

## COUNCIL ASSESSMENT REPORT

Panel Reference	PPSNTH-90 - Byron
DA Number	10.2021.234.1
LGA	Byron Shire
Proposed Development	Proposed Educational Establishment (TAFE NSW Connected Learning Centre) involving the construction of two (2) single storey buildings, outdoor learning area, car parking and landscaping. The proposal will accommodate a maximum of 45 students and three (3) staff at any one time.
Street Address	Lot 12 DP 1189646 No. 23 Bayshore Drive, Byron Bay
Applicant/Owner	Byron Shire Council
Date of DA lodgement	18 May 2021
Total number of Submissions Number of Unique Objections	No public submissions were received.
Recommendation	Approval subject to recommended conditions of consent.
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	<p><b>Schedule 7 Clauses 3 (b), 3(d) and 4.</b></p> <p><b>3 Council related development over \$5 million</b></p> <p>(b) the council is the owner of any land on which the development is to be carried out</p> <p>(d) the council is a party to any agreement or arrangement relating to the development (other than any agreement or arrangement entered into under the Act or for the purposes of the payment of contributions by a person other than the council).</p> <p><b>4 Crown development over \$5 million</b></p> <p>Development carried out by or on behalf of the Crown that has a capital investment value of more than \$5 million. The proposal has a capital investment value of \$6,131,750.</p>
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> <li>• Byron Local Environmental Plan 2014</li> <li>• Byron Local Environmental Plan 1988</li> <li>• Byron Development Control Plan 2014</li> <li>• SEPP No. 55 -Remediation of Land</li> <li>• SEPP (State and Regional Development) 2011</li> <li>• SEPP (Infrastructure) 2007</li> <li>• SEPP (Educational Establishments and Child Care Facilities) 2017</li> <li>• SEPP (Koala Habitat Protection) 2021 &amp; Byron Coast Comprehensive Koala Plan of Management</li> <li>• SEPP (Coastal Management) 2018</li> <li>• SEPP (Vegetation in Non-Rural Areas) 2017</li> </ul>
List all documents submitted with this report for the Panel's consideration	<ol style="list-style-type: none"> <li>1. Architectural Plan set BB-DA00 (Rev C), BB-DA01 (Rev C), BB-DA02 (Rev B), BB-DA03(Rev B) and BB-DA04 (Rev B), prepared by Brewster Hjorth Architects, dated 30/8/21.</li> <li>2. Landscape concept plan prepared by Taylor Brammer dated 20/4/21</li> <li>3. Traffic Access Design (225-01C No.1 ) prepared by Amber</li> <li>4. Stormwater Report – Geolink, updated 27/8/21</li> <li>5. Stormwater general arrangement plan (3544/C002) prepared by Geolink</li> <li>6. Stormwater Plan &amp; Sections (3544/C010) prepared by Geolink</li> <li>7. Statement of Environmental Effects prepared by Premise, dated 23/4/21.</li> <li>8. Appendix A – Interim Report on Geotechnical Investigation and Acid Sulfate Soil Assessment</li> <li>9. Appendix B – Bush Fire Assessment</li> <li>10. Appendix C - Traffic Impact Assessment</li> <li>11. Appendix D - Crime Risk Assessment</li> <li>12. Appendix E - Sustainability Design Report</li> <li>13. Appendix F - AHIMS Search Results</li> <li>14. Appendix G - Acid Frog Suitability – Preliminary Investigation</li> <li>15. Appendix I - Waste Management Plan</li> <li>16. Appendix J - Site Survey</li> <li>17. Appendix K - BCA Compliance Report</li> <li>18. Preliminary Site Contamination Report, prepared by Tim Fitzroy &amp; Associates, dated 18/5/21.</li> <li>19. Erosion &amp; Sediment Control Concept</li> </ol>

<b>Clause 4.6 requests</b>	Not Applicable
<b>Summary of key submissions</b>	No submissions received.
<b>Report prepared by</b>	<b>Kellie Shapland – Consultant Planner</b> BUrbRegPlan(Hons) RPIA
<b>Report date</b>	16 November 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?

**Yes**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

#### 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?

**Not applicable**

#### Special Infrastructure Contributions

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

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

**Not applicable**

#### Conditions

Have draft conditions been provided to the applicant for comment?

*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*

**Yes**



## **Executive Summary**

### **Proposed Development**

Byron Shire Council is in receipt of a development application for an Educational Establishment (TAFE NSW Connected Learning Centre (CLC)) at Lot 12 DP 1189646 (No. 23) Bayshore Drive, Byron Bay. The application was received on 18 May 2021.

The proposal involves the construction of two (2) single storey buildings, an outdoor learning area, car parking and landscaping. The proposal will accommodate a maximum of 45 students and three (3) staff at any one time.

The two (2) buildings consist of:

- a 'Maker Space' building which incorporates a mobile training unit, and
- a 'Connected Learning Centre' building which contains group learning areas, computer hub, media studio, audio studios, tech bar, kitchenette and amenities.

Access to the site is proposed via the construction of a new driveway from Bayshore Drive. A car park containing 21 spaces is located at the rear of the buildings.

The proposed development constitutes 'regional development', requiring referral to the Northern Regional Planning Panel (RPP) for determination as the proposal is Council related development and Crown development with a capital investment value exceeding \$5 million (estimated cost \$6.13M).

### **The Site**

The subject property has an area of 5.815 hectares. It is an irregular shape site that contains relatively flat cleared land on the eastern portion of the site adjacent to Bayshore Drive, and low-lying vegetated land (wetlands) on the western, rear portion of the land.

The proposed development footprint comprises an area of approximately 0.5 ha and is located on the portion of the property that has previously been cleared and now comprises maintained grassland.

The application has been modified since it was originally lodged to increase the setbacks of the proposed development envelope to the wetlands to the west resulting in a buffer of approximately 51 metres, which has been assessed as being acceptable.

The development envelope contains the following mapping constraints:

- Class 3 acid sulfate soils
- High environmental value land

The development envelope not mapped as being affected by flooding or heritage constraints. Bushfire prone land mapping indicates that the northern part of the subject site is affected, however the development envelope is not.

Byron Shire Council is in the process of preparing a development application for the subdivision of the subject site to create future lots for 'Business Park' development. Ultimately the proposed TAFE development will be located on one of the proposed new lots.

### **Zoning & Permissibility**

The subject site is zoned Part B7 Business Park and Part DM Deferred Matter under Byron LEP 2014. The deferred matter is zoned part 2(v) Village Zone and part 4(a) Industrial Zone under Byron LEP 1988.

The development envelope is entirely within the B7 Business Park Zone. The proposal is permissible with development consent.

## Assessment

There are a number of environmental planning instruments applicable to the site which the consent authority must consider. A detailed assessment against the relevant parts of each instrument is included in the body of this report.

A summary of the applicable provisions where the consent authority must be satisfied of particular matters is noted below:

- **Clause 10 of SEPP (Koala Habitat Protection) 2021**

Clause 10 applies to land to which an approved Koala Plan of Management applies. The site is within the Koala Planning Area of the Byron Coast Comprehensive Koala Plan of Management. It requires that the Councils determination of the development application must be consistent with the approved koala plan of management.

The proposal does not involve the removal of any trees. The land affected by the proposal is not potential koala habitat. It is considered that the proposal is satisfactory in this regard.

- **Clause 7 of SEPP No. 55 Remediation of Land**

Clause 7 requires the consent authority consider whether the land is contaminated. A Tier 1 Preliminary Site Investigation Report was provided to support the application.

Based on the site history, site inspection and the laboratory results from soil and groundwater sampling; together with radiation survey of surface soils, the report concluded that there is a low level of risk that the proposed site for the TAFE Connected Learning Centre is contaminated with residual chemicals from activities associated with current or past land use.

- **Clauses 10-15 SEPP (Coastal Management) 2018**

Clause 10 specifies that a consent authority must not grant consent for development on land identified in the SEPP as “coastal wetlands” or “littoral rainforest”, unless it is satisfied that sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the coastal wetland or littoral rainforest.

The subject land is not identified as coastal wetlands or littoral rainforest on mapping associated with this SEPP.

Clause 11 specifies that development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” unless the consent authority is satisfied that the proposed development will not significantly impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

The northern portion of the subject land is mapped as being a proximity area for a coastal wetland, with the wetland located to the north and north-east. This mapped proximate area is located approximately 240 metres from the ‘development envelope’ where the buildings and associated infrastructure is proposed to be located.

The wetlands on the western portion of the site where the development drains to, is not mapped as coastal wetlands, littoral rainforest or a proximate area. The closest mapped area to the west is located on the adjacent land, approximately 180 metres from the western boundary.

The application has been assessed by Council ecologist, engineer and environmental health officer and it is considered that activities will not significantly impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland, or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland. This is discussed further in the body of this report.

Clause 12 relates to development on land within the coastal vulnerability area. There is presently no coastal vulnerability map. Therefore, this clause is not applicable.

Clause 13 relates to development on land within the coastal environment area. The site is not mapped as being within the coastal environment area. Therefore, this clause is not applicable.

Clause 14 relates to development on land within the coastal use area. The site is not mapped as being within the coastal use area. Therefore, this clause is not applicable.

Clause 15 relates to development in coastal zone generally and requires that the consent authority must be satisfied that development will not increase risk of coastal hazards. The location of the site is sufficiently distant from the active coastal zone.

- **Clause 57 of SEPP (Educational Establishments and Child Care Facilities)**

Clause 57 relates to traffic generating developments and requires the consent authority to take into consideration any submissions made by Transport for NSW, the accessibility of the site, traffic safety, road congestion and parking implications of the development.

This clause does not apply to the proposal as it does not meet the relevant size or capacity threshold criteria. (ie 50 students).

- **Clause 2.3 Byron Local Environmental Plan 2014 – Zone objectives and land use table**

Clause 2.3 requires the consent authority to have regard for the relevant zone objectives when determining a development application. The proposal is permissible with consent in the B7 Business Park zone and is consistent with the relevant zone objectives.

- **Clause 6.1 Byron Local Environmental Plan 2014 - Acid sulfate soils**

This clause requires that, where applicable, development consent must not be granted for the carrying out of works unless an acid sulfate soils management plan (ASSMP) has been prepared in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.

Acid sulfate soil investigations and analysis undertaken by the applicant indicates that subject to certain criteria being met (ie excavation of less than 500m<sup>3</sup> of material) then an ASSMP is not required. This matter is further discussed in the body of the report where it is concluded an ASSMP is not required under the provisions of clause 6.1.

- **Clause 6.2 Byron Local Environmental Plan 2014 – Earthworks**

Clause 6.2(3) requires the consent authority to consider effects and potential impacts on the site and surrounding locality as a result of the proposed earthworks. The earthworks associated with the proposal include filling. Subject to conditions of consent, Council officers and the assessing planner are satisfied that the proposed development meets the provisions of clause 6.2(3) of the Byron LEP 2014.

- **Clause 6.6 Byron Local Environmental Plan 2014 – Essential Services**

The clause requires that, prior to granting consent to development, the consent authority must be satisfied that the nominated essential services are available or that adequate arrangements have been made to make them available.

