

## COUNCIL ASSESSMENT REPORT

Panel Reference	PPSNTH-64
DA Number	10.2021.474.1 PAN 33806
LGA	Byron Shire
Proposed Development	Multi Dwelling Housing consisting of Fourteen (14) Townhouses, Six (6) Swimming Pools, Removal of Sixteen (16) Trees, Demolition of Existing Dwelling, Associated Earthworks, Upgrade to Drainage Channels and Compensatory Planting
Street Address	103 Paterson Street, Byron Bay NSW 2481
Applicant/Owner	Planit Consulting
Date of DA lodgement	24 September 2020
Total number of Submissions	• [69]
Number of Unique Objections	• [41]
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	<b><i>Schedule 7 Regionally significant development 3(b)</i></b> <b><i>3 Council related development over \$5 million</i></b> <b><i>(b) the council is the owner of any land on which the development is to be carried out...</i></b>
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> <li>Byron LEP 2014; SEPP 55 Remediation of Land; SEPP (BASIX) 2004; SEPP (Infrastructure) 2009; SEPP (State and Regional Development) 2011</li> <li>Byron Development Control Plan 2014</li> <li>Environmental Planning and Assessment Regulation 2000 : Clause 49 owner's consent ; Clause 92 demolition</li> </ul>
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> <li>Architectural Plans - Site Plans_PAN-33806</li> <li>Architectural Plans - All homes_PAN-33806</li> <li>RFI Cover Letter and Report_PAN-33806</li> <li>All other documents submitted by the applicant are on the planning portal.</li> </ul>
Clause 4.6 requests	<ul style="list-style-type: none"> <li>A written request to vary Clause 4.3 Height of Buildings has not been prepared in accordance with Local Environmental Plan (LEP) clause 4.6</li> <li>The development is in the R2 Low Density Residential</li> </ul>
Summary of key submissions	<p>Issues raised include:</p> <ul style="list-style-type: none"> <li>owners consent not granted for private drainage works on private property;</li> <li>no easement for drainage works; flooding and stormwater;</li> <li>fill will remove flood storage capacity; obstruction / reduction of the natural flow of stormwater;</li> <li>future flood damage;</li> <li>overdevelopment; size/scale in this location; traffic and parking inadequacies;</li> <li>noise from people using fourteen dwellings and pools / pool pumps;</li> <li>use of the development for holiday letting; use of public land;</li> <li>biodiversity, loss of mature trees; sustainability, energy, water; access and mobility; lack of common property;</li> <li>boundary setbacks;</li> <li>overlooking;</li> <li>inadequate landscaping;</li> <li>character; amenity;</li> <li>cumulative impacts;</li> <li>dangerous access, pedestrian safety;</li> <li>non compliance with legislations and other instruments</li> </ul>
Report prepared by	Patricia Docherty
Report date	15 June 2021

### Summary of s4.15 matters

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

**Yes**

**Legislative clauses requiring consent authority satisfaction**

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?  
*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

**Yes**

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**Clause 4.6 Exceptions to development standards**

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

**No**

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**Special Infrastructure Contributions**

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

**Not applicable**

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

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**Conditions**

Have draft conditions been provided to the applicant for comment?

**No**

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

## DEVELOPMENT APPLICATION EVALUATION REPORT

Doc No. #A2021/20775

<b>DA No:</b>	10.2020.474.1		
<b>NSW PP</b>	PAN-33806		
<b>Proposal description:</b>	Multi Dwelling Housing consisting of Fourteen (14) Townhouses, Six (6) Swimming Pools, Removal of Sixteen (16) Trees, Demolition of Existing Dwelling, Associated Earthworks, Upgrade to Drainage Channels and Compensatory Planting		
<b>Property description:</b>	LOT: 101 DP: 839601, LOT: 86 DP: 708473		
	103 Paterson Street BYRON BAY, 78 Shelley Drive BYRON BAY		
<b>Parcel No/s:</b>	193620, 122160		
<b>Applicant:</b>	Planit Consulting Pty Ltd		
<b>Owner:</b>	Hunter Hopkins Project 7 PTY LTD		
<b>Zoning:</b>	R2 Low Density Residential		
<b>Date received:</b>	24 September 2020		
<b>Integrated / Designated Development:</b>	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input checked="" type="checkbox"/> Not applicable
<b>Concurrence required</b>	Yes – Enter CNR No.12947		
<b>Public notification or exhibition:</b>	<ul style="list-style-type: none"> <li>– Level 3 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications</li> <li>– Exhibition period: 7/10/20 to 27/10/20</li> <li>– Submissions received: 41 Objections (69 including additional petition signatures)</li> <li>– Submissions acknowledged: <input checked="" type="checkbox"/> Yes      <input type="checkbox"/> No      <input type="checkbox"/> N/A</li> </ul>		
<b>Planning Review Committee:</b>	Not applicable		
<b>Development Standard Variation Requests</b>	Clause 4.6		
<b>Delegation to determine</b>	Northern Regional Planning Panel		
<b>Issues:</b>	<ul style="list-style-type: none"> <li>• Owners consent for works on adjoining private land;</li> </ul>		

	<ul style="list-style-type: none"> <li>• Objectives of Low density residential zone;</li> <li>• site density and intensity of development;</li> <li>• Overdevelopment of site resulting amenity and privacy impacts in low density residential zone;</li> <li>• impact on neighbourhood character;</li> <li>• traffic impacts;</li> <li>• Clause 4.6 variation has not been submitted in writing to allow for assessment of breach of 9 metre height limit;</li> <li>• sunlight impacts;</li> <li>• solar access to private open space;</li> <li>• privacy to courtyards and pools;</li> <li>• privacy to neighbours from upper floors and roof terraces;</li> <li>• common landscaping does not reflect scale of development;</li> <li>• landscaping is not sensitive to site ecology; biodiversity impacts - not designed to maximise the number of trees retained on the site;</li> <li>• flooding and local drainage patterns; impact of flooding and stormwater;</li> <li>• stormwater disposal on community land - private works on community land;</li> <li>• stormwater works on adjoining private land with no owners consent; parking design;</li> <li>• grades within site do not comply with adaptable housing standards;</li> <li>• no garbage collection from street;</li> <li>• public interest.</li> </ul>
<b>Summary:</b>	<p>The DA proposes Multi Dwelling Housing consisting of Fourteen (14) Townhouses, Six (6) Swimming Pools, Removal of Sixteen (16) Trees, Demolition of Existing Dwelling, Associated Earthworks, Upgrade to Drainage Channels and Compensatory Planting.</p> <p>The proposed development is substantially inconsistent with the objectives of the R2 Low Density Residential zone and substantially inconsistent with the planning controls applicable to the site as prescribed by Byron DCP 2014. The development has generated significant community opposition and is not in the public interest.</p> <p>The information submitted with the development application fails to address the relevant constraints applying to the site. The issues raised by the development and reasons for refusal are documented in this report, and the proposal is considered to be an overdevelopment of the site in the context of the zoning and its location within a low density residential neighbourhood. The application is recommended for refusal.</p>
<b>Recommendation:</b>	<p><b>Pursuant to Section 4.16 of the Environmental Planning &amp; Assessment Act 1979, Development Application No. 10.2020.474.1 for Multi Dwelling Housing consisting of Fourteen (14) Townhouses, Six (6) Swimming Pools, Removal of Sixteen (16) Trees, Demolition of Existing Dwelling, Associated Earthworks, Upgrade to Drainage Channels and Compensatory Planting, be</b></p>

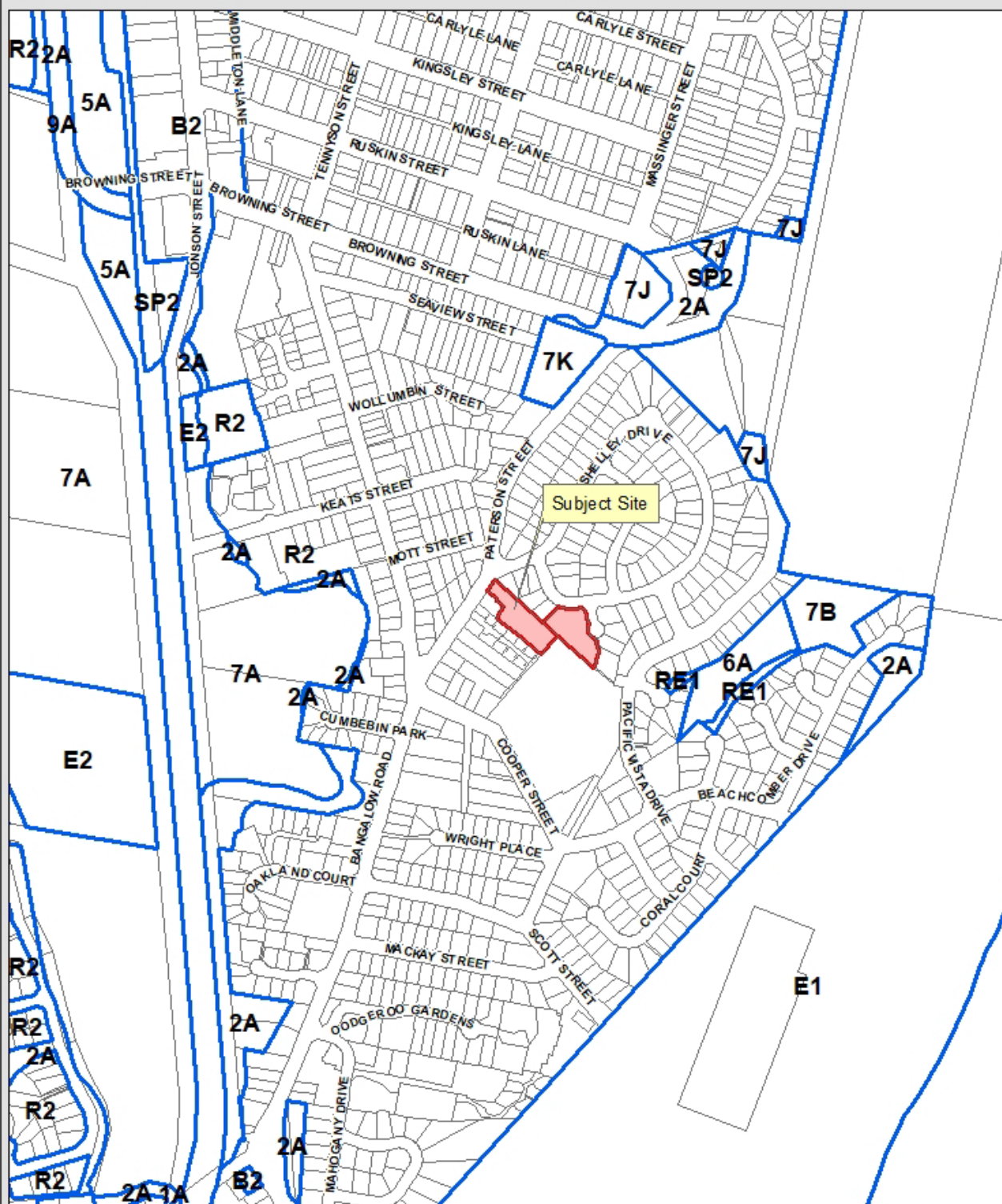
refused for the following reasons:

1. Pursuant to Environmental Planning & Assessment Regulation 2000 clause 49, the application fails to demonstrate that the owner's corporation has consented to lodge a development application to undertake stormwater work on Strata Plan 47184.
2. Pursuant to Section 4.15(1)(a)(i) the proposal is inconsistent with the objectives of the R2 Low Density Residential zone having regards to the site density and intensity of development;
3. Pursuant to Section 4.15(1)(a)(i) the proposal is inconsistent with Clause 4.4 Height of Buildings and Clause 4.6 Variations to Development Standards having regard to the overall maximum height of the building partly breaching the maximum 9 metres applicable to the site under Byron LEP 2014;
4. Pursuant to Section 4.15(1)(a)(i) the proposal is inconsistent with the provisions of Clause 6.2 Earthworks under Byron LEP 2014;
5. Pursuant to Section 4.15(1)(a)(i) the proposal is inconsistent with the provisions of Clause 6.6 Essential Services under Byron LEP 2014;
6. Pursuant to Section 4.15(1)(a)(iii) the proposal to remove vegetation on the site is inconsistent with requirements under Chapter B1 Biodiversity and Chapter B2 Tree and Vegetation Management of Byron DCP 2014;
7. Pursuant to Section 4.15(1)(a)(iii) the development will not mitigate the stormwater discharge of the site back to predevelopment levels and is inconsistent with Chapter B3 Services of Byron DCP 2014;
8. Pursuant to Section 4.15(1)(a)(iii) the development will not provide accessible parking dimensions in the garages of the four nominated accessible units and is inconsistent with Chapter B4 Section B4.2.2 Parking Layout Standards of Byron DCP 2014;
9. Pursuant to Section 4.15(1)(a)(iii) the proposal is inconsistent with requirements under Chapter B8 Waste Management and Minimisation of Byron DCP 2014;
10. Pursuant to Section 4.15(1)(a)(iii) the proposal is inconsistent with requirements under Chapter B9 Landscaping of Byron DCP 2014;
11. Pursuant to Section 4.15(1)(a)(iii) the proposal does not comply with Australian Standards AS1428, AS2890 & AS4299 and fails to satisfy the requirements of Chapter B13 Access and Mobility of Byron DCP 2014;
12. Pursuant to Section 4.15(1)(a)(iii) the proposal of up to 3 metres fill is inconsistent with Chapter B14 Excavation and Fill of Byron DCP 2014;
13. Pursuant to Section 4.15(1)(a)(iii) the proposal is inconsistent with the building height plane requirements under Chapter D1 Residential Accommodation in Urban, Village and Special Purpose

**Zones of Byron DCP 2014**

- 14. Pursuant to Section 4.15(1)(a)(iii) the proposal is inconsistent with the private open space and courtyard requirements under Chapter D1 Residential Accommodation in Urban, Village and Special Purpose Zones of Byron DCP 2014 as the development generates excessive shadow impacts and provides inadequate sunlight access on private courtyards and open space and a lack of privacy between dwellings;**
- 15. Pursuant to Section 4.15(1)(a)(iii) the proposal is inconsistent with requirements applicable to the site and proposed multi dwelling housing under Chapter D1 Residential Accommodation in Urban, Village and Special Purpose Zones of Byron DCP 2014;**
- 16. Pursuant to Section 4.15(1)(a)(iii) the proposal is inconsistent with the Character Provisions under Chapter E5 Section - E5.8.4 Character Narratives of Byron DCP 2014;**
- 17. Pursuant to Section 4.15(1)(b) the proposal having regards the developments density of fourteen (14) dwellings and intensity of development will have an unacceptable impact on the neighbourhood character, and generates deleterious impacts on neighbours through overshadowing and loss of privacy;**
- 18. Pursuant to Section 4.15(1)(c), the site is considered unsuitable for the density and intensity of development as proposed;**
- 19. Pursuant to Section 4.15(1)(e) the proposal is considered to be an overdevelopment of the site and is not in the public interest creating an undesirable precedent.**

**LOT: 101 DP: 839601, 103 Paterson Street BYRON BAY &  
LOT: 86 DP: 708473, 78 Shelley Drive BYRON BAY NSW 2481  
PN 193620 & 122160**



0 150 60 90 120 Metres

Scale 1:7,500



Disclaimer: While all reasonable care has been taken to ensure the information contained on this map is as accurate as possible, no warranty is given that the information contained on this map is free from error or omission. Any reliance placed on such information shall be at the user's discretion. Please verify the accuracy of the information prior to use.

Notes: This information does not constitute a contract. It is the property of the Byron Shire Council and is the NSW Department of Lands.



**Byron Shire**



Date: 8/06/2021

## 1. INTRODUCTION

### History/Background

History of Development applications from Council Records:

005.1992.00000316.001	Development Applications	Subdivision	Approved Delegation	03/09/1992
010.2003.00000311.001	Development Application	Removal of 4 trees & prune 3 trees	Approved	21/10/2003
010.2015.00000042.001	Development Application	Alterations and additions to a dwelling house, a swimming pool	Approved	20/03/2015
010.2015.00000042.002	Development Application	S96 for Relocation of Driveway	Refused	25/10/2016
010.2016.00000632.001	Development Application	Subdivision of One (1) Lot into Three (3) Lots and removal of Seven	Refused	05/05/2017
016.2020.00000051.001	Complying Development Cert	Secondary Dwelling & Detached Studio	Approved	11/06/2020

DA10.2016.632.1 was refused for the following reasons:

<b>Property description:</b>	LOT: 101 DP: 839601 <b>103 Paterson Street BYRON BAY</b>
<b>Development</b>	<b>Subdivision of One (1) Lot into Three (3) Lots and removal of Seven (7) Trees</b>
<b>Determination</b>	Application REFUSED
<b>Date determined:</b>	5 May 2017

#### REASONS FOR REFUSAL:

1. Pursuant to subsection 79C(1)(a)(i), the proposed development is not satisfactory having regard to clause 6.6 of Byron Local Environmental Plan 2014 because the development application does not demonstrate that the development will not have a significant impact in relation to access and driveway location, alignment, design, infrastructure clearances, sightlines and grades.
2. Pursuant to subsection 79C(1)(a)(iii), the proposed development is not satisfactory having regard to Byron Shire Development Control Plan 2014 Section B3.2.3 because the development application does not demonstrate that the development will not have a significant impact in relation to flooding and stormwater impacts, the lack of proposed easements in response to these impacts and impacts of any required easements on the development potential of the land.
3. Pursuant to subsection 79C(1)(a)(iii), the proposed development is not satisfactory having regard to Byron Shire Development Control Plan 2014 Section B4.2 because the development application does not demonstrate that the development will not have a significant impact in relation to access, driveway location, alignment and design, infrastructure clearances, sightlines and grades.
4. Pursuant to subsection 79C(1)(b), the development application does not demonstrate that the proposed development will not have significant environmental impacts on both the natural and built environments of the locality with respect to flooding, stormwater and access impacts.
5. Pursuant to subsection 79C(1)(c), the development application does not demonstrate that the site is suitable for the proposed development due to impacts related to flooding, stormwater and access.
6. Pursuant to subsection 79C(1)(e), the development application does not demonstrate that the proposed development would be in the public interest.

### Description of the proposed development

This application seeks approval for Multi Dwelling Housing consisting of Fourteen (14) Townhouses, Six (6) Swimming Pools, Removal of Sixteen (16) Trees, Demolition of Existing Dwelling, Associated Earthworks, Upgrade to Drainage Channels and Compensatory Planting.



The application originally sought approval for Multi Dwelling Housing consisting of Fourteen (14) Townhouses, Eight (8) Swimming Pools, Removal of Twenty Four (24) Trees, Demolition of Existing Dwelling, Associated Earthworks, Upgrade to Drainage Channels and Compensatory Planting on Council Owned Community Reserve. Amended documentation was prepared and submitted by the applicant in March 2021. This removed off set tree planting from the council owned community land retained works for off site stormwater drainage purposes.

