

COUNCIL ASSESSMENT REPORT
NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSNTH-420 – DA10.2025.156.1
PROPOSAL	Mixed use development comprising on-grade parking, commercial premises, pocket park and back of house facilities on the ground level; 37 shop top housing apartments, a landscaped podium, a swimming pool and resident amenities on level 1 and 41 shop top housing apartments on level 2 and subdivision of Penny Lane from Lot 1 DP271119 for integration with Lot 14 DP271119
ADDRESS	Lot 1 DP 271119, No. 5 Penny Lane, Byron Bay. Lot 14 DP 271119, No. 5 Penny Lane, Byron Bay.
APPLICANT	Planners North
OWNER	Bayshore Development Pty Ltd Community Association DP271119
DA LODGEMENT DATE	27 May 2025
APPLICATION TYPE	Integrated Development Application – Section 100B Rural Fires Act 1997
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19(1) and Clause 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 declares the proposal regionally significant development as it has an estimated development cost exceeding \$30 million.
EDC	\$57,100,282
CLAUSE 4.6 REQUESTS	Clause 4.3 Height of buildings – Byron Local Environmental Plan 2014. Clause 4.4 Floor space ratio – Byron Local Environmental Plan.
KEY SEPP/LEP	State Environmental Planning Policy (Housing) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Sustainable Buildings) 2022 State Environmental Planning Policy (Biodiversity and Conservation) 2021 Byron Local Environmental Plan 2014.
TOTAL & UNIQUE SUBMISSIONS KEY	2 unique submissions in total.

ISSUES IN SUBMISSIONS	Key Issues: overshadowing and car parking.
DOCUMENTS SUBMITTED FOR CONSIDERATION	<p>The following documents were submitted and assessed:</p> <ol style="list-style-type: none"> 1. Architectural Plans, by Mana Architects, Revision 02, dated 11 April 2025. 2. Site Waste Minimisation Management Plan and Operational Waste Management Plan (Version 1) by Mana Architects, dated 28/03/2025. 3. Traffic Impact Assessment by Planit Consulting, Job No. J8486, Version B, dated 28 April 2025. 4. Statement of Environmental Effects, by Planners North, dated April 2025. 5. Social Impact Statement by Planners North, dated April 2025. 6. Habitat Masterplan, by Mana Architects, Revision 04, dated 11 April 2025. 7. Fire Engineering Statement, by Innova Services Australia, dated 15 April 2025. 8. LUCRA by Planners north and Creative Capital, dated April 2025. 9. Public Art Plan, by Plummer and Smith, dated 1 May 2025. 10. BCA Assessment Report, by Concise Certificate, dated 15 April 2025. 11. Community Consultation Report, by Planners North, dated April 2025. 12. Apartment Design Guideline Design Statement, by Mana Architects, dated 17 April 2025. 13. Disability Access Report, by Inclusive Places, dated 14 April 2025. 14. Architect's Statement, by Mana Architects, dated 28 March 2025. 15. Quantity Surveyor's Report, by Altus Group, dated 16 April 2025. 16. Clause 4.6 variation requests in respect of building height and floor space ratio, by Planner North, undated. 17. Civil Engineering Assessment, by Ardill Payne and Partners, dated March 2025. 18. Bushfire Assessment Report, Version 2.6, by Australian Bushfire Protection Planners, dated 9 October 2025. 19. BASIX Certificate No. 1792896M, dated 24 April 2025. 20. NatHERS Certificate No. 0011833650, by Partners Energy Management, dated 3 April 2025. 21. Energy Efficiency Evaluation Section J NCC, Reference 2120905, revision 1, dated 14 April 2025. 22. NatHERS Stamped Plans by David Howard, dated 11 April 2025. 23. Noise Impact Assessment by Tim Fitzroy and Associates, Job No. 91/2024_nia, version final, dated 15 April 2025. 24. Stormwater Roof Plan and Treatment Area Details, by Ardill Payne and Partners, Revision C, dated 2 October 2025.

	<p>25. EPASWMM Modelling and Catchment Layout Plan, by Ardill Payne and Partners, original issue, dated 3 October 2025.</p> <p>26. Stormwater and Finished Ground Plan, by Ardil Payne and Partners, Revision C, dated 2 October 2025.</p> <p>27. Civil Services and Ground Floor Plan, by Ardill Payne and Partners, Revision C, dated 2 October 2025.</p> <p>28. Vegetation Community Assessment, by Bower Ecology, dated 15 September 2025.</p>
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (s7.24)	Not applicable.
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	No
SCHEDULED MEETING DATE	13 April 2026
PLAN VERSION	As originally submitted.
PREPARED BY	Benjamin Grant
DATE OF REPORT	30 March 2026

EXECUTIVE SUMMARY

Proposal Overview

This development application seeks consent for a mixed-use development within Habitat, an integrated mixed-use precinct located near the intersection of Bayshore Drive and Wallum Place, Byron Bay.

The proposal involves the construction of a three-storey mixed-use building comprising ground-level car parking, commercial and retail tenancies, a landscaped podium with swimming pool, and 78 shop-top housing units over two levels. The proposal also includes associated development within the wider Habitat complex including a two-lot community title subdivision, demolition and removal of Penny Lane, reconfiguration of shared parking and loading areas, new storage sheds for adjacent terrace houses, and the creation of a small pocket park.

The application is intended to replace the previous Habitat Stage 5 development, approved in 2021 under Development Consent 10.2020.87.1. The new scheme shifts the emphasis from tourist and visitor accommodation to residential living, reducing the amount of commercial and tourism-related floor space in favour of increased residential density. It represents the final stage of the Habitat project, which has progressively evolved since its inception.

Zoning and Permissibility

The site is zoned MU1 Mixed Use under Byron Local Environmental Plan 2014. Mixed-use development is permissible with consent in the zone.

Determining Authority

The application is referred to the Northern Regional Planning Panel ('the Panel') for determination as regionally significant development, pursuant to section 2.19(1) and Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021. The proposal has an estimated development cost exceeding \$30 million.

Site and Locality Context

Habitat is located off Bayshore Drive on the northern edge of the Byron Arts and Industrial Estate, approximately 3 km west of the Byron Bay town centre. The surrounding locality comprises bushland and coastal wetlands to the north and west, established residential areas to the east, and various commercial industrial uses to the south and south-east.

The Habitat site comprises a 4.921-hectare allotment legally described as Lot 3 DP 1004514. The site is subject to a community title scheme that establishes various development lots corresponding to different stages of the Habitat project. The development area is bounded by Wallum Place, Gallagher Street, Easy Street, and Porter Street, is currently vacant, and contains no native vegetation. Vehicular access is provided via Gallagher Street and Porter Street, which connect to Bayshore Drive through Wallum Place.

The land is identified as bush fire prone and is within a coastal wetlands proximity area under State Environmental Planning Policy (Resilience and Hazards) 2021.

Development Standard Variations

The applicant has submitted a Clause 4.6 request to vary the maximum building height standard of 9 m under Clause 4.3 of Byron LEP 2014. The proposed Stage 5 building has a maximum height of 10.48 m, representing an exceedance of 1.48 m (approximately 16.4%). In addition, two roofed pedestrian walkways are proposed with maximum heights of 10.6 m and 10.8 m respectively. The applicant contends these elements constitute architectural roof features under Clause 5.6 of LEP 2014 and should not be subject to the height limit.

A separate Clause 4.6 has been submitted to vary the maximum floor space ratio (FSR) of 0.9:1 under Clause 4.4 of LEP 2014. The applicant has calculated a FSR of 0.92:1, representing a variation of approximately 2%.

The proposed variation requests are assessed further in the body of this report.

Assessment – Key Issues

The application has been assessed in accordance with section 4.15 of the Environmental Planning and Assessment Act 1979 and the applicable planning instruments. The assessment identifies fundamental design and technical issues, as well as insufficient supporting information.

A primary concern relates to the landscaped podium, which is a central design element intended to deliver residential amenity for the shop-top housing units while simultaneously acting as a stormwater detention and treatment system. Council's Development Engineer has identified significant deficiencies in the stormwater modelling, including unreliable runoff calculations, inaccurate hydraulic representation of outlet structures, and water quality assumptions that cannot be achieved within the available landscaped areas. As a result, there is uncertainty that the system can safely manage stormwater flows, protect podium-level dwellings from flooding, or deliver the proposed water quality outcomes, especially during periods of heavy rainfall.

A closely related issue is the functionality and sustainability of the proposed landscape design. The initial documentation indicated soil depths of approximately 550 mm, which are insufficient to support mature vegetation such as Bangalow and Pandanus palms. A subsequent revision increased soil depths to up to 1.2 m; however, this amendment is not compatible with the submitted stormwater modelling as it would materially alter the assumed flow paths and infiltration rates. In addition, the proximity of deep-rooted vegetation to the Atlantis Flo-Cells located at the base of the podium raises concerns regarding potential root intrusion and system obstruction. Accordingly, it has not been adequately demonstrated that the podium can achieve the proposed landscaping outcomes while maintaining the required stormwater performance.

It is likely there are engineering and design solutions to the stormwater management system and its interaction with the landscaping, however this is beyond a condition of consent to correct a discrepancy in the plans. This integral element of the proposal needs to be reconsidered by the applicants with input from the architect, engineers and landscape designer co-ordinating an acceptable and workable solution.

The proposal's built form and site layout also raise significant concerns. The extensive at-grade car parking and dominant concrete podium result in visual bulk, high site coverage, and a substantial reduction in pedestrian permeability. The removal of Penny Lane and its replacement with a large parking area alters the established movement framework and is inconsistent with the Habitat Precinct Plan under Chapter E5 of Byron Development Control Plan 2014. While the previously approved Stage 5 scheme also involved the removal of Penny Lane, that proposal retained pedestrian connectivity through the provision of a centrally located public park, supported by multiple connecting pathways. These elements provided a compensatory public domain outcome that encouraged movement across the site.

The issues outlined above result in inconsistencies and non-compliances with key statutory and policy controls. In particular, the proposal is inconsistent with:

- Section 147(1) of State Environmental Planning Policy (Housing) 2021, including the design principles in Schedule 9 and certain Apartment Design Guide objectives, and
- Byron Development Control Plan 2014, namely Part B3.2.3 (Stormwater Management), Part E5.5 (Habitat), and Chapter D1.10.6 (Site Facilities).

Having regard to the relevant planning controls and the significant issues identified in this assessment, it is concluded that the application cannot be supported. The outstanding matters are substantive in nature, and it is not evident that they could be satisfactorily resolved through the imposition of conditions of consent.

Concurrences and Consultation

The application is integrated development and requires a Bush Fire Safety Authority under section 100B of the Rural Fires Act 1997. General Terms of Approval were issued by the NSW Rural Fire Service on 13 February 2026. The proposal was also referred to Essential Energy under State Environmental Planning Policy (Transport and Infrastructure) 2021, with no objections received.

The application was publicly notified in accordance with Council's Community Participation Plan from 6 June 2025 to 3 July 2025. Two unique submissions were received, raising concerns regarding overshadowing and car parking, which are addressed in the main body of this report.

Recommendation

Having regard to the matters for consideration under section 4.15(1) of the Environmental Planning and Assessment Act 1979 and the relevant environmental planning instruments, the proposal is unable to be supported. The application is therefore recommended for refusal for the reasons outlined in **Attachment A** of this report.

1. THE SITE AND LOCALITY

1.1 The Site

The proposed development is located within an existing mixed-use precinct known as Habitat, situated on the western side of Bayshore Drive near its intersection with Wallum Place. The Habitat precinct is contained within a single parcel of land, legally described as Lot 3 in DP 1004514. The lot has an area of 4.921 hectares and is zoned MU1 Mixed Use under Byron Local Environmental Plan 2014. A community title scheme applies to the site, establishing several development lots that correspond to the various stages of the Habitat development.

The proposed development will be located in the central part of Habitat, partly within the community association lot (Lot 1 DP 271119) and partly within the Stage 5 Development Lot (Lot 14 DP 271119). Lot 1 contains the internal road network, drainage infrastructure, central recreation area and the habitat restoration zone. Lot 14 is a development lot intended to accommodate the new Stage 5 mixed-use building.

The site is bounded by Wallum Place, Gallagher Street, Easy Street, and the pedestrian walkway at the rear of 2–20 Porter Street. It also incorporates the entirety of Penny Lane, which will be removed and amalgamated into the new development lot.

The development area is currently vacant and contains no native vegetation, having previously undergone site preparation works during earlier stages of the Habitat project. Council mapping identifies the land as bush fire prone, located within the Coastal Wetland Proximity Area (under SEPP Resilience and Hazards), and containing Class 3 Potential Acid Sulphate Soils.

To the north, across Wallum Place, lies native forest and mapped coastal wetlands. To the south, across Easy Street, is commercial development associated with Habitat Stage 4. Two blocks of live/work terraces fronting Porter Street sit directly to the east, while residential units in Habitat Stage 3 are located to the west, on the opposite side of Gallagher Street.

Access within the Habitat complex is primarily via two internal roads—Porter Street and Gallagher Street—which connect to Bayshore Drive through Wallum Place. Penny Lane currently forms a through-link between Porter Street and Gallagher Street but will be removed as part of the proposed development.



Photo 1: Aerial photo. Habitat site outlined in red. (Source Nearmaps).



Photo 2: Aerial photo. Proposed work area outlined in blue (Source Nearmaps).



Photo 3: View from Penny Lane towards Habitat Stage 4 (south).



Photo 4: View from Penny Lane towards Habitat Stage 4 (south).



Photo 5: View from adjoining live/work terraces facing Porter Street to the east.



Photo 6: View of adjoining commercial development on the southern side of Easy Street.

1.2 The Locality

Habitat is located at the periphery of the Byron Arts and Industrial Estate (A&I Estate) in Byron Bay. The site lies approximately 700 m north of the Bayshore Drive / Ewingsdale Road intersection and around 3 km west of the Byron Bay township.

Surrounding development within the locality includes:

- **North and West**
A large-forested area lies to the north and west, comprising coastal swamp forest and coastal heath swamp vegetation communities. Part of this area is mapped as coastal wetlands under the State Environmental Planning Policy (Resilience and Hazards) 2021. The Byron Bay Sewage Treatment Plant is located approximately 600 m north-west of the site.
- **North-East**
The North Byron Hotel and the Elements of Byron Resort are situated to the north-east of Habitat. The North Byron Hotel operates as a pub and bistro with an attached bottle shop. Elements of Byron is a tourist resort and spa providing accommodation and associated services adjacent to Belongil Beach. A solar-powered tourist train runs daily between a dedicated stop opposite the North Byron Hotel and the Byron Bay town centre.
- **East**
Directly east of Habitat is the Sunrise estate, a residential neighbourhood comprising a mix of low- and medium-density housing.
- **South and South-East**
To the south is a Council-owned lot approved for a TAFE Connected Learning Centre (Development Consent 10.2021.234.1). Further south and south-east is the Byron Arts and Industrial Estate. This area comprises a mix of creative industries, light industrial uses, wholesale and retail outlets, food and drink premises, and residential units. Beyond the A&I Estate, on the southern side of Ewingsdale Road, lies the West Byron Urban Release Area.