Assessing officers are satisfied that the site is fully serviced and meets the requirements of clause 6.6.

## **Public Exhibition and Authority referrals**

The development application was advertised from 27 May 2021 to 23 June 2021. No public submissions were received.

The application was referred to NSW Rural Fire Service. No objections to the proposal have been raised subject to the imposition of conditions of consent.

**Conclusion.**

In summary, the proposed development is considered satisfactory, subject to the imposition of suitable conditions of consent to address and mitigate key issues relating to potential impacts arising from the proposed development. The application has been assessed in detail against the relevant matters for consideration pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979 and is considered satisfactory.

As such, it is recommended that the proposed development be approved, subject to conditions documented in the recommendation at the end of this report.

Pursuant to Section 4.33(1)(b) of the EP & A Act 1979, TAFE NSW has agreed to the imposition of the recommended conditions.

## 1 INTRODUCTION

### 1.1 History/Background

The subject site is owned by Byron Shire Council (BSC). TAFE NSW has entered into an agreement with BSC to lease part of the subject site for the construction of a TAFE Connected Learning Centre. The remainder of the site is intended to be developed in the future in accordance with the 'Site Strategy & Urban Design Protocol' for Lot 12 Bayshore Drive, Byron Bay, which is a strategy developed and adopted by BSC.

The subdivision of Lot 12 will be subject of a separate development application.

The following is a history of development applications from Council records.

Application Number	Description	Determination Date	Decision
10.2015.177.1	Tree removal	17/06/2015	Approved
10.2015.10.1	New Tree Removal / Lopping	13/01/2015	Rejected
10.2007.177.1	Environmental enhancement work	19/12/2007	Approved
5.1997.171.1	Subdivision - Subdivision (4 lots)	04/07/1997	Approved Delegation

The site was historically used by BSC for the storage of a range of construction materials including a variety of surplus fill materials derived from construction works. The site was cleaned up following an assessment of materials on the site and development of a clean-up strategy. The NSW Environment Protection Authority (EPA) issued a license for the works. The license was lifted in 2017 following final approval of the completed clean up.

All trees on the development envelope were cleared pursuant to development consent 10.2015.177.1.

### 1.2 Description of the proposed development

#### Overview

The application seeks approval for the construction of a Connected Learning Centre by TAFE NSW. It involves the filling of part of the land and construction of two (2) single storey buildings, an outdoor learning area, car parking and landscaping.

The two (2) buildings consist of:

- a 'Maker Space' building comprising:
  - A Mobile Training Unit, and
  - Maker Space.
- a 'Connected Learning Centre' building containing:
  - Group learning areas
  - Media Lounge
  - Tech Bar
  - Kitchenette
  - Computer Hubs
  - Print Shop
  - Amenities

The Gross Floor Area of the proposal is approximately 1287m<sup>2</sup> and the buildings will have a maximum height of 5.975 metres above existing ground level.



The buildings are proposed to have a low roof profile. External building materials comprise metal deck roofing with the walls being a mix of vertical metal wall cladding, vertical and horizontal aluminium batten screens and feature screen walls.

An aerial image of the site is provided in **Figure 1**. **Figures 2 to 4** are plan extracts.



**Figure 1** – Aerial image of the site



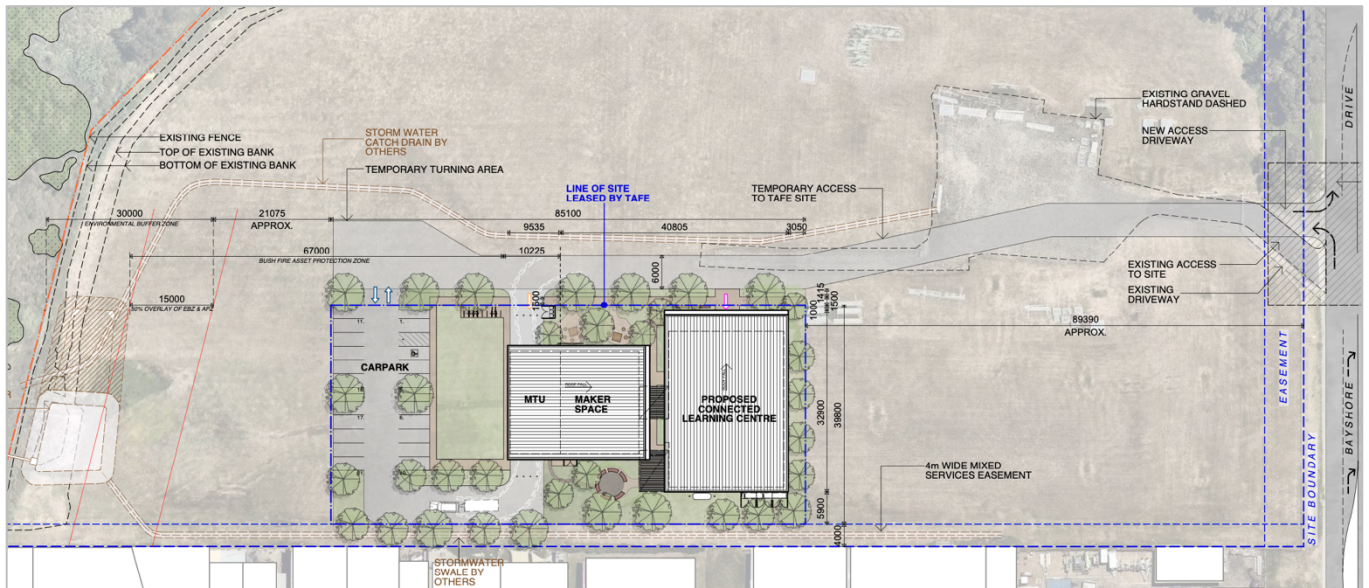


Figure 2 – Site Plan extract

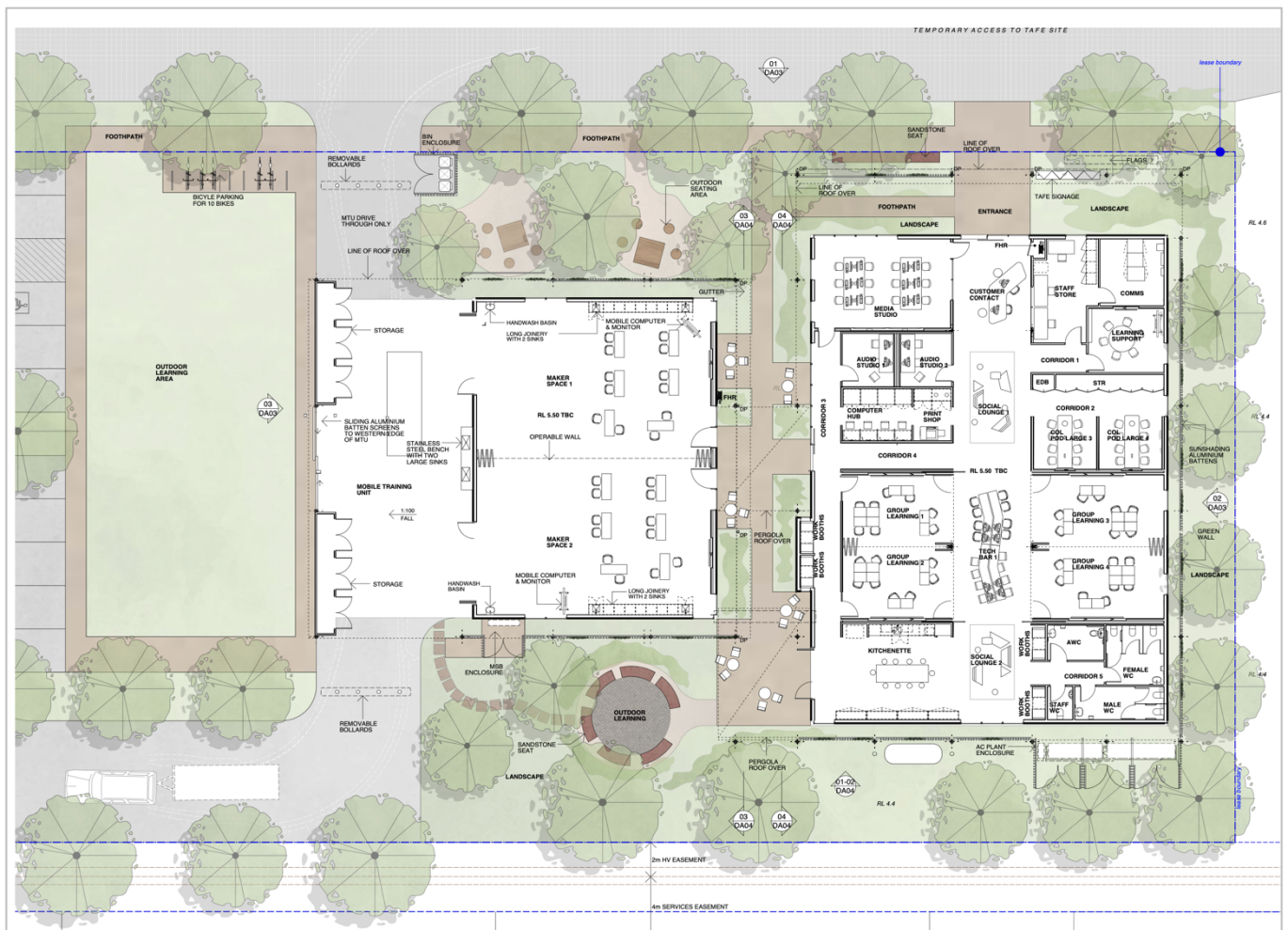
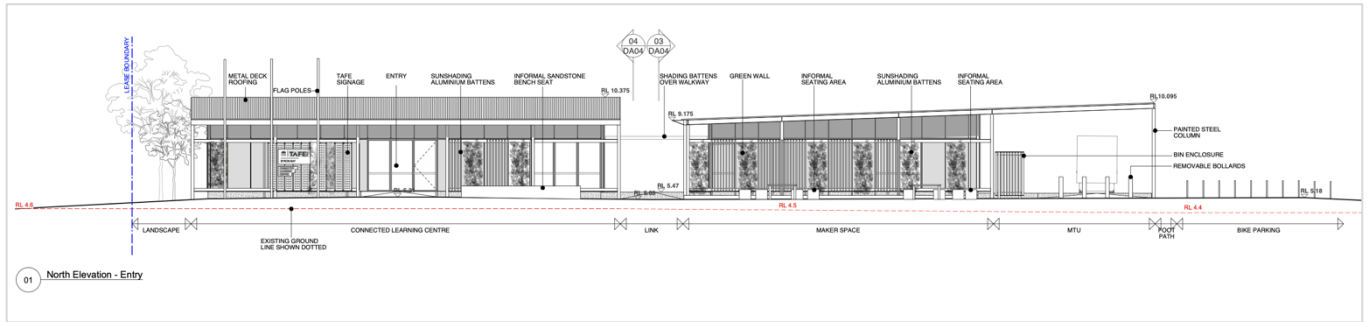


Figure 3 – Proposed Floor Plan



**Figure 4 – Northern Elevation**

### Access and Car Parking

Access to the site is proposed via the construction of a new temporary driveway from Bayshore Drive. This temporary driveway would be replaced by a new road as part of the future subdivision of the subject site.

