Section are to:

1. Promote and implement the principles of ecologically sustainable development identified in aims of Byron LEP 2014, in the planning, development and management of the site;
2. Contribute to the implementation of Byron Shire Affordable Housing Initiatives, the Biodiversity Conservation Strategy, the Byron Shire Cultural Policy and applicable objectives as outlined in the Community Strategic Plan 'Our Byron, Our Future'.
3. Define a compatible mix and density of business, office, residential, retail, light industry and other development on parts of the site;
4. Seek to increase the range of housing choice and further promote affordable living opportunities.
5. Enhance and protect the bio-physical environment, particularly the Wallum vegetation and wildlife habitat adjacent to the site;
6. Enhance and protect ground water and surface water quality and hydrology;
7. Ensure that the siting, scale and intensity of development enhance and protect Byron Bay's social and cultural qualities by:
 - a) responding to local and regional values, community needs and aspirations;
 - b) reflecting Byron Bay's character and scale;
 - c) ensuring that development of the site contributes to the range of services available and the identity of West Byron; and
 - d) ensuring that site access does not compromise the amenity or safety of adjacent residential areas.



E5.5.3 Desired Future Character and Development Principles

E5.5.3.1 Statement of Desired Future Character

Habitat provides a vibrant and sustainable urban environment, which enhances social equity, economic vitality, environmental performance and sustainability, and cultural expression within the Byron Bay community.

It provides a wide range of housing and employment choice and has strong connections to nearby shops, industry, town services, facilities and transport corridors.

A mix of housing types and small scale creative enterprises contribute to the neighbourhood's vitality and the town's identity. **Dwelling** types reflect the household profile of Byron Bay. Smaller **dwelling**s and multiple dwelling types cater for Byron's higher than average proportion of group households and lone person households. Integrated work and living spaces provide affordable and flexible opportunities for small scale businesses. Commercial ventures provide for local employment, **creative industries** and an outlet for goods and services produced on the site.

Land is used efficiently and energy and water use is minimised. The community actively contributes to the enhancement and maintenance of important habitats on adjoining land. Buffers are provided to these adjoining habitats, and to bushfire hazards and the West Byron Sewage Treatment Plant. Edges are well defined, the public domain is safe and permeable and amenity is fostered by transitions between uses and by integrated site planning.

E5.5.3.2 Planning Principles

The desired future character reflects the following planning principles:

1. Social Equity
 - a) Enables the co-location of uses to provide housing close to employment opportunities while ensuring potential conflict between the different land uses is minimised;
 - b) Provides a range of low cost residential and live/ work solutions that will enable creative artisans/business people to establish an economically achievable base; and
 - c) Includes a mix of housing, ownership patterns, prices and building types for a diverse community.
2. Economic Vitality
 - a) Provides a mix of employment opportunities with particular emphasis on **creative industries**;
 - b) Facilitates a density of development (with amenity) which makes cost effective use of scarce land; and
 - c) Embraces the concept of shared opportunities and synergies within the surrounding neighbourhood, which contributes to overall efficiencies.
3. Environmental Performance
 - a) Facilitates a smaller environmental footprint than traditional suburban development;



- b) Utilises a site sensitive approach^{5b} which provides filters and buffers protecting the ecological values of adjoining lands;
- c) Provides for habitat enhancement that integrate with work previously undertaken on adjoining land to restore significant new wetland habitat.

4. Cultural Expression

- a) Encourages a clustering of artistic and lifestyle based small scale industries; and
- b) Promotes the cultural identity of the area by building upon the commercial / services and industrial base in the surrounding neighbourhood.

E5.5.3.3 Achieving the Desired Future Character

This Plan aims to achieve the Desired Future Character of the site as described in Section E5.5.3.1 by:

1. Providing a Precinct Plan for the major elements of Habitat (refer to Map E5.3);
2. Specifying Principles that must apply to development of the site;
3. Specifying objectives, performance criteria and prescriptive measures for a number of environmental elements relevant to the future development of Habitat; and
4. Specifying ecological enhancement measures that are to be undertaken in adjoining habitats.

E5.5.3.4 Precinct Plan

1. The Habitat Precinct Plan (Map E5.3) identifies the major bio-physical elements that will make up the structure of the developed site. These elements include:
 - a) Major entries/ exits;
 - b) Internal access connections;
 - c) Land use 'precincts', including:
 - i) Precinct 1A - ~~Tiered living~~. Mixed use entails commercial premises, hotel or motel accommodation, serviced apartment, high technology industry, function centre, information and education facility, medical centre, recreation facility (indoor), and food and drink premises.
 - ii) Precinct 1B – Mixed use, retail / business / food and drink / recreation facility (indoor).
 - iii) Precinct 2 - pocket living.
 - iv) Precinct 3 - warehouse lofts.
 - v) Precinct 4 - mixed use, retail / business / residential / café / community recreation facilities / commercial terraces.
 - vi) Precinct 5 - ecological enhancement.
2. The Precinct Plan provides a framework for development in Habitat. It will assist developers and designers to obtain an understanding of the context for their proposed development. Components of the plan include the following:
 - a) Major entries/ exits



The major entries / exits for Habitat 57 will be from Wallum Place, at the northern frontage of the site. Entry-only service access and entry-only access to car parking areas within the site will be from Bayshore Drive, at the eastern frontage of the site.

b) Precinct 1

i. Precinct 1A: ~~Tiered Living~~ Mixed Use

~~Tiered Living consists of 8x two-and-a-half storey buildings along the northern edge of the site (half storey comprised of a mezzanine or loft that utilises the roof space). Tiered living provides for a range of housing options, with 12x one-bedroom units, 22x two bedroom units and 12x three bedroom units.~~

Mixed use –entails commercial premises, hotel or motel accommodation, serviced apartment, high technology industry, function centre, information and education facility, medical centre, recreation facility (indoor), and food and drink premises.

ii. Precinct 1B: Mixed Use

The Precinct will offer a mix of business, retail, recreation facilities (indoor) and food and drink, including: approx.. 450m² of retail space; approx.. 900m² of commercial office space; 615m² of recreation facilities (indoor) and 105m² of food and drink premises space.

c) Precinct 2: Pocket Living

The Pocket Living Precinct consists of 4x two-and-a-half storey buildings along the north western edge of the site and an amenities block (half storey comprised of a mezzanine or loft that utilises the roof space). This precinct offers the opportunity for high quality, small scale living units at an affordable price point and is comprised of 56x one bedroom units and 4x two bedroom units.

d) Precinct 3: Warehouse Lofts

The Warehouse Lofts consist of 4x two storey buildings along the southern edge of the site. Each building is comprised of six ground floor commercial/retail spaces with a one-bedroom apartment above. There is also an option for a second bedroom on the ground floor. This integrated solution will suit many creative industries.

e) Precinct 4: Retail / Business / Residential / Café / Community Recreation Facilities

This area offers a mix of business, retail and living spaces including; approx. 1200m² of retail space; approx. 1700m² of commercial office space plus a café/restaurant, gym and pilates studio, as well as 10x two bedroom apartments, with attached retail or commercial workspaces. The recreational precinct includes a swimming pool, change rooms, barbecue areas, bicycle storage and shaded lawn.

f) Precinct 5: Ecological Enhancement

Existing low lying areas or swales on adjoining lands will be extended and revegetated with freshwater wetland and heath plant species of local provenance to improve wetland habitats and increase important habitat components for local fauna species, particularly the Wallum frogs (Wallum Sedge frog, *Litoria ongburensis*, Wallum froglet *Crinia tinnula*). Appropriate restrictions on the title



of the property (Lot 3) will ensure that the community will continue to contribute to the maintenance of these important Wallum frog habitats.

E5.5.4 Design and Development Controls

Section E5.5.4 contains a range of controls which reflect environmental and design aspects of the future development of Habitat.

E5.5.4.1 Land Use, Management and Environmental Assessment

Background

A key characteristic of villages is the mix of uses that occur throughout them. Mixing uses facilitates a vibrant and safe environment by day and by night. The close proximity of workplaces and housing reduces travel distances and creates affordable and accessible urban environments. The economic viability of the development is supported over its life cycle by the provision of both housing and productive uses. Provision of a variety of housing types and configurations supports a diversity of households and reflects local demands for differentiated and affordable housing options.

The site has a number of constraints which will require detailed environmental assessment as part of any future development application for the site. These constraints include proximity to the West Byron Sewage Treatment Works and its primary access road, potential **acid sulfate soils**, and various ecological constraints.

Objectives

1. *To achieve the Desired Future Character for the site as defined by Section E5.5.3.1;*
2. *To facilitate the creation of a **mixed use development** with a diversity of housing and employment choice and optimum density that reflects the environmental capability of the site and the socio-economic and cultural context; and*
3. *To assess and mitigate potential environmental impacts.*

Performance Criteria

1. Utilise the site and building layout to maximise the potential for acoustic privacy by providing adequate building separation within the development and from neighbouring buildings;
2. In Precinct 1, utilise front fences and walls to enable use of private open space abutting Wallum Place to provide an acoustic barrier to vehicle movements;
3. In **mixed use development**, ensure loading bays, garbage collection areas etc are located away from bedrooms and other quiet areas in the residential component;
4. Provide diverse **dwelling** types within Precincts 1, 2, 3 and 4;
5. In Precinct 1, provide **spaces** to be used for a home office, **creative industry** or as an additional bedroom.

Prescriptive Measures

1. Land Use and Density
 - a) Distribute land uses across the site in accordance with the Precinct Plan (Map E5.3) and the consistent land uses and densities outlined in Table E5.1; and



- b) Provide for a maximum of 152 residential **dwelling**s within the site.

Table E5.1 – Land Uses Consistent with Desired Future Character

Precinct	Consistent Land Uses*	Maximum Densities*
<u>Precinct 1A</u> Land Area: Approximately 8,419m² Built Gross Floor Area: Approximately 6,042m² 6,716m² Bedroom Total: 126 106	Tiered Living (TL) - entails commercial premises, hotel or motel accommodation, serviced apartment, high technology industry, function centre, information and education facility, medical centre, recreation facility (indoor), and food and drink premises.	Tiered Living Mix of configurations ranging from 1 – 3 bedrooms depending on how the space is used. Garage to ground floor. <u>Mixed use</u> - 1 bedroom serviced apartments to ground floor - 1 bedroom hotel or motel rooms to first and second floor - Retail and commercial premises (class 5/6) to the ground floor. - Medical centre and recreation facility (indoor) to the ground floor - Function centre, information and education facility, high technology industry to the ground floor - Function centre, information and education facility to the first floor - Food and drink premises to second floor - Shared meeting rooms, wc's, garbage facilities - Commercial kitchen to the ground floor - Back of House - Underground carparking
<u>Precinct 1B</u> Land Area: Approximately 3,710m² Built Gross Floor Area: 2,160m²	- Retail - Business - Food and Drink - Recreation Facilities (indoor)	- Retail (class 6) to the lower level. - Commercial (class 5) to the upper two levels. - Food and drink and Recreation Facilities (indoor) to the lower level. - Shared meeting rooms, wc's, storage and garbage facilities.
<u>Precinct 2</u> Land Area: Approximately 10,255m² Built Gross Floor Area: 3,655m² Bedroom Total: 64	Pocket Living (PL)	<u>Pocket Living</u> - Mix of 1 + 2 bedroom units to ground floor - 1 bedroom units to first floor



<u>Precinct 3</u> Land Area: Approximately 7,360m² Built Gross Floor Area: 3,200m² Bedroom Total: 48	Warehouse Lofts 60 (WL)	<u>Warehouse Lofts</u> - Commercial / retail to the ground floor (class 5 / 6) - Generally residential to the first floor with additional bedroom permissible to ground floor - Able to be configured with 1 or 2 beds
--	----------------------------	--



Precinct	Consistent Land Uses*	Maximum Densities*
<u>Precinct 4</u> Land Area: Approximately 16,740m² . Built Gross Floor Area: 5,325m² Bedroom Total: 20	- Retail - Business - Residential - Café - Community / Recreation Facilities	<u>Commercial Precinct</u> B1 / C1 / C2 / C3 / C4 / C5 - Retail (class 6) to lower level with the exception of C5 (dentist) - Commercial (class 5) to upper level with the exception of C1 (gym) C3 and C5 (pilates studio) - Shared meeting rooms and wc's <u>Recreation Precinct</u> - Swimming pool and change facilities <u>Commercial Terraces</u> - Part of the ground floor is commercial/retail (class 5/6) - Rear portion of the ground floor and all upstairs is residential (class 2) - 2 bedrooms
<u>Precinct 5</u> Land Area: Approximately 2,728m²	Ecological enhancement, restoration, management and monitoring.	No buildings allowed

2. Setback

Provide **setbacks** within the development consistent with the minimum distances outlined in Table E5.2.