This assessment considers amended plans and documentation. The latest set of plans are attached at Appendix A. The following extracts are provided below:



Site plan of proposed multi dwelling housing development:



Elevations – Southern Terraces

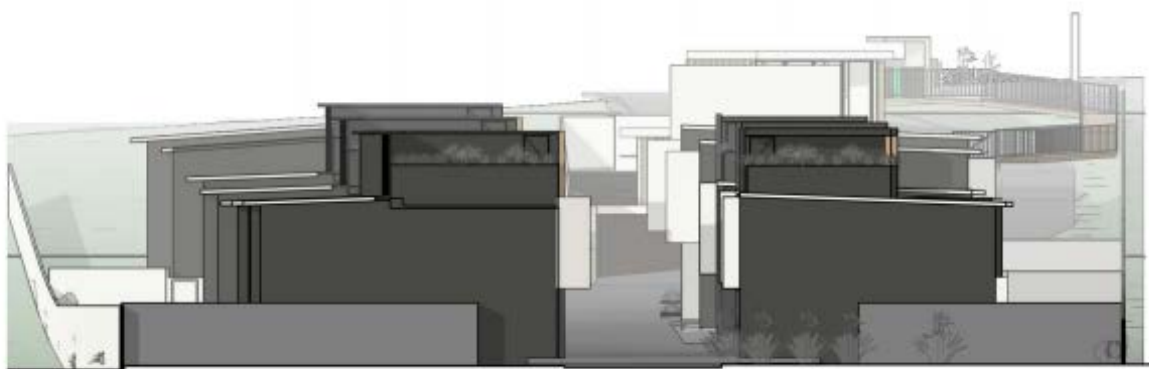


FRONT OF NORTHERN ASPECT  
SCALE: 1 : 300

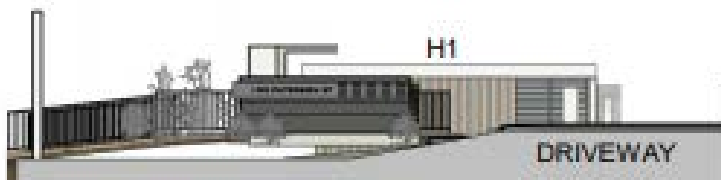


NORTH ELEV - REAR OF HOUSES  
SCALE: 1 : 300

## Elevations - Northern Terraces



EAST ELEV  
SCALE: 1 : 300



WEST ELEV  
SCALE: 1 : 300

## Eastern and Western Elevation

## Vegetation removal

The proposal would require extensive tree removal and clearing of remnant native vegetation on the site. An arboricultural report prepared by Peter Parker dated 19 March 2021 provides a recommendation that Trees # 8, 9, 10, 11, 12, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26 should be removed to allow construction of the development, and that trees # 1, 2, 3, 4, 5, 6, 7, 13, 14 and 15 should be retained in the development and protected during construction. The same report further recommends that fill material used in the Tree Protection Zone (TPZ) of tree # 15 must be blue metal cracker dust...to allow for best chance of survival of this tree in the development as proposed. A pump system should be installed to allow excess water to be removed from around the tree during times of heavy rainfall.



### LEGEND

- ① Coastal Cypress (*Callitris columellaris*)
- ② Swamp Mahogany (*Eucalyptus robusta*)
- ③ Swamp Mahogany (*Eucalyptus robusta*)
- ④ Broad-Lead Paperbark (*Melaleuca quinquenervia*)
- ⑤ Tuckeroo (*Cupaniopsis anacardioides*)
- ⑥ Swamp Mahogany (*Eucalyptus robusta*)
- ⑦ Swamp Mahogany (*Eucalyptus robusta*)

- ⑧ Sweet Viburnum (*Viburnum odoratissimum*)
- ⑨ Paperbark *Melaleuca* sp.
- ⑩ Silky Oak (*Grevillea robusta*)
- ⑪ Alexander Palm (*Archontophoenix alexandrae*)
- ⑫ Bangalow Palm (*Archontophoenix Cunninghamhamiana*)
- ⑬ Swamp Mahogany (*Eucalyptus robusta*)
- ⑭ Swamp Mahogany (*Eucalyptus robusta*)
- ⑮ Broad-Lead Paperbark (*Melaleuca*)

- ⑯ Broad-Lead Paperbark (*Melaleuca quinquenervia*)
- ⑰ Broad-Lead Paperbark (*Melaleuca quinquenervia*)
- ⑱ Broad-Lead Paperbark (*Melaleuca quinquenervia*)
- ⑲ Broad-Lead Paperbark (*Melaleuca quinquenervia*)
- ⑳ Broad-Lead Paperbark (*Melaleuca quinquenervia*)
- ㉑ Cheese Tree (*Glochidion sumatranum*)
- ㉒ Alexander Palm (*Archontophoenix alexandrae*)

- ㉓ Broad-Lead Paperbark (*Melaleuca quinquenervia*)
- ㉔ Broad-Lead Paperbark (*Melaleuca quinquenervia*)
- ㉕ Cheese Tree (*Glochidion sumatranum*)
- ㉖ Pink Euodia (*Melicope elleryana*)
- ㉗ Broad-Lead Paperbark (*Melaleuca quinquenervia*)



NOTE: Replacement/compensatory plantings and species for trees removed on site are as per Byron Shire Council's DCP 2014 Chapter 82 and Table 4 of the Arboricultural Impact Assessment Report compiled by Northern Tree Care, March 2021.

0 5 10 15 20 25

## Tree removal and native vegetation clearing Plan:



## Mapped areas of Paperbark Swamp Forest



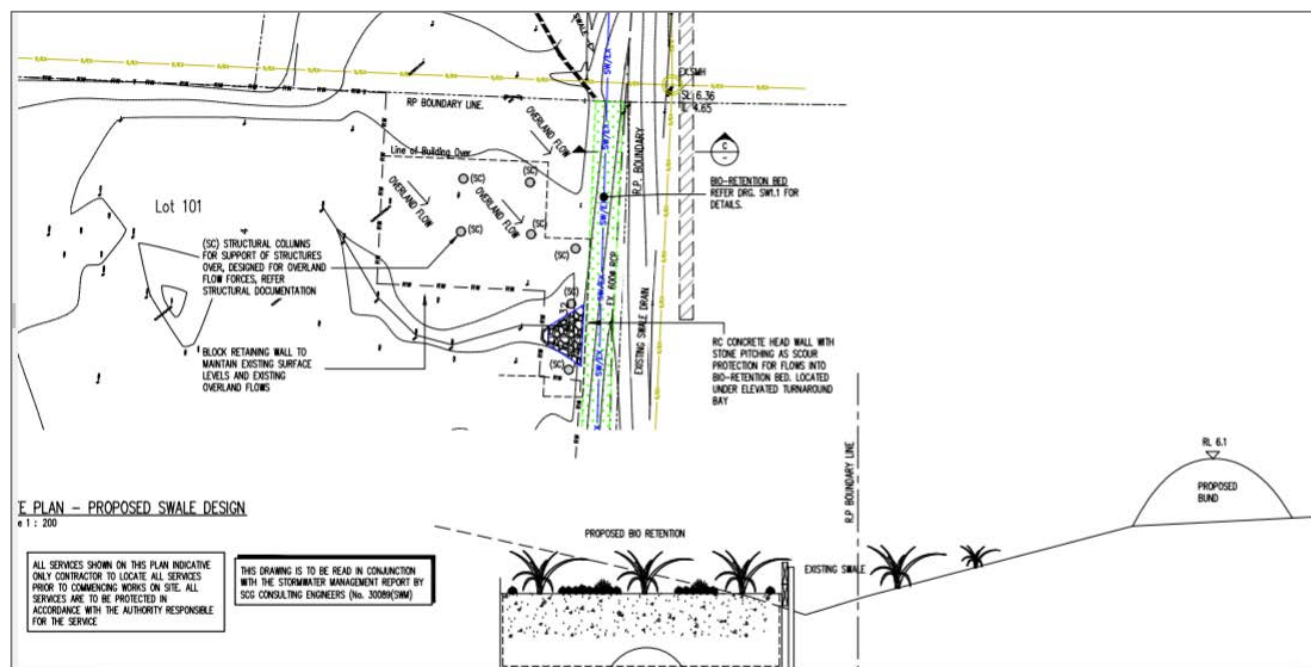
Although the proposed vegetation removal as described in the application has been reduced, the total amount of clearing relative to the existing vegetation on the site remains substantial. Of note is the proposed removal of approximately 750 m<sup>2</sup> of *Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregions* which is an Endangered Ecological Community listed under Schedule 2 of the BC Act. Furthermore, trees proposed to be retained are in very close proximity to the proposed development footprint.

Even if these trees can be retained during construction of the development (as concluded in the submitted arboricultural report) they are unlikely to be retained in the long-term. Trees located in such close proximity to residential development invariably lead to conflicts, and these conflicts are almost never resolved in the tree's favour. Therefore, it is considered that the full impacts to native vegetation have been underestimated.

### Stormwater works on adjoining properties

The proposal includes works on the privately owned land to the east and on Council owned community land to the north of the site.

Extract of stormwater plan with works on adjoining private land to east and community land to the north:



### Stormwater Plan Extract

#### Description of the site

A site inspection was carried out on 11 December 2020

Land is legally described	LOT: 101 DP: 839601, LOT: 86 DP: 708473
Property address	103 Paterson Street BYRON BAY, 78 Shelley Drive BYRON BAY
Land is zoned:	R2 Low Density Residential
Land area of Lot 101 is:	3816 m <sup>2</sup>
Property is constrained by:	Classified community land, mosquito risk zone, The majority of the existing vegetation on the site likely conforms to the description of the EEC <i>Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregions</i> .

	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Photos of Site below.