A car park containing 21 spaces is located at the rear of the buildings. This includes one (1) accessible space and 10 bicycle spaces.

### Student and Staff numbers

The proposal will accommodate a maximum of 45 students and three (3) staff at any one time.

### Hours of Operation

The proposed hours of operation are:

- 8am to 9pm Monday to Friday
- 9am to 5pm Saturday and Sunday

### Earthworks and drainage

The existing ground level of the development envelope varies from approximately RL 4.2m to RL 4.8m AHD. This is above the design flood level of RL 3.9m (+ 500mm freeboard requirement for commercial development). However, for overall site drainage purposes and to tie in with the likely future development of the remainder of Lot 12, the land is proposed to be filled and the minimum floor levels will be 5.55m AHD for the MTU/Maker space building and 5.70m AHD for the Connected Learning Centre.

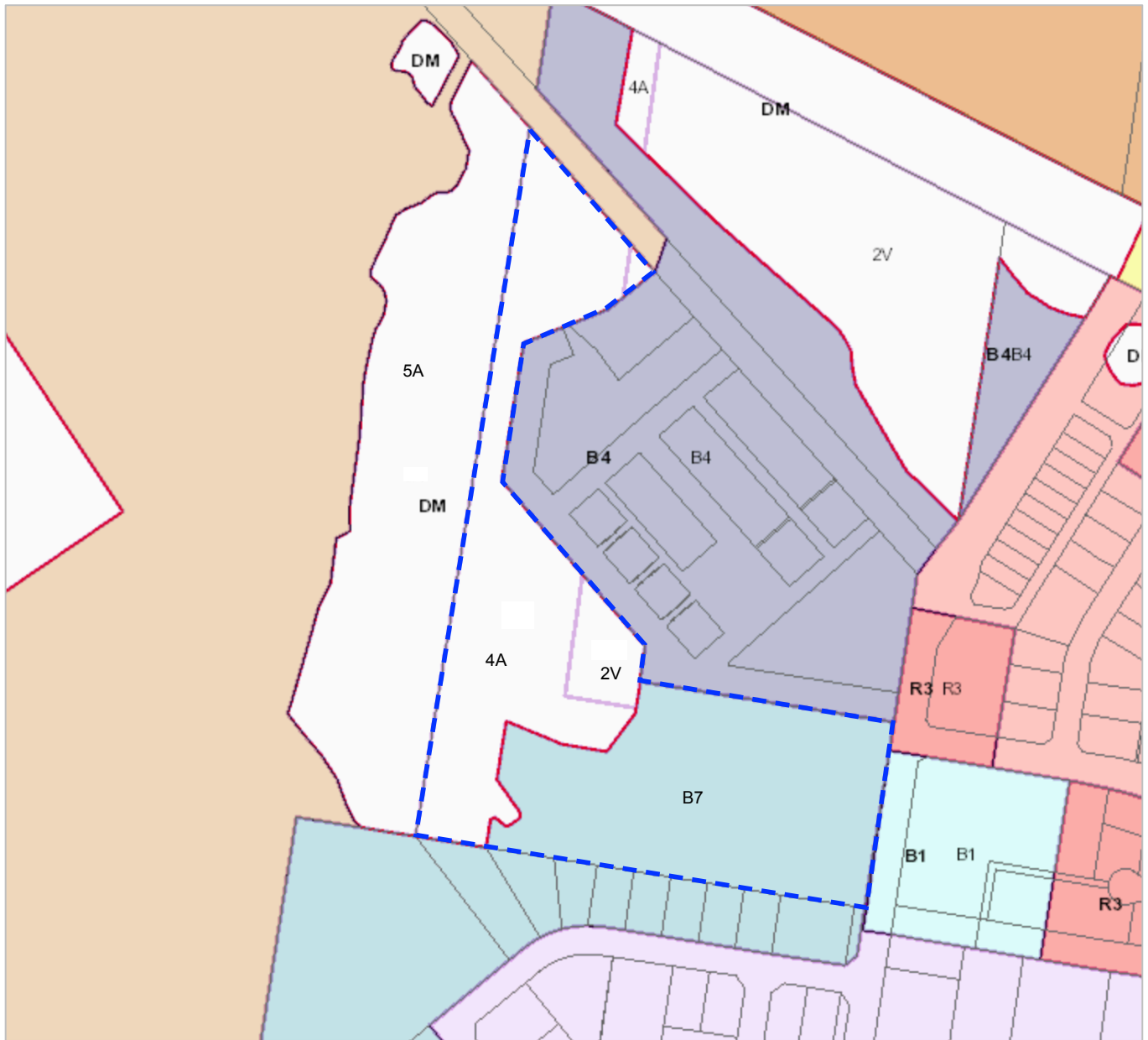
Stormwater will be drained to the west to a stormwater detention pond which discharges to the wetland.

## **1.3 Description of the site**

Land is legally described as:	LOT: 12 DP: 1189646
Property address:	23 Bayshore Drive BYRON BAY
Land is zoned:	Part B7 Business Park and Part DM Deferred Matter under Byron LEP 2014. The deferred matter is zoned part 2(v) Village Zone and part 4(a) Industrial Zone under Byron LEP 1988.  The development envelope is entirely within the B7 Business Park Zone. Refer to the zoning map in <b>Figure 5</b> .
Land area is:	5.815 hectares



Site Context	<p>The site is an irregular shape parcel of land in the Byron Arts and Industry Estate.</p> <p>North-west of the site is the West Byron Sewage Treatment Plant, to the south are developed lots as part of the arts and industry estate, on the opposite side of Bayshore Drive to the east is the West Byron Shopping Centre and Sunrise Beach estate, and to the north is the 'Habitat' development. Habitat is a mixed-use development, purpose-built to accommodate a variety of commercial, retail, and residential uses</p>	
Property is constrained by:	<ul style="list-style-type: none"> <li>• Bushfire prone land</li> <li>• Acid Sulfate Soils Class 3</li> <li>• High Conservation Value High Environmental Value</li> </ul>	
	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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No  There are easements for services, sewage, water supply and sewer rising main running along the eastern frontage of the site, adjacent to Bayshore Drive. The development envelope is clear of these easements.
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  There is a vegetation management plan in place for the western portion of Lot 12. This VMP was required as a condition of consent for DA 10.2015.1771.1 for tree removal over the site. The VMP does not directly affect this proposal.
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No



**Figure 5** – Zoning (Byron LEP 2014 and BLEP 1988 combined) – the development envelope is on the south eastern portion of the property and is zoned B7 Business Park (BLEP 2014). The Deferred Matter (DM) is shown white and is zoned part 2V (Village Zone) and part 4A (Industrial Zone) under Byron LEP 1988.

## 2 SUMMARY OF REFERRALS

<b>Referral</b>	<b>Issue</b>
Environmental Health Officer	No objections subject to conditions. Refer to Doc # A2021/15469
Development Engineer	No objections subject to conditions. Refer to Doc # A2021/15470
Ecologist	No objections subject to conditions. Refer to Doc # A2021/15474
S64 / Systems Planning Officer	No objections subject to conditions. Refer to Doc # E2021/78571

Section 94 Officer	No contributions are applicable. Refer to Doc # A2021/15473
NSW Rural Fire Service	No objections subject to conditions. Refer to letter dated 2 June 2021.
Bundjalung of Byron Bay Aboriginal Corp (Arakwal)	No response received.
Tweed Byron Local Aboriginal Land council	No response received.

## **Issues:**

### **Environmental Health Officer**

Council's Environmental Health Officer (EHO) raised no specific objections to the proposal subject to the imposition of conditions.

In relation to acid sulfate soils the following specific comments were provided:

*Comment: a report is provided E2021/63907 regarding ASS and geotechnical conditions.*

*The report makes recommendations pertaining to different types of construction approaches from slab on surface to deep piling and generally concludes that the site is non ASS.*

*However, there is a caveat that depends on the construction (footing and pilings method and how much soil is disturbed i.e. if soil disturbance is greater 500m<sup>3</sup> than an ASS management plan is required).*

*Further: the report suggests that if ASS is encountered then lime distributed on site would be the normal method of managing ASS. In the context of the neighbouring acid swamps and habitat for acid frogs (refer supporting report E2021/63895) this is not supported.*

*As such and as a precaution in the context of the nearby habitat for the acid frogs threatened species, a condition has been added that a detailed ASS, management plan is required that avoids the use of neutralizers on site where there is potential for neutral or alkaline pH run off impacting the surrounding acid frog habitat. The plan must also illustrate and define soil stockpile sites and management of any runoff / leachate associated with the stockpile.*

### **Planning assessment comments:**

Since these comments were made, the applicant has confirmed that foundations will be provided by the screw pier footing design and this forms part of the contract documentation. Further, they have confirmed that the proposal does not disturb more than 500m<sup>3</sup> of soil. An acid sulfate soil is not required pursuant to clause 6.1 of Byron LEP 2014. Notwithstanding, any consent will include conditions addressing Council's EHO requirements as part of the recommended Water Quality Management Plan and Acid Frog Management Plan.

### **Development Engineering**

Council's Development Engineer has assessed the proposal as follows:

#### **1. External Access**

Suitable vehicular access is available. Works in the road reserve to be conditioned include the provision of a footpath and cycle path, pedestrian crossing and raised island.

#### **2. Parking**

The proposal has been assessed against the provisions of Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access.

There is an excess of parking supply (11 spaces are required, 21 spaces are proposed). The proposal meets bicycle supply requirements.

The loading bay complies with dimensions specified in AS2890.2.

### **3. Internal Access Arrangements**

The parking layout and is satisfactory.

The turnaround movement does not meet the minimum dimension required in RFS Planning for Bushfire 2019.

The supporting documentation did not propose an internal pedestrian & cycle path to connect onto the external pedestrian & cycle path network.

The turnaround area and pedestrian and cycleway matters can be conditioned.

### **4. Traffic Impact**

This has been assessed as being low impact and satisfactory.

### **5. Stormwater management**

Councils' development engineer notes that:

- All stormwater is directed into the wetland area west of the site
- A two-stage approach has been adopted whereby stormwater both quality and quantity have been investigated for the ultimate development of Lot 2 and the TAFE development in isolation.
- In both cases the developed stormwater (quality & quantity) is mitigated back to the predevelopment situation.
- The treatment of stormwater (quality) has been targeted solely to treat Total Suspended Solids (TSS), Total Phosphorus (TP) & Total Nitrogen (TN). The measures in place address the pollutants (TSS, TP & TN) does not necessarily include pH levels and other water quality indicators required to mitigate the impact on the ecosystem in the wetland.

The engineering assessment concludes that these matters can be conditioned.