Table E5.2 – Setbacks

Land Use	Minimum Setback	Distance (m)
Precinct 1	External Property (lot) Boundary	4 2
	External road	9 7
	Internal roads	0
	Adjoining buildings	0
Precincts 2 & 3	External Property (lot) Boundary	4
	Internal roads	0.5



	62	
	Adjoining Buildings	0
Precinct 4	Bayshore Drive	7
	Wallum Place	4
	Internal Roads	0

3. Buffering

- Provide a minimum 20m **setback** between **dwelling**s and the western and north-western site boundaries, where these adjoin the adjacent Wallum frog habitats;
- Provide a minimum 5m **setback** between **dwelling**s and the internal boundary between Precincts 2 and 5, located in the north-western corner of the site as denoted by the approved Acid Frog Management Plan (Geolink, 2017) for the site; and
- Provide buffering from the Byron Bay Sewerage Treatment Works in the form of a minimum 20m buffer along the north western boundary of the site (this acknowledges the buffer provided in the original subdivision of the land, by the creation of Lot 12 DP 1189646).

4. Environmental Assessment

The following environmental assessment reports must be prepared as part of any development application for the site:

- Preliminary Acoustic Report;
- Site Waste Minimisation and Management Plan** and assessment consistent with the requirements of Chapter B8 Waste Minimisation and Management.

E5.5.4.2 Car Parking

Background

An integrated 'live/work' approach to development, characterized by the inclusion of **workspaces** in detached and attached residential **dwelling**s, presents the opportunity for *dual use* of parking spaces, thereby reducing the overall parking demand of the proposed development.

Dual use of parking spaces occurs when the same parking space can serve more than one component of a development, such as where residents of living areas also operate businesses in the attached workplaces. In circumstances where the parking demand generated by residents is satisfied by parking provided to serve the living areas, there is no need to satisfy the parking demand generated by residents' use of the workplaces.

A **mixed use development** also provides the potential for *complementary use* of parking spaces. This occurs when the peak parking demand of one component of the proposed development does not coincide with the peak parking demand of another.



Objectives

63

1. To provide sufficient parking to satisfy the needs of the proposed development taking into account the potential for dual and complementary use of parking spaces; and
2. To assist in achieving the Desired Future Character for the site as defined by Section E5.5.3.1 by minimising the total area of hard stand car parking within the site.

Performance Criteria

1. Provide on-site car parking appropriate to the needs of both residents and off-site workers, with consideration to potential for dual use and complimentary use of spaces;
2. **Dual Use Parking** - apply the concept of dual use parking, as described above, as appropriate to the nature of the proposed site development. In this regard it is not unreasonable to expect that the actual parking demand generated by the workplace floorspace in the commercial precinct (most notably the office floorspace), and in the industrial precinct, will be up to 30% less than the parking requirement which is calculated without regard to the duplication of parking provision, which is a consequence of the integrated "live/work" approach to the development. It should be noted, however, that it is possible that not all of the workforce employed by businesses that occupy the workplaces incorporated in integrated 'live/work' components of a **mixed use development** will also be residents of that development. For example, a resident operating a business from a workplace could employ a non-resident/residents to assist in the operation of the business;
3. **Complementary Use** - seek to reduce the total number of car parking spaces associated with a **mixed use development** proposal by comparing peak demands of each use by time of day, day of the week, and season. Where the varied parking demand for proximate uses allows joint use of a single parking space or facility, a reduced number of spaces is strongly encouraged;
4. Located shared parking spaces to be convenient to all users;
5. Provide non-residential parking on internal streets and accessways, providing that such parking does not affect the capacity of the internal access system to allow efficient internal movement of vehicles and pedestrians; and
6. Provide cycle access and facilities within the site, consistent with the requirements of Chapter B5 Providing for Cycling.

Prescriptive Measures

Provide on-site car parking in accordance with standards outlined in Table E5.3. Total provision of car parking is to consider potential for *dual use* and *complementary use*, as described above.

Table E5.3 – Car Parking Standards

Type of Development	Minimum Car Parking Provision	Special Requirements	Precinct Requirements
Precinct 1A – Tiered Living Mixed Use			
large dwellings – 3 or 4 bedrooms	2 spaces per dwelling	1 space must be capable of being covered (stacked car parking will not be acceptable)	1 per cent of spaces to be provided for people with a disability



Type of Development	Minimum Car Parking Provision	Special Requirements	Precinct Requirements
small dwellings — 1 bedroom	1 space per dwelling		
visitor car parking	1 space per 4 dwellings		
Workspace	1 space per workspace		
delivery / service vehicles	1 space per 50 units	Visitor parking can be used if designed for dual use	
Bike shop	1 space per 20m ² GFA		Where carshare is provided the maximum car parking credit shall be on the basis of 1 car share space per 5 spaces. Car share cannot account for more than 10% of the overall required parking. 1 per cent of spaces to be provided for people with a disability (generally – does not apply hotel / serviced app)
Co-retail	1 space per 20m ² GFA		
Commercial kitchen	1 space per 20m ² GFA		
Hotel	1 space per room	1 space to be provided for people with a disability for each accessible room	
Networking	1 space per 20m ² GFA		
New retail - Office premises - Retail premises	1 space per 40m ² GFA x 70% 1 space per 20m ² GFA		
Office	1 space per 40m ² GFA x 70%		
Restaurant	1 space per 20m ² GFA		
Retail	1 space per 20m ² GFA		
Sauna	Ancillary to Hotel		
Serviced apartment	1 space per room + 1 per 4 for visitor	1 space to be provided for people with a disability for each accessible room	
Special function centre	1 space per 20m ² GFA		
Studio	1 space per 20sqm GFA		
Wellness centre	1 space per 40sqm GFA x 70%		
Hotel staff	1 per 2 employees		
Delivery/Service Vehicles	Provide specific loading bay.		
Precinct 1B –Mixed use, retail / business / food and drink / recreation facility (indoor)			
Retail	1 space per 20m ² gross floor area		1 per cent of



Office / professional rooms / business premises	1 space per 40m ² gross floor area x 70%		spaces to be provided for people with a disability
Recreation facility (indoor)	1 space per 20m ² gross floor area		
delivery / service vehicles	1 space per 400m ²		
Precinct 2 – Pocket Living			
small dwelling s – 1 bedroom	1 space per dwelling		1 per cent of spaces to be provided for people with a disability
small dwelling s – 2 bedroom	1.5 spaces per dwelling		
delivery/ service vehicles	1 space per 800 m ² gross floor area	Visitor parking can be used if designed for dual use	
Precinct 3– Warehouse Lofts			
small dwelling s (1bedroom)	1 space per dwelling		1 per cent of spaces to be provided for people with a disability
small dwelling s – 2 bedroom	1.5 spaces per dwelling		
visitor car parking	1 space per 4 dwelling s		
Workspace	1 space per workspace		
delivery / service vehicles	1 space per 800 m ² gross floor area	Visitor parking can be used if designed for dual use	

Type of Development	Minimum Car Parking Provision	Special Requirements	Precinct Requirements
Precinct 4 – Mixed Use			
retail	1 space per 20 m ² gross floor area		1 per cent of spaces to be provided for people with a disability
office / professional rooms/ business premises	1 space per 40m ² gross floor area x 70%		
spa	1 space per 20m ² gross floor area		
small dwelling s (1 or 2 bedrooms)	1.5 spaces per dwelling		
large dwelling s (3 or 4 bedrooms)	2 spaces per dwelling		
visitor car parking	1 space per 4 dwelling s		
delivery / service vehicles	1 space per 400 m ²		

E5.5.4.3 Building Design

Background

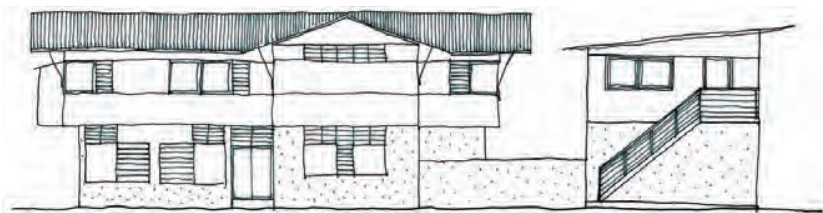
The climate, coastal location and the evolving culture of Byron Bay has given rise to a 'Byron style' which can be characterised as informal, light weight construction and is referred to in this Section as the 'Byron vernacular' and the 'Byron style'. Achieving the Byron vernacular will be reinforced within the developments' residential precincts, with the development as a whole characterised by lush vegetation, open spaces and linked landscaped areas, a mix of flat and sloping rooflines, timber, masonry and glass structures typical of the local Byron style (refer to Figure E5.1).

An opportunity exists for Habitat to be an intense living and working environment of a considerably higher density than suburbia. Consequently, a high degree of detailed design resolution is required in the architecture and urban design.

The density proposed for the site means that the form and layout of each building needs to consider its relationship to its immediate neighbour and its context in the street. It means that the creation of identifiable and well defined space in the public domain is more important than the individual building and garden. Further, it means that gardens and the landscaping on private lots need to contribute to the public domain. The issue of overshadowing will also need to be carefully considered in any design for the site.

Building design should:

1. Reinforce the structure of the public domain;
2. Respond to climate and local 'Byron vernacular';
3. Ensure privacy and amenity are maintained;
4. Contribute to high environmental performance; and
5. Ensure an adequate level of solar access is provided to living areas.



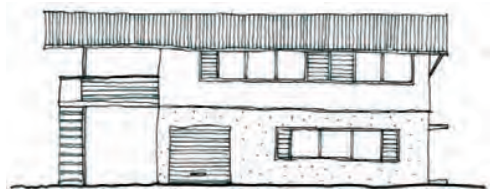


Figure E5.1 – Indicative examples of Byron vernacular

Objectives

1. *To achieve the Desired Future Character for the site as defined by Section E5.5.3.1;*
2. *To ensure that buildings on the site reinforce the structure of the public domain, respond to climate and the 'Byron vernacular', ensure that privacy and amenity are maintained, and contribute to high environmental performance;*
3. *To ensure that residential development will not significantly increase the overshadowing of adjoining properties; and*
4. *To ensure that occupants of buildings will enjoy the optimum use of winter sunlight and summer shade.*

Performance Criteria

1. Provide low-rise two and three **storey** building forms that are in proportion to street trees or existing built form. Two and (half **storey** comprised of a mezzanine or loft that utilises the roof space) are also possible.
2. Where possible, provide rear lane vehicular access to housing sites to facilitate a coherent, safe and visually pleasing streetscape and negate the need for private hard surfaced driveways;
3. Provide articulation and variety in building forms and utilise screening features to facilitate visual interest, privacy and energy efficiency;
4. Ensure that the width and internal layout of buildings facilitate natural cross ventilation;
5. Design entrances so that they are a clearly identifiable element of the building in the street;
6. Utilise durable materials and finishes;
7. No roof should have a highly reflective surface; any metal roof must have a colorbond or equivalent finish in a colour approved by Council. White or light coloured roofing will not be approved where it's likely to be intrusive;
8. Locate habitable rooms and open spaces away from noise sources and utilise car parking areas and zero side building **setbacks** to provide a buffer to noise sources;
9. In Precinct 1, design and construct development adjoining Wallum Place to ensure that acceptable living conditions can be created within **dwellings**, particularly in relation to noise and odour;
10. Incorporate lush vegetation to provide shade and screening; and
11. Orientate **dwellings** and design building roof and shade structures to maximise solar access into private open space areas and internal living spaces during winter months.

Prescriptive Measures

1. Provide details of building materials and surface colours for assessment with the development application;

2. External materials must complement the 'Byron vernacular' and can include various forms of cladding including pre-painted corrugated steel, fibrous cement, weatherboard, masonry, concrete and timber;
3. Allow zero side **setbacks** and boundary walls to efficiently utilise the site, create an urban edge to streets, minimise building material and energy usage, and enable the provision of private internal open space;
4. Design buildings to ensure a minimum of 3 hours of sunshine to the living area of **dwelling**s between 9am and 3pm mid winter;
5. Coordinate and integrate building services, such as drainage pipes and air conditioners, with overall façade and **balcony** design;
6. Coordinate security grills/ screens, ventilation louvres and **car park** entry doors with the overall façade design;
7. Provide operable walls and large openings to allow for windows and doors to be opened during summer and closed in winter;
8. Incorporate mosquito mitigation devices;
9. Locate living areas with direct access to private outdoor spaces; and
10. Avoid large expanses of any single material.
11. Design buildings to ensure that building heights do not exceed the maximum height shown for the land on the Byron LEP 2014 [Height of Buildings Map](#).
12. Design buildings to ensure that the maximum floor space ratio for a building is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).