**Access driveway looking back to Street**







**Rear of the subject site**



**Community land – Council Reserve**







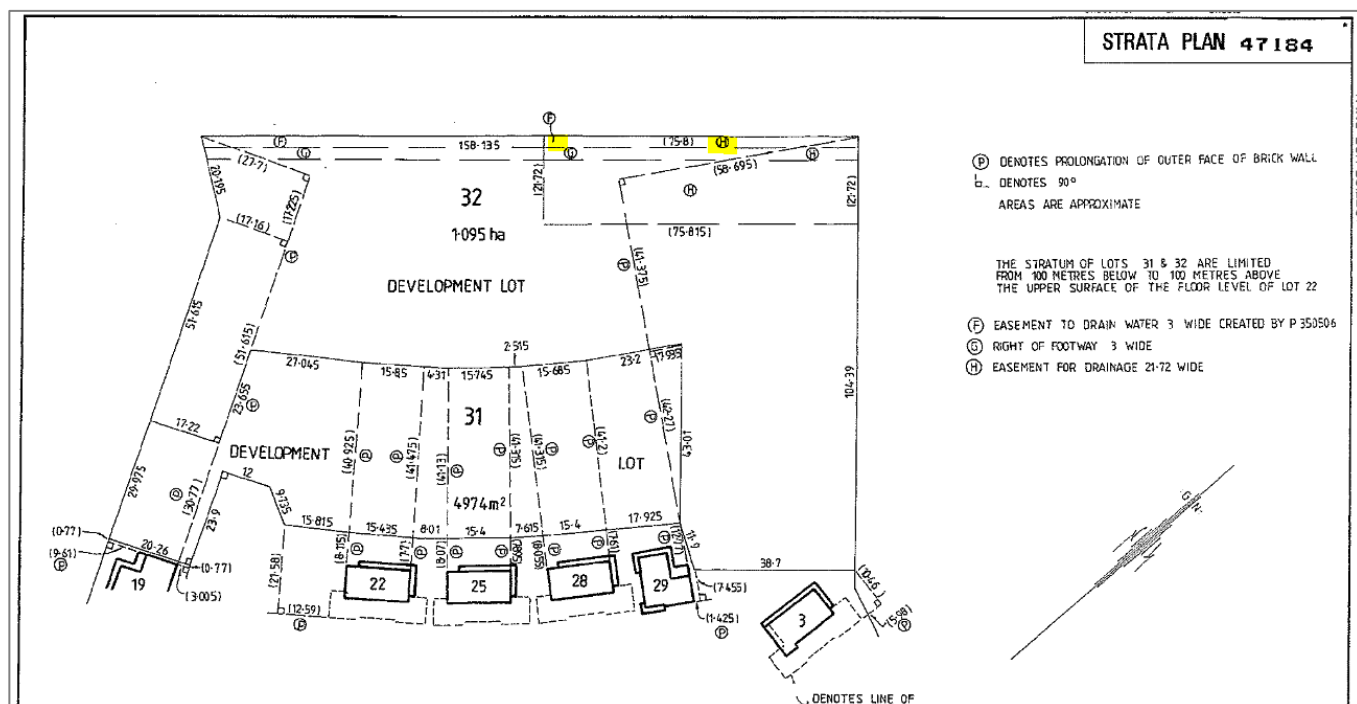
View from neighbouring land to north



Land zoning LEP 2014:







**Strata Plan 47184:**

## 2. SUMMARY OF REFERRALS

Referral	Issue
Development Engineer	Not supported. – see Comments below
S64 / Systems Planning Officer	No objections subject to conditions if approved.
Developer Contributions Officer	Contributions to apply if approved
Natural Resource Planner	Not supported - see comments below
Infrastructure Services - Waste	Not supported – see comments below
Essential Energy	No objections subject to conditions if approved.

### Natural Resource Planner

*The development cannot be supported for the following reasons:*

- The proposal represents overdevelopment of the site. The proposal would result in the loss of almost the entire existing extent of native vegetation on the site. Native vegetation on the site is representative of the Endangered Ecological Community Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregions listed in Schedule 2 of the Biodiversity Conservation Act 2016.*
- Pursuant to s7.3 of the Biodiversity Conservation Act 2016, insufficient justification has been provided to conclude that the proposal would not result in a significant impact on threatened species, ecological communities or their habitats. It is considered that the proposal may represent a significant impact on the Endangered Ecological Community Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregions listed in Schedule 2 of the Biodiversity Conservation Act 2016.*

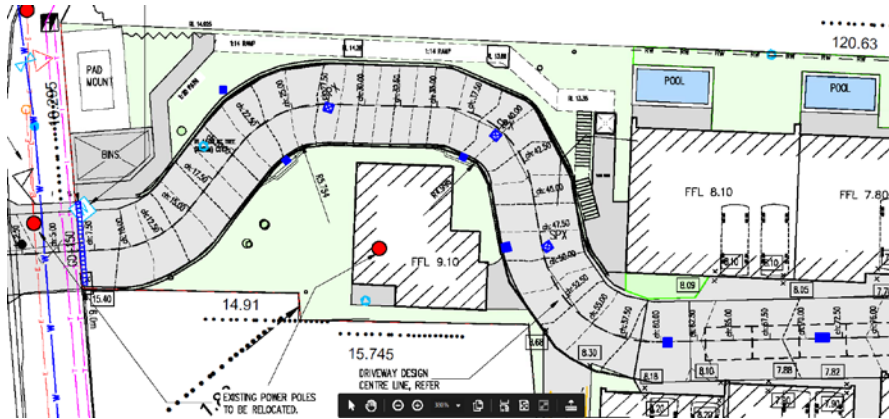
3. The full extent of biodiversity impacts has been underestimated. Impacts on native vegetation are likely to be greater than what is described in the application due to the proximity of trees proposed to be retained and proposed compensatory plantings to the planned development footprint. As a result, impacts on threatened species are likely to also have been underestimated.
4. Pursuant to Chapter B2 of the Byron Shire Development Control Plan 2014, the compensatory planting calculations have been carried out incorrectly. The total amount of compensatory plantings required is substantially higher than that listed in the application. There is insufficient space available on the site to achieve these plantings congruently with the proposed development footprint. The compensatory planting plan has not been designed with the aim of replacing the biodiversity loss proposed by the application.

### **Waste Resource and Recovery**

1. The application is deficient in that the waste management plan incorrectly nominates 13 units instead of 14.
2. New bin configuration is through a commercial service in a residential domestic location. How will each unit manage individual waste storage prior to disposal into larger skip bins? As per Chapter 8 of DCP- each **dwelling** must be provided with an indoor **waste/recycling cupboard** (or other appropriate storage space) for the interim storage of a minimum one day's garbage and recycling generation;
3. Skip bins for domestic dwellings do not encourage waste minimisation- systems must be designed to maximise source separation and recovery of recyclables
4. 'Bin configuration not sorted until final tenancy'- This needs to be clear before development approval and submitted in SWMMP as specified in Chapter 8 of the DCP
5. Front lift commercial waste collection vehicles require a larger turning circle and area to service bins, they are noisy and not suitable for residential areas and will affect the amenity of the area. Chapter 8 DCP-'areas must be located and designed in a manner which minimises adverse impacts upon neighbouring properties and upon the appearance of the premises';
6. If commercial bins are to be used SWMMP must include analysis of likely amenity impacts, pedestrian impacts, cycle, traffic and visual impacts, traffic movement on adjoining roads .
7. Must illustrate and specify pick up vehicle access and manoeuvring arrangements- these are not clear in current SWMMP
8. Front lift commercial bin must be able to enter and exit the site in a forward motion so that collection vehicles do not impede general access to, from or within the site Must be able to manoeuvre safely onsite, consistent with requirements of chapter 4 traffic planning, vehicle parking, circulation and access. As per chapter 8 DCP.
9. Waste collection as specified in waste management plan states collection vehicle will drive nose in to service property, this will then require reversing onto a busy road near an intersection
10. 'All bins and collection facilities will be clearly marked with labels, colour coding, symbols and words. Signs will be highly visible. Signage should be consistent with those used at garbage storage areas.' Will bin signage and words be consistent with Byron shire councils? Can we see evidence/examples a signage to be used?
11. 'Following occupation, owners/tenants would be provided with information on waste storage collection and recycling opportunities.' Can we see examples of proposed information?
12. 'Waste monitoring is necessary to assess whether the strategies implemented have been effective in achieving the SWMMP's aims.' What will be the outcome and timeline for assessing effective site waste strategies? What indicators will developer used to identify if waste strategies are working?
13. Will the review proposed in waste management plan include changes in the waste industry and allowance for increased source separation and waste reduction?
14. Council Service or Commercial Contract Organic Waste 5 x 240L MGB (serviced weekly or on demand) – This needs to be clear as council collection and/or commercial do not operate daily

### **Development Engineer**

1. Filling between 0.15m to 3.0m proposed. The proposed filling exceeds the requirement specified in Chapter 14 of DCP.
2. Non Compliance - Driveway Grade between CH 50 to CH56 exceeds the maximum grade requirement of AS1428 (i.e. Access to adaptable dwellings within the site is not achieved)



- Access Ramp proposed with maximum ramp grade of 1:14;
- Lift to provide connectivity between the top of the ramp and the path adjacent to H2 unit;
- Driveway grade between CH 50 to CH56 is 1:7.6
- Driveway Grade between CH56 to CH70 is 1:19.8

3. **Adaptable housing H3, T3, T4 & T5 does not meet the parking design requirement of AS2890 & AS4299**

AS4299:1995 – 3.5m wide x 6.0m long x 2.5m floor to ceiling height

AS2890.6:2009 – 2.4m wide x 5.4m long x 2.5m floor to ceiling height 0.3m side clearance

**Parking Design Requirement Non Compliance**

a. H1 – 1 bedroom – 1 parking space

Internal Parking Dimension in drawing A1H3

- 3.0m width
- 6.0m long

b. H2, H5-H7, T7 – 4 bedrooms + study – 2 parking spaces

Internal Parking Dimension in drawing AH2, H5-H7, T7

- 5.6m width
- 5.6m long

c. H4, T6 – 2 bedrooms – 1 parking space

Internal Parking Dimension in drawing A1H4, T6

- 4.3m width
- 5.6m long

d. T1, T2 – 3 bedrooms – 2 parking spaces

Internal Parking Dimension in drawing A1T1, T2

- 5.3m width
- 5.7m long

4. **Stormwater Management – The Stormwater Quantity Proposal is not satisfactory**

The proposal proposed the same time of concentration ( $t_c$ ) of 14 minutes pre and post development. With the increase of impervious area the ( $t_c$ ) needs to be verified however general assumption of 5 minutes can be use.