For reference, Lot 2 is a proposed future lot to be created from the subdivision of the subject site which will be subject of a separate development application which has not yet been lodged. The proposed general subdivision concept is shown on **Figure 6**.



**Figure 6** – Subdivision concept (source: Stormwater Report prepared by Geolink: 27.8.2021)

## 6. Geotechnical Hazards

The proposal is satisfactory with respect to DCP considerations for 'Excavation and Fill in all Zones'.

### Planning assessment comments:

Conditions of consent will be imposed as recommended by the development engineer.

### Ecologist

Councils' ecologist has reviewed the revised plans and advised as follows:

#### *Stormwater management*

*As with the previous plan, a stormwater detention basin is shown immediately adjacent to the edge of the coastal floodplain/swamp vegetation in the west of the site. It is understood that there is an already existing sediment basin in this area that will be utilised and incorporated into a bioretention basin. Although this stormwater infrastructure is within the ecological setback area, it is considered that it is unlikely to substantially increase human occupancy and associated impacts in the adjacent HEV/acid frog habitat area. The primary concern regarding stormwater management relates to potential changes in hydrology and water chemistry (in particular pH) in the receiving wetland. An acid frog management plan will be conditioned to include details regarding how stormwater management will avoid changes to hydrology, hydroperiod and/or water chemistry/quality.*

#### *Acid frog monitoring*

*Acid frogs should be systematically surveyed before and after construction to determine their presence/ absence and abundance and to assess habitat condition. A condition will be imposed for an Acid Frog Management Plan that includes these monitoring requirements. Data from monitoring surveys should be used to inform management decisions including the type and extent of future habitat enhancement works and contingency actions in the event that the stormwater management system does not function as intended.*

### *Ecological restoration/habitat enhancement*

*Given the application does not propose impacts to ecologically significant areas and does not require a variation of Chapter B1 of the DCP, no ecological restoration works are required. It is expected that the future stages of the broader development of the site will include the requirement for ecological restoration and protection of the HEV vegetation in the west of the site, including enhancement of acid frog habitat and the EECs occurring on the site: Swamp sclerophyll forest on coastal floodplains of the NSW north coast, Sydney basin and south east corner bioregions and Freshwater wetlands on coastal floodplains of the NSW north coast, Sydney basin and south east corner bioregions.*

The assessment concludes that the proposal is suitable for conditional consent.

### Planning assessment comments:

The recommendation for an Acid Frog Management Plan will be included as a consent condition.

### Systems Planning Officer

Council's Systems Planning Officer determined that levies under Section 64 of the Water Management Act 2000 are not payable as the proposed development generates no additional load on to Councils Water, Bulk Water and Sewer system. There is no additional loading above the existing entitlement.

### Section 94 Officer

Council's Section 94 Officer commented that no developer contributions are payable.

### **External Referrals**

The development application was referred to NSW Rural Fire Service. No objections to the proposal were raised subject to conditions of consent in relation to asset protection zones, construction standards, property access, water and utility services and landscaping.

It should be noted that the plans that NSW Rural Fire Service assessed proposed the development envelope sited closer to the vegetation to the west than the amended plans.

## **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 2019.

When the development application was prepared, and the bushfire assessment completed, the entire site was mapped as bush fire prone land. However, the mapping has since been amended and now only the northern part of the site, outside the development envelope, is mapped as bush fire prone land.

A Bush Fire Assessment report was submitted in support of the application and referred to the NSW Rural Fire Service. As outlined above, RFS raised no objections to the proposal subject to the imposition of relevant conditions of consent.

## **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><i>Consideration:</i> A Preliminary Site Contamination report has been prepared which included a soil sampling regime.</p> <p>All of the soil and groundwater samples show contaminant levels well below the relevant criteria.</p> <p>A Radiation survey of surface soils conditions was also undertaken across 11 locations and indicated compliance with the National Health and Medical Research Council (NHMRC 1984) and NSW EPA Action Level Criteria for dwellings, schools (including playgrounds), businesses, factories, etc.</p> <p>The report concludes: <i>Based on the extensive site history, site inspection and the laboratory results from soil and groundwater sampling; together with radiation survey of surface soils there is a low level of risk that the proposed site for the TAFE Connected Learning Centre is contaminated with residual chemicals from activities associated with current or past land use.</i></p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>SEPP (Coastal Management) 2018</i></p> <p><i>Consideration:</i> Clause 10 specifies that a consent authority must not grant consent for development on land identified in the SEPP as “coastal wetlands” or “littoral rainforest”, unless it is satisfied that sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological, and ecological integrity of the coastal wetland or littoral rainforest.</p> <p>The subject land is not identified as coastal wetlands or littoral rainforest on mapping associated with this SEPP.</p> <p>Clause 11 specifies that development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” unless the consent authority is satisfied that the proposed development will not significantly impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.</p> <p>The northern portion of the subject land is mapped as being a proximity area for a coastal wetland, with the wetland located to the north and north-east. This mapped proximate area is located approximately 240 metres from the ‘development envelope’ where the buildings and associated infrastructure is proposed to be located.</p> <p>The wetlands on the western portion of the site where the development drains to, is not mapped as coastal wetlands, littoral rainforest or a proximate area. The closest mapped area to the</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Considerations	Satisfactory	Unsatisfactory
<p>west is located on the adjacent land, approximately 180 metres from the western boundary.</p> <p>The application has been assessed by Council ecologist, engineer and environmental health officer and it is considered that activities will not significantly impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland, or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland. This is discussed further in the body of this report.</p> <p>Clause 12 relates to development on land within the coastal vulnerability area. There is presently no coastal vulnerability map. Therefore, this clause is not applicable.</p> <p>Clause 13 relates to development on land within the coastal environment area. The site is not mapped as being within the coastal environment area. Therefore, this clause is not applicable.</p> <p>Clause 14 relates to development on land within the coastal use area. The site is not mapped as being within the coastal use area. Therefore, this clause is not applicable.</p> <p>Clause 15 relates to development in coastal zone generally and requires that the consent authority must be satisfied that development will not increase risk of coastal hazards. The location of the site is sufficiently distant from the active coastal zone</p> <p>Conditions are proposed to be placed on the consent to ensure that the proposed development will not result in significant impacts on the adjacent wetland.</p>		
<p><i>SEPP (Educational Establishments and Child Care Facilities) 2017</i></p> <p>Consideration: Part 6 of this SEPP contains specific development controls for TAFE establishments. Clause 52 establishes that the proposed development is permitted with development consent in prescribed zones, which includes Zone B7 Business Park.</p> <p>Clause 57 relates to traffic generating development and requires that an educational establishment that are able to accommodate 50 or more additional students are required to be referred to Transport for NSW. As the proposal would not accommodate more than 45 students at any one time, referral under this clause is not required.</p> <p>Identification signage proposed is exempt development under the SEPP.</p> <p>The proposal is considered to be consistent with the relevant provisions of this SEPP.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>SEPP (Koala Habitat Protection) 2021</i></p> <p>Consideration: The site is within the Koala Planning Area of the Byron Coast Comprehensive Koala Plan of Management.</p> <p>The proposal does not involve the removal of any trees. The land affected by the proposal is not potential koala habitat. It is</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>



Considerations	Satisfactory	Unsatisfactory
considered that the proposal is satisfactory in this regard. No further consideration of this Policy is required.		
<i>SEPP (State and Regional Development) 2011</i> Consideration: Pursuant to Schedule 7 Clauses 3(b), 3(d) and 4, the proposal is Regionally Significant Development as it involves Council related development, and Crown development, with a capital investment value over \$5 million.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>SEPP (Vegetation in non-rural areas) 2017</i> Consideration: No vegetation, other than modified grassland, will be affected by the proposed development.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development (The proposed development is entirely within the B7 zoned land).

Part 1	<input checked="" type="checkbox"/> 1.1  <input checked="" type="checkbox"/> 1.1AA  <input checked="" type="checkbox"/> 1.2  <input checked="" type="checkbox"/> 1.3  <input checked="" type="checkbox"/> 1.4  <input checked="" type="checkbox"/> Dictionary  <input checked="" type="checkbox"/> 1.5  <input checked="" type="checkbox"/> 1.6  <input checked="" type="checkbox"/> 1.7  <input checked="" type="checkbox"/> 1.8  <input type="checkbox"/> 1.8A  <input checked="" type="checkbox"/> 1.9  <input type="checkbox"/> 1.9A
Part 2	<input checked="" type="checkbox"/> 2.1  <input checked="" type="checkbox"/> 2.2   <input checked="" type="checkbox"/> 2.3   <input checked="" type="checkbox"/> Land Use Table   <input type="checkbox"/> 2.4   <input type="checkbox"/> 2.5   <input type="checkbox"/> 2.6   <input type="checkbox"/> 2.7   <input type="checkbox"/> 2.8
Part 3	<input type="checkbox"/> 3.1  <input type="checkbox"/> 3.2  <input type="checkbox"/> 3.3
Part 4	<input type="checkbox"/> 4.1  <input type="checkbox"/> 4.1A  <input type="checkbox"/> 4.1AA  <input type="checkbox"/> 4.1B   <input type="checkbox"/> 4.1C  <input type="checkbox"/> 4.1D  <input type="checkbox"/> 4.1E  <input type="checkbox"/> 4.1F  <input type="checkbox"/> 4.2  <input type="checkbox"/> 4.2A  <input type="checkbox"/> 4.2B  <input type="checkbox"/> 4.2C  <input type="checkbox"/> 4.2D  <input checked="" type="checkbox"/> 4.3  <input checked="" type="checkbox"/> 4.4   <input checked="" type="checkbox"/> 4.5   <input type="checkbox"/> 4.6
Part 5	<input type="checkbox"/> 5.1  <input type="checkbox"/> 5.2  <input type="checkbox"/> 5.3  <input type="checkbox"/> 5.4  <input type="checkbox"/> 5.6  <input type="checkbox"/> 5.7  <input type="checkbox"/> 5.8  <input checked="" type="checkbox"/> 5.10  <input type="checkbox"/> 5.11  <input type="checkbox"/> 5.12  <input type="checkbox"/> 5.13   <input type="checkbox"/> 5.14   <input type="checkbox"/> 5.15   <input type="checkbox"/> 5.16   <input type="checkbox"/> 5.17   <input type="checkbox"/> 5.18   <input type="checkbox"/> 5.19
Part 6	<input checked="" type="checkbox"/> 6.1  <input checked="" type="checkbox"/> 6.2  <input type="checkbox"/> 6.3  <input type="checkbox"/> 6.4  <input type="checkbox"/> 6.5  <input checked="" type="checkbox"/> 6.6  <input type="checkbox"/> 6.7  <input type="checkbox"/> 6.8  <input type="checkbox"/> 6.9   <input type="checkbox"/> 6.10  <input type="checkbox"/> 6.11

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 an 'educational establishment' ;
- (b) The land is zoned part B7 Business Park and part DM Deferred Matter under Byron LEP 2014 according to the Land Zoning Map. The Deferred Matter is land affected by Byron LEP 1988 and is zoned part 2(v) Village Zone and part 4(a) Industrial Zone under Byron LEP 1988.