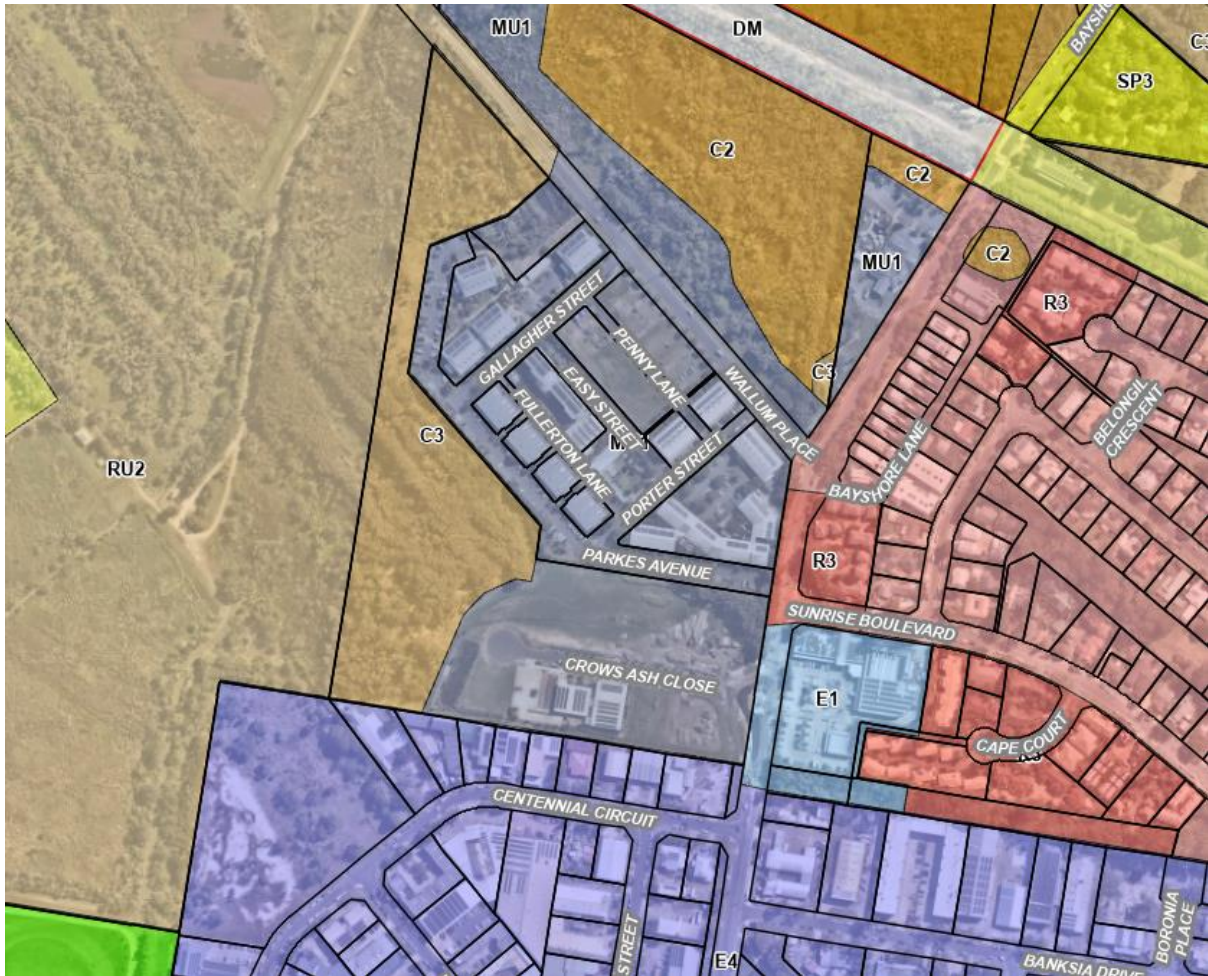


Figure 1: Zoning Map (Source: Byron Shire Council GIS).

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The development application seeks consent for a three-storey mixed-use building incorporating ground-level car parking, commercial and retail tenancies, a landscaped podium with swimming pool, and 78 shop-top housing units across two levels. The proposal also includes ancillary works within the wider Habitat complex, such as new storage sheds for the adjacent Porter Street terraces, demolition and removal of Penny Lane, modifications to shared parking and loading areas, and the creation of a new pocket park.

The proposal is intended to replace the previous Habitat Stage 5 development that was approved in 2021 under Development Consent 10.2020.87.1. The new scheme shifts the emphasis from tourist and visitor accommodation to residential living, reducing the amount of commercial and tourism-related floor space in favour of increased residential density. It represents the final stage of the Habitat project, which has progressively evolved since its inception.

The proposed development comprises the following components:

1. **Demolition and removal** of Penny Lane and the existing footpaths along Easy Street, Gallagher Street, and part of the nature strip in Wallum Place.
2. **Two-lot community title subdivision** of Lots 1 and 14 in DP 271119, involving the excision of Penny Lane from the Community Association Lot and its incorporation into Lot 14 to form a new Development Lot for Stage 5.
3. **Minor earthworks**, including up to approximately 1 metre of excavation and fill to achieve a level building platform.
4. **Construction of a three-storey mixed-use building** containing 78 apartments above a podium. All units include a dedicated home office/remote-working space with a separate entrance from the primary apartment entry. The ground level will accommodate car parking, commercial tenancies, and building services.

The residential component consists of two blocks:

- **Wallum Block** (north), facing Wallum Place, containing 38 apartments.
- **Easy Block** (south), facing Easy Street, containing 40 apartments.

Ground Level:

- At-grade parking providing 140 car spaces, 74 bicycle spaces, and residential storage lockers.
- Commercial and residential waste storage rooms.
- Three retail premises fronting Easy Street (combined GFA: 482 m²).
- Three office premises (combined GFA: 368 m²).

Level 1:

- 37 shop-top housing apartments, comprising 2 × two-bedroom units and 35 × one-bedroom units, each with a home office / WFH room.
- A landscaped podium.
- Swimming pool.
- Shared meeting / workspace area.
- Gymnasium and wellness facilities.

Level 2:

- 41 shop-top housing apartments, comprising 2 × two-bedroom units and 39 × one-bedroom units, each with a home office / WFH room.

5. **Creation of a 289 m² pocket park** located between the live/work terraces facing Porter Street.
6. **Construction of storage sheds** with attached pergola structures for exclusive use by the Porter Street Terraces. These structures will be located within the Community Association Lot.
7. **Associated civil works**, including a new service-vehicle entry from Wallum Place, three additional car parking spaces on Porter Street, and a further three car parking spaces and two loading bays on Gallagher Street.

Table 1: Development Data

Control	Proposal
Site area	The site area for the broader Habitat precinct (Lot 3 DP 1004514) is 4.921 ha. The applicant states that the “work zone area” for the proposed development is 7,301m ² . This area includes Lot 14 DP 271119 and selected parts of Lot 1 DP 271119.
GFA	The proposed Stage 5 building has a gross floor area (GFA) of 6,697m ² .
Cl. 4.6 requests	Clause 4.3 Height of Buildings: <ul style="list-style-type: none"> • Maximum permitted height – 9m • Proposed height – 10.48m • Variation – 16.4% Clause 4.4 Floor Space Ratio: <ul style="list-style-type: none"> • Maximum permitted FSR 0.9:1. • Proposed FSR 0.92:1. • Variation - ~2%
No. of apartments	78 apartments proposed.
FSR	The applicant states a FSR of 0.92:1. This assessment finds a lower FSR of 0.41:1 as discussed further this report.
Max Height	10.48m (assessable height). 10.8m (architectural roof feature).
Landscaped area	The applicant states that the development will provide 1762m ² landscaping across the work zone area, comprising: <ul style="list-style-type: none"> • 1090m² (podium plantings). • 316m² (verge). • 68m² (garden bed within carpark). • 288m² (pocket park).
Car Parking spaces	The applicant has stated that 143 carparking spaces are proposed, comprising: <ul style="list-style-type: none"> • 89 Residential spaces. • 20 Visitor spaces. • 29 Commercial spaces and 2 car share spaces. • 3 spaces for common use in Porter Street.
Setbacks	2m – North (Wallum Place) 0m – South (Easy Street) 0m – East (Porter Street Terraces) 0m – West (Gallagher Street)
Earthworks	The proposal involves excavation and filling to a depth of approx. 1m.
Subdivision	Two-lot subdivision of Lots 1 and 14 in DP 271119 within the Habitat community title scheme. It includes excising Penny Lane from Lot 1 and incorporating that land into a newly defined Stage 5 development lot.



Figure 2: Image from Gallagher Street to buildings S5B-A and S5B-F (Easy Block).



Figure 3: Image from Easy Street toward buildings S5B-F and S5B-E (Easy Block).



Figure 4: Image – view from landscaped podium (north).



Figure 5: image – view of podium swimming pool (north-east).

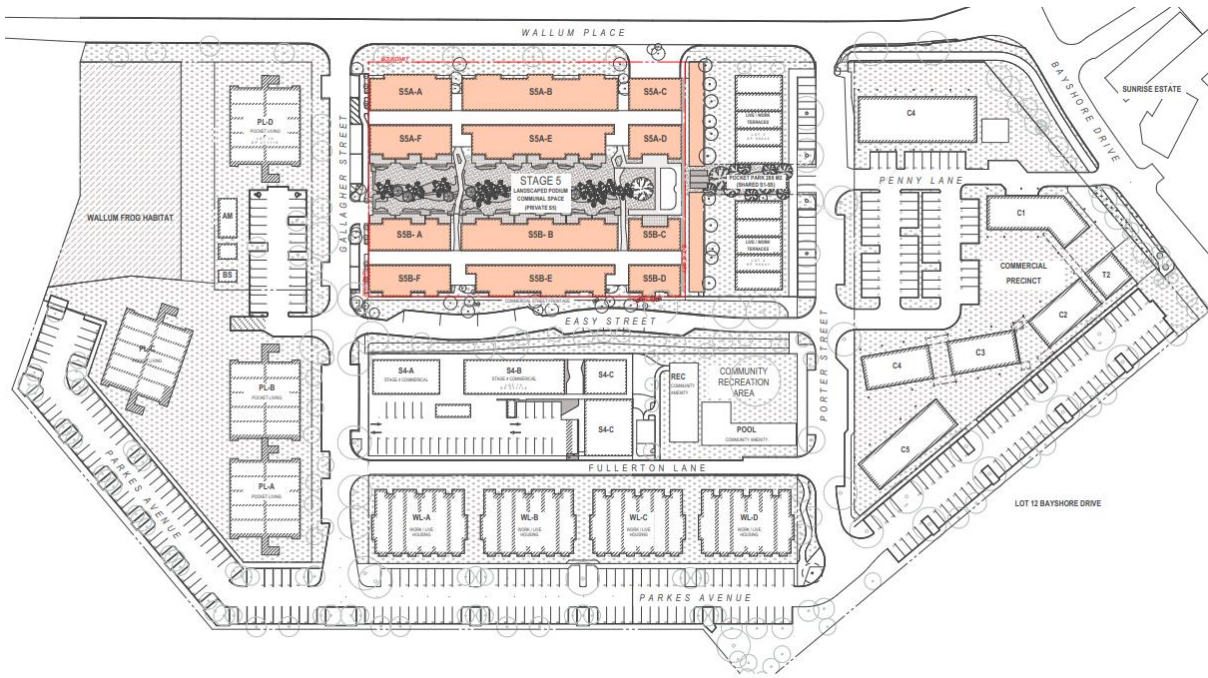


Figure 6: Habitat Masterplan. Proposed Stage 5 mixed use building highlighted in orange.

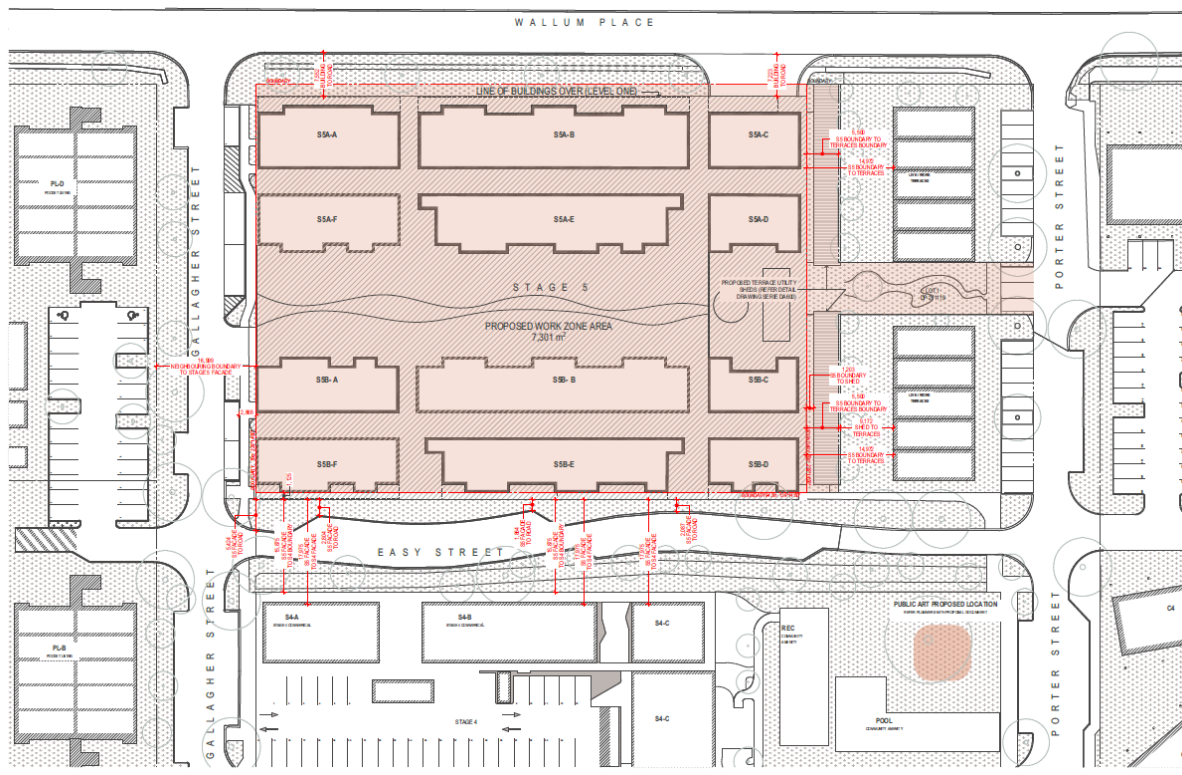


Figure 7: Site layout plan. Proposed "work zone area" highlighted in orange.

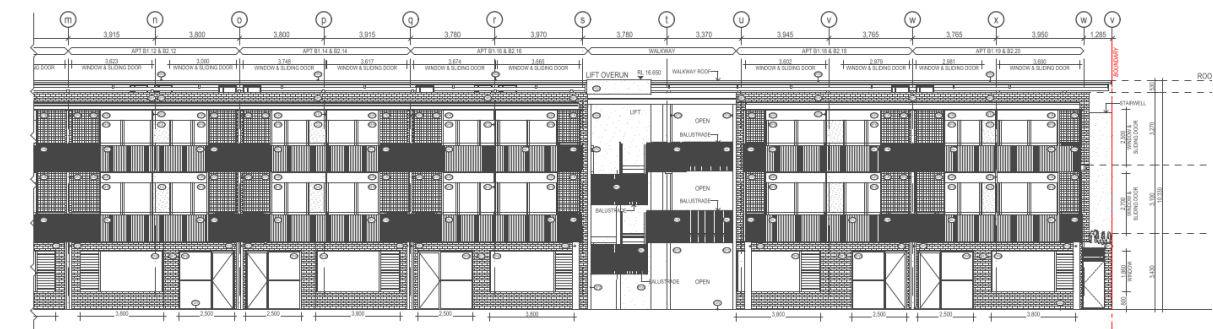
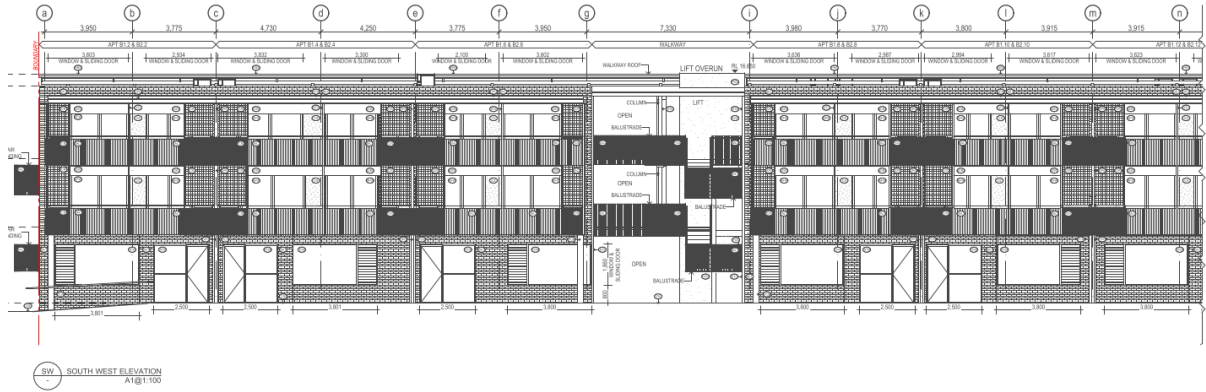


Figure 8: Proposed SW elevation of Easy Street Block.