E5.5.4.4 Site and Open Space Design

Background

The flat topography and high water table of the site and the sensitive wetland habitats of its context mean that managing stormwater runoff will be important. Minimising impervious surfaces across the site is critical to the reduction of stormwater runoff. This issue will also be supported by building design and infrastructure design elements of this Section.

The provision of areas for communal exchange, relaxation, education and contemplation will support the village concept. At the same time, territorial reinforcement of public and private space will facilitate efficient utilisation of the land and discourage crime opportunities.

Universal **access** will need to be built into the design of the site at ground level in order to produce a village that is supportive of people with the range of physical and mental functionality.

The mixed use nature and density of the proposed land use pattern and the availability and augmentation of existing cycling and walking networks delivers an opportunity to provide wide transport choice. Minimising and integrating vehicular parking is a demand management measure that can further support, walking, cycling and public transport. Locating visitor parking within the street system reduces the footprint of **dwelling** sites.

Objectives

1. *To achieve the Desired Future Character for the site as defined by Section E5.5.3.1; and*



2. To minimise the impervious footprint of the site, provide communal and private open space, delineate the public or private role of space and facilitate universal access.

Performance Criteria

1. Provide common open space to facilitate communal exchange and foster a sense of community;
2. Locate communal open space so that it exists as a focal point for the development;
3. Provide private outdoor open space areas in dwelling sites as an extension of living spaces, to allow yards to be fully planted as landscaped deep soil areas and to maximise pervious areas;
4. Provide private open space for workspaces by way of open space balconies as an extension of living spaces;
5. Provide adequate facilities for storage, clothes drying and waste management while minimising their visual and amenity impacts;
6. Provide universal access throughout the site by providing continuous accessible paths of travel and some housing and car parking specifically designed to support persons who have reduced physical or cognitive function;
7. Ensure communal open space areas are useable and accessible to all including those persons with a disability;
8. Ensure passive surveillance of the communal open space area;
9. Improve the amenity of open space with landscape design by:
 - a) providing appropriate shade in the form of locally indigenous trees or structures;
 - b) providing accessible routes through the space and between buildings; and
 - c) screening cars, communal drying areas, swimming pools and the courtyards of ground floor residential buildings;
10. Contribute to streetscape character and the amenity of the public domain by:
 - a) relating landscape design to the desired proportions and character of the streetscape;
 - b) using planting and landscape elements appropriate to the scale of the development; and
 - c) allowing for locating public art where they can be viewed by users of open space and/ or from within courtyards and the public domain;
11. Improve the energy efficiency and solar efficiency of dwellings and the microclimate of private open spaces. Planting design solutions include:
 - a) locally indigenous trees for shading low-angle sun on the eastern and western sides of a buildings;
 - b) locating locally indigenous dense-foliaged trees well away from the building to permit winter sun access;
 - c) varying heights of different species of locally indigenous trees and shrubs to shade walls and windows; and
 - d) locating pergolas on balconies and courtyards to create shaded areas in summer and private areas for outdoor living.



Prescriptive Measures

70

1. Public Open Space

- a) Provide a minimum of 2,000m² of public / communal open space, with at least one central location having an area of not less than 450m²; and
- b) Orientation of communal open spaces to the north with a minimum of three hours of sunlight between 9am and 3pm mid winter provided to at least 50% of the communal open space area.

2. Private Open Space

- a) A private open space balcony must be provided for each **dwelling** where the residential component is not located on the ground floor (note this includes **dwelling** that contain a **dwelling** on the first floor and **workspaces** / office on the ground floor). Within the commercial precinct, such private open space **balconies** must have a minimum area of 10m² and a minimum length and width of 2.5m. Within the Pocket Living precinct, private open space balconies must have a minimum area of 11m². In all other precincts, the private open space **balconies** must have a minimum area of 15m² and a minimum length and width of 2.5m;
- b) Private open space **balconies** must have appropriate orientation and adequate provision for winter sun and summer shade; and
- c) Each **dwelling** that has a residential component on the ground floor must have a minimum private **landscaped area** of 49m² (including terrace) plus additional common outdoor area.

3. Universal Access

- a) Provide a minimum of one **dwelling** as **adaptable housing**, designed in accordance with AS4299, for every 10 **dwellings** or part thereof;
- b) Design facilities for disabled persons (including car parking) to comply with the Australian Standard 1428 (Part 1 and 2), the Building Code of Australia and the *Disability Discrimination Act 1992* (as amended);
- c) Provide **continuous accessible paths of travel** from all public roads and public spaces, as well as throughout the ground level internal spaces of **adaptable housing dwellings**; and
- d) Design **adaptable housing dwellings** in accordance with AS 1428 Parts 1, 2 and 4 and AS 4299 Adaptable Housing.

E5.5.4.5 Lot Size and Subdivision

Objectives

1. *To provide lots of sufficient size to satisfy the needs of future residents and occupants, and which will accommodate well designed and innovative development;*
2. *To encourage diversity in lot size and opportunities for a variety of housing/building choice; and*
3. *To ensure that lot design takes into account the natural features of the site and locality.*



Performance Criteria

71

1. Lots must be of sufficient area to allow for the siting of **dwelling**s / buildings including provisions for private open space, **landscaped area**, vehicle access and car parking and to permit solar access; and
2. Lot sizes and design must enable **dwelling**s / buildings and driveways to be sited to protect natural or cultural features, and respond to site constraints including topography, bushland, soil, erosion, drainage, and bushfire risk.

Prescriptive Measures

1. The minimum lot size requirements for the site (including residential community title) shall be in accordance with Byron LEP 2014.
2. Lots must enable the construction of a built form which is sympathetic to the established character of the area.
3. Subdivision of the site is to occur only through strata and/or community title subdivision.
4. There is no minimum **allotment** size for strata subdivision provided the **allotment** boundaries substantially correspond with parts of any building intended for separate ownership. Demonstration of compliance with the Building Code of Australia with regard to fire separation and egress will be required prior to subdivision approval.
5. In the case of strata or community-title subdivisions, car spaces are not to be given separate lot numbers, and all visitor spaces are to be included within common property where possible. All private landscape area attached to a **dwelling** shall be identified on the subdivision plan as being part of the appropriate **dwelling** unit/ lot. All common **landscaped areas** and community facilities shall be identified as being within the common property.

E5.5.4.6 Water Cycle Management

Background

The wetland systems to the south-west and west of the site demand a water management regime that ensures that water leaving the site is appropriately treated and managed.

Objectives

1. *To achieve the Desired Future Character for the site as defined by Section E5.5.3.1;*
2. *To ensure that management of surface water and **ground water** on the site is consistent with the principles of Integrated Water Cycle Management and **water sensitive urban design**; and*
3. *To protect the area's sensitive ecological and geophysical environment, particularly by ensuring that water released into the **ground water** and adjacent swales is low in pH and nutrients.*

Performance Criteria

1. Utilise uncontaminated, low pH, low nutrient fill to provide for drainage of stormwater within and from the site;
2. Minimise building footprints by including three **storey** building forms in order to maximise pervious open space areas;



3. Minimise impervious surfaces dedicated to vehicular access and manoeuvring by minimising the length of driveways and parking provided within individual house sites;
4. Incorporate water use minimisation measures, such as water saving devices, into building designs;
5. Minimise filling of the site by adopting above-surface drainage regime with the use of swales;
6. Council may consider variations to its engineering standards to allow swale drainage, as an alternative to standard kerb and gutter drainage, if it can be demonstrated that the swale drainage design could be adapted to conform to standard kerb and gutter drainage in the event of system failure;
7. Avoid the need for deep basins or permanent pools for the detention of stormwater by incorporating shallow detention areas or swales across the site which fully drain following rainfall events;
8. Utilise car parking areas for the detention and treatment of stormwater runoff from roads;
9. Ensure that stormwater leaving the site is treated to a quality equal or better to pre-development quality;
10. Ensure that stormwater flow rates leaving the site are no greater than pre-development flow rates;
11. Manage the flow and quality of water leaving the site to avoid adverse impacts upon adjoining sensitive wetland areas, particularly in relation to maintaining low pH and low nutrient levels;
12. Maximise the reuse of treated wastewater and stormwater for non potable purposes such as garden watering and toilet flushing within site capability and public health limits; and

Prescriptive Measures

1. Requirements of the site wide Integrated Water Cycle and Soil Management Plan (Geolink, 2011) as amended by Stormwater Management Plan (Ardill Payne & Partners, 2013) are to be adhered to;
2. Provide dual reticulation within the site for the reuse of recycled water from the West Byron sewage treatment plant (STP) for toilet flushing and watering of open spaces where suitable;
3. Rainwater tanks to be provided as required by the approved Stormwater Management Plan (Ardill Payne and Partners, 2013);
4. Private courtyards are to minimise surfaces with impervious materials. Where timber decking is provided, water must be capable of infiltrating into the soil beneath the deck;
5. Contribute to water and stormwater efficiency by integrating landscape design with water and stormwater management, by:
 - a) using **locally indigenous** plants with low water demand to reduce water consumption;
 - b) using **locally indigenous** plants with low fertiliser requirements;
 - c) using **locally indigenous** plants with high water demand, where appropriate, to reduce run off from the site;
 - d) utilising permeable surfaces; and
 - e) incorporating wetland filter systems using **locally indigenous** plant species;



6. Employ sub-surface irrigation for watering⁷³ of public spaces, using recycled water with scheduling to avoid over-watering and adverse impacts to soils and **groundwater**;
7. Employ swale drainage within drainage systems to promote infiltration and treatment of stormwater. Swales shall be designed to minimise maintenance requirements with the use of **locally indigenous** plant species or alternative coverings such as river pebble;
8. Council will require the body corporate of Habitat to enter into an appropriate management agreement for the maintenance of any drainage swale on the public roads (Bayshore Drive and Wallum Place) fronting the site;
9. Drainage systems are to be maintained to ensure that ongoing stormwater quality is achieved.
10. Design car parking areas to facilitate stormwater detention and treatment; and
11. Carry out all **excavation** above the existing water table and in a way that does not change the natural characteristics of the water table.

E5.5.4.7 Ecological Enhancement

Background

Habitat is almost devoid of non-grass vegetation, having been slashed for decades. Three (3) vegetation communities occur on the site. These are swamp forest (small clump on southern boundary), sedgeland (located in depressions across the site) and grassland (majority of the site). No threatened plant species have been identified on the site.

The threatened Wallum Froglet (*Crinia tinnula*) has been recorded on and adjacent to the site and the threatened Wallum Sedge frog *Litoria olongburensis* occurs adjacent to the site. The site itself offers marginal habitat for the Wallum froglet as a result of degradation due to past disturbance.

A Compensatory Habitat Agreement exists between the land owner and Council, which will substantially enhance Wallum frog habitats and provide linkages between existing habitats of importance for these species. The development of the Habitat site will implement and inform the development of this compensatory habitat agreement.