The development envelope is entirely within the B7 Business Park Zone. There are no provisions of Byron LEP 1988 that are required to be considered.

- (c) The proposed development is permissible with development consent; and
- (d) Regard is had for the Zone Objectives as follows:

Zone Objectives	Consideration
<ul style="list-style-type: none"> <li>To provide a range of office and light industrial uses.</li> <li>To encourage employment opportunities.</li> </ul>	The proposed development is consistent with relevant zone objectives.

<ul style="list-style-type: none"> <li>• <i>To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.</i></li> <li>• <i>To enable a range of other development compatible with or ancillary to industrial uses if such uses do not undermine the retail function of Byron Bay town centre.</i></li> </ul>	<p>The proposal provides training for future employment opportunities and is a type of development that is compatible with industrial uses in the area.</p> <p>It is not a type of development that would undermine the retail function of the Byron Bay Town centre.</p>
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### Clause 4.3 Height of buildings

The Height of Buildings Map specifies a height limit of 9m over the B7 zoned land. The proposed TAFE buildings have a maximum height of 5.975 m above existing ground level. There are three (3) flagpoles proposed on the northern side of the buildings which have a height of 7.6m above existing ground level. The proposal complies with the requirements of this clause.

### Clause 4.4 Floor space ratio

The Floor Space Ratio Map specifies a maximum floor space ratio (FSR's) of 0.9:1. The proposal complies with this standard.

### Clause 5.10 Heritage conservation

*Non-indigenous heritage:* The site does not contain any listed heritage items, is not located adjacent to any listed heritage items, and is not within a heritage conservation area.

*Indigenous heritage:* The application included an AHIMS (Aboriginal Heritage Information Management System) search, which found no Aboriginal sites or places have been recorded or declared in or near the subject site.

### Clause 6.1 Acid sulfate soils

The proposed development is located on land identified as Class 3 on the Acid Sulfate Soils Map. Where there is work more than 1 metre below natural ground level, subclause (3) provides that development consent must not be granted under this clause unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.

Works below 1 metre below natural ground level includes the installation of the screw piles for the building foundations. The applicant has confirmed that the installation of services does not require work below 1m below natural ground level.

The Acid Sulfate Soil Manual indicates that a preliminary acid sulfate soil assessment should establish whether acid sulfate soils are present on the site and if so, whether the preparation of an acid sulfate soils management plan is warranted based on this preliminary investigation. In this case, the preliminary acid sulfate soils investigation indicates that if less than 500m<sup>3</sup> of material is to be disturbed, an acid sulfate soil management plan is not required.

The applicant has confirmed that less than 500m<sup>3</sup> will be disturbed, therefore it is considered that the requirements of this clause has been met. However, as a precaution a condition of consent will require the provision of a water quality management plan and acid frog management plan that avoids the use of neutralizers on site where there is potential for neutral or alkaline pH run off impacting the surrounding acid frog habitat. The plan must also illustrate and define soil stockpile sites and management of any runoff / leachate associated with the stockpile.

### Clause 6.2 Earthworks

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. Subclause 3 requires that:

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

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- (b) the effect of the development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the likelihood of disturbing relics,*
- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Filling is proposed to establish the building platform and shape the site for drainage and the installation of services. Fill depths vary across the site from 0m to 1.1m. Fill will be imported and conditions of consent imposed to ensure its stability.

The TAFE site and surrounding land generally falls from the north-eastern corner to the south-western corner. The proposal is to maintain the existing overland flow path in this direction. Upon completion of the proposed TAFE development, a catch drain will intercept runoff from the north-eastern portion of Lot 12. This catch drain will discharge to the wetland in the south western corner of the site in a controlled manner.

The southern boundary of the site will have a swale constructed to prevent overland flow crossing the boundary into neighbouring properties. The overland flow path will discharge water into the proposed bioretention basin in the south-western corner.

With respect to the specific clause 6.2 considerations, Councils engineers have raised no objections to the earthworks proposed and it is concluded that suitable conditions can be placed on any consent to ensure that there will be no unacceptable impacts on drainage patterns and surrounding properties, or wetlands to the west. If relics are uncovered, work must immediately stop and the relevant authorities notified.

#### Clause 6.6 Essential services

The clause requires that, prior to granting consent to development, the consent authority must be satisfied that the nominated services are available or that adequate arrangements have been made to make them available.

The site is within an existing developed urban area where all required services are available or can be made available.

Access will be via a new driveway from Bayshore Drive. It is designed as a temporary driveway as a new internal road system will be designed as part of the future subdivision of Lot 12. The new internal road system will result in a new road frontage for the portion of land that the TAFE building is proposed to be constructed on.

The remaining checked clauses have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act. The proposed development complies with relevant clauses of LEP 2014 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

#### **4.3 Byron Local Environmental Plan 1988 (LEP 1988)**

The land affected by Byron LEP 1988 is zoned part 2(v) Village and part (4a) Industrial. The proposed development envelope and associated infrastructure is located on the B7 zoned land under the Byron LEP 2014. There is no work in the land affected by the Byron LEP 1988 and there are no specific clauses that need to be addressed.

#### **4.4 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority**

An amendment to SEPP (Educational Establishments and Child Care Facilities) 2017 was exhibited from 20/11/2020 to 17/12/2021. This amendment is still under consideration and has no implications for this development application.

#### 4.5 Byron Shire Development Control Plan 2014 (DCP 2014)

DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the land to which LEP 2014 applies. The DCP 2014 Parts/Chapters that are checked below are of relevance to the proposed development:

Part A	<input checked="" type="checkbox"/>
Part B Chapters:	<input checked="" type="checkbox"/> B1   <input type="checkbox"/> B2   <input checked="" type="checkbox"/> B3   <input checked="" type="checkbox"/> B4   <input checked="" type="checkbox"/> B5   <input checked="" type="checkbox"/> B6   <input type="checkbox"/> B7   <input checked="" type="checkbox"/> B8   <input checked="" type="checkbox"/> B9   <input type="checkbox"/> B10   <input checked="" type="checkbox"/> B11   <input type="checkbox"/> B12   <input checked="" type="checkbox"/> B13   <input checked="" type="checkbox"/> B14
Part C Chapters:	<input type="checkbox"/> C1   <input type="checkbox"/> C2   <input type="checkbox"/> C3   <input type="checkbox"/> C4
Part D Chapters	<input type="checkbox"/> D1   <input type="checkbox"/> D2   <input type="checkbox"/> D3   <input type="checkbox"/> D4   <input type="checkbox"/> D5   <input type="checkbox"/> D6   <input type="checkbox"/> D7   <input type="checkbox"/> D8   <input type="checkbox"/> D9
Part E Chapters	<input type="checkbox"/> E1   <input type="checkbox"/> E2   <input type="checkbox"/> E3   <input type="checkbox"/> E4   <input type="checkbox"/> E5   <input type="checkbox"/> E6   <input type="checkbox"/> E7   <input type="checkbox"/> E8

The checked Parts/Chapters referred to in the above Table have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act. The proposed development is demonstrated to meet the relevant Objectives of all relevant Parts/Chapters (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

Council's Engineer has reviewed the application regarding access, traffic, stormwater management and earthworks (Chapters B3 - Services, B4 – Traffic Planning, Vehicle Parking, Circulation and Access and B14 – Excavation and Fill) and found the proposal to be satisfactory subject to recommended conditions.

Council's Environmental Health Officer has reviewed the application regarding site waste minimisation and land use conflicts (Chapters B6 – Buffers and Minimising land Use Conflicts and B8 – Waste Minimisation and Management) and found the proposal to be satisfactory subject to recommended conditions.

Council's Ecologist has reviewed the application with respect to biodiversity (Chapter B1 - Biodiversity) and found the proposal to be satisfactory subject to conditions concerning acid frog management, stormwater management and landscape species.

As discussed, the application when it was originally lodged sited the building closer to the wetlands to the west. At the time, the applicant was advised that the proposed ecological setback area did not comply with Chapter B1 as the ecological setback area is only ~24 m rather than the required 30 m.

The APZ also overlapped with the ecological setback area required under Chapter B1 of the DCP. The applicant was invited to address this matter and consequently chose to increase the setbacks to comply.

The Record of Briefing from the Northern Regional Planning Panel indicated that:

*Application amended via cl55 to address ecological concerns. Council requested an increase in car park setback. The setback between car park and veg to the west is now approx. 50m. Council should detail consideration around the impact setback has on any potential for sterilization of valuable land and future upsizing the TAFE at the western end.*

In this regard:

- The increased setback provides an opportunity for the creation of a 1000m<sup>2</sup> parcel of land between the TAFE development and the stormwater detention basin. Any development on this proposed lot would need to comply with Planning for Bushfire Protection 2019 (which may have less of a APZ requirement than a TAFE development) and meet satisfactory ecological

outcomes. This would be assessed as part of a separate development application for the proposed subdivision.

Consequently, by increasing the TAFE setback, the business zoned land is not sterilised, however the type of development that occurs adjacent to the wetland would need to be compatible with its environmental qualities.

- Additional land is available to the east of the development envelope if TAFE wanted to upsize in the future. However, this would be subject to further lease negotiations between Council and TAFE, and this is not proposed as part of this development application.

#### 4.6 Byron Shire Development Control Plan 2010 (DCP 2010)

The DCP applies to the parts of the subject site that are affected by Byron DCP 2010. These areas are outside of the development footprint and there are no relevant matters for consideration.

#### 4.7 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?
92	No	N/A	N/A
93	No	N/A	N/A
94	No	N/A	N/A
94A	No	N/A	N/A

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

Impact on:	Likely significant impact/s?
<b>Natural environment</b>	No. The proposal will not have a significant adverse impact on the natural environment of the locality.  Conditions of consent are recommended with respect to stormwater management, water quality management and acid frog management.
<b>Built environment</b>	No. The proposal will not have a significantly adverse impact on the built environment of the locality.  The proposed single storey building are compatible with the existing mixed-use developments in the Byron Arts and Industrial Estate.
<b>Social Environment</b>	No. The proposal will not have a significant social impact on the locality.  It will provide additional educational opportunities in the Byron area.
<b>Economic impact</b>	No. The proposal will not have a significant economic impact on the locality.
<b>Construction Impacts</b>	The development will generate minor impacts during its construction. Conditions of consent recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.

#### 4.9 The suitability of the site for the development

The site is a serviced, and due to previously approved tree removal and site clean-up is void of any significant constraints. The site is suitable for the proposed development.

#### 4.10 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited from 27 May 2021 to 23 June 2021. There were no submissions received.

#### 4.11 Public interest

The proposed development is unlikely to prejudice or compromise the public interest or create an undesirable precedent.

#### 4.12 Section 4.33 – Determination of Crown development applications

TAFE NSW is a Crown authority. Section 4.33(1) of the Act precludes a consent authority from refusing a Crown development application, except with the approval of the Minister, or from imposing a condition of consent to a Crown development application, except with the approval of the applicant or the Minister.

Draft conditions of consent were provided to the applicant for consideration on 22 October 2021.