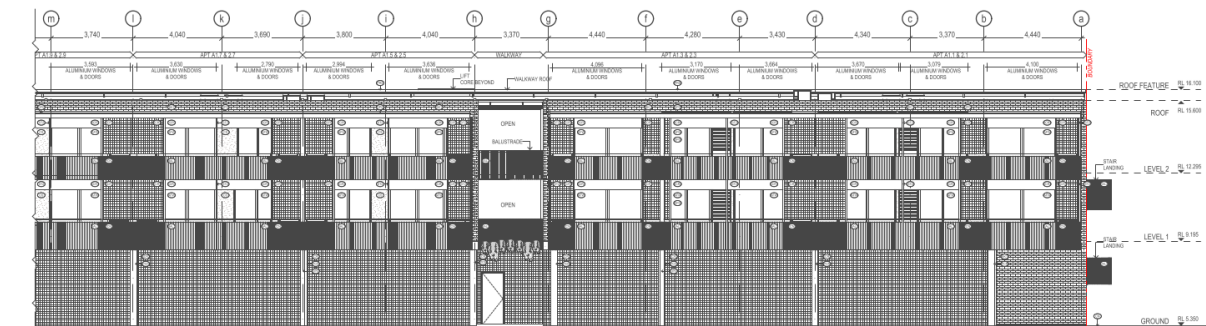
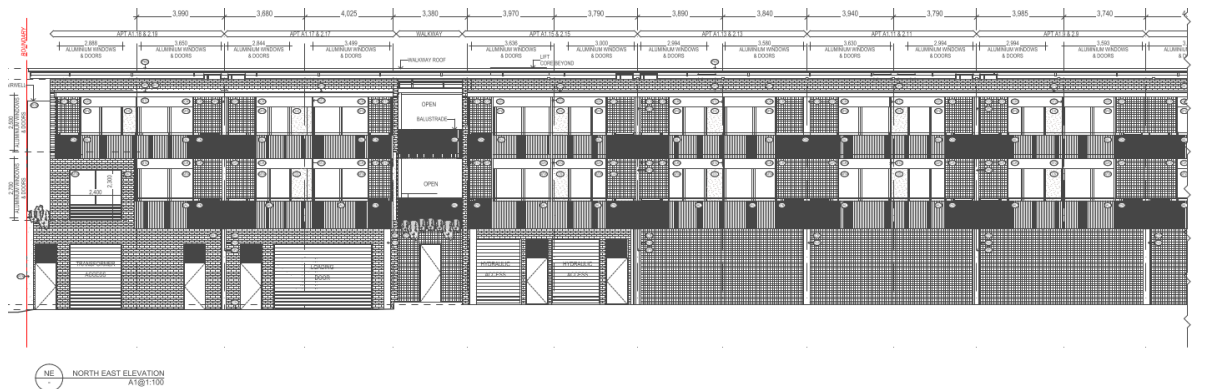


Figure 9: Proposed NE elevation of Wallum Place Block

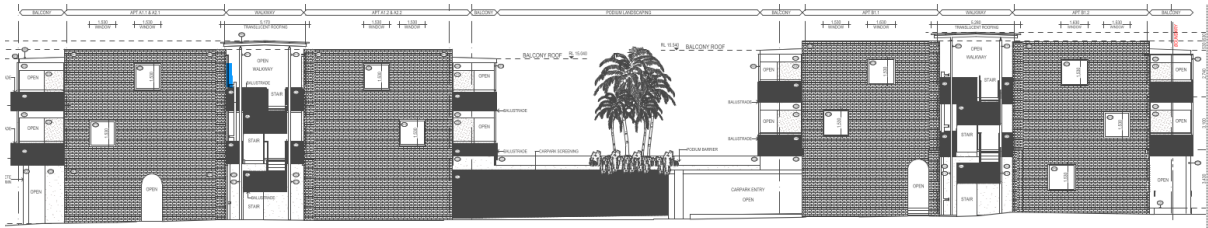


Figure 10: Proposed NW Elevation from Gallagher Street.

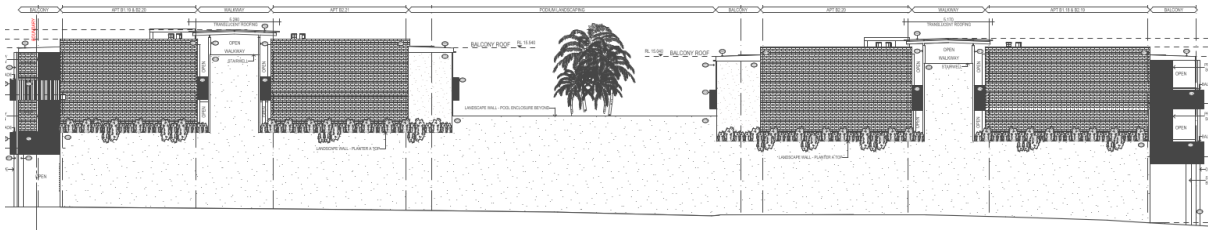


Figure 11: Proposed SE Elevation from Porter Street.

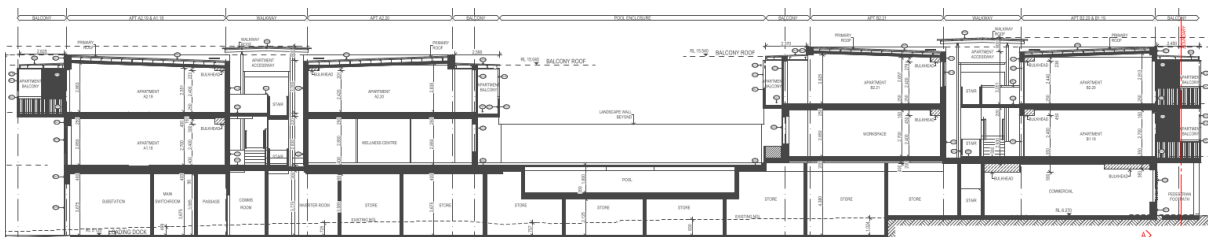


Figure 12: Section C-C (NW)

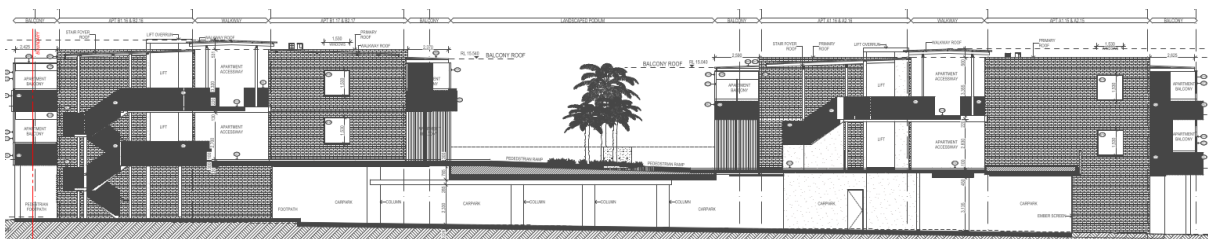


Figure 13: Section B-B (SE)



Figure 14: Proposed pocket park and storage sheds next to the Porter Street terraces.

2.2 Background

The development application was lodged on **25 June 2025**. A chronology of the development application since lodgement is outlined below:

Table 2: Chronology of the DA

Date	Event
27 May 2025	DA lodged (fees paid)
30 May 2025	DA referred to external agencies
2 June 2025	Comments received from Essential Energy
6 June 2025	Exhibition of the application
26 Aug 2025	GTAs issued by RFS.
12 Sep 2025	1 st request for information from Council to applicant
7 Oct 2025	Response received from applicant to first request for further information.
29 Jan 2026	DA referred back to RFS for review.
6 Feb 2026	2 nd request for Information from Council to applicant
16 Feb 2026	Response received from applicant to second RFI.
17 Feb 2026	Amended GTA's issued by RFS

2.3 Site History

The site was originally approved for a mixed-use development known as Bayshore Village in 2008 under Development Consent 10.2008.360.1. That scheme proposed a mix of residential dwellings of various types, commercial uses, industrial units, and live-work buildings. A site-specific DCP chapter was prepared, establishing a precinct plan and a desired future character statement to guide subsequent development. These controls later informed the current Habitat provisions now contained in Chapter E5 of Byron Shire DCP 2014.

The 2008 approval was subsequently superseded by Development Application 10.2011.162.1, which proposed a similar development concept to be delivered in multiple stages. The road network and civil works were completed under this consent however the remaining stages were not pursued.

In 2015, the project was rebranded as Habitat. Since then, the development has progressed across five principal stages with various modifications and additional development consents being issued as the precinct has developed. Stages 1 to 4 have been constructed with Stage 5 representing the last area within Habitat to undergo development.

In September 2021, development consent was granted to a previous version of Stage 5 (10.2020.87.1) which proposed construction of commercial, retail, serviced apartment and hotel development over three levels with basement car parking. The current proposal is intended to replace the previous Stage 5 approval.

Table 3: Key determinations for the site

Application	Description	Decision
10.2008.360.1	Bayshore Village (original) Mixed-use development comprising 82 residential dwellings, commercial, retail, and creative industry units, and associated services.	Approved 18 Dec 2008
10.2011.612.1	Bayshore Village (revised) Mixed use development comprising 67 dwellings, retail, commercial and creative industrial units, to be completed in stages.	Approved 14 Feb 2012
10.2015.353.1	Habitat Stage 1 Mixed use development comprising 28 Residential dwellings, plus commercial and retail units, recreation facilities, associated infrastructure and subdivision.	Approved 15 Feb 2016
10.2017.4.1	Habitat Stage 2 Residential flat building and light-industry (creative industries) development.	Approved 21 May 2020
10.2017.628.1	Habitat Stage 3 Construction of 60 pocket-living apartments and subdivision to create one additional community title lot.	Approved 24 Jul 2018
10.2019.517.1	Habitat Stage 4 Mixed-use development comprising commercial premises, restaurant/café, recreation facilities, and 37 car parking spaces	Approved 21 May 2020

10.2020.87.1	Habitat Stage 5 Mixed-use development comprising commercial, retail, and tourist accommodation over three levels with basement car parking	Approved 15 Sep 2021
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3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted and considered further in this report that the proposal is:

- Integrated Development and requires a Bush Fire Safety Authority under s100B of the Rural Fires Act 1997.
- Requiring concurrence under s2.48 of State Environmental Planning Policy (Transport and Infrastructure) 2021.

3.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

(a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Sustainable Buildings) 2022*
- *State Environmental Planning Policy (Housing) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Byron Local Environmental Plan 2014*

A summary of the key matters for consideration arising from these Environmental Planning Instruments is outlined in **Table 4** and considered in more detail below.

Table 4: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 4: Koala habitat protection 2021 <ul style="list-style-type: none"> • Section 4.8 Development assessment process— approved koala plan of management for land 	Y
Sustainable Buildings SEPP	Chapter 2: Standards for residential development – BASIX Chapter 3: Standards for non-residential development	Y
State Environmental Planning Policy (Housing) 2021	Chapter 4: Design of residential apartment development <ul style="list-style-type: none"> • Section 142 Aims of chapter • Section 143 Land to which this chapter applies • Section 144 Application of chapter • Section 145 Referral to design review panel for development applications • Section 146 Referral to design review panel for modification applications • Section 147 Determination of development applications and modification applications for residential apartment development. • Section 148 Non-discretionary development standards for residential apartment development—the Act, s4.15. • Section 149 Apartment Design Guide prevails over development control plans 	N
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development <ul style="list-style-type: none"> • Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 3 of Schedule 6. The NRPP is the determining authority. 	Y
SEPP (Resilience & Hazards)	Chapter 2: Coastal Management <ul style="list-style-type: none"> • Section 2.8 – Development on land in proximity to coastal wetlands or littoral rainforest. • Section 2.12 - Development in coastal zone generally —development not to increase risk of coastal hazards. 	Y

	<ul style="list-style-type: none"> Section 2.13 - Development in coastal zone generally - coastal management programs to be considered. Chapter 4: Remediation of Land <ul style="list-style-type: none"> Section 4.6 – Contamination and remediation. 	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure <ul style="list-style-type: none"> Section 2.48(2) (Determination of development applications—other development) – electricity transmission 	Y
Proposed Instruments	There are no proposed instruments of relevance.	N/A
Byron LEP 2014	<ul style="list-style-type: none"> Clause 2.3 – Permissibility and zone objectives. Clause 2.7 – Demolition requires development consent. Clause 4.1 – Minimum subdivision lot size. Clause 4.3 – Height of Buildings (subject to Clause 4.6 variation to building height standard). Clause 4.4 – Floor Space Ratio (subject to Clause 4.6 variation to building height standard). Clause 4.5 – Calculation of floor space ratio and site area. Clause 4.6 – Exceptions to development standards. Clause 6.1 – Acid sulfate soils. Clause 6.2 – Earthworks. Clause 6.6 – Essential Services. Clause 6.17 – Affordable housing in employment, mixed use and residential zones. 	Y

Consideration of the relevant SEPPs is outlined below:

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 4 Koala habitat protection 2021

Chapter 4 of the Biodiversity and Conservation SEPP is a matter for consideration as the site has an area of more than 1 hectare and is zoned MU1 Mixed Use. Pursuant to Section 4.8 of the SEPP, Council’s determination of the development application must be consistent with the Byron Coast Comprehensive Koala Plan of Management (CKPoM).

The site is devoid of vegetation aside from exotic grasses and scattered landscaping. No mapped koala habitat is present on the site, and no koala feed tree species will be removed. The proposed development will not adversely affect local koala populations or their habitats and is considered to be consistent with the requirements of the Byron Coast CKPoM.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The development application was referred to Essential Energy for comment in accordance with Section 2.48 of the Transport and Infrastructure SEPP as it involves excavation work within 2m of underground electricity infrastructure.

Essential Energy wrote to Council on 2 June 2025, stating that they had “no comments to make as to potential safety risks arising from the proposed development”. A set of standard notes were provided advising of potential safety risks when working near powerlines.

State Environmental Planning Policy (Planning Systems) 2021

The proposed development has an estimated development cost (EDC) of \$57,100,282 and is declared to be regionally significant development under Section 2.19(1) and Schedule 6 of the Planning Systems SEPP. The Northern Regional Planning Panel is the determining authority.

State Environmental Planning Policy (Sustainable Buildings) 2021

A valid multi-dwelling BASIX certificate has been provided for the residential component of the development. Commitments for energy, water, and thermal comfort are shown on the DA plans. The non-residential component of the building has an EDC of less than \$5 million and does not require additional sustainability measures under Chapter 3 of the Sustainable Buildings SEPP.

Resilience and Hazards SEPP 2021

Chapter 2 Coastal management

Chapter 2 of the Resilience and Hazards SEPP aims to promote a co-ordinated approach to land use planning in the coastal zone through the definition of four coastal management areas in NSW, being:

- (a) the coastal wetlands and littoral rainforests area,
- (b) the coastal vulnerability area,
- (c) the coastal environment area,
- (d) the coastal use area.

Part of the site is within a “proximity area for coastal wetlands”, being less than 100m from an area of mapped coastal wetlands on the opposite side of Wallum Place. The site is not located in any of the other coastal management areas described above.



Figure 15: Coastal wetlands proximity area (blue).

Section 2.8 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.*

Section 2.8 states that development consent must not be granted for development on land within a coastal wetlands proximity area unless the consent authority is satisfied that the proposal will not have a significant impact on the biophysical, hydrological, or ecological integrity of adjacent coastal wetlands, nor adversely affect the quality or quantity of surface or groundwater flows entering those wetlands.

The majority of stormwater generated by the proposed development will be captured within the existing internal drainage network of the Habitat precinct. This system ultimately discharges to a series of onsite ponds and swales, which are designed to provide passive filtration and attenuation prior to release.

The remaining balance of stormwater will be directed to Council’s drainage network in Wallum Place. From this point, flows will travel north toward the swale located along Bayshore Drive, before gradually dispersing into surrounding forested areas.

As that the majority of stormwater will be diverted away from the adjacent wetland, the likelihood of stormwater flows causing a significant adverse impact on the hydrological or ecological integrity of those wetlands is low, and the proposal is considered satisfactory having regard to the matters for consideration under Section 2.8.

Section 2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Section 2.12 provides that development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

The subject site is located approximately 900m from the open coast and the mouth of the Belongil Estuary. Given the large separation distance between the site and the coast, it is considered extremely unlikely that the development would increase the risk of coastal hazards within the site or on adjoining land.

Section 2.13 Development in coastal zone generally—coastal management programs to be considered

Section 2.13 requires the consent authority to take into consideration the relevant provisions of any certified coastal management program that applies to the land before granting development consent.

There are no formally certified coastal management programs that apply to the land.

Chapter 4: Remediation of Land

Chapter 4 of the Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

The Habitat site has been subject to several contamination reports and detailed investigations since the original masterplan was developed in late 2000s. Previous studies have confirmed that the land is uncontaminated. Based on these findings, it is concluded that Stage 5 area is suitable for future residential use in its current state and does not require remediation.

State Environmental Planning Policy (Housing) 2021

Chapter 4 Design of residential apartment development

Chapter 4 of the Housing SEPP aims to improve the design of residential apartment development in NSW. It applies to residential flats and mixed-used development with a height of at least three storeys, where the building contains at least 4 dwellings.

In determining a development application for a residential apartment development Council is required to consider:

- (a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9.
- (b) the Apartment Design Guide,
- (c) any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.