Table 1 below shows the pre and post development flows using 14 minutes pre and 5 minutes post.

ARI	Pre-Development ( $\text{m}^3/\text{s}$ )			Post-Development ( $\text{m}^3/\text{s}$ )			Increased Runoff ( $\text{m}^3/\text{s}$ )
	Pervious	Impervious	Total	Pervious	Impervious	Total	
5	0.0862	0.02616	0.1123	0.04052	0.1212	0.1617	0.0494
10	0.0990	0.03011	0.1291	0.04791	0.1435	0.1914	0.0623
20	0.1142	0.03468	0.1489	0.05654	0.1691	0.2256	0.0768
100	0.1692	0.04765	0.2169	0.08022	0.2225	0.3027	0.0859

Table 1

*The post development peak discharge in Table 6.4 of the Report is greater than the predevelopment flows in Table 1. The proposal did not satisfy Section 6.3 of Council's Comprehensive Guidelines (Storage Volume and Permissible Site Discharge)*

### 3. SECTION 4.14 – BUSH FIRE PRONE LAND

Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document 'Planning for Bush Fire Protection 2006'. The site is not bush fire prone land.

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

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

#### 4.1 State Environmental Planning Instruments (SEPP)

Considerations	Satisfactory	Unsatisfactory
<p><i>SEPP No 55—Remediation of Land</i></p> <p>Consideration: The site is not within a dip site buffer and is not identified by Council's mapping as affected by contamination. The land has a history of being used for residential purposes. No increase in sensitivity of land use is proposed. No further investigation is considered warranted.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>SEPP (Building Sustainability Index: BASIX) 2004</i></p> <p>Consideration: BASIX Certification was prepared by the applicant and submitted with the original development application documents. Amended BASIX documentation would be required for the revised plans to demonstrate the design passes the requirements should the development be approved.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>SEPP (Infrastructure) 2007</i></p> <p>Consideration: The application was referred to Essential Energy in accordance with Clause 45 of the SEPP.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>SEPP (State and Regional Development) 2011</i></p> <p>Consideration: The proposal is regionally significant development and is to be determined by the Northern Regional Planning Panel in accordance with the provisions of Clause 20 <i>Declaration of regionally significant development: section 4.5(b)</i> and subclause 3 (b) of <i>Schedule 7 Regionally significant development</i></p> <p><b>3 Council related development over \$5 million</b></p> <p><i>Development that has a capital investment value of more than \$5 million if—</i></p> <p><i>(b) the council is the owner of any land on which the development is to be carried out...</i></p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

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

- (a) The proposed development is defined in the LEP 2014 Dictionary as Multi dwelling housing;
- (b) The land is within the R2 Low Density Residential according to the Land Zoning Map;
- (c) The proposed development is permissible with consent; and
- (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
To provide for the housing needs of the community within a low density residential environment.	The proposed multi dwelling housing development will provide fourteen dwellings to replace the 2 dwellings on the lot (principal and approved secondary dwelling). It will increase the site density significantly, going from an equivalent density of 5 dwellings per hectare to 35 dwellings per hectare. Fourteen 2-3 storey dwellings on this site is not consistent with the low density nature and character of this neighbourhood.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	

The relevant clauses have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The proposed development does not comply with all clauses of LEP 2014.

### Characterisation of the development

*The proposed development meets the legal definition of multi dwelling housing:*

**multi dwelling housing** means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

### Clause 4.1E Minimum lot sizes for dual occupancies, manor houses, multi dwelling housing and residential flat buildings

The proposal complies with the minimum lot size for multi dwelling housing on land zoned R2 Low density residential under Clause 4.1E *Minimum lot sizes for dual occupancies, manor houses, multi dwelling housing and residential flat buildings*. Multi dwelling is permissible on a site which is at least 1000 square metres in the R2 Zone. The lot size is 3816 m<sup>2</sup>.

### Clause 4.3 Height of buildings

Parts of the roof exceed the 9 metre building height limit.

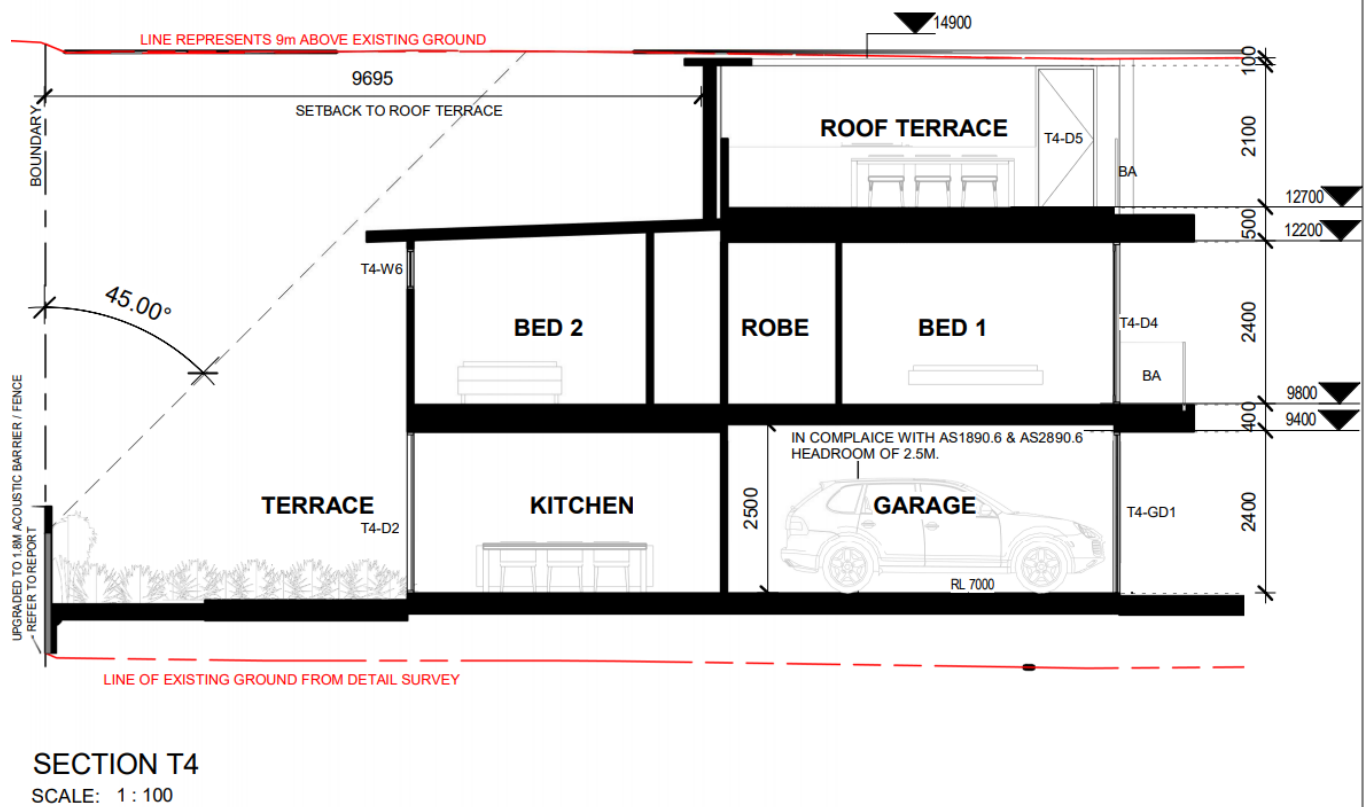
The proposal does not meet the objectives and development standards of this clause:

- (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](#).

Part of the roof on unit T4 is at least 9.04 metres above existing ground level and the applicant has not prepared a variation in accordance with Clause 4.6 of Byron LEP 2014 to the 9 metre height of building development standard applicable to this site under Clause 4.3 of Byron LEP 2014.

The proposed floor to ceiling heights are the minimum for habitable rooms and cannot be reduced further. It is also considered that minimal floor to ceiling heights would result in poor air circulation and

minimises passive cooling of buildings. This lack of design consideration increases the likelihood of mechanical ventilation being retrofitted by future occupants, increasing potential cumulative noise impacts and decreased energy efficiency.



It is recommended the Development Application be refused partly due to non compliance with Clause 4.3

#### Clause 4.4 Floor space ratio

The site has a maximum FSR of 0.5:1.

The proposed development has an FSR of 0.488:1 and complies with the development standard.

#### Clause 4.6 Exceptions to Development Standards

The Applicant is proposing a building with a height of at least 9.04 metres according to the site survey levels and submitted plans, which exceeds the height controls under Clause 4.3 Height of Buildings under Byron LEP 2014. The applicant has not submitted a written request that strict compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental grounds to vary the controls.

The consent authority cannot consider a variation to the development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental grounds to vary the development standard.

The proposal is not in the public interest having regards to the objectives of the development standard:

The concurrence of the Planning Secretary is not required.