Following a period of negotiation, the applicant responded on 16 November 2021 with approval of the conditions of consent which are included in the Recommendation below.

### 5 DEVELOPER CONTRIBUTIONS

#### 5.1 Water & Sewer Levies

There is no additional loading above the existing entitlement. No Section 64 levies will be required.

#### 5.2 Developer Contributions

No Developer Contributions will be required.

### 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 development application proposes an Educational Establishment (TAFE NSW Connected Learning Centre).

The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed, and the site is considered suitable for the proposed development. The application appropriately addresses the relevant constraints applying to the site and is recommended for approval subject to the conditions listed in the Recommendation of this Report below.

### 8 REASONS 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 complies with the provisions of Byron Local Environmental Plan 2014.

The proposed development complies with relevant State Environmental Planning Policies
The proposed development complies with relevant provisions of Development Control Plan 2014
The proposed development complies with Environmental Planning & Assessment Regulation 2000 considerations.
The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The development application was notified/advertised in accordance with the Community Participation Plan. There were no public submissions made.
The proposed development is unlikely to prejudice or compromise the public interest.

<b>How community views were addressed</b>
The DA was notified/advertised in accordance with Byron Shire Council Community Participation Plan (CPP). No submissions were received.

## 9 RECOMMENDATION

It is recommended that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.234.1 for Proposed Educational Establishment TAFE NSW Connected Learning Centre, be granted consent subject to the following conditions:

## 10 CONDITIONS OF CONSENT

## SCHEDULE 1 CONDITIONS OF CONSENT

### Parameters of consent

1. **Development is to be in accordance with approved plans**  
The development is to be in accordance with plans listed below:

Plan No.	Description	Prepared by	Dated:
BB-DA00 Rev C	Coversheet & Locality Plan	Brewster Hjorth Architects	30/8/21
BB-DA01 Rev C	Site Plan	Brewster Hjorth Architects	30/8/21
BB-DA02 Rev B	Floor Plan	Brewster Hjorth Architects	30/8/21
BB-DA03 Rev B	Elevations – Sheet 1	Brewster Hjorth Architects	30/8/21
BB-DA04 Rev B	Elevations – Sheet 2	Brewster Hjorth Architects	30/8/21
225-01C No 1	TAFE Access Design	Amber	24/8/21
3544/C002	General Arrangement Plan	Geolink	No date
3544/C010	Stormwater Plan and Sections	Geolink	No date
3544-1026	Stormwater Report Lot 12 Bayshore Dr Proposed Lot 2	Geolink	27/8/21

2. **Bush fire safety measures**  
This land is identified as being designated bush fire prone land and under section 4.14 of the Environmental Planning and Assessment Act 1979, Council must be satisfied prior to making a determination for development on bush fire prone land that the development complies with “Planning for Bush Fire Protection 2019”.

The development is approved subject to the NSW Rural Fire Service conditions provided in **Schedule 3** of this consent, or any updated requirements from the NSW Rural Fire Service as a result of moving the building further away from the bush fire source.

### The following conditions are to be complied with prior to the certification of Crown building works

3. **Geotechnical Report required – Building Works**  
A certificate from a professional Engineer experienced in Geotechnical Science is to be provided to the Principal Certifying Authority, certifying that the site is stable and will not be affected by landslide or subsidence at, above or below the site when the building is erected. The certificate must be prepared in accordance with AS 1726.



4. **Geotechnical Report required – Engineering Works**

A certificate from a professional Engineer experienced in soil mechanics is to be provided to the Principal Certifying Authority, certifying that:

- a) the design of the civil engineering works, including retaining walls and/or cut & fill batters, has been assessed as structurally adequate,
- b) the civil engineering works will not be affected by landslip or subsidence either above or below the works; and
- c) adequate drainage has been provided

5. **Sediment and Erosion Control Management Plan required**

The application for Crown building works certification is to include plans and specifications that indicate the measures to be employed to control erosion and loss of sediment from the site. Control over discharge of stormwater and containment of run-off and pollutants leaving the site/premises must be undertaken through the installation of erosion control devices such as catch drains, energy dissipaters, level spreaders and sediment control devices such as filter fences and sedimentation basins.

Such plans and specifications must be approved by the Crown Certifier.

**NOTE: The plans must be in compliance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".**

6. **On-site stormwater detention required**

Plans and specifications for stormwater drainage in accordance with the relevant Australian Standard. All stormwater drainage for the development must be conveyed via an on-site stormwater detention system by gravity in accordance with the approved plans

A fully detailed design of the OSD and Stormwater Quality Improvement Devices including maintenance plan generally in accordance with the approved plans and Geolink stormwater report must be prepared and submitted in accordance with NRLG Design and Construction Guidelines and Water by Design Music Modelling Guidelines and Technical Guidelines

Such plans and specifications must be approved by the Crown Certifier.

All stormwater drainage systems within the lot and the connection to a public or an inter-allotment drainage system must comply with any requirements for the disposal of stormwater drainage and on-site stormwater detention contained in Council's Development Control Plan, Stormwater Guideline and Local Approvals Policy.

7. **Consent required for works within the road reserve**

Consent from Council must be obtained for works within the road reserve pursuant to Section 138 of the Roads Act 1993. Three (3) copies of engineering construction plans must accompany the application for consent for works within the road reserve.

Such plans are to be in accordance with Council's current Design & Construction Manuals and are to provide for the following works:

**Driveway**

A driveway in accordance with Council's standard "Northern Rivers Local Government Development Design & Construction Manuals and AS2890.2.

The driveway layout and width of the access/driveway must be in accordance with Figure 3.1 and Table 3.1 of AS2890.2 respectively to accommodate the maximum design vehicle accessing the site.

The footpath crossing must be designed to provide a cross fall of 1 % or 1:100 (maximum 2.5% or 1 in 40) for a width of at least 2.4 metres to provide for pedestrians with access disabilities.

Provision must be made to provide a pedestrian ramp on the northern and southern sections of the driveway

**1.5 m wide footpath** 1.5m wide foot paving south of the driveway up to the southern boundary of the site at a crossfall of 1 % or 1:100 (maximum 2.5% or 1 in 40). The footpath must be located 1.5m from the back of kerb.

**2.5m wide footpath** 2.5m wide footpath/cycleway heading north in accordance with Amber drawing 1 at a crossfall of 1 % or 1:100 (maximum 2.5% or 1 in 40). The footpath must be located 1.5m from the back of kerb.

**Pedestrian refuge** A pedestrian refuge in accordance with Amber drawing 1 in Bayshore Dr. The pedestrian refuge is to be designed in accordance with Australian Standard 1742.10 – Manual of Uniform Traffic Controls – Pedestrian Control and Protection and Traffic Authority of New South Wales Guidelines for Traffic Facilities, Part 4.2 – Pedestrian Refuges. The design is to address siting, signs, linemarking, parking restrictions and night-time visibility.

The following must also be included in the design

- Provision of 4m ramp on both sides of Bayshore Dr
- Pedestrian refuge to accommodate 4m width x 2m long area
- Streetlighting in accordance with AS1158

**Raised Island**

Raised island in accordance with Amber drawing 1 in Bayshore Dr. The raised island must include the following:

- minimum lane width of 3.5m
- left-in and left-out manoeuvres of all design vehicles
- right turning movement of HRV coming from IGA driveway
- The configuration of the raised island must be checked and designed using the following design vehicles servicing the development:
  - MTU including the towing vehicle
  - Largest MTU without towing requirement
  - Refuse Collection Vehicle (RCV)
  - MRV
- chevron treatment north of the raised island/pedestrian refuge
- Associated signage and linemarking

## 8. Public Safety Management Plan required

Prior to certification of Crown building works, consent from Council must be obtained for a Public Safety Management Plan for those works within the road reserve pursuant to Section 138 of the Roads Act 1993. This public safety management plan is to include provision for (but not be limited to):

- a) a pedestrian barrier, alternative footpaths and ramps as necessary;
- b) lighting of the alternative footpath between sunset and sunrise;
- c) the loading and unloading of building materials;
- d) parking space for tradesman's vehicles, where such vehicles must be located near the site due to tools and equipment contain within the vehicle;
- e) Removal of any such hoarding, fence or awning as soon as the particular work has been completed.

The temporary use of Council land/road reserve to enable construction work or an event is subject to fees in accordance with Council's adopted fees and charges. The use fee must be paid upfront prior to use and will generally be required to be paid prior to issue of the Council's consent for such use.

9. **Traffic Management Plan (TMP)**

Prior to issue of the Crown building works certification, consent from Council must be obtained for a Traffic Management Plan (TMP) pursuant to Section 138 of the Roads Act 1993. The plans and specifications are to include the measures to be employed to control traffic (inclusive of construction vehicles) during construction of the development. The TMP is to be designed in accordance with the requirements of the current version of the Transport for NSW Traffic Control at Work Sites Technical Manual.

The report must incorporate measures to ensure that motorists using road adjacent to the development, residents and pedestrians in the vicinity of the development are subjected to minimal time delays due to construction on the site or adjacent to the site.

The TMP and associated traffic guidance scheme/s must be prepared by a suitably qualified Transport for NSW accredited person.

10. **Car parking layout, vehicle circulation and access plans required.**

The application for Crown building works certification is to include plans and specification that indicate access, parking and manoeuvring details in accordance with the plans approved by this consent.

The access, parking and manoeuvring for the site is to comply with the requirements of AS 2890.1-2004: Parking facilities, Part 1: Off-street car parking and AS 2890.2 – 2010 - Parking facilities, Part 2: Off-street commercial vehicle facilities. Plans are to include, but not be limited to, the following items:

- a) 19 x User Class 1 car parking spaces
- b) 1 x User Class 4 car parking
- c) 1 x MRV loading bay
- d) 10 bicycle parking
- e) Shared path to connect onto the existing/proposed footpath/cycle path network
- f) Internal access to meet Condition 3 of RFS GTA with reference no DA20210527002178-Original-1 and generally in accordance with the approved drawings
- g) pavement design, comprising an all weather surface, such as asphalt, bitumen seal, concrete, pavers or other similar treatment;
- h) site conditions affecting the access;

- i) existing and design levels;
- j) longitudinal section from the road centreline to the car space(s);
- k) cross sections every 15 metres;
- l) drainage details; and
- m) line marking and signage.

The engineering plans and specifications are to be designed by a qualified practising Civil Engineer. The Civil Engineer is to be a corporate member of the Institution of Engineers Australia or is to be eligible to become a corporate member and have appropriate experience and competence in the related field.

Such plans and specifications must be approved as part of the Crown building works certification.

NOTE: The plans must be in compliance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings"

**11. Bond required to guarantee against damage to public land**

A bond of \$10000 is to be paid to Council as guarantee against damage to surrounding public land and infrastructure during construction of the proposed development. Evidence is to be provided to Council indicating the pre development condition of the surrounding public land and infrastructure. Such evidence must include photographs. The proponent will be held responsible for the repair of any damage to roads, kerb and gutters, footpaths, driveway crossovers or other assets.