Objectives

1. *To achieve the Desired Future Character for the site as defined by Section E5.5.3.1; and*
2. *To assist and increase ecological restoration being undertaken to the west of the site and extend ecological restoration into the site.*

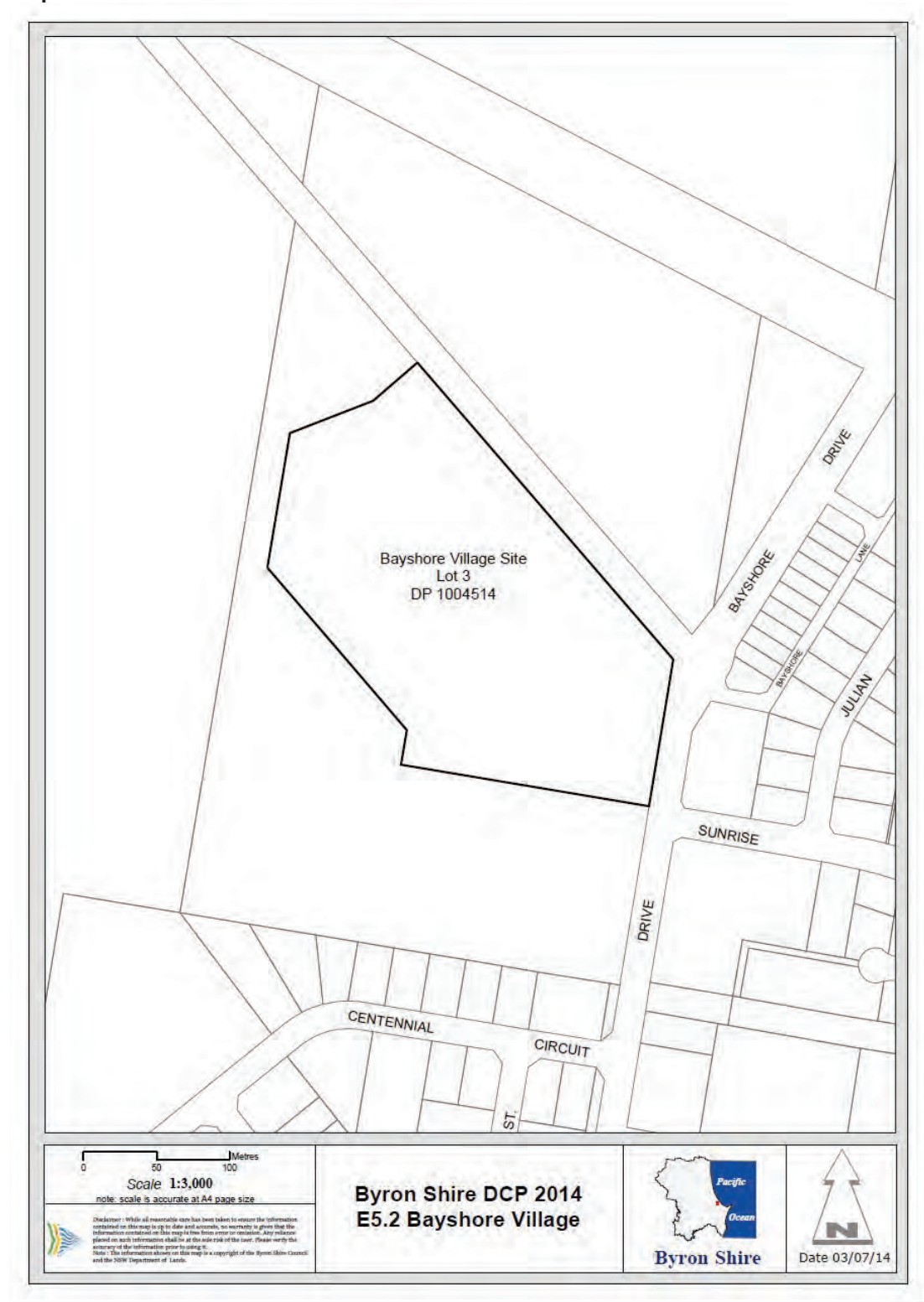
Performance Criteria

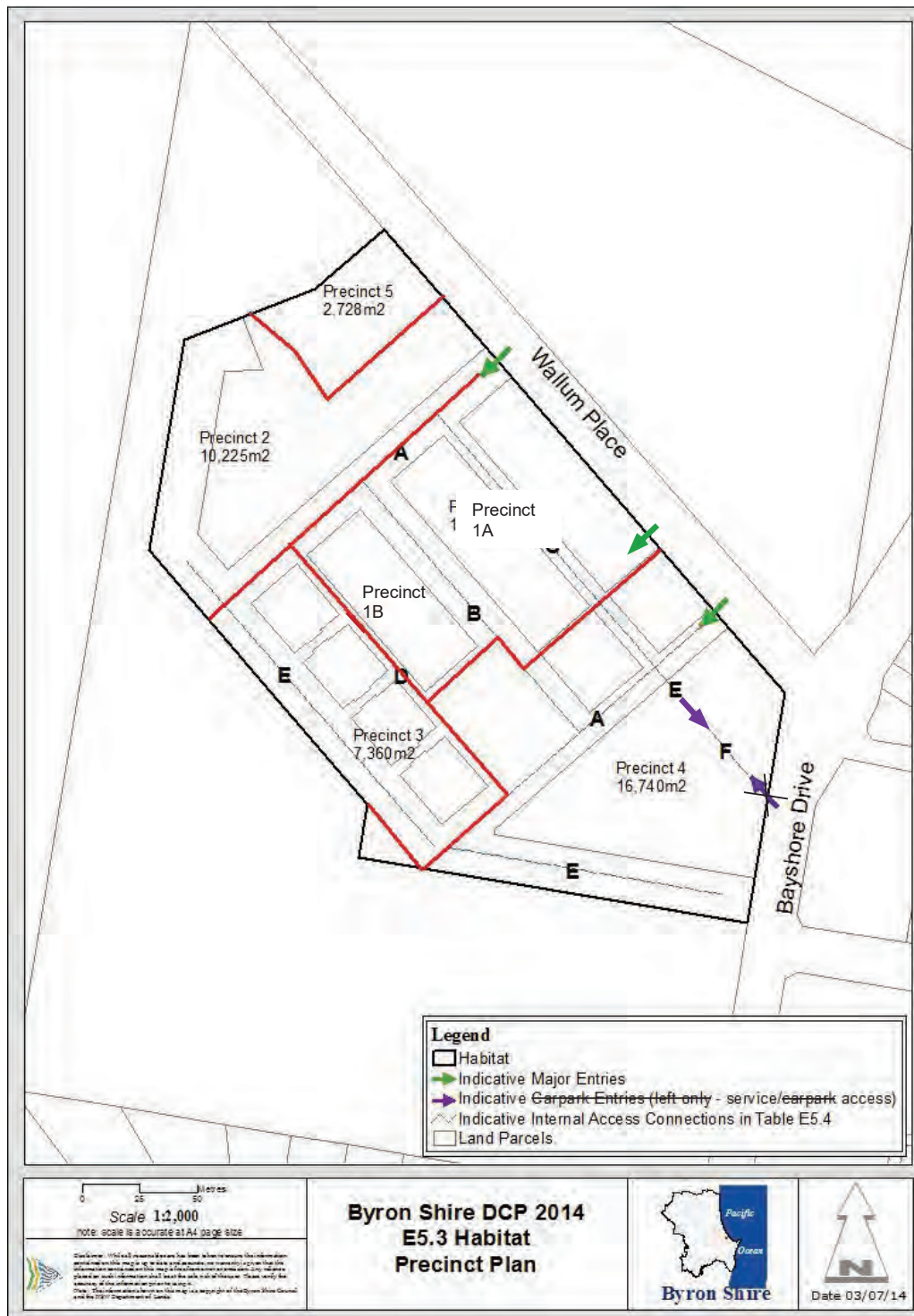
1. Continue to contribute to the establishment and maintenance of Wallum frog habitats being created on adjoining land; and
2. Provide restored Wallum frog habitat in accordance with the Council approved *Acid Frog Management Plan: Habitat North Beach, Byron Bay* by Geolink Environmental Management and Design, Version 4 dated 4/5/17.

Prescriptive Measures

Habitat restoration within the site and adjoining lands is to be in accordance with the Council approved *Acid Frog Management Plan: Habitat North Beach, Byron Bay* by Geolink Environmental Management and Design, Version 4 dated 4/5/17.







Clause 4.6 Objection - Height

Clause 4.6 Objection to Clause 4.3 - Height of Buildings under Byron Local Environmental Plan 2014 (BLEP14)

Introduction

I, Stephen J Connelly, of PLANNERS NORTH, 6 Porter Street, Byron Bay on behalf of Bayshore Development Pty Ltd object under Clause 4.6 Byron Local Environmental Plan 2014 (BLEP14) to the Development Standard relating to Building Height at Clause 4.3 of BLEP14.

I contend for the reasons set out following that the Development Standard prescribed at Clause 4.3 of BLEP14 is unreasonable and unnecessary in the circumstances of the subject case. Further, I am of the view that the proposed development raises no matters of adverse significance in Local, Regional or State terms and no public benefit will result from the maintenance of the subject standard in this case.

This objection is to be considered in conjunction with the Statement of Environmental Effects (SEE) published for HABITAT Stage 5.

Structure of Objection

This objection:

- describes the variation proposed;
- provides justification for the exemption;
- reviews the proposal with respect to the guidance provided by *Wehbe v Pittwater Council*;
- reviews the proposal in light of the guidance provided by *Winten Developments v North Sydney Council*;
- examines considerations relevant to the public interest and State and regional planning significance; and
- provides a summary justification of the objection.

Clause 4.6 Objection

Development Standard

Pursuant to Clause 4.6 of the BLEP14, this objection seeks to vary the building height standard stipulated in Clause 4.3 that states:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The relevant portion of the Heights of Building Map (Sheet HOB_003 CC) of the BLEP14 is shown below. It specifies a maximum height of 9m for the site.



Extract from BLEP14 Sheet HOB_003 CC

APPENDICES

78

Plan C.1 Height Control Points Plan (being Drawing **DA 210** from the **Plan Set**) is attached. It shows the roof view of the proposed development and highlights key locations to test height compliance. The table below outlines the corresponding building reference points and specifies the building heights variation in numerical and percentage terms.

Table C1 Building Height Reference Points Table

Ref. Point	Description	Ground RL	Roof RL	Roof Height above GL	Max (m)	Variation (m)	Variation %
A	Existing Surveyed Ground Line	5.350	15.600	10.250	9.00	1.25	13.89
B	Existing Surveyed Ground Line	5.326	15.600	10.275	9.00	1.275	14.17
C	Existing Surveyed Ground Line	5.380	15.600	10.220	9.00	1.22	13.56
D	Existing Surveyed Ground Line	5.345	15.210	9.865	9.00	0.865	9.61
E	Existing Surveyed Ground Line	5.649	15.600	9.951	9.00	0.951	10.57
F	Existing Surveyed Ground Line	5.771	16.070	10.299	9.00	1.299	14.43
G	Existing Surveyed Ground Line	6.303	16.070	10.040	9.00	1.04	11.56
H	Existing Surveyed Ground Line	6.220	16.070	9.850	9.00	0.85	9.44
I	Existing Surveyed Ground Line	6.360	15.634	9.574	9.00	0.574	6.38
J	Existing Surveyed Ground Line	6.320	16.070	9.834	9.00	0.834	9.27

Plan C.2 shows the elevations of Stage 5 in relation to its closest neighbours within the HABITAT development, these are Stages 2, 3 & 4. Key considerations include:

Stage 3 Easy Street Living (residential):

- North west of Gallagher Street. The boundary separation between stages is 17m
- The maximum Stage 5 RL in this location is +15,600m
- The maximum Stage 3 RL in this location is +15,750m
- Reference to **DA925** & **DA926** 'Summer + Winter Shadow Diagrams' demonstrates no overshadowing of Stage 3 from Stage 5

Stage 4 Stage 04 (commercial):

- South-west of Easy Street. Boundary separation between stages is 17m.
- The maximum Stage 5 RL in this location is +16,070m
- The maximum Stage 4 RL in this location is +15,800m
- Reference to **DA925** & **DA926** 'Summer + Winter Shadow Diagrams' demonstrates no overshadowing of Stage 4 from Stage 5

APPENDICES

79

Stage 2 Commercial Terraces (mixed-use commercial/residential):

- The maximum Stage 5 RL in this location is +16,070m
- The maximum Stage 4 RL in this location is +14,170m
- In order to minimise overshadowing, the buildings have been set-back from the south-east boundary by 4m. A further 1.2m setback (5.2m total) at level 02 has been introduced to further minimise overshadowing and reduce the visual 'bulk' of the buildings. To prevent overlooking, there are zero openings (windows, doors or other) within this elevation.
- Reference to **DA927 - DA941** 'Summer + Winter Shadow Diagrams' details thorough comparative sunpath studies between what is currently approved under the DCP and that which is proposed. Reference to these drawings demonstrates largely comparable results.
- Partial overshadowing of Stage 2 does occur at 3pm on the winter solstice for both proposals.

As illustrated from the above analysis, care has been taken to ensure we are designing quality internal environments appropriate to each use (adequate ceiling height / plenty of natural light / sense of volume and space) without compromise to the amenity and environmental quality of the surrounding Stages (overlooking / overshadowing).

In consideration of the above factors, I submit that a 3m floor to floor dimension with flat, parapet roof is appropriate for Stage 5 and achieves this balance. This is consistent with Stage 4 and largely equivalent in terms of height with both Stage 3 and Stage 4.

Consultation with the owners of Stage 2 throughout the Stage 5 design process lead to the introduction of the 4m setback, additional 1.2m Level 02 setback and commitment to zero openings within the south-east elevation of S5_E. In my view, these measures are appropriate and y and environmental quality of Stage 2 is retained.