A design verification statement has been submitted to support the application. The proposal is considered to be inconsistent with certain design principles listed in Schedule 9 of the SEPP for the reasons outlined below:

Apartment Design Principles

Design Principle	Comment
1 Context and neighbourhood character	
(1) Good design responds and contributes to its context, which is the key natural and built features of an area, their relationship and the character they create when combined and also includes social, economic, health and environmental conditions.	The Habitat precinct is intended to accommodate higher residential densities than surrounding urban areas, and in this respect a mixed-use development on the site is broadly consistent with the strategic intent for the site. However, the specific design response—characterised by an extensive ground-level car parking area and a dominant concrete podium—results in visual bulk, high site coverage, and a reduction in pedestrian permeability.
(2) Responding to context involves identifying the desirable elements of an area's existing or future character.	
(3) Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.	
	Consequently, the proposal is not considered to adequately respond to the site context or reflect the urban form

<p>(4) Consideration of local context is important for all sites, including sites in the following areas—</p> <ul style="list-style-type: none"> (a) established areas, (b) areas undergoing change, (c) areas identified for change. 	<p>envisaged for the Habitat precinct under Chapter E5 of DCP 2014.</p>
<p>2 Built form and scale</p>	
<ul style="list-style-type: none"> (1) Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. (2) Good design also achieves an appropriate built form for a site and the building's purpose in terms of the following— <ul style="list-style-type: none"> (a) building alignments and proportions, (b) building type, (c) building articulation, (d) the manipulation of building elements. (3) Appropriate built form— <ul style="list-style-type: none"> (a) defines the public domain, and (b) contributes to the character of streetscapes and parks, including their views and vistas, and (c) provides internal amenity and outlook. 	<p>While the overall building height of the proposed Stage 5 development is comparable to Stage 4 and the previously approved Stage 5 scheme, the podium-based design and extensive ground-floor car parking significantly increase the perceived visual bulk and represents a significant departure from the Byron vernacular style envisaged for Habitat under Chapter E5 of DCP 2014.</p> <p>As noted previously, the replacement of Penny Lane with a large at-grade parking area reduces pedestrian permeability and internal site connectivity compared to the former Stage 5 scheme, which featured a central square and interconnected pedestrian pathways.</p> <p>Accordingly, the proposal is not considered consistent with the ADG design principles relating to built form, scale, and site integration.</p>
<p>3 Density</p>	
<ul style="list-style-type: none"> (1) Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. (2) Appropriate densities are consistent with the area's existing or projected population. (3) Appropriate densities are sustained by the following— <ul style="list-style-type: none"> (a) existing or proposed infrastructure, (b) public transport, (c) access to jobs, (d) community facilities, (e) the environment. 	<p>The proposed Stage 5 Scheme is broadly consistent with the intended residential density of Habitat as set out in Chapter E5 of DCP 2014.</p> <p>The development is supported by reasonable access to local employment lands and transport, which assists in sustaining the proposed density.</p>
<p>4 Sustainability</p>	

<p>(1) Good design combines positive environmental, social and economic outcomes.</p> <p>(2) Good sustainable design includes—</p> <ul style="list-style-type: none"> (a) use of natural cross ventilation and sunlight for the amenity and liveability of residents, and (b) passive thermal design for ventilation, heating and cooling, which reduces reliance on technology and operation costs. <p>(3) Good sustainable design also includes the following—</p> <ul style="list-style-type: none"> (a) recycling and reuse of materials and waste, (b) use of sustainable materials, (c) deep soil zones for groundwater recharge and vegetation. 	<p>Each apartment has cross ventilation and offers an acceptable level of liveability for residents. Several podium level apartments have limited direct winter sunlight but nevertheless still achieve a reasonable amount of natural ambient lighting.</p> <p>The proposed development does not offer deep soil for ground water recharge or vegetation growth due to the podium design and high site coverage. However, adequate deep soil is provided across the broader Habitat precinct to satisfy the objectives of groundwater recharge and vegetation coverage.</p>
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5 Landscape

<p>(1) Good design recognises that landscape and buildings operate together as an integrated and sustainable system, resulting in development with good amenity.</p> <p>(2) A positive image and contextual fit of well-designed development is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>(3) Good landscape design enhances the development's environmental performance by retaining positive natural features that contribute to the following—</p> <ul style="list-style-type: none"> (a) the local context, (b) co-ordinating water and soil management, (c) solar access, (d) micro-climate, (e) tree canopy, (f) habitat values, (g) preserving green networks. <p>(4) Good landscape design optimises the following—</p> <ul style="list-style-type: none"> (a) usability, (b) privacy and opportunities for social interaction, (c) equitable access, (d) respect for neighbours' amenity. 	<p>The proposed Stage 5 development relies on a landscaped podium to provide a green space between first and second floor apartments.</p> <p>As discussed elsewhere in this report, insufficient information has been provided to demonstrate that the proposed podium landscaping can be successfully established and sustained in the long term. The applicant has advised that soil depths of up to 1.2 metres would be required to support mature Bangalow and Pandanus palms, along with mid-storey shrubs and grasses. However, this approach is incompatible with the stormwater modelling submitted, as it would alter flow concentration and infiltration rates from those assumed in the model.</p> <p>In addition, the proximity of deep-rooted vegetation to the Atlantis Flo-Cells lining the base of the podium raises concerns regarding potential root penetration, obstruction and long-term functionality of the stormwater detention and water quality treatment system.</p> <p>As a result, it has not been adequately demonstrated that the podium can simultaneously support the proposed landscaping, maintain stormwater</p>
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(5) Good landscape design provides for practical establishment and long-term management.	performance, and deliver a sustainable landscape outcome.
6 Amenity	
<p>(1) Good design positively influences internal and external amenity for residents and neighbours.</p> <p>(2) Good amenity contributes to positive living environments and resident well-being.</p> <p>(3) Good amenity combines the following—</p> <ul style="list-style-type: none"> (a) appropriate room dimensions and shapes, (b) access to sunlight, (c) natural ventilation, (d) outlook, (e) visual and acoustic privacy, (f) storage, (g) indoor and outdoor space, (h) efficient layouts and service areas, (i) ease of access for all age groups and degrees of mobility. 	<p>The proposed apartment designs provide an acceptable level of amenity for residents. Apartments have dual frontages to provide natural ventilation and living areas open onto courtyards or balconies to provide a pleasant outlook.</p>
7 Safety	
<p>(1) Good design optimises safety and security within the development and the public domain.</p> <p>(2) Good design provides for quality public and private spaces that are clearly defined and fit for the intended purpose.</p> <p>(3) Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>(4) A positive relationship between public and private spaces is achieved through clearly defined secure access points and well-lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p>The scheme does not raise any significant safety concerns. The ground floor car parking area will need to be appropriately lit in the morning and evening to ensure safety is maintained. Conditions could be imposed if necessary to ensure minimum lighting standards are achieved.</p>
8 Housing diversity and social interaction	
<p>(1) Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p>	<p>The proposal offers a range of 1- and 2-bedroom apartments with work-from-home living spaces, which is considered to be a reasonable fit for local demographics and living needs.</p>

<p>(2) Well-designed residential apartment development responds to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>(3) Good design involves practical and flexible features, including—</p> <ol style="list-style-type: none"> a. different types of communal spaces for a broad range of people, and b. opportunities for social interaction among residents. 	<p>While the new Stage 5 proposal offers limited functional communal open space (the podium is largely a non-trafficable landscape feature), the broader Habitat precinct offers opportunities for social interaction between residents.</p>
<p>9 Aesthetics</p>	
<p>(1) Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure.</p> <p>(2) Good design uses a variety of materials, colours and textures.</p> <p>(3) The visual appearance of well-designed residential apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	<p>The proposed Stage 5 apartments adopt a material palette and architectural style that is similar to Habitat Stage 4, demonstrating an effort to achieve visual continuity in respect of materials and finishes.</p> <p>Notwithstanding this, the introduction of a substantial podium structure and an expansive ground-level car parking area contributes to increased visual bulk and high site coverage, which is a significant departure from the intended future character of Habitat generally.</p>

Apartment Design Guide

The application has been assessed against the relevant objectives and design criteria set out in the Apartment Design Guide (ADG). The detailed assessment is provided in **Attachment B**. It is considered that the development does not meet all relevant ADG objectives. While some of the proposed variations to the ADG design criteria are acceptable, other variations and non-compliances are not supported.

The proposed variations / non-compliances are considered further in Table 5.

Applying the controls – precinct plan

This assessment applies the precinct planning principles outlined in Chapter 2 of the ADG. Under these principles, certain design criteria are considered at the precinct scale rather than on a building-by-building basis. For example, deep soil areas and communal open space may be consolidated in shared locations and accessed by multiple buildings across the site. This approach is considered appropriate for a mixed-use precinct such as Habitat.

In contrast, design criteria relating to the amenity of individual apartments such as visual privacy, solar access, and outlook are assessed only in relation to the new Stage 5 building. This ensures that precinct-wide elements are evaluated holistically, while apartment-specific performance is reviewed at the building scale.

Several calculations in the applicant’s ADG report and Statement of Environmental Effects are based on a proposed “work zone area” of 7,301 m². This area includes the entirety of the Stage 5 Development Lot and selected portions of the community association lot. As outlined above, this assessment does not adopt the applicant’s methodology for calculating site area, as it does not present an accurate representation of compliance or demonstrate how the Stage 5 scheme sits within the broader Habitat site.

Table 5 – ADG Variations / Non-Compliances

ADG Section	Comment on Variation
<p>3D Communal and public open space</p>	<p>Objective 3D-1 <i>An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping</i></p> <p><u>Design criteria</u></p> <p>The design criteria of Part 3D-1 requires communal open space to have a minimum area equal to 25% of the site.</p> <p><u>Proposed variation</u></p> <p>The applicant states that the proposed development will provide 32% communal open space, based on a site area of 7,301m² and provision of 2,367m² open space areas. The applicant also notes that residents of Stage 5 will have access to the Habitat Community Recreation Area, comprising a swimming pool and grassy open space which is stated to have an area of 1,500m².</p> <p><u>Assessment</u></p> <p><i>Habitat precinct</i></p> <p>At the precinct scale, the total amount of communal open space within Habitat—including the additional open space proposed in Stage 5—is calculated to be 3,533m² as follows:</p> <ul style="list-style-type: none"> • Stage 5 Landscaped podium (private): 1,370m² • Stage 5 Pocket park: 288 m² • Pocket Living open space: ~680 m² • Central recreation and pool area: ~1,280 m² <p>The Habitat precinct has a total site area of 4.921 ha, meaning communal open space represents approximately 7% of the overall site area.</p> <p>In addition to these areas, the precinct includes streets, pathways, an ecological zone, and a commercial hub with restaurants and cafés. These spaces facilitate incidental social interaction and contribute to the vibrancy of the precinct but are not classified as communal open space under the ADG, as they do not provide significant opportunities for landscaping or recreational use.</p>

	<p>Stage 5 Development Lot</p> <p>The proposed Stage 5 development provides a total of 1,285 m² of communal open space, representing approximately 20 % of the total lot area of 6,615 m². This figure relates solely to the landscaped podium.</p> <p>The verge along Wallum Place has not been included as communal open space, as it is exposed, not readily accessible, and has a narrow width, limiting its functionality for communal use.</p> <p>When assessed at both the lot level and the broader precinct level, the proposal does not meet the 25 per cent communal open space requirement. In addition, the landscaped podium is not intended to function as a fully accessible communal area, but rather as a landscaped garden zone that contributes to privacy and visual amenity. Opportunities for passive recreation or communal gathering within this space are limited to a small swimming pool at the eastern end of the podium.</p> <p>Notwithstanding the numerical shortfall, it is considered that the proposal broadly satisfies the objectives of 3D-1. The landscaped podium contributes positively to residential amenity and provides opportunities for landscaping within the site. Moreover, residents will have access to a range of outdoor recreation and social interaction opportunities within the wider Habitat precinct.</p> <p>In this context, the Stage 5 building is one component of a larger, integrated mixed-use development, and the reduced communal open space is considered acceptable when assessed holistically.</p>
	<p>Objective 3D-2 <i>Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting</i></p> <p><u>Design Guidance</u></p> <p>The design guidance of Part 3D-2 requires facilities to be provided within communal open spaces for a range of age groups, incorporating some of the following elements:</p> <ul style="list-style-type: none"> • seating for individuals or groups • barbecue areas • play equipment or play areas • swimming pools, gyms, tennis courts or common rooms <p><u>Proposed variation</u></p> <p>The proposed Stage 5 building provides a small swimming pool and a gym for private use, which meets certain criteria. The</p>

	<p>scheme does not provide internal play areas, barbeques, or seating.</p> <p><u>Assessment</u></p> <p>Stage 5 residents will have access to the central recreation area and swimming pool in Habitat which partially offsets the lack of internal facilities and functional communal open space.</p>
<p>3E Deep soil zones</p>	<p>Objective 3E-1 <i>Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality</i></p> <p><u>Design Criteria</u></p> <p>The design criteria of Part 3E-1 requires at least 7% of the site to be deep soil, with minimum dimensions of 6m for large sites with an area greater than 1,500m².</p> <p><u>Proposed variation</u></p> <p><i>Habitat Precinct</i></p> <p>At a precinct scale, Habitat provides approximately 8000m² deep soil areas, which comprises about 20% of the total site area. This includes the ecological restoration zone, the central recreation area, proposed pocket park, deep soil between buildings, and landscaped zones along verges and street edges.</p> <p><i>Stage 5 Development lot</i></p> <p>Within the Stage 5 Development Lot, there is approximately 439m² deep soil comprising approximately 6.5% of the lot area. This represents a variation to the Design Criteria of 0.5%.</p> <p>This area comprises:</p> <ul style="list-style-type: none"> • Wallum verge: 335m² • Car park deep soil zone: 68m² • Garden beds 36m² <p><u>Assessment</u></p> <p>The proposed development is considered to meet the objectives of the Design Guidance under Part 3E-1. The variation to the Design Criteria for the Stage 5 Development Lot is minor (0.5%), and the Habitat site retains sufficient deep soil to support mature vegetation and groundwater infiltration.</p>
<p>3F Visual privacy</p>	<p>Objective 3F-2</p>

	<p><i>Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space</i></p> <p><u>Design Guidance</u></p> <p>The design guidance for Part 3F-2 requires communal open space to be separated from private open space and apartment windows, particularly those of habitable rooms.</p> <p><u>Proposed variation</u></p> <p>Half of the podium-level apartments include private open-space courtyards that interface directly with the landscaped podium.</p> <p><u>Assessment</u></p> <p>The applicant has confirmed that the landscaped podium is not intended to be generally accessible, aside from the swimming pool located at the eastern end. The podium will be planted with trees, shrubs, and groundcovers, rather than lawn or other trafficable surfaces.</p> <p>The proposed landscaping will improve privacy between apartments by partially screening direct sightlines between podium facing apartments. As the podium is largely non-trafficable, the potential for privacy or noise impacts is considered low. Overall, this is regarded as an appropriate design response in relation to privacy that meets the Objectives of Part 3F-2.</p>
<p>3G Pedestrian access and entries</p>	<p>Objective 3G-3: <i>Large sites provide pedestrian links for access to streets and connection to destinations</i></p> <p><u>Design Guidance</u></p> <p>The design guidance requires large sites to provide pedestrian through links to facilitate direct connections to open space, main streets, centres and public transport.</p> <p><u>Proposed variation</u></p> <p>The scheme aims to demolish an existing laneway and pedestrian through-link and replace it with a large carparking area. The applicant states that the development benefits from the broader pedestrian circulation network within Habitat.</p> <p><u>Assessment</u></p> <p>The proposed development is not considered to satisfy Objective 3G-3 for large sites for the following reasons:</p>

	<ul style="list-style-type: none"> • The removal of Penny Lane and its replacement with a large car parking area reduces pedestrian permeability and disrupts pedestrian circulation through Habitat. • This outcome is a regression from the previously approved Stage 5 scheme, which incorporated a central public square and a network of pedestrian paths to mitigate the loss of the laneway. • The proposal is inconsistent with the Statement of Desired Future Character for Habitat in Chapter E5 of DCP 2014, which envisages a public domain that is safe and permeable, and supported by integrated site planning.
<p>3J Bicycle and car parking</p>	<p>Objective 3J-5 <i>Visual and environmental impacts of on-grade car parking are minimised</i></p> <p><u>Design guidance</u></p> <p>The design guidance states that on-grade carparking should be avoided where possible. Where on-grade carparking is unavoidable, design solutions should be considered including locating car parking away from the primary street frontage, screening the carparking area, integrating the landscaping and carpark design.</p> <p><u>Proposed variation</u></p> <p>The proposed development includes a large on-grade car parking area which covers approximately 6,600m². The car park is located behind commercial premises facing Easy Street but is partially visible from the primary public view point from Wallum Place. The Wallum Place frontage feature mesh screening at ground level.</p> <p><u>Assessment</u></p> <p>The applicant contends that basement parking is not feasible due to construction costs, leaving on-grade parking as the only viable option. It is further asserted that the visual impacts of the car parking area will be adequately mitigated through the use of mesh screening at ground level, particularly along the Wallum Place frontage</p> <p>While some measures have been incorporated to visually screen the car parking when viewed from Wallum Place, their effectiveness is limited by the scale and dominance of the at-grade parking area.</p> <p>Accordingly, the proposal does not satisfactorily address Objective 3J-5, as it does not sufficiently mitigate the visual impacts of on-grade parking or demonstrate that its environmental and urban design impacts have been appropriately minimised.</p>