Such bond will be held until Council is satisfied that the infrastructure is maintained/repaired to pre development conditions and that no further work is to be carried out that may result in damage to Council's roads, footpaths etc

**12. Compliance required with Building in the Vicinity of Underground Infrastructure Policy**

All developments must comply with Policy: Building in the Vicinity of Underground Infrastructure 2020. Swimming pools are classed as buildings and are required to comply with this policy.

Any retaining wall / brick / masonry fence crossing a pipeline requires Council approval. The fence must be supported such that it does not cause loading on the pipes zone-of-influence.

**13. Water Quality Management Plan.**

A plan including calculations and diagrams must be submitted to council for approval by either council's environmental health and or ecological officers that details the volume of material being excavated, how excavated material is to be treated and stored on or off site and how any runoff or leachate from excavations, and stockpiles are to be managed.

The plan must detail how the works will aim to avoid any changes in the pH and hydraulics of the surrounding wetlands during both the construction and operation phases of the proposal.

A copy of the approved plan must be kept on site during construction and operation phases

**14. Acid frog management plan**

An acid frog management plan must be prepared by a qualified ecologist with experience working with threatened frogs. The management plan is to be titled and structured as a 'Stage 1' document to allow for an expanded program of actions for the ultimate development of Lot 12 DP 1189646. The plan is to be approved by Council's ecologist and include the following:

- a) a program of acid frog monitoring consistent with the monitoring program associated with the development on Lot 1 DP 271119 to the north. This must include monitoring surveys prior to the commencement of construction to obtain baseline data.
- b) water quality monitoring of the receiving wetland/acid frog habitat (by suitably qualified personnel);
- c) a detailed description of how stormwater management will avoid changes in hydrology and water quality/chemistry of the receiving wetland in the context of acid frog habitat requirements;
- d) measures to reduce the impacts on acid frog habitat during the construction phase;
- e) performance indicators and adaptive management strategies to ensure that acid frog populations are conserved and contingency actions in the event that adverse impacts are detected; and
- f) a requirement to report to Council on an annual basis

15. **Stormwater management to avoid impacts to acid frog habitat**

The detailed stormwater management plan must incorporate measures to avoid changes in hydrology and water quality/chemistry of the receiving wetland in the context of acid frog habitat requirements

16. **Landscaping**

All landscaping on any part of the site must accord with the requirement to plant only appropriate local native species.

**The following conditions are to be complied with prior to any construction works commencing**

17. **Traffic Management Plan**

The approved traffic management plan is to be implemented.

18. **Public safety requirements**

All care is to be taken to ensure the safety of the public in general, road users, pedestrians and adjoining property. The public liability insurance cover, for a minimum of \$20 million, is to be maintained for the duration of the construction of the development. Council is not held responsible for any negligence caused by the undertaking of the works.

19. **Erosion and Sediment Control Management Plan required**

Erosion and sedimentation controls are to be in place in accordance with the approved Erosion and Sediment Control Plan.

Sediment and erosion control measures in accordance with the approved Erosion and Sedimentation Control plan/s must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.

Any such measures that are deemed to be necessary because of the local conditions must be maintained at all times until the site is made stable (i.e. by permanent vegetation cover or hard surface).

**Note: Council may impose on-the-spot fines for non-compliance with this condition.**

20. **Acid frog baseline monitoring**

Baseline monitoring of acid frogs to determine presence/absence and abundance and assessment of habitat condition must be carried out in accordance with the approved acid frog management plan prior to construction works commencing.

21. **Toilet facilities**

Toilet facilities are to be provided, at or in the vicinity of the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be a toilet connected to an accredited sewage management system approved by the Council.

**The following conditions are to be complied with during any building or construction works**

22. **Construction times**

Construction works must not unreasonably interfere with the amenity of the neighbourhood. In particular construction noise, when audible from adjoining residential premises, can only occur:

- a) Monday to Friday, from 7 am to 6 pm.
- b) Saturday, from 8 am to 1 pm.

No construction work to take place on Saturdays and Sundays adjacent to Public Holidays and Public Holidays and the Construction Industry Awarded Rostered Days Off (RDO) adjacent to Public Holidays.

**Note: Council may impose on-the-spot fines for non-compliance with this condition.**

23. **Construction noise**

Construction noise is to be limited as follows:

- a) For construction periods of four (4) weeks and under, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 20 dB(A).
- b) For construction periods greater than four (4) weeks and not exceeding twenty-six (26) weeks, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 10 dB(A) .

**Note: Council may impose on-the-spot fines for non-compliance with this condition.**

24. **Signs to be erected on building and demolition sites**

A sign must be erected in a prominent position on the work site:

- a) stating that unauthorised entry to the work site is prohibited, and

- b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.

Any such sign is to be removed when the work has been completed.

25. **Builders rubbish to be contained on site**

All builders rubbish is to be contained on the site in a 'Builders Skips' or an enclosure. Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

26. **Fill to be retained on the subject land**

Fill material must not encroach onto any adjoining land.

27. **All excavated soils to be disposed of off-site**

All excavated soils to be disposed of off-site and in accordance with NSW EPA *Waste Classification Guidelines* (2014) and approved environmental management plans.

28. **Prevention of water pollution**

Only clean and unpolluted water is to be discharged to Council's stormwater drainage system or any watercourse to ensure compliance with the Protection of Environment Operations Act.

**Note: Council may impose on-the-spot fines for non-compliance with this condition.**

29. **Removal of demolition and other wastes**

All wastes, including asbestos and lead-contaminated wastes, associated with these works are to be handled and disposed of in accordance with the requirements of the Work Cover Authority. The applicant/owner is to produce documentary evidence that this condition has been met. Wastes must be disposed of at a Licenced Waste Facility. All wastes removed from the site must be managed and disposed of in accordance with the NSW DECC Waste Classification Guidelines (2008)  
[www.environment.nsw.gov.au/resources/waste/08202classifyingwaste.pdf](http://www.environment.nsw.gov.au/resources/waste/08202classifyingwaste.pdf)

30. **Excavated natural materials and demolition waste disposal**

Any and all excavated natural materials and demolition and builders waste transported from the site must be accompanied (a copy kept with the transporter) by a NSW Protection of The Environment Operations Act s143 Notice. Template s143 Notices are available at <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/wasteregulation/160095-notices143-form.docx>

31. **Services**

Services below the flood planning level must be in accordance with the requirements of Council's Development Control Plan 2014 – Chapter C2 – Areas Affected by Flood.

32. **Maintenance of sediment and erosion control measures**

Sediment and erosion control measures must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface

33. **Stormwater drainage work**

Stormwater drainage for the development shall be constructed in accordance with the approved plans and specification by a suitably qualified person

**The following conditions are to be complied with prior to occupation of the building**

34. **Works to be completed prior to occupation of the building**  
All of the works indicated on the plans and approved by this consent, including any other consents that are necessary for the completion of this development, are to be completed and approved by the relevant consent authority/s prior to the occupation of the building.
- Any Security bond paid for this application will be held until Council is satisfied that no further works are to be carried out that may result in damage to Council's road/footpath reserve.
35. **Completion of landscaping works**  
Prior to the occupation of the building all landscaping works must be undertaken in accordance with the approved plans and conditions of consent
36. **Roadworks to be completed.**  
The roadworks are to be constructed in accordance with the approved plans and Roads Act consent.
37. **Certificates for engineering works**  
The submission of a certificate from a suitably qualified engineer certifying that all works have been constructed in accordance with the approved plans and Council's current "Northern Rivers Local Government Design and Construction Manuals and Specifications".
38. **Works-As-Executed Plans**  
Following completion of works and prior to issue of the occupation certificate, Work-as-Executed Drawings, together with a Work-As-Executed Certification Report, in accordance with Council's requirements are to be submitted to Council. Two categories of Work-as-Executed Drawings are to be submitted to Council, being **Amended Design Work-as-Executed Drawings** and **Summary Work-as-Executed Drawings**.
- Amended Design Work-as-Executed Drawings**, being certified copies of all approved design plans with as constructed departures, deletions and additions clearly noted and detailed on the plans, are to be submitted to Council in the following formats:-
- a) One (1) paper copy at the same scale and format as the approved design plans, but, marked appropriately for as constructed information and with original signatures; and
  - b) An electronic copy of above in PDF format and provided to Council on CD, DVD or via email.
- Summary Work-as-Executed Drawings** are to be prepared on a background plan of the road infrastructures. Such drawings are to be submitted to Council in the following formats:-
- c) One (1) paper copy of each drawing with original signatures and in accordance with Council's requirements.



- d) Electronic copy of the above in AutoCAD DWG or DXF format and provided to Council on CD, DVD or via email. The AutoCAD (DWG or DXF) files are to be spatially referenced to MGA Zone 56.
- e) Electronic copy of above in PDF format and provided to Council on CD, DVD or via email.

Note: Council's requirements are detailed in Council's adopted engineering specifications, currently the [Northern Rivers Local Government Development Design and Construction Manuals](#), and on Council's website.

39. **Internal driveway, parking, loading bay area and shared path in accordance approved plans**

Internal driveway parking, loading bay area and shared path is to be constructed from the property boundary to the proposed car space(s) in accordance with the approved plans.

**Note:** The internal driveway turnaround area design is to be amended to comply with the requirements of the NSW Rural Fire Service and Planning for Bushfire Protection 2019.

40. **Stormwater – certification of works**

All stormwater drainage works, including on-site stormwater detention works, internal stormwater drainage system and stormwater quality improvement devices (SQIDs), for the development must be constructed in accordance with the approved plans and specification prior to issue of an occupation certificate. Certificate/s of Compliance and Work-As-Executed (WAE) plans for the stormwater works must be submitted to the Principal Certifying Authority prior to the issue of an occupation certificate.

The certificate/s and WAE plans are to be prepared by a suitably qualified engineer and must be in accordance with Council's [Comprehensive Guidelines for Stormwater Management](#).

41. **Compliance the requirements of NSW Rural Fire Service**

Documentary evidence is to be submitted to the Principal Certifying Authority demonstrating that the bushfire conditions have been complied with.

**The following conditions are to be complied with at all times**

42. **Vehicles to enter/leave in a forward direction and left-in/left-out movement only**

All vehicles must enter and leave in a forward direction and left-in/left-out movement. All driveways and turning areas must be kept clear of obstructions that prevent compliance with this condition.

43. **Maximum staff and student numbers**

The buildings are to accommodate a maximum of 45 students and three (3) staff at any one time.

44. **Hours of operation**

The development must only operate during the approved hours of operation which are:

- Monday to Friday 8am – 9pm
- Saturday and Sunday 9am – 5pm

45. **Private Pump Stations**

The owner is solely responsible for the operation, maintenance and repair of private sewer pump station. Conditions of approval also include the following:

- Power Operation - Owners/occupiers are not permitted to interfere with the electrical operation of the pump station. Council requires the pump station to be wired into the common switchboard in such a manner so as not to interfere with the normal electrical operation of the property, nor be accessible by the residents.
- Maintenance - The owner is to enter into a contract for the maintenance of the private sewer pump station with a suitably qualified person in accordance with the manufacture's specification. Pump wells must be checked by the service provider as part of the 6 monthly maintenance inspections. This bi-annual maintenance shall include servicing of pumps and electrical components, and a check that the level switches are correctly set and operating.