Justification for the exception and matters for consideration

Compliance to Clause 4.6 BLEP14

The following provides the justification with regards to the objectives of Clause 4.6 of BLEP14:

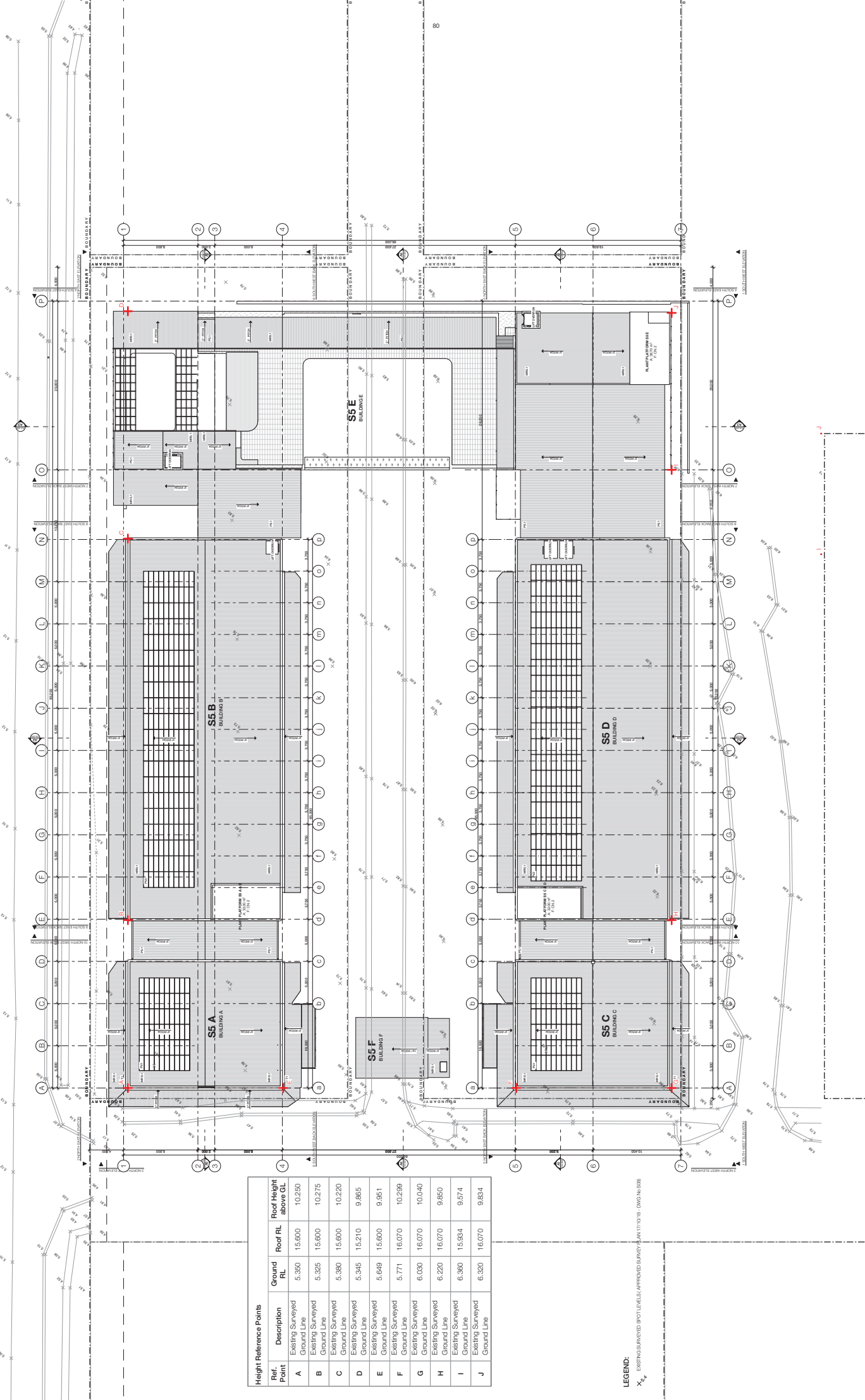
(1) The objectives of this clause are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances*

Comment:

The proposed variation sought is generally 9-10% but up to a maximum of 14.4% (at point F).

By applying an appropriate degree of flexibility with respect to the height development standard, the resultant buildings will be consistent in height with the general height of development in the west and south. We submit that for the reasons further outlined below, this architectural approach will achieve better outcomes for and from development.



Height Reference Points			
Ref. Point	Description	Ground RL	Road Height above GL
A	Existing Surveyed Ground Line	5.350	10.250
B	Existing Surveyed Ground Line	5.325	10.275
C	Existing Surveyed Ground Line	5.380	10.220
D	Existing Surveyed Ground Line	5.345	9.865
E	Existing Surveyed Ground Line	5.649	9.951
F	Existing Surveyed Ground Line	5.771	10.289
G	Existing Surveyed Ground Line	6.030	10.040
H	Existing Surveyed Ground Line	6.220	9.850
I	Existing Surveyed Ground Line	6.380	9.574
J	Existing Surveyed Ground Line	6.320	9.834

LEGEND:
X_g EXISTING SURVEYED SPOT LEVELS (APPROVED SURVEY PLAN 17/10/18 DWG N1508)



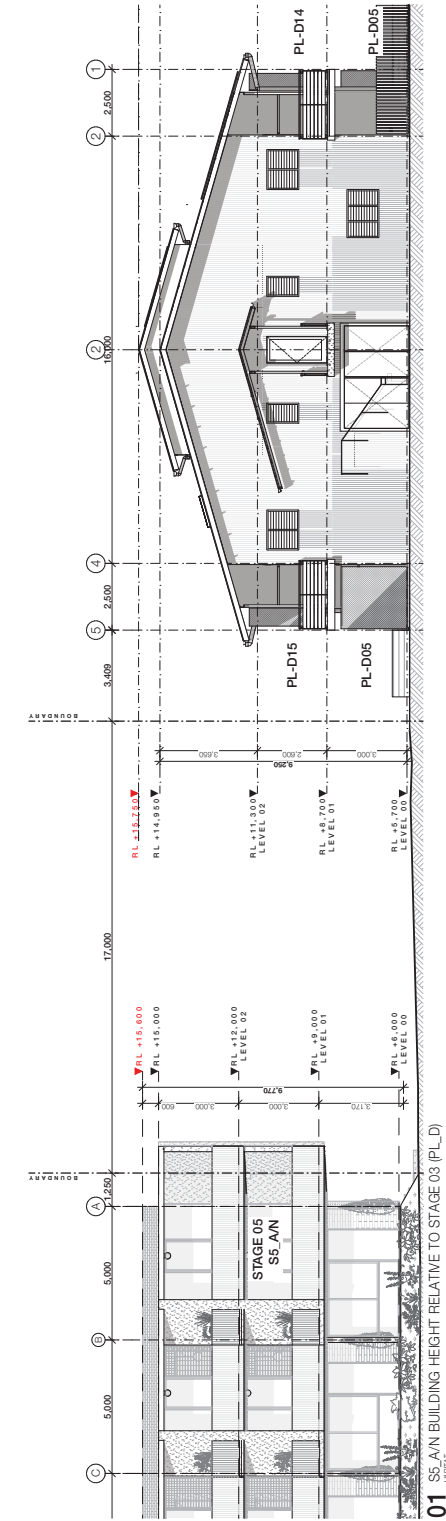
40 MILLER STREET
SYDNEY NSW 2000
AUSTRALIA
TEL: 02 9550 1234
WWW.PACIFICCONCRETE.COM.AU

PROJECT: **HAIRBURY**
CLIENT: **THE HAIRBURY GROUP**
PROJECT ADDRESS: **210 BUILDING HEIGHT**
PROJECT STATUS: **DEVELOPMENT APPLICATION**

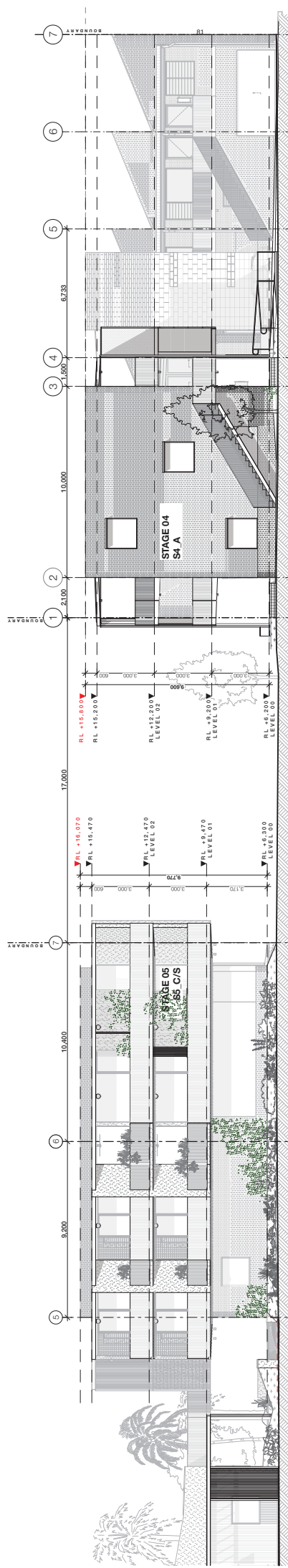
DATE: **17/10/18**
DRAWN BY: **DF102**
CHECKED BY: **DF102**
SCALE: **1:200**
PROJECT NO: **DA 210**

PROJECT TITLE: **210 BUILDING HEIGHT**
BUILDING HEIGHT RELATIVE TO EXISTING GROUND LEVEL
DEVELOPMENT APPLICATION

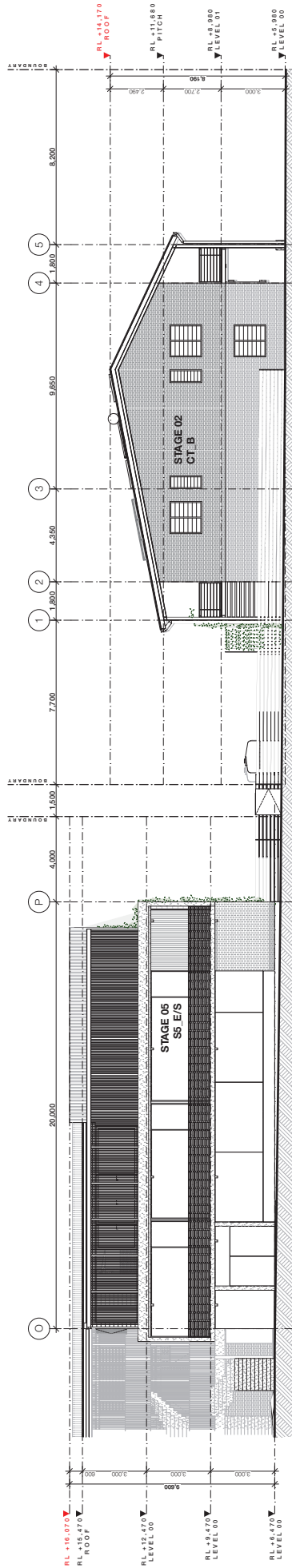
THESE DOCUMENTS ARE THE PROPERTY OF PACIFIC CONCRETE PTY LTD. NO PART OF THESE DOCUMENTS ARE TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF PACIFIC CONCRETE PTY LTD. THESE DOCUMENTS ARE TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED. ANY REUSE OR MODIFICATION OF THESE DOCUMENTS WITHOUT THE WRITTEN PERMISSION OF PACIFIC CONCRETE PTY LTD. IS STRICTLY PROHIBITED.