<p>4A Solar and daylight access</p>	<p>Objective 4A-1 <i>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space</i></p> <p><u>Design Criteria</u></p> <p>The Design Criteria of Part 4A-1 states that a maximum of 15% of apartments in a building should receive no direct sunlight between 9am and 3pm.</p> <p><u>Proposed variation</u></p> <p>13 out of 78 apartments will not receive any direct winter sunlight between 9am and 3pm. This equates to 16.7% of the total number of apartments.</p> <p><u>Assessment</u></p> <p>The proposed development falls short of the solar access requirement by one apartment. The proposal is considered to satisfy the overall objectives of 4A-1 for the following reasons:</p> <ul style="list-style-type: none"> • A 1.7% variation is considered marginal overall. • Each of the affected units is provided with a private open space balcony or courtyard which receives at least 15-minutes of direct winter sunlight, providing a benefit to residents. • Each apartment has a dual frontage with sufficient windows and siding door to provide a reasonable degree of ambient lighting and amenity for residents.
<p>4C Ceiling heights</p>	<p>Objective 4C-1 <i>Ceiling height achieves sufficient natural ventilation and daylight access</i></p> <p><u>Requirement</u></p> <p>The Design Criteria of Part 4C-1 specify the following minimum ceiling heights for apartments and mixed-use buildings:</p> <ul style="list-style-type: none"> • Habitable rooms: 2.7 m. • Non-habitable rooms: 2.4 m. • Mixed-use (ground and first floors): 3.3 m. <p><u>Proposed variation</u></p> <p>The second-floor apartments provide an internal ceiling height of 2.7 m, complying with the ADG requirement. The ground-floor commercial tenancies and podium-level residential apartments have ceiling heights of 3 m and 2.7 m respectively. Both fall short of the requirement; by 300 mm for the</p>

	<p>commercial spaces and 600 mm for the podium-level apartments.</p> <p><u>Assessment</u></p> <p>The ground-floor commercial tenancies provide a 3 m ceiling height, which is considered appropriate for the intended uses. This height allows adequate natural light and ventilation and can accommodate ceiling fans and typical service installations.</p> <p>For the first-floor residential apartments, a 2.7 m ceiling height is considered acceptable given the fact that this level will be used solely for residential purposes in the future. Overall, the proposed ceiling heights are suitable for their respective uses and are supported on merit.</p>
<p>4E Private open space and balconies</p>	<p>Objective 4E-1 <i>Apartments provide appropriately sized private open space and balconies to enhance residential amenity</i></p> <p><u>Design Criteria</u></p> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m</p> <p><u>Proposed variation</u></p> <p>Each podium facing apartments has a private open space courtyard measuring 15m². However, the minimum dimension of the courtyard varies from 3m to 1.2m. The 3m wide sections have an average area of approx. 8m².</p> <p><u>Assessment</u></p> <p>The proposed courtyard design is adequate for a 1-bedroom apartment and offers a reasonable level of privacy and amenity for residents, in accordance with the Objectives of 4E-1.</p>
<p>4P Planting on structures</p>	<p>Objective 4P-1 <i>Appropriate soil profiles are provided</i></p> <p><u>Design Guidance</u></p> <p>Soil volume is appropriate for plant growth, considerations include:</p> <ul style="list-style-type: none"> • modifying depths and widths according to the planting mix and irrigation frequency. • free draining and long soil life span. • tree anchorage.

Table 5 of the ADG specifies a minimum soil depth of 800mm for small trees and shrubs and 1,200mm for large trees.

Proposed variation

The plans initially submitted with the application indicated max. soil depths of approx. 540mm in the central podium which is insufficient to support the types of trees and shrubs shown in the landscape concept plan including Bangalow and Pandanus palms.

A more detailed section was later provided as part of the applicant's RFI response (refer to **Figure 17**) which demonstrates that soil will be mounded to a depth of 1,200mm in the centre of the podium.

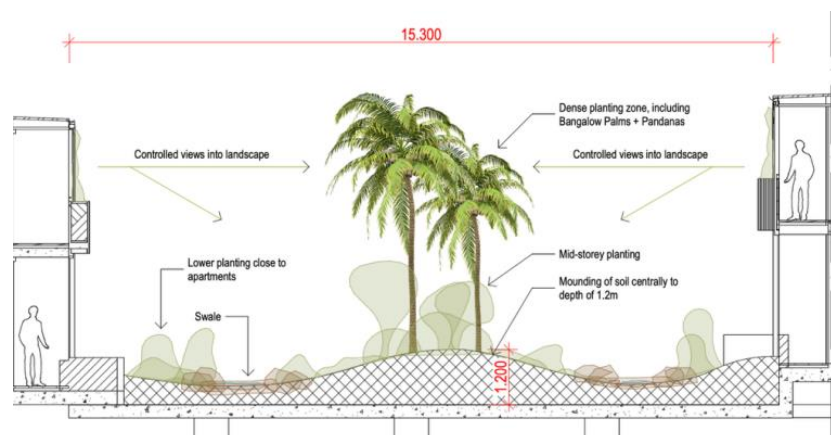


Figure 17: Section of landscape mounding strategy.

Assessment

While the detailed sections demonstrate that the podium is to be mounded with an appropriate soil profile to support mature vegetation, this approach introduces a potential conflict with the stormwater system design.

Council's Development Engineer has advised that the placement of mounded soil in the centre of the podium would direct and concentrate stormwater flows into two swale-type areas on either side of the mound. This altered flow regime would change the intended function of the stormwater system in a manner not contemplated by the MUSIC and DRAINS modelling submitted with the application.

While the additional soil depth assists in achieving the objectives of the landscaping scheme, it gives rise to other issues that are material to the assessment. As such, it is considered that insufficient information has been provided to demonstrate that the proposed podium can simultaneously support adequate soil profiles for mature vegetation and a functioning stormwater detention and filtration system.

Objective 4P-2

	<p><i>Plant growth is optimised with appropriate selection and maintenance</i></p> <p><u>Design Guidance</u></p> <p>A landscape maintenance plan must be prepared. Irrigation and drainage systems are to be designed in response to the soil profile and proposed planting regime.</p> <p><u>Proposed variation</u></p> <p>A landscape maintenance plan has not been provided with the application.</p> <p><u>Assessment</u></p> <p>A landscape maintenance plan is considered essential given the scale of the proposed podium landscaping and its intended function as a natural stormwater filtration system within the applicant's WSUD strategy.</p> <p>Notwithstanding this omission, it is considered that a landscaping maintenance plan could likely be prepared and approved post consent through conditions of consent if necessary.</p>
<p>4Q Universal design</p>	<p>Objective 4Q-1 <i>Universal design features are included in apartment design to promote flexible housing for all community members</i></p> <p><u>Design guidance</u></p> <p>Developments achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.</p> <p>Section 1(c) of the Livable Housing Guidelines (Livable Housing Australia, 2017), provides that car parking spaces for Silver Level liveable dwellings must have minimum dimensions of 3200mm (width), 5400mm (length), and be located on a level surface of 1:40 or less.</p> <p><u>Proposed variation</u></p> <p>The proposed ground floor carparking area does not provide any parking spaces for the Silver Level liveable apartments which comply with the minimum standards detailed in the LHG.</p> <p><u>Assessment</u></p> <p>The proposed development is not considered to have satisfied the objectives of the ADG in relation to universal design. To achieve the intent of the LHG, it is considered appropriate that</p>

	properly dimensioned and dedicated parking spaces be made available for the liveable apartments.
4V Water management and conservation	<p>Objective 4V-1 <i>Potable water use is minimised</i></p> <p><u>Design Guidance</u></p> <p>Rainwater should be collected, stored and reused on site.</p> <p><u>Proposed variation</u></p> <p>The proposed development does not propose rainwater storage and reuse. Instead, it is planned to connect the site to a recycled water service for non-potable uses such as landscaping.</p> <p><u>Assessment</u></p> <p>The use of recycled water from the Council's recycled water service is considered a suitable alternative strategy to minimise potable water use, in accordance with Objective 4V-1.</p>

Section 145 Referral to design review panel for development applications

Section 145 requires all development applications for residential apartment development, other than State significant development, to be referred to the relevant design review panel for advice on the quality of the design of the development.

A design review panel has not been constituted for Byron Shire and accordingly, the application did not required referral to any external panel or body for advice on the quality of the design of the development.

Byron Local Environmental Plan 2014

The relevant local environmental plan applying to the site is the *Byron Local Environmental Plan 2014* ('the LEP').

Aims of Plan (Part 1)

The key aims of the LEP relevant to this assessment include:

- to progressively respond to changes in the natural, social and economic environment in a way that is consistent with the following principles of ecologically sustainable development (Section 1.2(2)(a)).
- to integrate local planning provisions with applicable regional and State planning controls and policies (Section 1.2(2)(b)).
- to promote and coordinate the orderly and economic use and development of land (Section 1.2(2)(d)).
- to build and sustain community resilience by encouraging a diversity of housing choice and affordable housing in appropriate localities (Section 1.2(2)(e)).
- to encourage development that contributes to a vibrant, socially diverse community (Section 1.2(2)(f)).

- to encourage development that contributes to a strong, growing and diversified economy (Section 1.2(2)(g)).
- to provide for public involvement and participation in environmental planning and assessment (Section 1.2(2)(k)).

The proposal is not inconsistent with these overarching aims.

Zoning and Permissibility (Part 2)

The site is located within the Mixed Use (MU1) Zone pursuant to Clause 2.2 of the LEP:



Figure 18: Aerial photo with zoning overlay from Council's GIS.

Characterisation

According to the definitions contained in Clause 1.4 (Dictionary), the proposal meets the definition of *mixed use development*, which is a permissible use with consent under the Land Use Table in Clause 2.3.

mixed use development means a building or place comprising two or more different land uses.

The proposed development comprises four distinct components:

1. Subdivision of land.
2. Construction of a mixed-use building with commercial premises and shop-top housing.
3. Storage sheds ancillary to existing residential dwellings, and

4. Landscaping and associated site works, including the reconfiguration of loading bays and car parking spaces within the broader Habitat complex.

While each component could theoretically be characterised separately, they collectively serve the same overarching purpose of delivering a mixed-use development on the site.

Zone objectives

The MU1 zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*

The proposal is considered to be generally consistent with these zone objectives for the following reasons:

- The application proposes home office spaces, along with ground floor retail and commercial uses capable of generating employment opportunities.
- The application provides for active street frontages along Easy Street.
- The new mixed use building is unlikely to result in significant land use conflict within Habitat or the immediate locality.

General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 6** below. The proposal does not comply with the development standard in Parts 4.3 (height of buildings). The applicant also states that the proposal does not comply with the FSR standard under Clause 4.4 (Floor Space Ratio). Clause 4.6 variation requests have been provided with the application for the exceedance of the maximum building height and residential floor space ratio respectively.

Table 6: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Minimum subdivision lot size for community title schemes (Cl.4.1AA)	Community title subdivision in zones RU1, RU2, R5, SP1, SP3, C3 and C4 must comply with the lot size map.	The proposed subdivision is occurring on land within the MU1 zone and is not subject to the lot size map.	Yes
Height of buildings (Cl 4.3(2))	9 metres	10.8m (20%) * Roof 10.48 (16.4%) Lift overrun	No. Clause 4.6 variation request submitted.

FSR (Cl 4.4(2))	0.9:1	The applicant submits an FSR of 0.92:1	No. Clause 4.6 variation request submitted.
Architectural roof features (Cl. 5.6)	Architectural roof features are not subject to maximum height development standard.	The applicant submits that the two walkway roof structures which exceed the 9m height limit by up to 1.8m or 20% of the development standard are architectural roof features.	Yes
Acid sulphate soils (Cl 6.1)	The site is identified on mapping as Class 3 Acid Sulfate Soils. Development consent is required for works 1m below the natural ground surface or works likely to lower the water table by more than 1m.	Excavation to a depth of approximately 1m is proposed. It is noted that the site was investigated for acid sulfate soils in the early stages of the Habitat project. Sampling and testing confirmed that the site does not contain actual acid sulfate soil.	Yes
Essential Services (Cl 6.6)	The development must be serviced by water, electricity, sewer, stormwater drainage and suitable vehicle access.	The development has access to all essential services. Vehicular access off Wallum Place is adequate.	Yes
Affordable housing (Cl 6.17)	The consent authority must consider the need for providing, maintaining or retaining affordable housing.	The proposed development is not for the purposes of affordable housing and will not remove or displace any existing affordable housing units within Habitat or the surrounding area.	Yes

The proposal is considered to be consistent with the Byron LEP 2014 subject to assessment of the Clause 4.6 variation requests addressed below.

Cause 4.1 Minimum subdivision lot size

Strata and community title subdivision is expressly excluded from the operation of Clause 4.1. Accordingly, no minimum lot size applies to the proposed community title subdivision under this Clause.

Clause 4.1AA Minimum subdivision lot size for community title schemes

The proposal involves a 2-lot community title subdivision of Lots 1 and 14 in DP 271119, whereby Penny Lane is excised from the Community Association Lot and incorporated into Lot 14 to create a new Development Lot for Stage 5.

Table 7 – Comparison of existing and proposed lot sizes

Description	Existing Area	Proposed Area	Difference (%)
Lot 1 DP 271119	20,764m ²	20,157m ²	-3%
Lot 14 DP 271119	6,008m ²	6,615m ²	+10%



Figure 19 – Comparison of existing lots (left) and proposed lots (right).

Clause 4.1AA requires subdivision under the *Community Land Development Act 2021* within the following zones to comply with the Minimum Lot Size Map.

- Zone RU1 Primary Production,
- Zone RU2 Rural Landscape,
- Zone R5 Large Lot Residential,
- Zone SP1 Special Activities,
- Zone SP3 Tourist,
- Zone C3 Environmental Management,
- Zone C4 Environmental Living,

The site is zoned MU1 Mixed Use and is therefore not subject to a minimum lot size under this clause. The proposed subdivision satisfies all relevant requirements in relation to minimum lot size.

Clause 4.3 Height of buildings

A maximum building height of 9m applies to the subject site. The applicant submits that the proposed development has a maximum height of 10.48m above existing ground level and exceeds the height limit by 1.48m or 16.4% of the development standard.

The application is accompanied by a written request to vary the maximum building height development standard which is considered further under Clause 4.6 'Exceptions to development standards'.

Clause 4.4 Floor Space Ratio

The Floor Space Ratio Map under Clause 4.4 of Byron LEP 2014 specifies a maximum Floor Space Ratio (FSR) of 0.9:1 for the Habitat precinct.

The applicant states that the site has a total area of 7,003 m² and a gross floor area (GFA) of 6,697 m², resulting in an FSR of 0.92:1. On this basis, the applicant considers that the proposal exceeds the applicable FSR standard by approximately 2%, and has submitted a Clause 4.6 variation request seeking to justify the departure from the standard.

The applicant further notes that the overall FSR for the broader Habitat precinct, including the proposed Stage 5 development, is calculated at 0.44:1.

Clause 4.5 Calculation of floor space ratio and site area

This assessment concludes that the FSR for the proposed development is:

- 0.25:1 when considering development on the two community title lots, and
- 0.41:1 when considering development across the entire habitat precinct.

The significant discrepancy between the applicant's FSR calculation and the calculation undertaken in this assessment arises from fundamentally different approaches to determining 'site area'.

Under Clause 4.5, site area is essentially defined as meaning the combined area of all contiguous lots on which the development is being carried out.

The definition of site area is reproduced below:

- (3) **Site area** *In determining the site area of proposed development for the purpose of applying a floor space ratio, the **site area** is taken to be—*
- (a) *if the proposed development is to be carried out on only one lot, the area of that lot, or*
 - (b) *if the proposed development is to be carried out on 2 or more lots, the **area of any lot** on which the development is proposed to be carried out that has at least one common boundary with another lot on which the development is being carried out.*

In addition, subclauses (4)–(7) apply to the calculation of site area for the purposes of applying a floor space ratio to proposed development.

Clause 4.5 does not differentiate between Torrens title, community title, or strata title for the purpose of calculating site area. Consequently, where land is subdivided under multiple title systems, the area of each relevant lot—whether Torrens, community, or strata—must be considered individually when determining the site area and assessing compliance with the applicable FSR standard.

The Habitat precinct is situated on a single Torrens title parcel, legally described as Lot 3 in DP 1004514, with a total area of 4.921 hectares. A community title scheme also applies to the site, creating a number of development lots corresponding to individual stages of the Habitat project. The proposed Stage 5 building spans two of these community title lots—Lots 1 and 14 in DP 271119—which have areas of 20,157 m² and 6,615 m² respectively. As the development physically occupies both lots, their areas must be considered cumulatively when determining the applicable site area and calculating the floor space ratio.