The owner is also required to keep records of maintenance and repair of private sewer pump station. These records need to be supplied to Council on an annual basis.

Approval of your private pump station will be included in a register to provide accountability for the operation and maintenance of the pump station and to assist in any compliance action that may be required in the circumstance that unsatisfactory operation and maintenance regimes arise.

46. **No vegetation removal**

This development consent does not authorize any native vegetation to be cleared, lopped or damaged.

47. **Site Waste Minimisation and Management**

All works must comply with the objectives of waste minimisation and waste management of Part B8.1.2 of DCP 2014.

48. **Must not interfere with the amenity of the neighbourhood**

The use of the development must not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, dust, wastewater or otherwise. In particular:

- a) Any complaints to Council about 'offensive' noise will be dealt with under the provisions of the Protection of the Environment Operations Act 1997.
- b) Only clean and unpolluted water is permitted to be discharged to Councils' stormwater drainage system or any waters.
- c) All wastes shall be contained within appropriate containers fitted with a tight-fitting vermin-proof lid.
- d) All waste storage and sewage facilities shall be serviced and maintained to ensure that all relevant environment protection standards are satisfied.
- e) Goods deliveries shall be restricted to daytime operating hours

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**SCHEDULE 2 PRESCRIBED CONDITIONS**

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**The prescribed conditions in accordance with Division 8A of the Environmental Planning and Assessment Regulation apply as are of relevance to this application:**

- Clause 98 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989
- Clause 98A Erection of signs
- Clause 98B Notification of Home Building Act 1989 requirements
- Clause 98E Condition relating to shoring and adequacy of adjoining property

Refer to the NSW State legislation for full text of the clauses under Division 8A of the *Environmental Planning and Assessment Regulation 2000*. This can be accessed at <http://www.legislation.nsw.gov.au>.

## SCHEDULE 3 NSW RURAL FIRE SERVICE CONDITIONS



NSW RURAL FIRE SERVICE

Byron Shire Council  
PO Box 219  
MULLUMBIMBY NSW 2482

Your reference: (CNR-22536) 10.2021.234.1  
Our reference: DA20210527002178-Original-1

**ATTENTION:** Chris Larkin

Date: Wednesday 2 June 2021

Dear Sir/Madam,

**Development Application**  
**s4.14 – Other – Educational Establishment**  
**BAYSHORE DR BYRON BAY NSW 2481, 12//DP1189646**

I refer to your correspondence dated 20/05/2021 seeking advice regarding bush fire protection for the above Development Application in accordance with section 4.14 of the *Environmental Planning and Assessment Act 1979*.

The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted and provides the following recommended conditions:

### **Asset Protection Zones**

**Intent of measures: to provide suitable building design, construction and sufficient space to ensure that radiant heat levels do not exceed critical limits for firefighters and other emergency services personnel undertaking operations, including supporting or evacuating occupants.**

1. From the commencement of building works, and in perpetuity to assist in the ongoing protection from the impact of bush fires, the property around the Connected Learning Centre and the Maker Space buildings shall be maintained as an inner protection area (IPA), in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019, as follows:
  - northwest and west for a distance of 67 metres.

### **Construction Standards**

**Intent of measures: to provide suitable building design, construction and sufficient space to ensure that radiant heat levels do not exceed critical limits for firefighters and other emergency services personnel undertaking operations, including supporting or evacuating occupants.**

2. New construction must comply with Section 3 and Section 5 (BAL 12.5) of Australian Standard AS3959-2018 Construction of buildings in bushfire-prone areas or the relevant BAL-12.5 requirements of the NASH Standard - Steel Framed Construction in Bushfire Areas (incorporating amendment A - 2015). New construction must also comply with the construction requirements for BAL 12.5 in Section 7.5 of Planning for Bush Fire Protection 2019.

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#### **Postal address**

NSW Rural Fire Service  
Locked Bag 17  
GRANVILLE NSW 2142

#### **Street address**

NSW Rural Fire Service  
4 Murray Rose Ave  
SYDNEY OLYMPIC PARK NSW 2127

**T** (02) 8741 5555  
**F** (02) 8741 5550  
[www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au)

#### **Access – Property Access**

**Intent of measures: to provide safe operational access for emergency services personnel in suppressing a bush fire, while occupants are accessing or egressing an area.**

3. Property access for the development shall comply with general requirements of Table 6.8b of Planning for Bush Fire Protection 2019 and the following:

- minimum 5.5m carriageway width kerb to kerb;
- parking is provided outside of the carriageway width;
- hydrants are located clear of parking areas;
- curves of roads have a minimum inner radius of 6m;
- the road crossfall does not exceed 3 degrees; and
- a minimum vertical clearance of 4m to any overhanging obstructions, including tree branches, is provided.

#### **Water and Utility Services**

**Intent of measures: to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.**

4. The provision of water, electricity and gas must comply the following in accordance with Table 6.8c of Planning for Bush Fire Protection 2019:

- reticulated water is to be provided to the development where available;
- fire hydrant, spacing, design and sizing complies with the relevant clauses of Australian Standard AS 2419.1:2005;
- hydrants are and not located within any road carriageway;
- fire hydrant flows and pressures comply with the relevant clauses of AS 2419.1:2005;
- all above-ground water service pipes are metal, including and up to any taps;
- where practicable, electrical transmission lines are underground;
- where overhead electrical transmission lines are proposed they shall comply with the requirements/guidelines of the local electricity authority;
- reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 and the requirements of relevant authorities, and metal piping is used;
- reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 - The storage and handling of LP Gas, the requirements of relevant authorities, and metal piping is used;
- all fixed gas cylinders are kept clear of all flammable materials to a distance of 10m and shielded on the hazard side;
- connections to and from gas cylinders are metal; polymer-sheathed flexible gas supply lines are not used; and
- above-ground gas service pipes are metal, including and up to any outlets.

#### **Landscaping Assessment**

**Intent of measures: to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.**

5. Landscaping within the required asset protection zone is to be designed and managed in accordance with the following:

- compliance with Appendix 4 of 'Planning for Bush Fire Protection 2019'; and
- new fencing is constructed in accordance with section 7.6 of 'Planning for Bush Fire Protection 2019'.

#### **General Advice – Consent Authority to Note**

The recommendations are based on the plans prepared by Brewster Hjorth Architects, titled 'CLC – Byron Bay, TAFE New South Wales', Project No: 21923, dated 20 April 2021 and the 'Bush Fire Assessment' prepared by Premise dated 22 April 2021.

The bush fire consultant has identified the proposed development as a Class 9 structure in accordance with the Building Code of Australia. Such structures are considered assembly buildings. Section 8.3.11 of Planning for



And the Russian 2018 nuclear security facilities will allow us to make other efforts as we proceed with Special Air Support (SAS) (2018). The above are examples of what I'm saying.

For my earlier reporting on the situation, please see the link below (2018/10/10).

Thank you.

And finally,

Special Air Support (SAS) (2018)  
Special Air Support (SAS) (2018)  
Special Air Support (SAS) (2018)



## SCHEDULE 4            NOTES

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### **Relics Provisions - Advice**

Attention is directed to the NSW Heritage Act 1977 and the provisions of the Act in relation to the exposure of relics. The Act requires that if:

- (a) a relic is suspected, or there are reasonable grounds to suspect a relic in ground, that is likely to be disturbed damaged or destroyed by excavation; and/or
- (b) any relic is discovered in the course of excavation that will be disturbed, damaged or destroyed by further excavation;

those responsible for the discovery must notify nominated management personnel who will in turn notify the Heritage Council of New South Wales or its delegate, the Office of Environment and Heritage, NSW Heritage Branch, and suspend work that might have the effect of disturbing, damaging or destroying such relic until the requirements of the NSW Heritage Council have been satisfied (ss139, 146).

### **Section 170 Heritage and Conservation Register and State Heritage Inventory**

Government agencies have responsibilities under Section 170 of the Heritage Act 1977. Section 170 requires agencies to identify, conserve and manage heritage assets owned, occupied or managed by that agency.

It is recommended that:

- (a) the Byron Bay Public School Heritage Item I080 is included in the Section 170 Register by the NSW Department of Education in accordance with Section 22 of the Heritage Regulation 2012, and
- (b) the SHI Inventory 1260007 is updated and Criteria C Aesthetic Significance is included, as also recognised in the SOHI report by Conrad Garget Dated 26 June 2017.

### **Principal Certifying Authority:**

Work must not commence until the applicant has:-

- a. appointed a Principal Certifying Authority (if the Council is not the PCA); and
- b. given Council at least two days notice of the intention to commence the erection of the building. Notice must be given by using the prescribed 'Form 7'.
- c. notified the Principal Certifying Authority of the Compliance with Part 6 of the Home Building Act 1989.

### **Protection of the Environment Operations Act 1997:**

It is an offence under the provisions of the Protection of the Environment Operations Act 1997 to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ("on-the-spot fine") or prosecution.

**Enclosed public places (smoke-free environment)**

Environment Act 2000 and the Smoke-Free Environment Regulation 2000 and the guidelines in the Regulation for determining what an enclosed public place is. Enquiries may be directed to the NSW Department of Health. The legislation may be viewed on: <http://www.legislation.nsw.gov.au/maintop/scanact/inforce/NONE/0>

**Penalties apply for failure to comply with development consents**

Failure to comply with conditions of development consent may lead to an on the spot fine (generally \$600) being issued pursuant to section 127A of the Environmental Planning & Assessment Act 1979 or prosecution pursuant to section 125 of the Environmental Planning & Assessment Act 1979.

**Plumbing Standards and requirements.**

All Plumbing, Water Supply, Sewerage and Stormwater Works shall be installed in accordance with the Local Government Act 1993, Plumbers Code of Australia and AS/NZS 3500 Parts 0-5, the approved plans (any notations on those plans) and the approved specifications. Any plumbing inspections required under a Section 68 Approval are to occur in accordance with that approval.

**SCHEDULE 5            REASONS**

- 
- To ensure the development is completed in accordance with conditions of consent and approved plans.
  - To comply with the provisions of Byron Local Environmental Plan 2014.
  - To ensure compliance with engineering standards.
  - To provide and/or maintain an adequate drainage network that will not cause damage to existing or future development.
  - To ensure the potential impacts from flooding are minimised.
  - To ensure that the land or adjoining land is not damaged by the uncontrolled discharge of runoff from any buildings and paved areas that may be constructed on the land.
  - To ensure adequate traffic and parking arrangements are in place to cater for the development.
  - To ensure adequacy of services.
  - To minimise loading on services water and/or sewer services.
  - To preserve the environment and existing or likely future amenity of the neighbourhood.
  - To protect vegetation.
  - To protect the environment.
  - To preserve the amenity of the area.
  - To ensure public health and safety.
  - To ensure compliance with Section 68 of the Local Government Act 1993.