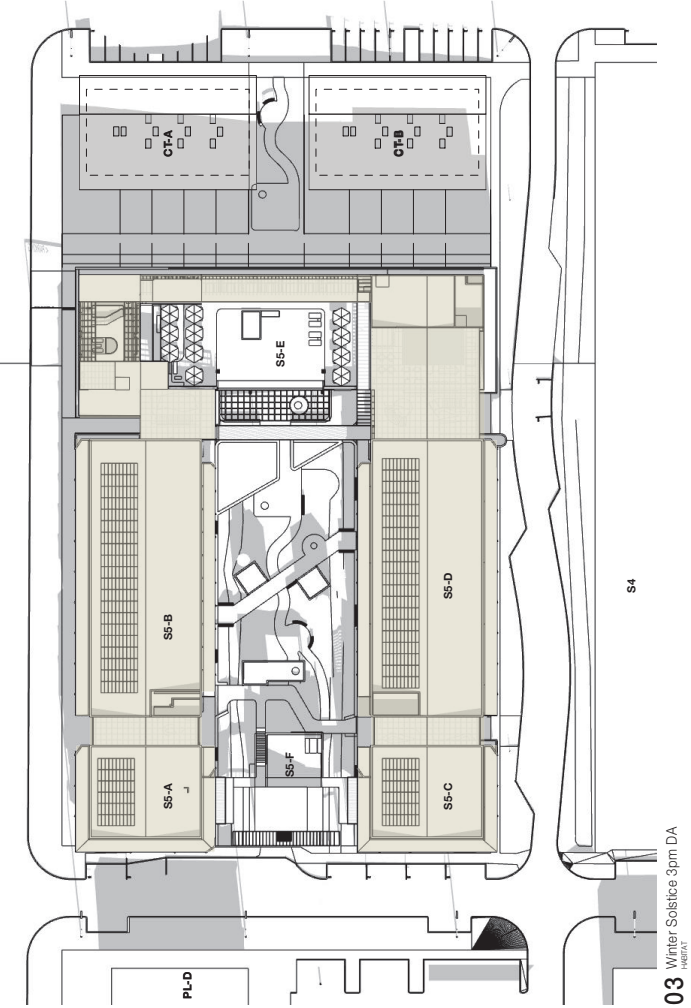
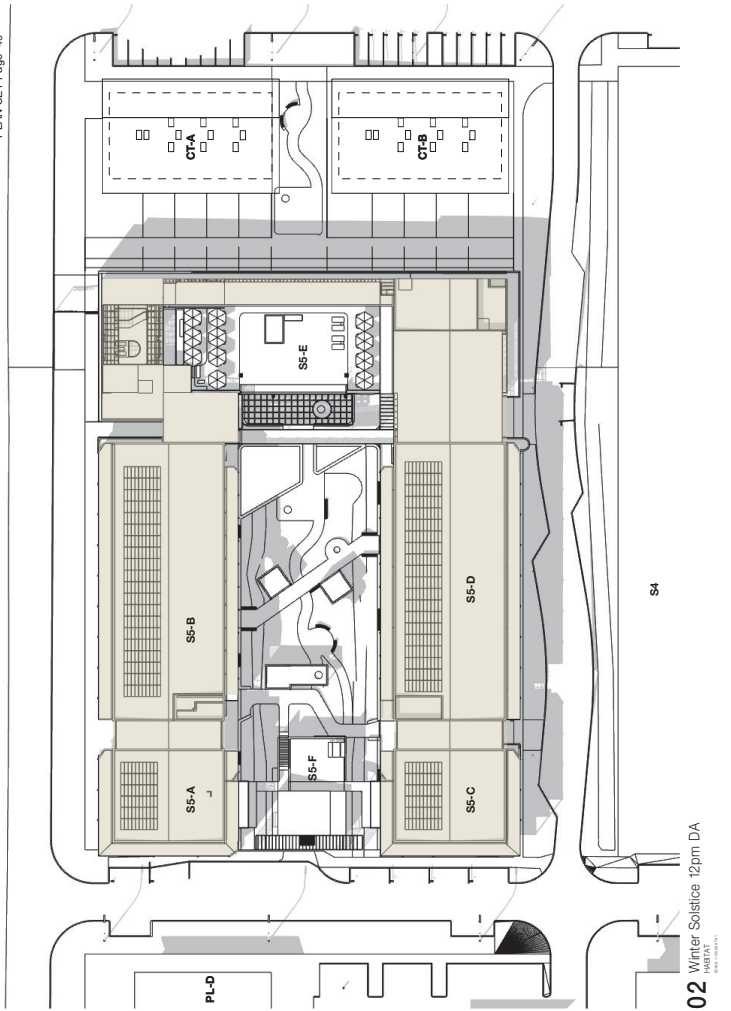
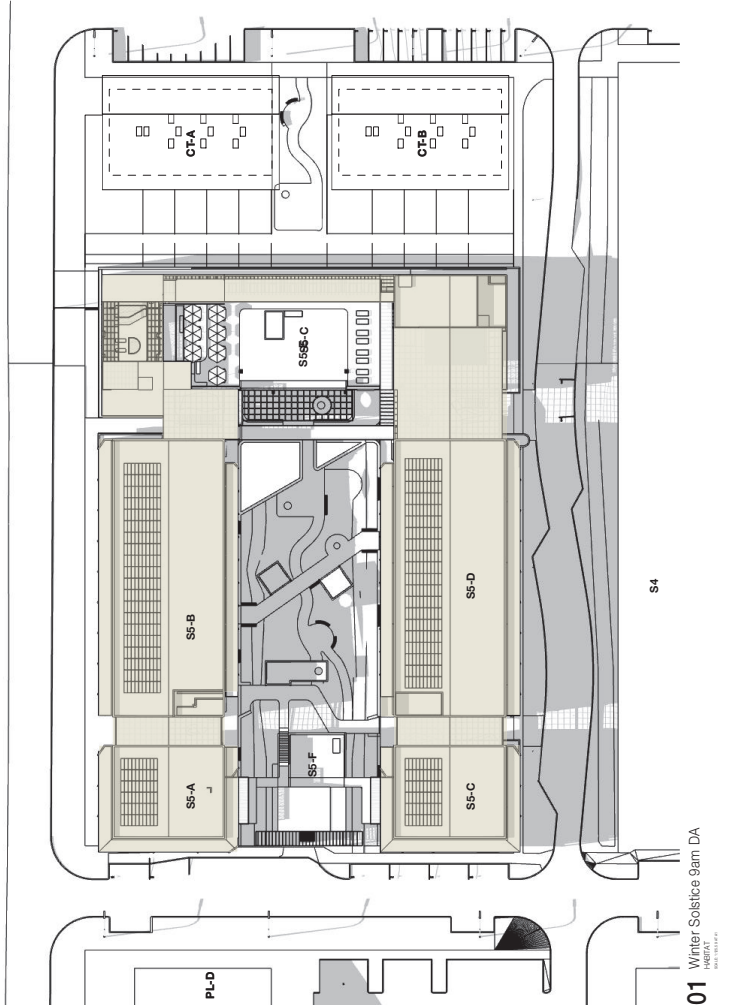
01 S5_A/N BUILDING HEIGHT RELATIVE TO STAGE 03 (PL_D)



02 S5_C/N BUILDING HEIGHT RELATIVE TO STAGE 04 (S4_A)



03 S5_E/S BUILDING HEIGHT RELATIVE TO STAGE 02 (CT_B)



KEY NOTES

■ EXTENT OF SHADOW BASED ON PROPOSED DESIGN

APPENDICES

83

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

The building height standards are not excluded from the operation of this clause.

- (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:*

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

Comment:

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case for six fundamental reasons.

1. The buildings as proposed are consistent of development to the west and south.
2. Building bulk is reduced as the roof structures are fragmented.

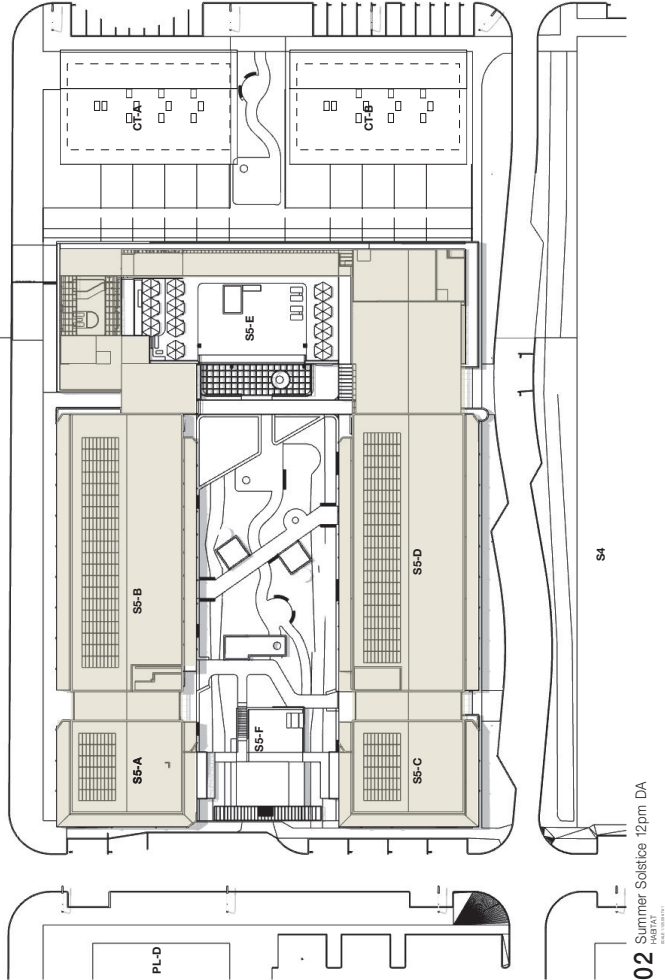


Renderings illustrating the roof characters proposed.

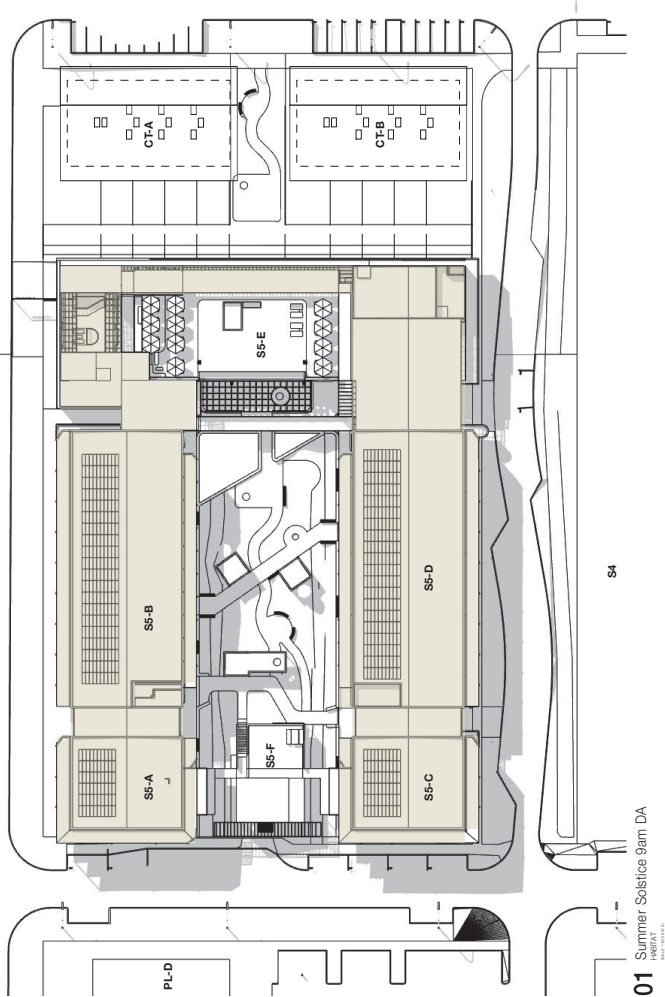
3. Strict compliance would maintain a 3 story structure but would result in an overall floor height of 2.6m rather than 3m as is best practice.
4. There is no disruption to planned views, loss of privacy or visual intrusion occasioned by the numerical excess in the BLEP14 specified building heights.
5. In terms of overshadowing, the proposal has no material impact. **Plans C.3 and C.4** illustrate shadow projections. **Plan C.5** shows shadow plots of a building form in strict compliance with the current DCP building form and 9m building height. **Plan C.6** shows the projection of shadows based on the proposed building form. The impact to the current amenity will be insignificant.
6. The design has an FSR of 0.92:1, demonstrating the suitability of the site for the intensity proposed without “over development” of the land.

Given the 6 above described aspects, I submit that strict compliance with the 9m building height in BLEP14 is unreasonable and unnecessary and strict compliance with those standards would, in any particular case, tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Environmental Planning and Assessment Act 1979 (the Act).

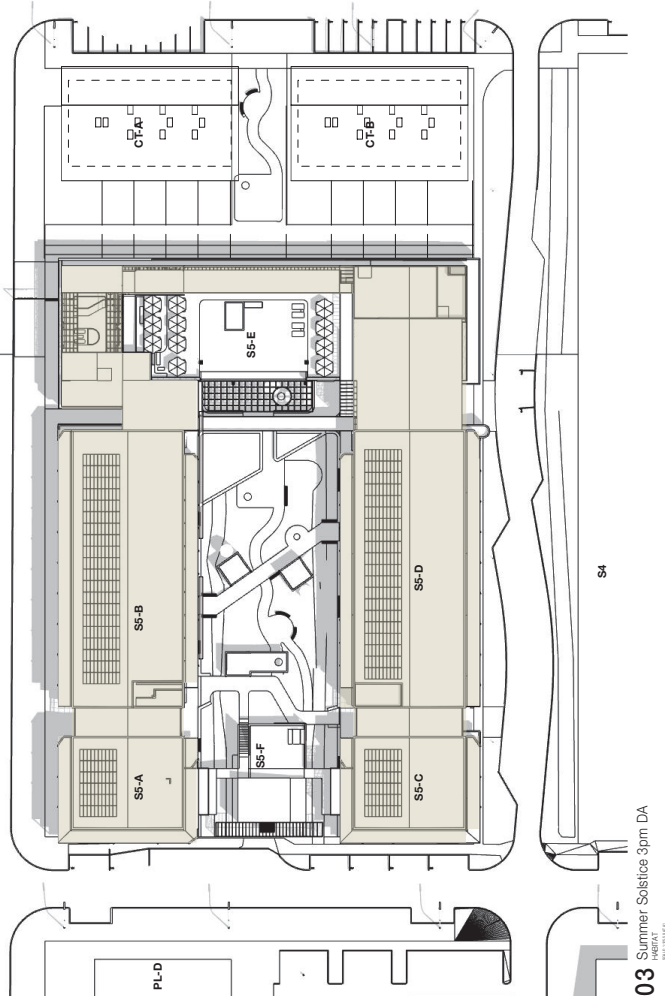
Clause 4.6 of the BLEP14 allows a proponent to seek approval from the Council for consent to be granted to an application that contravenes a development standard. As outlined in this SEE, the proposed development complies with all other standards of BLEP14 and BDCP 2014 will create a minimal impact on the locality and its surrounds.