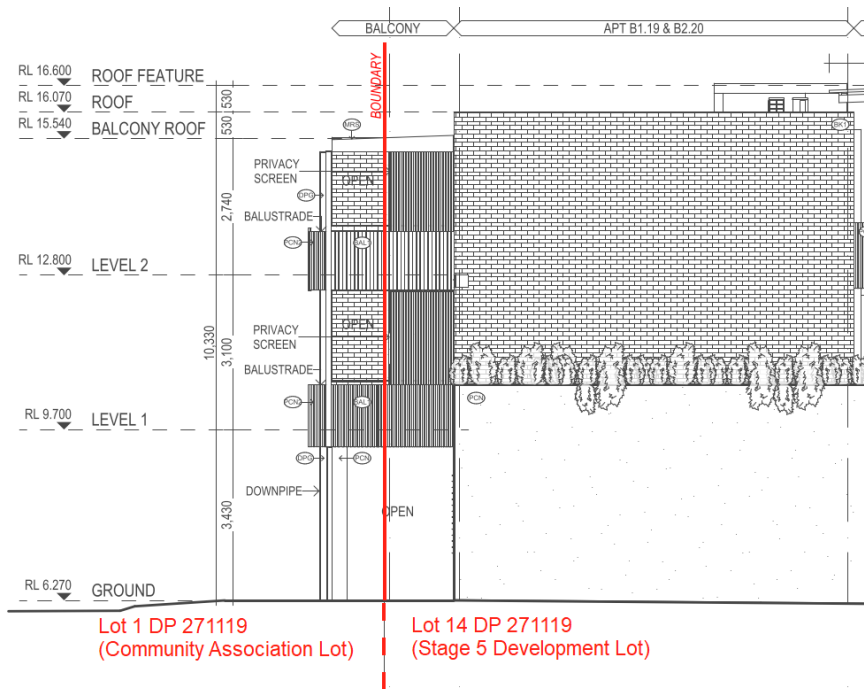


Figure 20: SE Elevation showing the building extending across Lot 1 and Lot 14 in DP 271119.

Floor Space Ratio Calculation

Two FSR calculations are shown below:

- (1) An initial calculation based off the area of the underlying Torrens lot, which includes the combined GFA of existing development, and
- (2) A second calculation based off the two community title lots on which the development will be carried out.

Calculation 1: FSR based on area of Torrens lot

Site Area: (Lot 3 DP 1004514)	49,210m ²
Stage 1 GFA	6,677m ²
Stage 2 GFA	1,480m ²
Stage 3 GFA	3,184m ²
Stage 4 GFA	2,162m ²
Proposed Stage 5 GFA	6,697m ²
Total GFA	20,200m ²
FSR	0.41:1

Calculation 2: FSR based on Lot 1 and Lot 14

Lot 14 DP 271119	6615m ²
Lot 1 DP 271119	20,157m ²
Proposed Stage 5 GFA	6,697m ²
Existing GFA in Lot 1	55m ²
Total GFA	6752m ²
FSR	0.25:1

The proposed development is considered to comply with the maximum FSR for the site of 0.9:1. For completeness, the applicant's written request to vary to the maximum FSR under Clause 4.6 of LEP 2014 is considered further below. That section of the report can be referred to if the Panel prefers the applicant's method for determining site area and FSR.

Clause 4.6 – Exceptions to development standards

The development application includes a written request to vary the maximum building height limit and maximum floor space ratio for the site under Clauses 4.3 and 4.4 of Byron LEP 2014. The variation requests are in **Attachment C**.

Development standard to be varied – Clause 4.3 height of buildings

The Height of Buildings Map specifies a 9m maximum height building for the land.

Clause 4.3 is reproduced below.

4.3 Height of buildings

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

Extent of variation

The applicant states that the proposed development has a maximum height of 10.48m above existing ground level and exceeds the height limit by 1.48m or 16.4% of the development standard. The applicant refers to Point K (lift overrun) on the attached height plan as the highest point on the building requiring consideration.

The main body of the development varies between 9.71m and 10.3m in height, with an average height exceedance of approximately 10.1m or 15% of the development standard.

Additionally, two walkway roof structures are proposed for each block, which reach a height of 10.6m and 10.8m respectively. The walkway roof structure on the Easy Block exceeds the maximum height standard by approx. 20% at the highest point (point N on the height plan). The applicant asserts that this structure is an architectural roof feature (Clause 5.6 of LEP 2014) and therefore does not require consideration under the height clause.

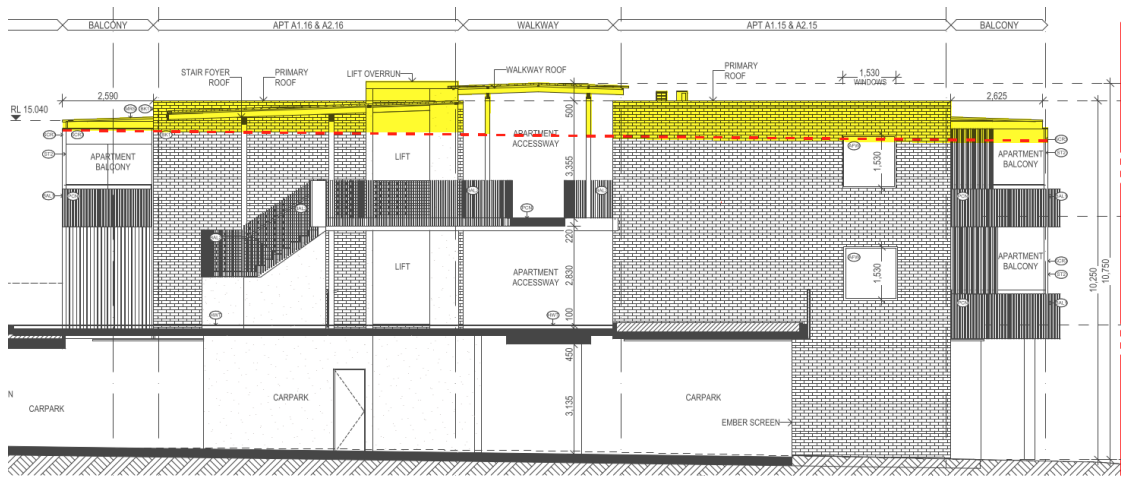


Figure 21: Section B–B (Easy Block) with the height exceedance highlighted in yellow.

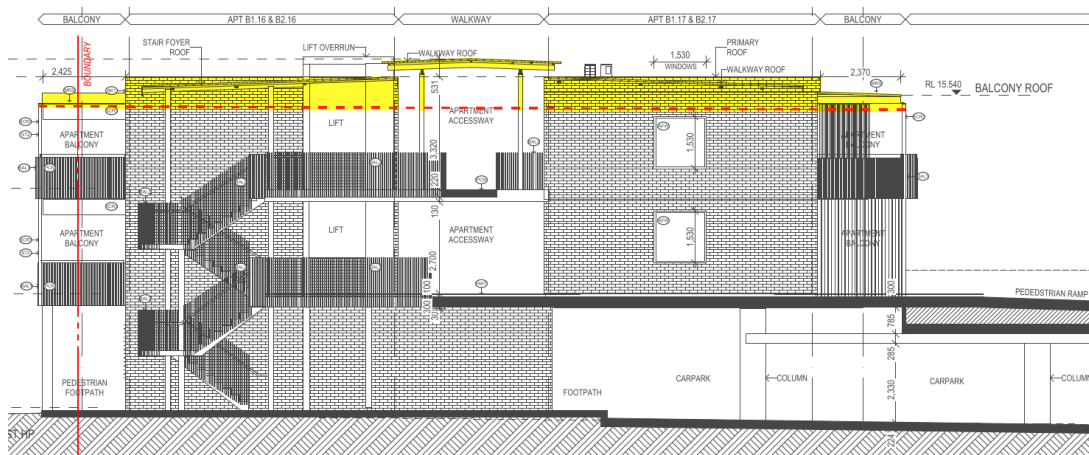


Figure 22: Section B–B (Wallum Block) with the height exceedance highlighted in yellow.

Preconditions to be satisfied

Clause 4.6(3) of Byron LEP 2014 sets out the preconditions that must be met before a consent authority can approve development that breaches a development standard. The consent authority must be satisfied that:

1. strict compliance with the development standard is unreasonable or unnecessary in the circumstances (Clause 4.6(3)(a)); and
2. there are sufficient environmental planning grounds to justify the non-compliance (Clause 4.6(3)(b)).

The following section addresses these requirements in relation to the applicant’s Clause 4.6 request.

(a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In summary, the applicant’s written request reasons that the proposed development:

- Is consistent with height variations granted in earlier stages of Habitat, particularly Stage 4 and the previous Stage 5 scheme.

- Will achieve a superior architectural and visual outcome by aligning the height of new Stage 5 buildings with the existing Stage 3 and Stage 4 buildings in Habitat.
- Reduces visual bulk and perceived height through the use of multiple individual buildings across an elevated podium, which visually ‘fragments’ the built form.
- Achieves superior interior design by providing generous internal ceiling heights, and that reducing those ceiling heights to achieve strict compliance with the development standard would compromise the internal amenity and sense of space for users of the development.
- Does not result in any significant loss of views or solar access for residents of adjoining buildings.
- Is not an ‘overdevelopment’ of the site, demonstrated by general compliance with the Floor Space Ratio control (only a minor 2% exceedance in accordance with the applicant’s FSR calculation).

The applicant’s written request also refers to *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) which establishes five different ways or methods by which an applicant can demonstrate that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case.

The applicant relies on the first *Wehbe* method which attempts to demonstrate that compliance is unreasonable and unnecessary where the overall objectives of a development standard are achieved notwithstanding numerical non-compliance.

In summary, the applicant states that the objectives of Clause 4.3 are satisfied because the proposed development is consistent with the height of development immediately adjoining the site and in the Habitat neighbourhood generally. The building mass and articulated facades assist in breaking up the perceived visual bulk of the development. It is also asserted that that the additional height will not create unreasonable solar access impacts on the nearest properties or surrounding area.

Assessment

The applicant’s written request has demonstrated that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case. The proposed development is generally consistent with building heights already established in Habitat Stage 4 and the previously approved Stage 5 scheme. The most recent stages of Habitat have normalised a three-storey built form with an average height of around 10 metres.

It is further agreed that the proposed development generally achieves the objectives of Clause 4.3 as the building height does is unlikely to significantly disrupt the views, privacy or solar access of adjoining development.

As noted elsewhere in this report, concerns are raised in relation to the podium style design which increases the visual bulk of the development and reduces pedestrian access and permeability across the site. Notwithstanding those issues, the overall height of the development is compatible with previous stages and not a reason for refusal in its own right.

(b) *That there are sufficient environmental planning grounds to justify contravention of the standard.*

The applicant’s written request provides the following environmental planning grounds to justify the contravention of the maximum building height development standard.

- 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 fit well to the existing and future streetscape and character of the Habitat area.
- 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 fit well to the existing and future streetscape and character of the Habitat area.

Assessment

The applicant's written request demonstrates that sufficient environmental planning grounds exist to justify a variation to the development standard. Notably, the height exceedance arises primarily from the need to meet the internal ceiling height requirements under Part 4C of the ADG. These provisions require a minimum internal height of 3.3 m for ground-floor commercial premises and at least 2.7 m for residential units on the first and second floors. Achieving strict compliance with the 9m height limit would likely require lower internal ceiling heights, resulting in reduced sunlight and amenity for residents.

It is also agreed that the proposed height exceedance is unlikely to disrupt views, privacy, or create unacceptable levels of overshadowing or visual intrusion for adjoining dwellings.

Development standard to be varied – Clause 4.4 Floor space ratio

The Floor Space Ratio Map specifies a maximum FSR for the site of 0.9:1.

Clause 4.4 is reproduced below.

4.4 Floor space ratio

- (1) *The objectives of this clause are as follows—*
 - (a) *to ensure that new buildings are appropriate in relation to the character, amenity and environment of the locality,*
 - (b) *to enable a diversity of housing types by encouraging low scale medium density housing in suitable locations,*
 - (c) *to provide floor space in employment and mixed use zones adequate for the foreseeable future,*
 - (d) *to regulate density of development and generation of vehicular and pedestrian traffic,*
 - (e) *to set out maximum floor space ratios for dual occupancy in certain areas.*
- (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](#).*
- (2A) *(Repealed)*

Extent of variation

The applicant's written request states that the proposed development has a FSR of 0.92:1, representing a ~2% variation to the development standard.

Preconditions to be satisfied

Clause 4.6(3) of Byron LEP 2014 sets out the preconditions that must be met before a consent authority can approve development that breaches a development standard.

The consent authority must be satisfied that:

1. strict compliance with the development standard is unreasonable or unnecessary in the circumstances (Clause 4.6(3)(a)); and
2. there are sufficient environmental planning grounds to justify the non-compliance (Clause 4.6(3)(b)). The following section addresses these requirements in relation to the applicant's Clause 4.6 request.

(a) *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*

Summary of applicant's response

In summary, the applicant argues that compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case for the following 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 or 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 BLEP 2014 specified building bulk.

Assessment

It is agreed that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case. The minor 2% exceedance of the FSR standard will not result in a significant increase in the generation of pedestrian or vehicular traffic compared to a compliant design. Habitat is an integrated mixed-use site and it is appropriate to consider density at a precinct level. The extent of the FSR exceedance is also identical to the previous Stage 5 scheme that was approved in 2021.

(c) *That there are sufficient environmental planning grounds to justify contravention of the standard.*

Summary of applicant's response

In summary, the applicant argues that there are sufficient environmental planning grounds to vary the development standard as follows:

- 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 fit 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.

Assessment

The environmental planning reasons put forward to justify contravening the FSR standard relate to a lack of impacts on amenity, views, solar access and the character of the Habitat precinct.

While these matters are relevant, they are only marginally connected to the purported FSR exceedance, as impacts on adjoining properties arise from a combination of factors—including building siting, height, setbacks, massing, and the distribution of gross floor area—rather than from FSR alone. Nevertheless, given the relatively minor nature of the proposed variation (approximately 2%), the general absence of adverse impacts is considered sufficient to justify a minor departure from the standard.

Clause 5.6 – Architectural roof features

The Stage 5 building has two elevated roof structures that provide weather protection for the second floor apartments. Both roof structures exceed the 9m maximum height limit by between 1.592m and 1.81m respectively, or up to a maximum of ~20% of the development standard.

The applicant contends that these structures are architectural roof features and are therefore not subject to the height control.

5.6 Architectural roof features

- (1) *The objectives of this clause are as follows—*
 - (a) *to encourage variety in built form,*
 - (b) *to provide for architectural innovation,*
 - (c) *to improve the streetscape of urban areas,*
 - (d) *to protect the amenity of the streetscape by enabling the development of roof features that are compatible with the natural and built features of the locality.*
- (2) *Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.*
- (3) *Development consent must not be granted to any such development unless the consent authority is satisfied that—*
 - (a) *the architectural roof feature—*
 - (i) *comprises a decorative element on the uppermost portion of a building, and*
 - (ii) *is not an advertising structure, and*
 - (iii) *does not include floor space area and is not reasonably capable of modification to include floor space area, and*
 - (iv) *will cause minimal overshadowing, and*
 - (b) *any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.*

It is agreed that these roof structures have both a decorative and functional component and are located on the uppermost portion of the buildings. The structures do not detract from the roofline and are considered to meet the definition of an architectural roof feature under Clause 5.6.

Clauses 6.1 Acid sulfate soils

The site was investigated for the presence of acid sulfate soils in the early stages of the Habitat project. Sampling and testing confirmed that the site does not contain actual acid sulfate soil. On the basis of previous testing, it is considered unlikely that acid sulfate soils would be disturbed during building works and an acid sulfate soils management plan is not required.

Clause 6.2 Earthworks

Excavation up to 1m is proposed across most of the site is proposed to create a level building surface for the ground floor carpark and commercial tenancies. The proposed works are not expected to have any long-term impact on soil stability or drainage in the locality.

Clause 6.6 Essential services

The Habitat site is connected to reticulated water, sewer, electricity and telecommunications services. External and internal vehicular access off Easy Street and Gallagher Street are considered adequate.

Clause 6.17 Affordable housing in employment, mixed use and residential zones

The proposed development is not for the purposes of affordable housing and will not remove or displace any existing affordable housing units within Habitat or the surrounding area. There is no need to impose conditions relating the provision or maintenance of affordable housing under this clause.

(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are no proposed instruments relevant to this application.

(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The Byron Development Control Plan 2014 ('the DCP') is relevant to this application, including the following Sections:

- Part A Preliminary
- Chapter B1: Biodiversity
- Chapter B3: Services
- Chapter B4: Traffic Planning, Vehicle Parking, Circulation and Access
- Chapter B5: Providing for Cycling
- Chapter B6: Buffers and Minimising Land Use Conflict
- Chapter B7: Mosquitos and Biting Midges
- Chapter B8: Waste Minimisation and Management
- Chapter B9: Landscaping
- Chapter B10: Planning for Crime Prevention
- Chapter B12: Social Impact Assessment
- Chapter B13: Access and Mobility
- Chapter B14: Excavation and Fill

- Chapter B15: Public Art
- Chapter C3: Visually Prominent Development and View Sharing
- Chapter D1 Residential Accommodation in Urban, Village and Special Purpose Zones
- Chapter D4 Commercial and Retail Development
- Chapter E5 Certain Locations in Byron Bay and Ewingsdale

The proposed development has been assessed against the relevant provisions of Byron DCP 2014, with those sections most pertinent to the proposal addressed in detail below.