It is recommended that the development standard cannot be varied in this instance and it is considered that: The development is not satisfactory having regard to the requirements outlined in clause 4.6;

- b) The development is not satisfactory having regard to applicable Department of Planning, Infrastructure and Environment Circulars;

- c) The development is not satisfactory having regard to relevant caselaw;
- d) The DA does not demonstrate that compliance with the development standard is unreasonable and unnecessary;
- e) The DA does not demonstrate that there are sufficient environmental planning grounds to justify contravening the standard;
- f) The DA does not demonstrate that the development is in the public interest;
- g) The DA does not demonstrate that the development is consistent with the objectives of the standard and the zone;
- h) The DA does not demonstrate how the development produces a better planning outcome than one that strictly complied with the development standard; and
- i) The DA does not demonstrate what it is about the grounds of the request that are particular to the proposed development on this site, and that there has to be something particular to the development on this site to justify the variation.

#### **Clause 6.2 Earthworks**

Filling between 0.15m to 3.0m is proposed. The proposed fill is not considered to satisfactorily address the objectives of the clause... *to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.*

Development consent is required for earthworks and Council cannot be satisfied that the works would not result in the likely disruption of, or any detrimental effect on, drainage patterns in the locality; the existing and likely amenity of adjoining properties; and potential for adverse impacts in an environmentally sensitive area. The proposal is considered to be an overdevelopment of the site and fails to take appropriate measures to avoid, minimise or mitigate the impacts of the development. It is considered that Clause 6.2 has not been complied with.

#### **Clause 6.6 Essential services**

Council cannot be satisfied the essential stormwater works can be undertaken off site on private and community land. The owners of private land have expressly objected to the development. The community classified land is within the adjacent public reserve to the north is for the benefit and enjoyment of the public and is not intended to be used for the purposes of private infrastructure works.

The proposed vehicular access to the adaptable dwelling units fails to meet the relevant Australian Standards essential to the development for the purposes of providing suitable disabled access to new development. Development consent must not be granted to development unless the consent authority is satisfied that services that are essential for the development are available or that adequate arrangements have been made to make them available when required.

#### **Clause 6.7 Affordable housing in residential and business zones**

The proposed development is not for affordable housing purposes, nor does it result in the removal of any affordable housing currently on the property as defined under the EP&A Act 1979. **Affordable housing** means housing for very low income households, low income households or moderate income households. It is likely that the development will add to the housing stock for rental accommodation or permanent accommodation. As the property is not used for affordable housing purposes, there is no nexus to levy conditions requiring that the dwellings be utilised for that purpose in this instance.

### **4.3 Byron Shire Development Control Plan 2014 (DCP 2014)**

The following chapters are of relevance to the proposed development.



## **Chapter B1 Biodiversity and Chapter B2 Tree and Vegetation Management**

The proposed development fails to meet biodiversity and vegetation management requirements as discussed in previous sections to this report.

### **Compensatory plantings**

The submitted arboricultural report included calculations of the required compensatory plantings with reference to the compensatory planting ratios listed in the Byron Shire DCP Chapter B2 (see Table 1). The total replacement plantings were calculated as 62. However, most of the replacement ratios have been undervalued.

All broad-leaved paperbarks (*M. quinquenervia*) on the site have been calculated as requiring a replacement ratio of 1:5. This species is locally native and has important habitat value for local wildlife including threatened species such as the grey-headed flying fox (*Pteropus poliocephalus*) which is known to feed on the tree's nectar and pollen. Furthermore, many of the *M. quinquenervia* specimens proposed to be removed have a DBH of greater than 50 cm. Therefore, the replacement ratio for the *M. quinquenervia* trees proposed to be removed from the site should be 1:10.

Likewise, cheese tree (*Glochidion ferdinandi*) pink euodia (*Melicope elleryana*), and bangalow palm (*Archontophoenix cunninghamiana*) are locally native rainforest species, requiring a replacement ratio of 1:10. The replacement ratio for the silky oak (*Grevillea robusta*) was calculated as 1:1 due to it allegedly being a planted specimen. It is unclear how it was established that this tree was planted.

In accordance with the replacement planting ratios listed in DCP Chapter B2, it is considered that a minimum of 117 replacement plantings would be required to compensate for the proposed tree removal. As noted above, the full amount of vegetation loss has been underestimated. Therefore, the total replacement planting requirement is likely to be much higher.

As mentioned above, the proposal to carry out replacement plantings in the neighbouring Council reserve was retracted. The amended compensatory planting plan proposes to incorporate the full compensatory planting requirement into the subject site (see Fig 5). Minimal detail was provided in this amended plan. Importantly, the plan appears to indicate that rooftop podium planters and bio-basin planting will form part of the required compensation. Additionally, much of the required compensation is proposed be addressed through the planting of shrubs and groundcover species. This approach does not accord with the intent of the DCP provision, which is to attempt to slow biodiversity loss due to development in the Shire by ensuring development can achieve no net biodiversity loss on-site. To address the biodiversity impacts of the present proposal, this means that the design must incorporate an ecological restoration area separate from the development footprint. The required ecological restoration area must involve the creation of habitat/vegetation that is comparable to the habitat proposed to be removed.

Specifically, the proposed development requires a separate ecological restoration area comprising a minimum of 117 replacement plantings of species representative of the EEC *Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregions*. The majority of these plantings must be tree species. It is considered that the proposed development footprint would need to be substantially reduced in order to achieve this requirement.

### **Chapter B3 Services**

The proposed development fails to meet the requirements of Chapter B3 – refer to section 4.2 with regards to LEP Clause 6.6 above.

### **Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access**

The proposed development fails to meet the requirements of Chapter B4 – refer to section 2 above.



Chapter B8 Waste minimisation and management

The waste minimisation and management plan underestimates the number of units, waste generation, number of required waste receptical and fails to demonstrate that there is sufficient frontage to the street to allow for safe collection of waste.

Chapter B9 Landscaping

The proposed common landscaped area of the site does not present a functional area separate to private spaces between buildings on the site and therefore fails to meet the relevant objectives, prescriptive measures and performance criteria under Chapter B9 Landscaping. The provision of fencing between each unit does not represent a design that is for common use and enjoyment. The proposal fails to retain existing vegetation, and is not sensitive to existing ecological features. The orientation of landscape areas fails to have any regard to sunlight and prevailing winds, particularly for those units proposed on the south of the site.



**Note.** Common landscaped area means that part of the site not occupied by any building, that is predominantly landscaped by way of planting, trees, gardens, lawns or shrubs and is available for common use and enjoyment by the occupants of the building erected on the site. It excludes drying yards, garbage collection and handling spaces and any spaces used for the movement or parking of vehicles but can include swimming pools at or below ground level (existing). Where Council deems it appropriate in terms of accessibility, treatment and appearance, the common landscaped area may include rooftop spaces, terraces, steps, walkways, pergolas or other built elements

The proposal does not satisfy the provisions of Chapter B9 Landscaping, in particular with regards to B9.4.1 Landscape Principles

Objectives 1. To ensure a high quality landscape and aesthetic environment for multi dwelling housing, attached dwellings and residential flat buildings.

Performance Criteria - Multi dwelling housing, attached dwellings and residential flat buildings shall provide a high quality landscape that seeks to enhance the amenity and function of the development and provide a pleasant environment for residents that supports their physical and psychological well-being.

*Prescriptive Measures 1. The following design requirements apply to multi dwelling housing, attached dwellings and residential flat buildings developments:*

- a) retention of suitable existing vegetation;*
- b) screen planting to street frontages and driveway areas, to provide privacy between dwelling houses and around the boundaries of the site;*
- c) provision of pleasant landscaped settings for the enjoyment of residents;*
- d) planting selection that relates to building scale and mass.*

*2. The common landscaped area of the site must not be less than the total of the areas required for each dwelling house, calculated from the following table, less the total of the areas of approved private courtyards and approved private open space balconies in accordance with Chapter D1 Residential Accommodation in Urban, Village and Special Purpose Zones. Table B9.1 – Dwelling Size to Landscape Area.*

**Table B9.1 – Dwelling Size to Landscape Area**

Dwelling <sup>(D)</sup> Size	Landscaped Area <sup>(D)</sup>
Small (under 55 m <sup>2</sup> in floor plan area <sup>(D)</sup> )	50 m <sup>2</sup>
Medium (55-85 m <sup>2</sup> in floor plan area <sup>(D)</sup> )	70 m <sup>2</sup>
Large (over 85 m <sup>2</sup> in floor plan area <sup>(D)</sup> )	90 m <sup>2</sup>

The proposal does not satisfy the provisions of Chapter B9 Landscaping, in particular with regards to B9.4.2 Common Landscaped Area

*Objectives 1. To ensure appropriate treatment of common landscaped areas. Performance Criteria 1. Landscaped areas and landscaping must be considered as components of the site planning process and must reflect the scale of development.*

*Performance Criteria 1. Landscaped areas and landscaping must be considered as components of the site planning process and must reflect the scale of development.*

*2. Landscaping must complement existing streetscapes, urban landscape and bushland, and must be in scale with the height and bulk of buildings. Landscaping must be sensitive to site attributes such as existing landscape features, streetscape, ecology, land capability, micro-climate, views and vistas.*

*3. Development must be designed to maximise the number of trees retained on the site.*

#### *Prescriptive Measures*

*1. The common landscaped area of the site must be in accordance with Section B9.4.1.*

*2. A minimum of 75% of the total common landscaped area of the site must consist of deep soil areas. Areas of landscaping over underground car parks, and the like, cannot be included in the calculation of deep soil areas.*

*3. The landscape design must address:*

- a) the retention and provision of appropriate trees on the site;*
- b) the use of earth mounding and terraced areas to create useful and visually pleasing recreation areas and to assist screening;*
- c) the orientation of landscape areas with regard to sunlight and prevailing winds;*
- d) the provision of sufficient areas adequately shaded against the summer sun and giving adequate access to the winter sun.*

The application fails to provide sufficient details to demonstrate full compliance with Chapter B

Continuous accessible path of travel means an uninterrupted route to or within premises or buildings and providing access to all services and facilities. It should not contain any step, stairway, turnstile, revolving door, escalator, hazard or other impediment that would prevent being safely negotiated by people with disabilities.