02 Summer Solstice 12pm DA

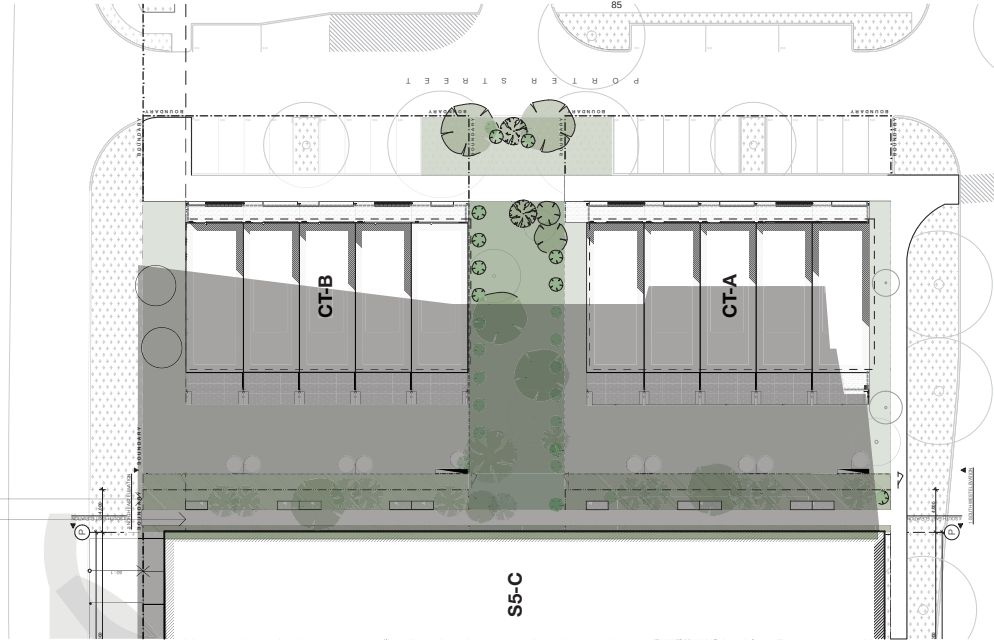


01 Summer Solstice 9am DA

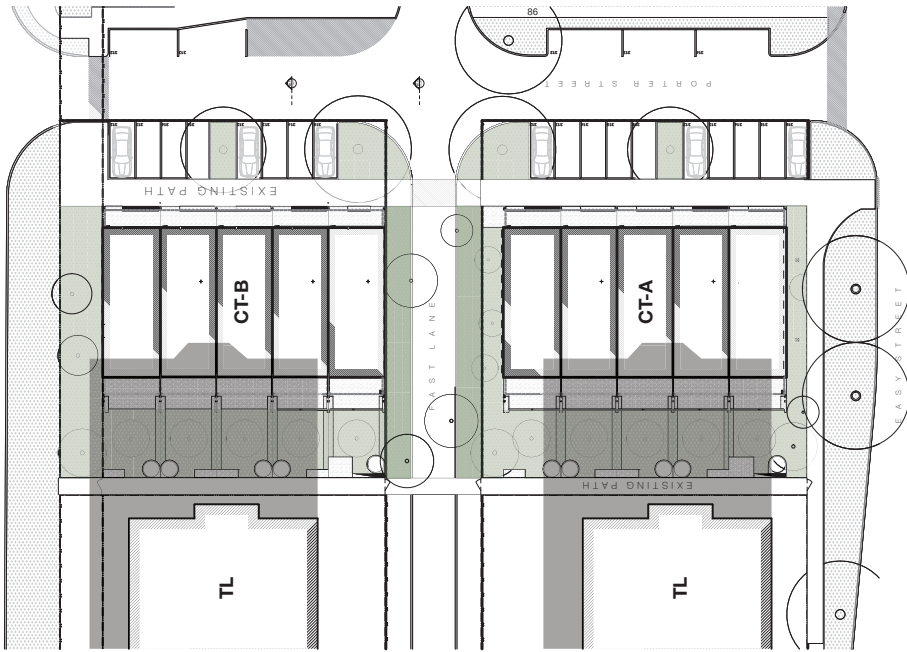


0.3 Summer Solstice 3pm DA

KEY NOTES



03 Winter Solstice 3 pm



03 Winter Solstice 3 pm_ Current DCP

APPENDICES

87

The consistency with the objectives of Cl. 4.3 Height of buildings as described above satisfies the “Wehbe test” and the absence of any environmental impacts, demonstrates that strict compliance with the building height standard is both unreasonable and unnecessary in this instance.

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment

There will be no impact to the prevailing HABITAT character and amenity. No disruption to planned views, no loss of privacy, no increased overshadowing or visual intrusion results.

The use of a composite massing strategy together with the choice of building materials and colours, façade and fenestration treatment as well as landscaping measures all ensure that the buildings fits well to the existing and future streetscape and character of the HABITAT area.

The solar access and privacy are considerations that have been addressed and demonstrated that the additional building and wall heights will not create any unreasonable additional impact on the nearest properties or surrounding public domain of HABITAT.

Based on the above, I submit there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted unless:

(a) the consent authority is satisfied that:

(i) the written request has addressed sub clause (3)

Comment

This Appendix is our formal written request.

(ii) the proposed development is in the public interest (consistent with the objectives of the standard and the zone)

Comment

The objectives of Zone B4 are:

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

The above objectives of the zone are met by the proposal in the following ways:

- Development in the manner proposed assists in providing a mixture of compatible uses;
The development sits comfortably with the existing and the future character of HABITAT and surrounding area; and
- Landscaping is used throughout the site to enhance the overall development by softening the hard surfaces including the carparking bays, driveways and pedestrian pathways.

(b) the concurrence of the Secretary has been obtained.

Comment

We understand that the Council and NRPP enjoy assumed concurrence from the Planning Secretary in relation to this matter.

(5) The Secretary must consider:

(a) whether contravention raises any matter of significance for State or regional environmental planning.

Comment

An examination of the Stage 5 project against relevant strategies raises no issues of State or Regional planning significance. The development is consistent with the objectives and aspirations set out in the *North Coast Regional Plan 2036*, particularly provisions:

APPENDICES

88

- Direction 6: Develop successful centres of employment;
- Direction 14: Provide great places to live and work;
- Direction 15: Develop healthy, safe, socially engaged and well-connected communities; and
- Direction 20: Maintain the region's distinctive built character

Wehbe v Pittwater Council

In his decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827, Preston CJ expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy.

Those five tests are considered in the table below.

(i) <i>The objectives of the standard are achieved notwithstanding non-compliance with the standard</i>	The BLEP14 Clause 4.3 Height of Buildings and corresponding responses are as follows: <i>(1) The objectives of this clause are as follows:</i> <i>(e) to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,</i> Comment In my submission, scale, height and built form is adequately resolved by ensuring the absolute height of buildings proposed is consistent with the height of development immediately adjoining and, in the HABITAT, neighbourhood generally. Further, by breaking up the building mass and articulated building facades assist in making the height control imperceptible to a user of the site. The solar access considerations have been addressed and demonstrated that the additional height will not create any unreasonable additional impact on the nearest properties or surrounding public domain.
(ii) <i>the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary</i>	Not applicable. The underlying objective or purpose of the standard is relevant to the development and is achieved as outlined in (i) above.
(iii) <i>the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable</i>	Not applicable. The underlying object or purpose of the standard would not be defeated or thwarted if compliance was required.
(iv) <i>the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and</i>	This objection to development standards request does not rely on this reason.

APPENDICES

89

<i>(v) the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.</i>	This objection to development standards request does not rely on this reason.
---	---

Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46

The objection to development standards request is assessed below against the accepted test for the assessment of development standard variation established by *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46.

<i>A Is the planning control in question a development standard?</i>	Yes, Cl. 4.3(2) of BLEP14 is a development standard.
<i>B What is the underlying object or purpose of the standard?</i>	The objectives of this clause are as follows: • <i>to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,</i> • <i>to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located, and to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.</i>
<i>C Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?</i>	Compliance with the development standard unnecessary or unreasonable in the circumstances of HABITAT Stage 5 because: • The proposed non-complying elements from the 9m building height came about to enable optimum utilisation of the site to the 0.92:1 Floor Space Ratio but also maintaining best practice height between floors. • The project is consistent with the general height of development in the locality. • The front elevation demonstrates that the development sits comfortably within the existing streetscape and surrounding area. The minor breach will not be incompatible with any future development. • Scale and built form is well resolved by breaking up the building massing and articulating building facades. The roof forms utilised reduce the bulk and size of the roof structure. • There is no disruption to planned views, loss of privacy, significant overshadowing or visual intrusion. There will be an insignificant impact to the current amenity.
<i>D. Is compliance with the development standard consistent with the aims of the Policy (to provide flexibility in the application of development standards); and, in</i>	The arguments contained in this Clause 4.6 variation support the case to allow flexibility in the application of the standard.

APPENDICES

90

<i>particular, does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979?</i>	The non-compliance with the development standard allows for an orderly use of the land and has been designed with consideration to the desired future character of the area. Additionally, the Objects of the Act are satisfied as: • The departure from the height standard in BLEP14 will have no negative consequences in terms of the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment; and • The departure from the height standard in BLEP14 allows for the orderly and economic use of the site in a manner which otherwise achieves the outcomes and objectives of the relevant planning controls.
<i>E. Is the objection well founded?</i>	As my Clause 4.6 exception to development standards request appropriately addresses <i>Wehbe v Pittwater Council</i> [2007] NSW LEC 827, I submit that the proposed variation is well founded.

Public interest and matters of State or regional significance

Is the proposal in the public interest?

Clause 4.6 exception to development standards request and the accompanying plans and technical reports contained within the SEE demonstrate the public advantages of developing the site. In summary:

- Strict compliance to the building height requirements will result in the ceiling height of the building HABITAT Stage 5 to be reduced from the current 3m height to only 2.6m. Whilst this height is permissible pursuant to the Building Code of Australia, the project architect strenuously submits that it would be an undesirable approach. In the context of the existing height already established by the architectural roof features associated with the Live/ Work building and the Pocket Living residential flat building.
- The new and modern structure will contribute to the quality of building stock in HABITAT. Notwithstanding non compliances in building.
- Optimum utilisation of the site which is consistent with the Council plans and strategies for Byron Bay.
- The project will generate employment during the construction and continuing into the long-term future.
- No unreasonable public disadvantages have been identified as it has been demonstrated that any environmental or other impacts associated with the development are minimal and/or can be adequately managed.

Matters of State or Regional Significance

The non-compliance with CI 4.3 Height of buildings standard does not raise matters of significance for State or regional planning. The proposed development is consistent with the aspirations of the *North Coast Regional Plan 2036*.

The public benefit of maintaining the standard

There is no public benefit in maintaining strict compliance with the development standard in this instance. On the contrary, the general public will benefit in the increase of the supply of affordable housing in the area.

Summary justification

A summary of the matters set out in Clause 4.6 exceptions to development standards request to vary the height of building and wall standards are as follows:

APPENDICES

91

- The proposed non-complying elements from the 9m building height was brought about to enable optimum utilisation of the site but also maintaining best practice height between floors.
- The project is consistent with the general height of development in the locality.
- The front elevation demonstrates that the development sits comfortably within the existing streetscape and surrounding area. The minor breach will not be incompatible with any future development.
- Scale and built form is well resolved by breaking up the building massing and articulating building facades. The roof forms utilised reduce the bulk and size of the roof structure.
- There is no disruption to planned views, loss of privacy, significant overshadowing or visual intrusion. There will be an insignificant impact to the current amenity.
- The proposed variations satisfy the tests and considerations established in *Wehbe v Pittwater Council* [2007] NSW LEC 82 and *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46.