Chapter B3: Services

B3.2.3 Stormwater Management

The proposed stormwater system collects roof water from the Stage 5 building and directs it into the landscaped podium on Level 1. The podium will function as both a stormwater detention device and biofiltration system. Stormwater water will pass through the permeable soil layer into subsurface Atlantis Flo-cells and Atlantis Flo-tanks where it will be stored and slowly released though controlled outlet pipes. From there, water will be directed to the existing Habitat stormwater drainage system, or to a Council swale drain in Wallum Place. The main water-quality treatment will occur in through soil filtration in central podium, while ground-level runoff around the buildings will flow into nearby drains via swales or kerb and gutter structures.

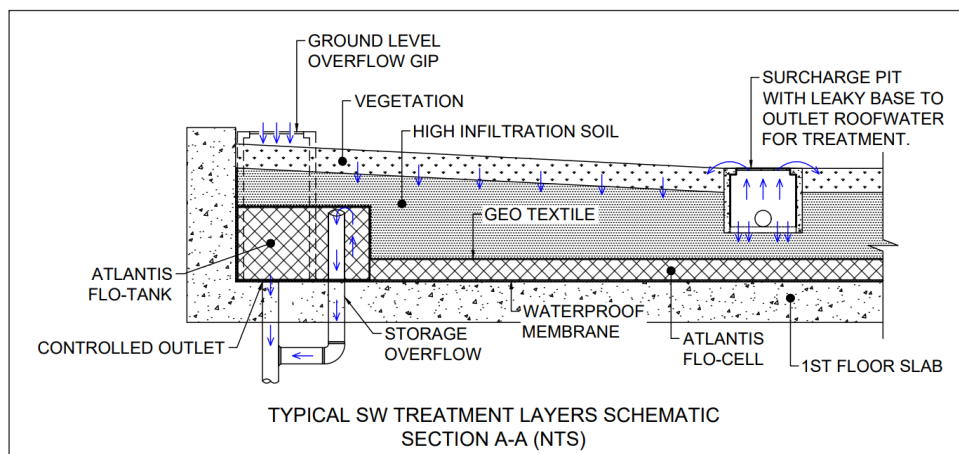


Figure 23: Section of the proposed stormwater treatment system.

Assessment

Council’s Development Engineer was unsupportive of the stormwater system design and raised serious concerns regarding the reliability of the DRAINS and MUSIC modelling which are used to calculate water conveyance, peak flows, and water quality.

In summary, the following key issues were identified with the stormwater modelling and system design:

1. *Model reliability*

The DRAINS model (a software model used to calculate stormwater conveyance and peak flows) is inconsistent with the design of the stormwater system as depicted on the architectural and civil engineering plans. Specifically, the plans identify the use of 20 x 67mm outlets for the Atlantis Flo-Cell system, and 20 x 102mm outlets for the Atlantis Flo-Tank system. However, the DRAINS model relies on a “Sag Inlet” spreadsheet

calculation that does not accurately represent the hydraulic behaviour or orifice-controlled outflow of the proposed system.

As a result, Council cannot rely on the model for predicting the likely hydraulic function of the system or test for compliance against the relevant engineering standards and guidelines.

The risk of a malfunctioning or poorly calibrated system is significant. If the outlets have insufficient capacity to handle stormwater flows during heavy rainfall, there is a realistic possibility that the podium level could flood, causing inundation and damage to adjacent apartments. Without reliable modelling, it is not possible to fully understand the hydraulic function of the system or impose conditions that could address these concerns.

2. *Conflict with MUSIC and DRAINS modelling*

Council's Development Engineer identified a conflict between the MUSIC modelling, which assesses pollutant loads and the effectiveness of the proposed stormwater treatment train, and the DRAINS modelling. Specifically, the outlet sizing required under the MUSIC model to achieve the nominated water quality targets does not align with the outlet sizing required under the DRAINS model to achieve acceptable flow rates. The larger outlet size dictated by the DRAINS modelling would reduce detention times, resulting in inadequate filtration and water quality performance under the MUSIC model.

3. *Depth of filter media (soil depth)*

The system has not been designed to provide extended detention, and the soil depths are insufficient to provide effective stormwater treatment. While additional soil depths were later proposed by the applicant to support the types of trees and mature vegetation specified in the landscaping plan, these additional soil depths have not been incorporated into the stormwater model leading to uncertainty over the system function and model reliability.

4. *MUSIC model unreliable*

The input modelling parameters nominated in the MUSIC model, namely bioretention basin and media filtration areas of 980 m² and 965 m² respectively, cannot be physically accommodated within the available vegetated areas of the site. As a result, the stormwater quality modelling outputs are considered unreliable.

5. *Design of surcharge pit*

The design features surcharge pits at the podium level which could potentially cause stormwater run-off to overflow into units on the northern side of the podium during heavy rainfall, resulting in localised flooding.

6. *Lack of high-flow bypass*

The system design does not include a high flow bypass to divert stormwater flows away from the bioretention basin during period of heavy rainfall. This could potentially result in reduced pollutant removal efficiency, damage to the drainage system, and localised flooding due to the system's inability to handle excessive flows.

7. Conflict with landscaping plan

There is a conflict with the landscape plan and the stormwater plan. The landscaping concept involves placing a range of mature trees, mid-storey shrubs and grasses on the podium to assist in the provision of privacy between apartments and to enhance residential amenity.

Proposed plant species include Bangalow and Pandanus palms, Elephant's ear, Native ginger, Pig's face, and Lomandra. The root systems of these species will likely extend into the soil layer and the underlying Atlantis Flo-Cells, potentially damaging and impacting the hydraulic performance of the system. The stormwater model does not appear to have accounted for the presence of mature vegetation on the podium with root systems extending into the filter media, nor has it accounted for the additional mounded soil profiles (up to 1.2m in depth) that will be needed to support the types of vegetation specified in the landscaping plan.

For the above reasons, Council is not able to support the proposed development in its current form. These issues seriously affect the viability of the podium design and there is no confidence they can be easily resolved through conditions of consent.

In this regard, the proposal is not considered to comply with the aims of Chapter B3 or the requirements for stormwater management under Part B3.2.3 of DCP 2014.

Chapter B4: Traffic Planning, Vehicle Parking, Circulation and Access

B4.2.1 Traffic Impact

A traffic report was submitted with the application which included a detailed parking assessment, traffic modelling, and SIDRA analysis of the proposed development. The report predicted that the proposal would generate 530 daily trips, with an AM peak of 68 vehicles per hour and a PM peak of 74 vehicles per hour.

Table 8: Summary of traffic modelling

Land use	Quantity	Trip Generation		
		AM Peak	PM Peak	Daily Trips
Residential Units	78	32	47	286
Commercial	340m ²	3.4	3.3	34
Retail	475m ²	32	24	210
Total		68	74	530

Based on the SIDRA analysis, Council's Development Engineer concluded that the intersection between Wallum Place and Bayshore Drive has sufficient capacity to cater for the likely increase in traffic from the development and will not result in significant degradation in the level of service.

The proposed development will eventually feed traffic southbound to Ewingsdale Road, which is subject to heavy congestion. Previous modelling has suggested that the main intersection with Bayshore Drive and Ewingsdale Road handles approximately 3000 vehicle movements per hour in AM and PM times. While the development will contribute to congestion at this intersection, the overall impact is deemed to be acceptable, given that the development would contribute only a small percentage to the total volume of traffic already on the road.

B4.2.3 Vehicle Access and Manoeuvring Areas

Council's Development Engineer does not support the proposed garbage and service vehicle access off Wallum Place. The proposed access entrance exceeds the maximum allowable width, and the swept-path analysis demonstrates that heavy vehicles would encroach into the road verge during reversing manoeuvres.

Notwithstanding these concerns, the access arrangement is not considered to warrant refusal, as the identified issues have the potential to be resolved conditions of consent, including:

1. Reducing the access width to a maximum of 6 metres.
2. Providing an on-site manoeuvring area measuring a minimum of 11 metres by 4.8 metres.
3. Submitting amended plans demonstrating that service vehicles are able to enter and exit the site in a forward direction exclusively.

Chapter B6: Buffers and Minimising Land Use Conflict

Detailed acoustic modelling was undertaken for the submitted noise assessment report, covering vehicle movements, delivery activity, voices, commercial tenancy noise breakout, and mechanical plant. The modelling predicts that noise levels will generally comply with noise intrusion criteria at most receptors, with only minor night-time exceedances of around 1 dB(A) within the Habitat site. A cumulative assessment including the former Barrio Café and Stage 4 similarly shows mostly compliant levels, with small evening and night-time exceedances up to 2 dB(A).

The acoustic report predicted that any occasional events involving live amplified music within Habitat would likely exceed noise criteria by up to 9 dB(A) at nearby residential receptors and up to 20 dB(A) at sensitive locations. Council's Environmental Health Officer therefore recommended that a Noise Management Plan be prepared post-consent, detailing procedures for managing events and other noise related issues within Habitat.

Chapter B8: Waste Minimisation and Management

An internal, off-street loading bay is provided at ground level to accommodate waste collection activities. Two separate storage areas are included: one dedicated to commercial waste bins and another for residential apartment bins. A rear-loading waste collection vehicle will reverse into the loading bay off Wallum Place to collect residential and commercial waste. Collection will be handled by a commercial waste contractor such as Richmond Waste.

Council's Resource and Recover Officer raised concerns that 2 x 240L bins (as nominated in the OWMP) would be insufficient to cater for the proposed 78 apartments given the upcoming EPA Food Organic and Garden Organic (FOGO) mandate which will make FOGO collection services mandatory for all residential households by 1 July 2030.

To address these shortcoming, it was recommended that a revised Demolition and Construction Waste Management Plan be approved by Council prior to the issue of a construction certificate should consent be granted. The revised plan should detail adequate storage and management procedures for general waste, recycling, and organics, along with details of signage and appropriate mechanical ventilation systems for the bin storage rooms.

Chapter B15: Public Art

Under Chapter B15, public art must be provided to the value of at least 2.5% of development costs for the first \$2m, and a further 1% of costs over \$2m. The commercial part of the

development has an Estimated Development Cost of \$1,830,365. Public art is therefore required with a minimum value of \$46,334. The applicant is also seeking to include unimplemented contributions for Stages 2 and 3 of habitat (\$25,000 per stage). The overall contribution is \$96,334.

The application includes public art in the form of a sculptural installation. The proposed public art has been reviewed by Council's Public Art Committee and was deemed acceptable.

Chapter D1 Residential Accommodation in Urban, Village and Special Purpose Zones

D1.10 Shop Top Housing

Part D1.10 requires a minimum of 25% of the floor space of mixed-use developments to be set aside for commercial or retail purposes. The proposed development apportions 22% of the total GFA to commercial and retail premises.

A minor variation of ~3% to the prescriptive 25% GFA requirement is considered acceptable in this instance. Notwithstanding the numerical variation, the proposal is considered to achieve overall objective of D1.10.1 to provide "shop-top housing accommodation close to transport, employment and services".

D1.10.6 Site Facilities

Part D1.10.6 of the DCP requires at least one car wash bay to be provided for any shop-top housing development containing more than ten residential units. The submitted plans do not identify any car wash facilities for the proposed development.

While it is acknowledged that car washing facilities could potentially be provided elsewhere within the Habitat complex, insufficient information has been submitted to demonstrate how this could be practically achieved. As a result, the proposal is considered unsatisfactory in relation to the DCP requirements for site facilities as it is a realistic expectations for residents that some car washing facilities will be available. This matter contributes to the reasons for refusal in conjunction with the other issues identified elsewhere in this report.

E5.5 Habitat

Part E5.5 of Chapter E5 is structured in two parts: (1) an initial section that outlines the desired future character and planning principles for the precinct, and (2) a second section that provides more detailed design and development controls.

E5.5.3 Desired Future Character and Development Principles

E5.5.3 Desired Future Character and Development Principles

Parts E5.5.3.1 to E5.5.3.4 outline a Statement of Desired Future Character, Planning Principles, and a Precinct Plan for Habitat. These provisions establish the planning framework for Habitat's desired future character.

According to Part E5.5.3, the desired future character is achieved by:

1. locating specific land uses and development in accordance with the precinct plan,
2. adhering to the overarching planning principles,
3. satisfying the objectives and performance criteria of specific development controls, and
4. achieving the ecological enhancement goals for the site.

Assessment

The proposed development is not considered to achieve the desired future character for Habitat as envisaged by Parts E5.5.3. The proposal results in the loss of a key internal pedestrian access connection through Precinct 1A and is inconsistent with the adopted Precinct Plan. The removal of this connection reduces pedestrian connectivity and does not align with the site planning principles for Habitat.

While the previously approved Stage 5 scheme also involved the removal of Penny Lane, that proposal retained pedestrian connectivity through the provision of a centrally located public park within Precinct 1A, supported by multiple connecting pathways. These elements provided a compensatory public domain outcome that encouraged pedestrian circulation.

As such, it is considered that the proposal does not achieve the desired future character for Habitat as contemplated by Part E5.5.3 of the DCP.

E5.5.4 Design and Development Controls

E5.5.4.1 Land Use, Management and Environmental Assessment

1. Land Use and Density

Part E5.5.4.1 sets maximum residential density of 152 dwellings for Habitat. Development within Precinct 1A is limited to a maximum gross floor area (GFA) of 6,700 m² and a total of 126 bedrooms.

The proposed Stage 5 building will result in 172 dwellings across the site, exceeding the prescribed maximum of 152 dwellings. In relation to gross floor area and bedroom numbers, the Stage 5 building has a GFA of 6,697 m² and provides 82 bedrooms, which complies with the maximum density controls.

Notwithstanding the numerical non-compliance, the proposed development is considered to achieve the overall density Objectives of this section for the following reasons:

- The residential density standards for Habitat were established when Precinct 1A was intended to accommodate lower-density commercial terraces and “tiered living” dwelling types with higher bedroom counts. Since that time, Habitat has evolved through the approval of hotel and commercial development. In this context, the additional dwelling density—which comprises 1- and 2-bedroom apartments—is considered acceptable, noting that the scheme complies with nominated bedroom and GFA standards.
- The new Staged 5 proposal facilitates a mixed-use development with a diversity of housing and employment floor space that is generally reflective of socio-economic and cultural context of the site.
- The proposal is unlikely to have significant environmental impacts, aside from potential stormwater issues which are addressed elsewhere in this report.

E5.5.4.2 Car Parking

Chapter E5 establishes special parking rates for the Habitat precinct which prevail over the parking rates provided under Chapter B4: Traffic Planning, Vehicle Parking, Circulation and Access. In general, these parking rates are lower than those in Chapter B4, in recognition that the live-work model envisioned for Habitat can lower total parking needs through the dual use of parking spaces.

The quantum of car parking provided is considered to be acceptable and satisfies the requirements of Part E5.5.4.2, as detailed in Table 9 below.

Table 9: Total parking requirements

Land use	Quantity	Parking Rate	Required Parking	Provided Parking
Residential Apartments	84 bedrooms	1 per room 1 guest per 4 units	84 residential 21 visitor	89 residential 20 visitor
Office	369m ²	1 per 40m ² * 0.7	7 Office	28 commercial 2 car share
Co-Lab (Office)	114m ²	1 per 40m ² * 0.7	2 Co-lab (Office)	
Retail	482m ²	1 per 20m ²	24 Retail	
Total			138	140

Table E5.3 of Chapter 5 specifies that 1 disabled space should be provided for each accessible apartment, and that 1 percent of spaces in total should be provided for persons with a disability. The proposal offers sufficient accessible parking and complies with the requirements of Part E5.5.4.2.

Table 10: Accessible parking requirements

Land use	Parking Rate	Required	Provided
Residential	1 per adaptable unit (AS 4299-1995)	8	8
Commercial	1 per 50 spaces (Class 6 NCC)	1	1
Total		9	9

The design provides 9 accessible parking spaces (8 residential and 1 commercial) which complies with the requirements of AS299 and DCP 2014.

E5.5.4.3 Building Design

Part E5.5.4.3 establishes a building design framework to ensure development reflects the architectural character and climate of Byron Bay and the Habitat precinct. It defines a 'Byron vernacular' style characterised by informal, lightweight construction set within lush landscaping and connected open spaces, with a mix of flat and pitched roof forms and materials typical of local architecture.

The proposed development is not considered to be consistent with the objectives or background intent of Part E5.5.4.3 of the DCP. While the Habitat precinct has evolved to accommodate higher densities and more contemporary development, the podium-based design represents a departure from the vernacular style and the design principles envisaged for Habitat.

E5.5.4.6 Water Cycle Management

Most of the stormwater management measures required under this section of the DCP have either been incorporated into the overall Habitat site design, through the provision of swales, detention ponds, and landscaped areas, or are no longer applicable due to the evolution of the proposal.

Notwithstanding, it is considered that the stormwater modelling and system design provided to date are insufficient to confirm compliance with the principles of integrated water cycle

management and water-sensitive urban design. Council's Development Engineer has advised that the modelling indicates the current bioretention system design would not provide adequate treatment to achieve the required water quality targets.