Lawful point of discharge means the point of discharge for stormwater from a development or a particular location if the location is under the lawful control of the Council or other statutory authority

from whom permission to discharge has been received, and that in discharging in that location, the discharge will not cause an actionable nuisance.

Chapter B13 Access and Mobility

The proposed development fails to meet the requirements for site access to the four nominated adaptable dwellings on the site. See Sections 2 and 4.2 above.

Chapter B14 Excavation and Fill

The proposed development fails to meet the requirements for minimal fill on the site with up to 3 metres of fill proposed. See Sections 2 and 4.2 above.

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

The building height plane in combination with boundary setbacks prescribed and building height prescribed in the Byron LEP 2014, form the maximum building envelope for all residential development. Part of the roof does not meet the minimum height of building and the proposal fails to ensure that it is designed to minimise impacts on solar access and privacy on adjoining properties, and on the views from adjacent existing building and that the occupants of the buildings will enjoy the optimum use of winter sunlight and summer shade.

Shadow diagrams provided with the application indicate that the development will significantly overshadow the neighbouring property to the south during the morning hours in midwinter:

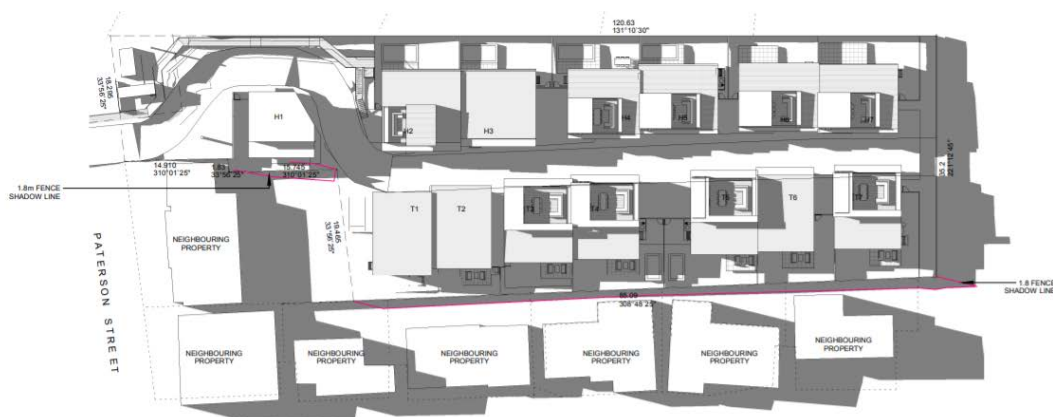


9am Midwinter



9601 ON STREET,	12PM SHADOW WINTER SOLSTICE SCALE: 1 : 500	TOTAL SITE AREA SITE AREA = 3816m <sup>2</sup> FSR = 0.488	SITE NET AREAS SITE NET TOTAL - GROUND FLOOR = 764.5m <sup>2</sup> SITE NET TOTAL - UPPER FLOOR = 1074.3m <sup>2</sup> GRAND NET TOTAL = 1859.8m <sup>2</sup>	TERRACE & HOUSE AREAS ON SITE PRIVATE OPEN SPACE SITE TOTAL = 545.4m <sup>2</sup>	
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## 12 Noon Midwinter



1 STREET,	3PM SHADOW WINTER SOLSTICE SCALE: 1 : 500	TOTAL SITE AREA SITE AREA = 3816m <sup>2</sup> FSR = 0.488	SITE NET AREAS SITE NET TOTAL - GROUND FLOOR = 764.5m <sup>2</sup> SITE NET TOTAL - UPPER FLOOR = 1074.3m <sup>2</sup> GRAND NET TOTAL = 1859.8m <sup>2</sup>	TERRACE & HOUSE AREAS ON SITE PRIVATE OPEN SPACE SITE TOTAL = 545.4m <sup>2</sup>	
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## 3pm Midwinter

### D1.2.1 Building Height Plane

The proposed development does not satisfy the provisions of Chapter D2 Section D1.2.1 Building height plane. The proposal results in breaches of the building height plane and maximum height of building. The proposed elevated walkway and lift structures also present a potential impact with regards to overlooking..

The proposal fails to *ensure that residential development is designed to minimise impacts on solar access and privacy on adjoining properties, and on the views from adjacent existing buildings; and ensure that the occupants of the building or buildings will enjoy the optimum use of winter sunlight and summer shade.*

The proposal fails to meet the *Prescriptive Measures and Performance Criteria*

- *The building height plane in combination with boundary setbacks prescribed in this DCP, and building height prescribed in the Byron LEP 2014, form the maximum building envelope for all residential development.*
- *Developments must be set back progressively from the site boundaries as height increases so that they do not adversely affect existing or future development on adjoining properties by way of overshadowing, impinging on privacy or obstructing views.*
- *Developments must be designed so that they will promote energy efficiency and so that residents may enjoy optimum use of winter sunlight and summer shade.*
- *Development applications must demonstrate that the windows of living areas (decks, living rooms, bedrooms, kitchens, etc.) of development on adjoining properties will, as a minimum, retain full solar access between the hours of 9.00am to 3.00pm on any day.*

### **D1.2.2 Setbacks from Boundaries**

The proposed development does not satisfy the provisions of Chapter D2 Section D1.2.2 Setbacks from Boundaries.

It is unclear if the pools in the south of the site meet the minimum setback to the boundary and appear to breach the 1.5 metre setback to the water edge. There is insufficient information to determine if the pools will meet the prescriptive measures:

- *The outer edge of the pool concourse or coping must be set back a minimum of one (1) metre from the side or rear boundaries, with the water line being a minimum of 1.5 metres from those boundaries.*
- *Pool pumps shall be located as far back from a side or rear boundary as practical and if closer than 3 m from either it shall be acoustically shielded.*

Notwithstanding, the proposal fails to meet the objectives, performance criteria of this section:

#### *Objectives*

- 1. To achieve varied and interesting streets that complement and harmonise with existing and planned streetscapes and development in the locality.*
- 2. To achieve good orientation and spacing of residential developments that achieve high quality living environments relative to sunlight, shade, wind and weather protection, residential amenity and proximity of neighbouring development.*
- 3. To achieve effective use of allotments to create useable and liveable private open space and courtyards.*
- 4. To provide flexibility in siting and design of dwelling house development in urban residential areas.*
- 5. To ensure that development in residential areas seeks to minimise any negative impacts on neighbours caused by siting.*

Performance criteria requires that private open space and common landscaped areas of the site must be useable as part of the living environment available for the occupants of the development. Council discourages the provision of bare spaces between buildings and the street which are unusable because they lack privacy, or because they are inappropriately planned or treated for climate control. Development must seek to minimize any impacts on neighbouring properties through considerate siting and design.

The potential acoustic impact of multiple pools and pool pumps running close to the boundary of residential dwellings adjoining and within the site has not been addressed.

#### **D1.2.4 Character & Visual Impact**

The proposed development does not satisfy the provisions of Chapter D2 Section D1.2.4 Character & Visual Impact, in particular the following objectives and performance criteria:

##### **Objectives**

- 1. To retain and enhance the unique character of Byron Shire and its distinctive landscapes, ecology, towns, villages, rural and natural areas.*
- 2. To ensure that new development respects and complements those aspects of an area's natural and built environment that are important to its existing character.*

Performance Criteria is not met:

1. Development should demonstrate how siting, design and character are consistent with the relevant Residential Character Narrative, as contained in the corresponding locality chapter in Part E of the DCP (See Chapter E5 below); 2. Site, building and landscaping design must address the climate;...4. Development should be designed to minimise loss of privacy; 5. There must be a reasonable degree of integration with the existing built and natural environment.

#### **D1.2.6 Balconies**

The proposed development does not satisfy the provisions of Chapter D2 Section D1.2.6 Balconies Objectives 1. To ensure that the visual character of balconies is consistent with and does not dominate the design of residential buildings. In particular the building elevations are dominated by upper storey balconies /roof terraces that dominate the design and result in significant overlooking from multiple dwellings into the private open space and living areas of adjoining dwellings both within and adjoining the site.

#### **D1.2.9 Energy Efficiency**

The proposed development fails to, where possible provide for rainwater tanks or renewable energy such as solar roof panels and the orientation and layout fails to harness passive solar access to improve thermal comfort and reduce greenhouse gas emissions. This is contrary to section D1.2.9 Energy Efficiency objectives and performance criteria, as follows:

*Objectives 1. To reduce greenhouse gas emissions created from residential development 2. To increase thermal comfort and efficiency for residential development.*

*Performance Criteria 1. Buildings for habitable purposes should seek to incorporate measures to reduce energy consumption, reduce reticulated water consumptions and improve thermal comfort. 2. Where possible, development should seek to fit energy efficient fixtures and fittings to reduce greenhouse gas emissions.*

#### **D1.6 Multi Dwelling Housing (including Manor Houses and Terraces), Residential Flat Buildings and Attached Dwellings**

##### **D1.6.1 Private Open Space Courtyards**

Location of courtyards do not take account of outlook and natural features of the site without impacting on neighbouring buildings or open space. Orientation and shading of all courtyards does not provide for maximum year round use in terms of sunlight and facilitate access to winter sunshine.

**D1.6.3 Landscaping** The proposal fails to enhance the amenity of dwellings and the built environment, and allow preservation of significant vegetation.

**D1.6.4 On-Site Car Parking** The proposal fails to provide sufficient convenient car parking for residents in the adaptable dwelling units. And therefore does not provided for accessible parking according to projected needs.