In summary, compliance with the development standard restricting building and wall height is unreasonable and unnecessary. This is because the objectives of the development standard can still be achieved notwithstanding non-compliance. The development standard is not an end in itself but rather a means of achieving desired outcomes.

The consent authority is therefore urged to support this Clause 4.6 objection.



Stephen Connelly RPIA (Fellow)
Partnership Principal
PLANNERS NORTH

Clause 4.6 Objection – FSR

Clause 4.6 Objection to Clause 4.3 – Floor Space Ratio under Byron Local Environmental Plan 2014 (BLEP14)

Introduction

I, Stephen J Connelly, of PLANNERS NORTH, 6 Porter Street, Byron Bay on behalf of Bayshore Development Pty Ltd object under Clause 4.6 Byron Local Environmental Plan 2014 (BLEP14) to the Development Standard relating to Floor Space Ratio at Clause 4.4 of BLEP14.

I contend for the reasons set out following that the Development Standard prescribed at Clause 4.4 of BLEP14 is unreasonable and unnecessary in the circumstances of the subject case. Further, I am of the view that the proposed development raises no matters of adverse significance in Local, Regional or State terms and no public benefit will result from the maintenance of the subject standard in this case.

This objection is to be considered in conjunction with the Statement of Environmental Effects (SEE) published for HABITAT Stage 5.

Structure of Objection

This objection:

- describes the variation proposed;
- provides justification for the exemption;
- reviews the proposal with respect to the guidance provided by *Wehbe v Pittwater Council*;
- reviews the proposal in light of the guidance provided by *Winten Developments v North Sydney Council*;
- examines considerations relevant to the public interest and State and regional planning significance; and
- provides a summary justification of the objection.

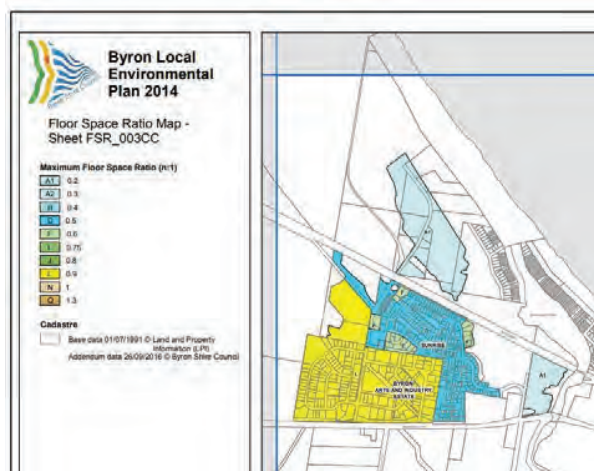
Clause 4.6 Objection

Development Standard

Pursuant to Clause 4.6 of the BLEP14, this objection seeks to vary the Floor Space Ratio (FSR) standard stipulated in Clause 4.4 that states:

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The relevant portion of the Floor Space Ratio Map (Sheet FSR_003 CC) of the BLEP14 is shown below. It specifies a maximum FSR of 0.9:1 for the site.



Extract from BLEP14 Sheet FSR_003 CC

APPENDICES

94

The site has an area of 7,301.5m² and the floor space of the building as illustrated in **Plan C7** is 0.92:1. The overall floor space ratio, in the event of approval of Stages 4 and 5, for the HABITAT site, is calculated to be 0.44:1.

Justification for the exception and matters for consideration

Compliance to Clause 4.6 BLEP14

The following provides the justification with regards to the objectives of Clause 4.6 of BLEP14:

(4) The objectives of this clause are as follows:

- (c) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (d) to achieve better outcomes for and from development by allowing flexibility in particular circumstances*

Comment:

The proposed variation sought is 2.2%.

By applying an appropriate degree of flexibility with respect to the FSR development standard, the resultant buildings will be consistent with the general character of development in the vicinity. We submit that for the reasons further outlined below, this will achieve better outcomes for and from development.

(5) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

The floor space ratio standards are not excluded from the operation of this clause.

- (6) 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:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

Comment:

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case for four fundamental reasons.

1. The buildings as proposed are consistent of development in the vicinity.
2. Building bulk is reduced as the roof structures are fragmented.
3. The difference in bulk and scale between the floor space ratio of 0.9:1 and 0.92:1 will be imperceptible to persons utilising the HABITAT site or viewing it externally.
4. There is no disruption to existing views, loss of privacy or visual intrusion occasioned by the numerical excess in the BLEP14 specified building bulk.

Given the four above described aspects, I submit that strict compliance with the 0.9:1 FSR in BLEP14 is unreasonable and unnecessary and strict compliance with that standard would, in any particular case, tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Environmental Planning and Assessment Act 1979 (the Act).



SITE AREA: 7,301.50 m²
GFA: 6,716.09 m²
FSR: 0.92

PROJECT NO.: DFJ102		DRAWING TITLE: 800 GFA PLANS S5 - GFA SCHEDULE	REVISION NO.: 04
SCALE AT A1: 1:300 DRAWING CHECKED: LO EXAMINED: FWM	PROJECT STATUS: DEVELOPMENT APPLICATION	DRAWING NO.: DA 800	

APPENDICES

96

Clause 4.6 of the BLEP14 allows a proponent to seek approval from the Council for consent to be granted to an application that contravenes a development standard. As outlined in this SEE, the proposed development complies with all other standards of BLEP14 and BDCP 2014 will create a minimal impact on the locality and its surrounds.

The consistency with the objectives of Cl. 4.4 Floor Space Ratio as described above satisfies the “Wehbe test” and the absence of any environmental impacts, demonstrates that strict compliance with the Floor Space Ratio standard is both unreasonable and unnecessary in this instance.

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment

There will be no impact to the prevailing HABITAT character and amenity. No disruption to existing views, loss of privacy, overshadowing or visual intrusion results.

The use of a composite massing strategy together with the choice of building materials and colours, façade and fenestration treatment as well as landscaping measures all ensure that the buildings fits well to the existing and future streetscape and character of the area.

The solar access and privacy are considerations that have been addressed and demonstrated that the additional building and wall heights will not create any unreasonable additional impact on the nearest properties or surrounding public domain of HABITAT.

Based on the above, we submit there are sufficient environmental planning grounds to justify contravening the development standard.

(6) Development consent must not be granted unless:

(a) the consent authority is satisfied that:

(iii) the written request has addressed sub clause (3)

Comment

This Appendix is our formal written request.

(iv) the proposed development is in the public interest (consistent with the objectives of the standard and the zone)

Comment

The objectives of Zone B4 are:

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

The above objectives of the zone are met by the proposal in the following ways:

- Development in the manner proposed assists in providing a mixture of compatible uses;
- The development sits comfortably with the existing and the future character of HABITAT and surrounding area; and
- Landscaping is used throughout the site to enhance the overall development by softening the hard surfaces including the carparking bays, driveways and pedestrian pathways.

(b) the concurrence of the Secretary has been obtained.

Comment

We understand that the NRPP, like Council, enjoys assumed concurrence from the Planning Secretary in relation to this matter.

(7) The Secretary must consider:

(a) whether contravention raises any matter of significance for State or regional environmental planning.

APPENDICES

97

Comment

An examination of the Stage 5 project against relevant strategies raises no issues of State or Regional planning significance. The development is consistent with the objectives and aspirations set out in the *North Coast Regional Plan 2036*, particularly provisions:

- Direction 6: Develop successful centres of employment;
- Direction 14: Provide great places to live and work;
- Direction 15: Develop healthy, safe, socially engaged and well-connected communities; and
- Direction 20: Maintain the region's distinctive built character

Wehbe v Pittwater Council

In his decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827, Preston CJ expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy.

Those five tests are considered in the table below.

<i>(ii) The objectives of the standard are achieved notwithstanding non-compliance with the standard</i>	The BLEP14 Clause 4.4 Floor Space Ratio and corresponding responses are as follows: <i>(1) The objectives of this clause are as follows:</i> <i>(c) to provide floor space in business and industrial zones adequate for the foreseeable future.</i> <i>(d) to regulate density of development and generation of vehicular and pedestrian traffic.</i> <i>(e) to ensure new buildings are appropriate in relation to the character, amenity and environment of the locality.</i> Comment The bulk and scale of the building works well with the traffic generation anticipated, and the new buildings are appropriately located in relation to protection of the character, amenity and environment of the HABITAT locality.
<i>(ii) the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary</i>	Not applicable. The underlying objective or purpose of the standard is relevant to the development and is achieved as outlined in (i) above.
<i>(iii) the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable</i>	Not applicable. The underlying object or purpose of the standard would not be defeated or thwarted if compliance was required.
<i>(iv) the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and</i>	This exception to development standards request does not rely on this reason.

APPENDICES

98

(v) the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.	This exception to development standards request does not rely on this reason.
--	---

Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46

The exception to development standards request is assessed below against the accepted test for the assessment of development standard variation established by *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46.

A Is the planning control in question a development standard?	Yes, Cl. 4.4 of BLEP14 is a development standard.
B What is the underlying object or purpose of the standard?	The objectives of this clause are as follows: to ensure new buildings are appropriate in relation to the character, amenity and environment of the locality.
C Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?	Compliance with the FSR development standard unnecessary or unreasonable in the circumstances of HABITAT Stage 5 because the project is consistent with the general height and scale of development in the locality. There is no disruption to existing views, loss of privacy, overshadowing or visual intrusion. There will be an insignificant impact to the current amenity by virtue of the bulk and scale proposed.
D. Is compliance with the development standard consistent with the aims of the Policy (to provide flexibility in the application of development standards); and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979?	The arguments contained in this Clause 4.6 variation support the case to allow flexibility in the application of the standard. The non-compliance with the development standard allows for an orderly use of the land and has been designed with consideration to the desired future character of the area. Additionally, the Objects of the Act are satisfied as: - The departure from the height standard in BLEP14 will have no negative consequences in terms of the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment; and - The departure from the FSR standard in BLEP14 allows for the orderly and economic use of the site in a manner which otherwise achieves the outcomes and objectives of the relevant planning controls.
E. Is the objection well founded?	As this Clause 4.6 exception to development standards request appropriately addresses <i>Wehbe v Pittwater Council</i> [2007] NSW LEC 827, I submit that the proposed variation is well founded.

Public interest and matters of State or regional significance

Is the proposal in the public interest?

Clause 4.6 exception to development standards request and the accompanying plans and technical reports contained within the SEE demonstrate the public advantages of developing the site. In summary:

- Strict compliance to the FSR requirements will not be perceptible to a viewer within the HABITAT development or external thereto.
- The new and modern structure will contribute to the quality of building stock in HABITAT. Notwithstanding minor non compliances in building bulk.
- Optimum utilisation of the site which is consistent with the Council plans and strategies for Byron Bay.
- The project will generate employment during the construction and continuing into the long-term future.
- No unreasonable public disadvantages have been identified as it has been demonstrated that any environmental or other impacts associated with the development are minimal and/or can be adequately managed.
- Viewed as a whole, the HABITAT site (assuming the approval of Stages 4 and 5) will have an FSR of only 0.44:1.

Matters of State or Regional Significance

The non-compliance with CI 4.4 Floor Space Ratio standard does not raise matters of significance for State or regional planning. The proposed development is consistent with the aspirations of the *North Coast Regional Plan 2036*.

The public benefit of maintaining the standard

There is no public benefit in maintaining strict compliance with the development standard in this instance. On the contrary, the general public will benefit in the increase of the supply of affordable housing in the area.

Summary justification

A summary of the matters set out in Clause 4.6 exceptions to development standards request to vary the floor space ratio standard are as follows:

- The proposed non-complying elements from the FSR was brought about to enable optimum utilisation of the site to but also maintaining best practice.
- The project is consistent with the general height, bulk and scale of development in the locality of HABITAT.
- Scale and built form is well resolved by breaking up the building massing and articulating building facades.
- There is no disruption to existing views, loss of privacy, overshadowing or visual intrusion. There will be an insignificant impact to the current amenity.
- The proposed variations satisfy the tests and considerations established in *Wehbe v Pittwater Council* [2007] NSW LEC 82 and *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46.

In summary, compliance with the development standard restricting floor space ratio is unreasonable and unnecessary. This is because the objectives of the development standard can still be achieved notwithstanding non-compliance. The development standard is not an end in itself but rather a means of achieving desired outcomes.

The consent authority is therefore urged to support this Clause 4.6 objection.

APPENDICES
100

A handwritten signature in black ink, appearing to read 'Stephen Connelly', is written over a diagonal line that spans the width of the signature area.

Stephen Connelly RPIA (Fellow)
Partnership Principal
PLANNERS NORTH