(d) Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

(e) Section 4.15(1)(a)(iv) - Provisions of Regulations

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application. The proposed development involves demolition of Penny Lane and therefore conditions should be imposed if consent is granted requiring demolition works to be carried out in accordance with Australian Standard AS 2601—2001: *The Demolition of Structures*.

Section 62 (consideration of fire safety) and Section 64 (consent authority may require upgrade of buildings) of the 2021 EP&A Regulation are not relevant to the proposal.

3.2 Section 4.15(1)(b) - Likely Impacts of Development

The likely significant impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below. Key issues:

The consideration of impacts on the natural and built environments includes the following:

- **Context and setting** – A mixed-use development on the site is supported in principle and aligns with the planning intent for Habitat. However, as discussed elsewhere in this report, the extensive at-grade car parking and large podium do not reflect the site context or the urban character envisaged under Chapter E5 of DCP 2014.
- **Access and traffic** – the proposal provides adequate carparking and the estimated traffic generation is within the capacity of the local road network.
- **Public Domain** – The proposal diminishes the public domain by replacing a key pedestrian link with a dominant parking podium, reducing permeability and creating a vehicle-oriented interface to Wallum Place.
- **Proximity to pipelines** – The proposed Stage 5 building is located approximately 2m from a 350mm sewer rising main that runs parallel to the Wallum Place frontage. Council's System Planning Officers have confirmed that the new Stage 5 building does not encroach on the pipes zone of influence, but there will need to be an easement registered to protect Council's infrastructure should consent be granted to the DA.
- **Utilities** – All utilities are available to the site including reticulate water, sewer, electricity, and telecommunications. The site is also serviced by a dedicated recycled water connection for non-potable uses such as gardening and washing.

- **Groundwater** – The proposal is unlikely to intercept groundwater or affect ground water recharge in the locality.
- **Flora and fauna impacts** –The site is not identified as having biodiversity values. There are no threatened species or ecological communities on the site that would be affected by the proposed development.
- **Natural environment** – The proposed works will not significantly alter the site’s natural contours which are already quite flat, nor will it significantly alter drainage or soil stability on adjoining sites.
- **Noise and vibration** – Noise and vibration can be adequately managed through the implementation of a construction management plan if necessary.
- **Natural hazards** – The site is identified as Bush Fire Prone Land, with the primary hazard being forest on the opposite side of Wallum Place. General Terms of Approval have been issued by the RFS.
- **Safety, security and crime prevention** – The applicant notes that appropriate lighting will be installed in the covered car parking area to ensure safety and security is not compromised. The car parking area generally has clear lines of site and does not propose and secluded areas that could pose a safety risk.
- **Social impact and economic impact** – The proposed development will not have an adverse social or economic impact on the area.
- **Cumulative impacts** – The proposal development is sited within an existing mixed used precinct and is unlikely to result in cumulative environmental, traffic or noise impacts beyond those already considered in the original planning for the site.

3.3 Section 4.15(1)(c) - Suitability of the site

The site attributes are considered suitable for a mixed use development. The land is relatively flat and unconstrained and sits within an established mixed use precinct. The site has access to urban services and is relatively well connected to shops, transportation and employment lands.

3.4 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 5 of this report.

3.5 Section 4.15(1)(e) - Public interest

Approval of the proposal is likely to set an undesirable precedent and would be contrary to the public interest.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 5.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 11: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Referral/Consultation Agencies			
Essential Energy	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	Referred for development within 2m of underground electricity infrastructure. Essential Energy raised no concerns regarding the potential safety risks associated with the development. Standard notes were provided for inclusion in any consent notice regarding safety risks when building near powerlines.	Y
Integrated Development (S 4.46 of the EP&A Act)			
NSW Rural Fire Service (RFS)	Section 100B Rural Fires Act 1997 in respect of subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes.	General Terms of Approval were issued by the RFS on 13 February 2026.	Y

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 12**.

Table 12: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	<p>Council's Development Engineer raised serious concerns over the stormwater modelling and system design. He also noted that the proposed car parking layout did not provide suitable carparking for the proposed liveable housing units in accordance with the Livable Housing Guidelines.</p> <p>It was concluded that the proposal could not be supported on engineering grounds for the following reasons:</p> <p>Non-compliant parking for liveable units The ground-floor parking layout meets the overall parking demand numerically; however, it fails to provide the required number of compliant residential accessible parking spaces to cater for the Silver Level Housing. Achieving compliance would necessitate a substantial redesign of the ground-floor layout,</p>	N

which is expected to reduce the total number of parking spaces given the limited available area and the design constraints associated with accessible parking.

Stormwater modelling and system design

The stormwater modelling is unreliable and does not match the drainage system shown on the plans, so it cannot reliably demonstrate compliance with stormwater quantity requirements.

In particular:

- The stormwater detention model (DRAINS) does not match the drainage system shown on the plans, so it cannot reliably demonstrate compliance with stormwater quantity requirements. The modelling of the 20 × 67 mm outlets for the Atlantis Flo-Cell system and the 20 × 102 mm outlets for the Atlantis Flo-Tank system using the DRAINS “Sag Inlet” spreadsheet does not represent the hydraulic behaviour or orifice-controlled outflow of these multiple small-diameter outlets. Consequently, the model does not accurately reflect the on-site detention outlet performance or reliably to demonstrate compliance with Comprehensive Guidelines for Stormwater Management. The DRAINS “Surcharge Pit” spreadsheet is the closest available tool for approximating these outlet arrangements.
- Run-off from the surcharge pit is directed into the units north of the vegetated area through openings between planter boxes and other gaps with levels at or below the top of the vegetated area.
- There is insufficient available depth within the vegetated area to accommodate both filter media layer and the Atlantis Flo-Cell system.
- The proposed bioretention basin and media filtration within the vegetated area on Level 1/Podium Level does not work because extended detention depth has not been provided resulting an ineffective stormwater quality system.
- The proposed landscaping on the architectural sections drawing compromises the bioretention basin media layer and the Atlantis Flo-Cell system. The deep root systems of the proposed trees extend into the bioretention filter media layer and the underlying Atlantis Flo-Cell system, potentially impacting hydraulic performance and causing damage to the drainage layer/Atlantis Flo-Cell system.
- Input modelling parameters for the bioretention basin and media filtration areas of 980m² and 965m² respectively in MUSIC cannot be accommodated within the vegetated area resulting in unreliable stormwater quality results.
- There is no provision of high flow bypass in the design.
- The proposed cross section “*B.3 Sketch section showing the design intent of podium landscaping*” as part of the response to the request for further information by Planners North dated 16th February 2026, compromises the effectiveness of the media filtration system and bioretention basin as it reduces

	<p>the effective treatment areas of the stormwater quality improvement devices.</p> <ul style="list-style-type: none"> The outlets sizing in MUSIC to achieve the notional detention time to effectively achieve the results of the treatment train effectiveness does not align with the outlet sizing adopted in the DRAINS. 	
Building Certifier	Council's Building Surveyor agreed that the proposed development appears capable of meeting NCC requirements. The certification for the Construction Certificate may require some performance solutions which will be addressed by the certifier.	Y
Environmental Health	Council's Environmental Health Officer has reviewed the LUCRA and the Acoustic Assessment Report and determined that the proposal is unlikely to result in significant noise or amenity impacts. The Acoustic Assessment Report notes the possibility of occasional live events that may exceed the applicable noise criteria, yet it does not provide any recommendations for managing these impacts. Accordingly, Council's Environmental Health Officer recommends that a detailed Noise Management Plan be prepared and approved following consent. This plan should include, among other measures, a prohibition on amplified music within the building's common areas.	Y
Ecological Consultant	Council's Ecological Consultant Reviewed the application and commented that the proposal would not have an adverse ecological impact given the site is generally cleared of vegetation. No conditions were recommended.	Y
Resource Recovery	<p>Council's Resource Recovery Officer raised concerns that no construction waste management plan had been submitted with the application, and the operational waste management plan did not sufficiently deal with the need for disposal of organic matter, particularly given the upcoming 2020 FOGO mandate by the NSW EPA.</p> <p>A recommendation was made for conditions to be imposed requiring:</p> <ul style="list-style-type: none"> A detailed demolition and construction waste management plan to be prepared and implemented during the construction phase of the development. Further details provided demonstrating that the waste collection bay has been designed to accommodate a HRV collection vehicle. Further details confirming that the bulk bin storage area is capable of accommodating up to 9 x 240L FOGO bins. 	Y
Systems Planning Officer	Council's Systems Planning Officer noted that the proposed Stage 5 building is in close proximity to a critical sewer rising main that runs parallel with Wallum Place. The building has been assessed as being outside the pipes zone of influence although an easement should be registered over the pipe if consent is	Y

	granted to the application. Water and Sewer levies are also payable under Section 64 of the Water Management Act 2000.	
Development Contributions Officer	<p>Council's Development Contributions Officer recommended that Section 7.11 contributions be imposed in accordance with the Schedule in the Recommended Conditions of Consent.</p> <p>It was noted that:</p> <ul style="list-style-type: none"> • Section 7.11 contributions and Section 7.12 levies are applicable under the Byron Shire Development Contributions Plan 2012 as the development contains both residential and commercial land uses. • Based on the EDC provided, the Section 7.11 Contributions are calculated at ~\$994,000 while Section 7.12 Levies are calculated at ~\$514,000. • Section 7.11 Contributions, being the higher of the two, are applicable and Section 7.12 Contributions will not be charged. • Existing Lot 14 in DP 271119 does not carry a Standard Development Unit Credit as no development contributions were paid on development consent 10.2021.219.1 when Lot 14 was originally subdivided. 	Y
Public Art Panel	Council's Public Art Panel review the proposed sculpture installation and raised no concerns. Conditions are recommended to ensure that the public art plan is fully implemented prior to the occupation of the development.	Y

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from 6 June 2025 until 3 July 2025.

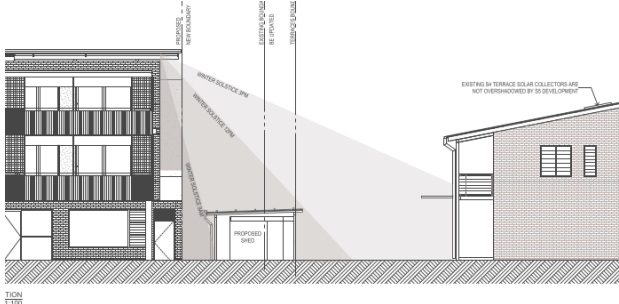
The notification included the following:

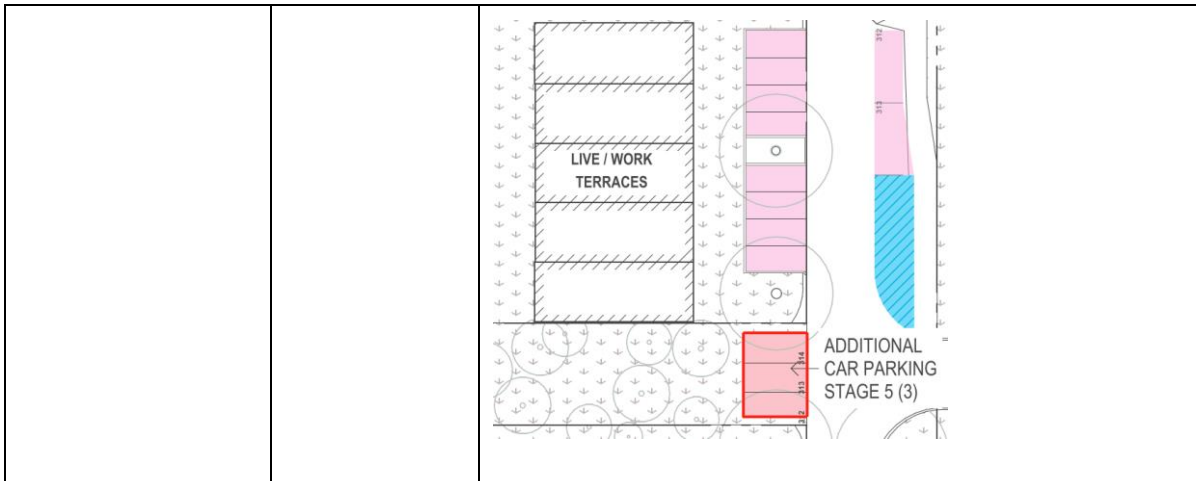
- A sign placed on the site.
- Notification letters sent to adjoining and adjacent properties (approximately 100); and
- Notification on the Council's website.

The Council received a total of two (2) unique submissions. The issues raised in these submissions are considered in **Table 13**.

Table 13: Community Submissions

Issue	No of submissions	Council Comments
Overshadowing	1	Issue: One submitter raised concerns that the proposed development could potentially overshadow the open

		<p>space and living areas of their dwelling to the east, resulting of loss of winter sun.</p> <p>Outcome: The new Stage 5 building will overshadow the private outdoor space of the Porter Street terraces to the east in the afternoon, from 1pm to 3pm at mid-winter. Solar access will be relatively unimpeded in winter mornings and throughout the summer months. The proposal satisfies both Council and ADG solar access requirements, which stipulate that at least 2 hours sunlight should be provided to neighbouring private open space between 9am and 3pm on 21 June.</p> <p>To reduce the severity of the impact, the upper levels of the new Stage 5 building would need to be setback substantially from the eastern boundary which is considered an impractical outcome in the circumstances.</p> 
<p>Car parking</p>	<p>1</p>	<p>Issue: A second submitter expressed a view that the three new car spaces planned in front of Pocket Park should be reduced to two and relocated to the northeast, so they adjoin the existing eight spaces. This would provide the terraces at 2–10 Porter Street with a total of ten spaces—two per dwelling, consistent with the adjoining block at 12–20 Porter Street —and would preserve the Pocket Park as an uninterrupted, visually cohesive open space without the intrusion of parked cars.</p> <p>Outcome: It is agreed that removing the car parking spaces fronting the pocket park would improve the function and appearance of this area. No conditions are recommended in this regard as the application is recommended for refusal for reasons explained elsewhere in this report.</p>



5. KEY ISSUES

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

5.1 Stormwater Design and Function

The proposed development relies on a complex podium-level stormwater detention and treatment system, but significant uncertainties remain regarding whether the system can function as intended. Council’s Development Engineer has identified that the stormwater modelling used to predict runoff volumes, peak flows, and water quality outcomes is unreliable and internally inconsistent. As a result, there is no confidence that the system could manage stormwater flows safely or deliver the proposed level of treatment.

These shortcomings present a realistic risk of podium level apartments being flooded during heavy rainfall. From a water-quality perspective, reduced detention times, insufficient soil depth, and the absence of a high-flow bypass mean that pollutant removal may be ineffective, and the system itself may be damaged during large storm events.

5.2 Landscape Design

The proposed Stage 5 development relies on a landscaped podium to provide residential amenity, visual privacy, stormwater treatment, and a sense of place through endemic planting. Insufficient information has been provided to demonstrate that the podium can sustainably perform these functions. In particular, the proximity of deep-rooted vegetation to the Atlantis Flo-Cell system raises concerns regarding potential root intrusion and long-term stormwater performance.

5.3 Precinct Plan and Loss of Pedestrian Connectivity

The proposed development removes a key NW to SE internal pedestrian connection and replaces it with a large car parking area. This results in a significant alteration to the movement framework for Habitat and is inconsistent with the adopted Precinct Plan under Chapter E5 of DCP 2014. Consequently, the development creates a less permeable internal environment that is not aligned with intended character and function of the Habitat precinct.

5.4 Built Form, Bulk and Site Integration

While the proposed Stage 5 development is comparable in height and general materiality to Stage 4 and the previously approved Stage 5 scheme, the extensive ground-level car parking and concrete podium significantly increase the perceived visual bulk of the proposed development. The podium-based form creates a heavier ground-level outcome and departs from the desired future character and vernacular style envisaged for Habitat under Chapter E5 of DCP 2014.

6. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions, and the key issues identified in this report, it is considered that the application cannot be supported.

It is considered that the key issues as outlined in Section 5 have not been resolved satisfactorily through amendments to the proposal nor are they capable of being resolved through conditions of consent.

7. RECOMMENDATION

That the Development Application No. 10.2025.516.1 for mixed use development comprising on-grade parking, commercial premises, pocket park and back of house facilities on the ground level; 37 shop top housing apartments, a landscaped podium, a swimming pool and resident amenities on level 1 and 41 shop top housing apartments on level 2 and subdivision of Penny Lane from Lot 1 DP271119 for integration with Lot 14 DP271119, at 5 Penny Lane, Byron Bay, be REFUSED pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 subject to the draft reasons for refusal attached to this report at **Attachment A**.

The following attachments are provided:

- Attachment A: Recommended reasons for refusal.
- Attachment B: ADG Compliance Table.
- Attachment C: Clause 4.6 Request.
- Attachment D: Essential Energy Comments.
- Attachment E: Rural Fire Service – Section 100B General Terms of Approval.