**D1.6.5 Sound Proofing** - It is considered that the multiple pools, opens space areas and roof top terraces will not minimise the impact for potential noise impacts on surrounding dwellings. The acoustic report provided by the applicant only addresses noise generated by car doors opening and closing and does not fully demonstrate the likely cumulative noise impacts arising from multiple occupants using the outdoor spaces. The proposal fails to meet the objectives, performance criteria and prescriptive measures of this section:

*Objectives 1. To ensure an adequate acoustic environment for residents.*

*Performance Criteria 1. Development must be designed to provide a reasonable acoustic environment within dwellings and to minimise the potential for noise impact on the occupants of surrounding dwellings. 2. Where practicable, sources of noise must be sited away from adjoining properties and where necessary must be screened by effective acoustic treatments. 3. Development must be designed to minimise noise and vibration impacts on occupants of surrounding dwellings or buildings.*

*Prescriptive measures 1. Division walls between dwellings must be of sound-resisting construction to Council's satisfaction. 2. The floors in single storey multi-dwelling housing, residential flat buildings and attached dwellings must be so constructed or treated as to minimise the conduct of sound between dwellings.*

**D1.6.6 Clothes Drying Facilities** - The proposal fails to meet the objectives, prescriptive measures of this section: Objectives 1. To ensure that adequate, effective space is provided and provision is made for clothes drying. Performance Criteria Outdoor clothes drying facilities must be provided to meet projected needs and located to facilitate privacy and sunlight access. Prescriptive measures The minimum provision of clothes drying facilities must be at the rate of 7.5 metres of line per dwelling, located in suitably screened external drying areas.

**D1.6.7 Equity of Access and Mobility** The proposal fails to meet the objectives, prescriptive measures of this section: Objectives 1. To ensure equity of access and mobility to all members of the community. Performance Criteria There are no Performance Criteria. Prescriptive measures Provision for access and mobility must be made pursuant to Chapter B13 Access and Mobility. See Sections above.

## Chapter E5 Certain Locations in Byron Bay and Ewingsdale

The proposed development is inconsistent with the character of this area, identified as pocket B in Chapter 5 of DCP 2014: *Pocket B extends south and east ...forming the Byron Bay suburban garden areas bounded by undulating to steep landforms, national park and wetland nature reserves. These features have influenced the departure from a traditional grid layout to more curvilinear streets following contour lines and the substantial use of cul-de-sacs and battleaxe lots. Housing types include a **mix of detached and semi-detached houses as well as low rise terraces** (townhouses) and apartments. The residential character is one of an eclectic array of architectural styles, with diverse coastal architectural themes.*

*The built form is **largely one or two storeys** incorporating various building materials and styles. The areas coastal and hinterland views, hilly topography and **abundance of subtropical/coastal vegetation** give it a distinctly leafy green and natural feel.*

*It is important that any future infill development in 'transitional' areas respects the limitations of steep terrain and does not intrude on highly visible hills and other landforms, while areas **mapped in the environmentally sensitive category should complement the low scale character and qualities of the natural landscape.***

## 4.5 Environmental Planning & Assessment Regulation 2000 Considerations

Clause	This control is applicable to the proposal:	I have considered this control as it relates to the proposal:	If this control is applicable, does the proposal comply?
49	Yes	Yes	No



<b>92</b>	Yes	Yes	Yes
<b>93</b>	No	N/A	N/A
<b>94</b>	No	N/A	N/A
<b>94A</b>	No	N/A	N/A

#### **4.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

<b>Impact on:</b>	<b>Likely significant impact/s?</b>
<b>Natural environment</b>	Yes. The proposal will have a significantly adverse impact on the natural environment of the locality.
<b>Built environment</b>	Yes. The proposal will likely have a significantly adverse impact on the built environment of the locality.
<b>Social Environment</b>	Yes. The proposal will likely have a significant social impact on the locality.
<b>Economic impact</b>	The proposal is unlikely to have a significant economic impact on the locality.
<b>Construction Impacts</b>	The development would generate impacts during its construction. Should the application be approved conditions of consent would be required to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.

#### **Biodiversity Conservation Act 2016 (BC Act)**

The application included a threatened species test of significance (ToS) pursuant to section 7.3 of the BC Act. There is some uncertainty regarding the conclusion of the ToS for one threatened entity: *Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregions* (SSF).

The ToS is largely concerned with assessing the potential for development to result in the localised extinction of a threatened entity (a species or ecological community). The consultant ecologist has interpreted the 'local occurrence' of the community as referring to the entire occurrence of SSF in the Byron Shire. Based on this interpretation, the proposed impacts on the community are relatively insignificant. However, there is some doubt regarding this interpretation of 'local occurrence'. If this is the intended meaning of 'local occurrence' in the context of the ToS, it would mean that cumulative impacts to the SSF EEC are permitted to progressively occur until only a tiny fraction of the EEC remains in the Shire. It is considered that this is an incorrect interpretation of the terminology of the ToS.

Rather, it is considered that the fragmented patch of SSF occurring on the subject site may itself be considered the 'local occurrence' of the community. In this interpretation, the proposal undoubtedly represents a significant impact according to the ToS. This being the case, the application would trigger entry into the Biodiversity Offsets Scheme.

Whether or not the proposal can be considered to represent a significant impact on threatened species or ecological communities, it is considered that the ToS has doubtlessly underestimated the impacts of the proposal on the SSF EEC.



Council Policies that are applicable to the proposed development have been considered during assessment.

#### **4.7 The suitability of the site for the development**

The site is a constrained property and is not suitable for the proposed development, which is considered to represent an over development of the site.

#### **4.8 Submissions made in accordance with this Act or the regulations**

The development application was publicly exhibited prior to lodgement of the application in accordance with the Byron Shire Community Consultation Plan and was exhibited during assessment.

There were **41** submissions made against the development application - **69** if individual petition signatures are included.

Issues raised include: owners consent not granted for private drainage works on private property; no easement for drainage works; flooding and stormwater; fill will remove flood storage capacity; obstruction / reduction of the natural flow of stormwater; future flood damage; overdevelopment; size/scale in this location; traffic and parking inadequacies; noise from people using fourteen dwellings and pools / pool pumps; use of the development for holiday letting; use of public land; biodiversity, loss of mature trees; sustainability, energy, water; access and mobility; lack of common property; boundary setbacks; overlooking; inadequate landscaping; character; amenity; cumulative impacts; dangerous access, pedestrian safety; non compliance with legislations and other instruments; land values.

According to written submissions, the applicant has not obtained the consent of the owners of Strata Plan 47184 to submit this application proposal does not have consent of all land owners to undertake stormwater works on private land and the consent authority has no jurisdiction to grant consent for development until and unless it is provided.

The unlawful use of any approved residential accommodation for purposes not specified in the development consent or otherwise permissible without consent would be the subject of compliance action. Regulatory action would be enforceable on any unlawful activity for the purposes of short term holiday rental as would be the case for any activity operating without the relevant development consent.

Land values is 'ultra vires' / beyond the powers of this assessment and the consent authority.

The remaining issues raised in submissions are addressed in this report. In many cases, they are the reasons that the development is recommended for refusal.

#### **4.9 Public interest**

The proposed development is likely to prejudice and compromise the public interest and would create an undesirable precedent.

### **5. DEVELOPER CONTRIBUTIONS**

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

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

#### **5.2 Developer Contributions**

Section 7.11 Contributions would be payable should the proposed development be approved.

## 6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Disclosure details	Response
Has a Disclosure Statement been received in relation to this application? If Yes, Provide Disclosure Statement register reference: 91.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

## 7. CONCLUSION

The DA proposes Multi Dwelling Housing consisting of Fourteen (14) Townhouses, Six (6) Swimming Pools, Removal of Sixteen (16) Trees, Demolition of Existing Dwelling, Associated Earthworks, Upgrade to Drainage Channels and Compensatory Planting.

The proposed development is substantially inconsistent with the objectives of the R2 Low Density Residential zone and substantially inconsistent with the planning controls applicable to the site as prescribed by Byron DCP 2014. The development has generated significant community opposition and is not in the public interest.

A development comprising a reduced number of dwellings in a two storey format which were carefully sited to retain the majority of existing mapped ecologically significant vegetation on the site would be better suited to this site. Such a proposal would be more consistent with the objectives of the R2 Low Density Zone and be better equipped to address the various planning controls, constraints and hazards applicable to the land. The matters have been raised with the applicant formally and informally however the applicant has not taken that opportunity to redesign the development accordingly.

The current proposal comprising 14 dwellings is an overdevelopment of the site in the context of the zoning and its location within a low density residential neighbourhood. The application is recommended for refusal.

## 8. EASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED

*Note: From July 1 2018, Council's are required to give and publicly notify reasons for a range of planning decisions where they are deciding if development should proceed to help community members to see how their views have been taken into account and improve accountability to stakeholders. A statement of reasons for the determination of this application is provided below.*

### Statement of Reasons

The proposed development does not comply with the provisions of Byron Local Environmental Plan 2014.

The proposed development complies with relevant State Environmental Planning Policies.

The proposed development does not comply with relevant provisions of Development Control Plan 2014

The proposed development does not comply with Environmental Planning & Assessment Regulation 2000 considerations.

The proposed development will have significant adverse impacts on the natural, built or social environment or economic impacts on the locality.

The proposed development is considered an overdevelopment and unsuitable for the proposed site.

The development application was notified/advertised in accordance with the Community Participation Plan. Issues raised in the submissions have been considered during assessment of the application.

The proposed development is likely to prejudice or compromise the public interest.

**How community views were addressed**

The DA was advertised in accordance with Byron Shire Council Community Participation Plan (CPP). The submissions received were considered on merit and addressed during assessment of the application.

To view the considerations, please contact Council to view a copy of the assessment report relating to this DA.