

Modification Application to DA 10.2014.743.3

Submitted under Section 4.55(2) of the EP&A Act, 1979

Approved staged residential development at No.2 Kulgun Court & Nos.41-43 Matong Drive, Ocean Shores

Prepared on behalf of

Mr. Callum Sked

by



June 2021



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Version	Purpose	Issue Date	To whom
Draft v.1	Client Review	2 nd June 2021	C Sked
Final	Lodgement	2 nd June 2021	A Smith



1.0 Introduction & Summary

NPA have been engaged by Mr. Callum Sked (the proponent) to assist in seeking to facilitate a modification to a consent relating to the subject land.

The proponent has owned the land for some time and has delivered upon development approvals to a significant extent and the parent consent in this instance is described as DA 10.2014.743.3 (as amended).

A copy of this consent (as amended) is provided as a **separate annexure**.

By way of background, the parent consent was approved by Byron Shire Council on the 29th of October 2015 and was evidently modified with approval on the 23rd August 2017.

The properties relating to this consent are listed below:

2 Kulgun Crt, Ocean Shores 2483 NSW (LOT: 1 DP: 1243658)
2 Kulgun Crt, Ocean Shores 2483 NSW (LOT: 12 DP: 1128095)
2 Kulgun Crt, Ocean Shores 2483 NSW (LOT: 9 DP: 1046566)
2 Kulgun Crt, Ocean Shores 2483 NSW (LOT: 954 DP: 241073)
41 Matong Drv, Ocean Shores 2483 NSW (LOT: 3 DP: 1243658)
41 Matong Drv, Ocean Shores 2483 NSW (LOT: 892 DP: 241810)
41 Matong Drv, Ocean Shores 2483 NSW (PT: 3 DP: 1243658)
43 Matong Drv, Ocean Shores 2483 NSW (LOT: 2 DP: 1243658)
43 Matong Drv, Ocean Shores 2483 NSW (LOT: 893 DP: 241810)
43 Matong Drv, Ocean Shores 2483 NSW (PT: 2 DP: 1243658)
Pacific Hwy, Ocean Shores 2483 NSW (LOT: 944 DP: 241810)

Source: extract from BSC DA tracker

The consent, amongst other items, authorised a total of eight dwellings, which are essentially fronting the Matong Drive frontage.

In summary, the proposed amendment seeks increase the number of dwellings in the above stated area from eight (8) to ten (10) by way of adopting a revised design approach to the dwellings proposed, which not only increases the yield in this particular area, but also incorporates a revised internal driveway configuration. This design change has been bought about by way of adapting to commercial needs and wants of the housing market and through the design evolution process highlighting the ability to amend the access arrangement in a more efficient manner.

A copy of the revised Staging and Design plans are proved as **separate annexures** to this report.

Also attached are **separate annexures** relating to Energy Efficiency Certification, Bushfire Assessment and Engineering.

2.0 Subject Site and Surrounds

The site is zoned part Deferred Matter under the Byron LEP 1988 and part R2 Residential and RU2 Rural Landscape pursuant to the *Byron Local Environmental Plan 2014 (BLEP2014)*.

The site is linear in form and fronts the Old Pacific highway (Brunswick Valley Way), Kulgun Court and Matong Drive.

The site is shown in figure 1 below and reference is made to the site itself in blue and a red line designating the Parks Drive access path (generally).



Figure 1. Locality Plan Source: Six Maps

Subject Site

3.0 Proposed Modification

Outlined below are the key modifications sought.

MODIFICATION No.1 – Modification of the Proposal Description as it relates to staging:-

Delete the following existing description of staging:



Stage 1 – Torrens Title Lot Consolidation of 3 Lots to 1 Lot and Boundary Adjustment (between two existing Lots).

Stage 2 – Works located on Proposed Lot 1. Construction of eight (8) dwellings, driveway, car parking and access to Kulgun Court, and Strata Subdivision;

Stage 3 – Torrens Title subdivision of Lot 944 DP 241810 to create 2 lots; and Torrens Title Lot Consolidation of two lots into 1. Works located on Proposed Lot 2. Construction of eight (8) dwellings, driveway, car parking, and access to Matong Drive with a locked gate for Emergency Services (gate to be locked to prevent access through the site to Kulgun Court/Brunswick Valley Way), Strata Subdivision, Right-of Carriageway for dual occupancy on proposed Lot 3.

Stage 4 – Works located on Proposed Lot 1. Construction of eight (8) dwellings, driveway, carparking, access to Brunswick Valley Way, and Strata Subdivision.

Stage 5 – Works located on Proposed Lot 1. Construction of six (6) dwellings, driveway, carparking and Strata Subdivision.

Stage 6 – Construction of an additional dwelling on Proposed Lot 3 to create a Dual Occupancy (detached).

Stage 7 – Boundary adjustment between proposed Lot 2 and Lot 3.

And replace it with the following staging description: -

Stage 1 - Torrens Title Lot Consolidation of 3 Lots to 1 Lot and Boundary Adjustment (between two existing Lots). Complete.

Stage 2 - Works located on Proposed Lot 1. Construction of eight (8) dwellings, driveway, car parking and access to Kulgun Court, and Strata Subdivision; Complete

Stage 3 – Eight Dwellings and extension of internal road works as shown. Associated strata subdivision and driveway, car parking, and access works to the lot fronting Matong Drive (stage 4) inc. a locked gate for Emergency Services (gate to be locked to prevent access through the site to Kulgun Court/Brunswick Valley Way), Services and Easements as required;

Stage 4 - Works located on land fronting Matong Drive, dwelling construction and access, services, easements and strata registration as required;

Stage 5 – Site works and construction of six (6) dwellings, services, driveway, carparking, easements and Strata Subdivision.

Stage 6 (future stage) – to be confirmed, otherwise as per existing approvals

Stage 7 (future stage) – to be confirmed, otherwise as per existing approvals

NB. Please note that there is a separate application before council that seeks to modify the consent as per the above. This application may be assessed in part concurrently with same.

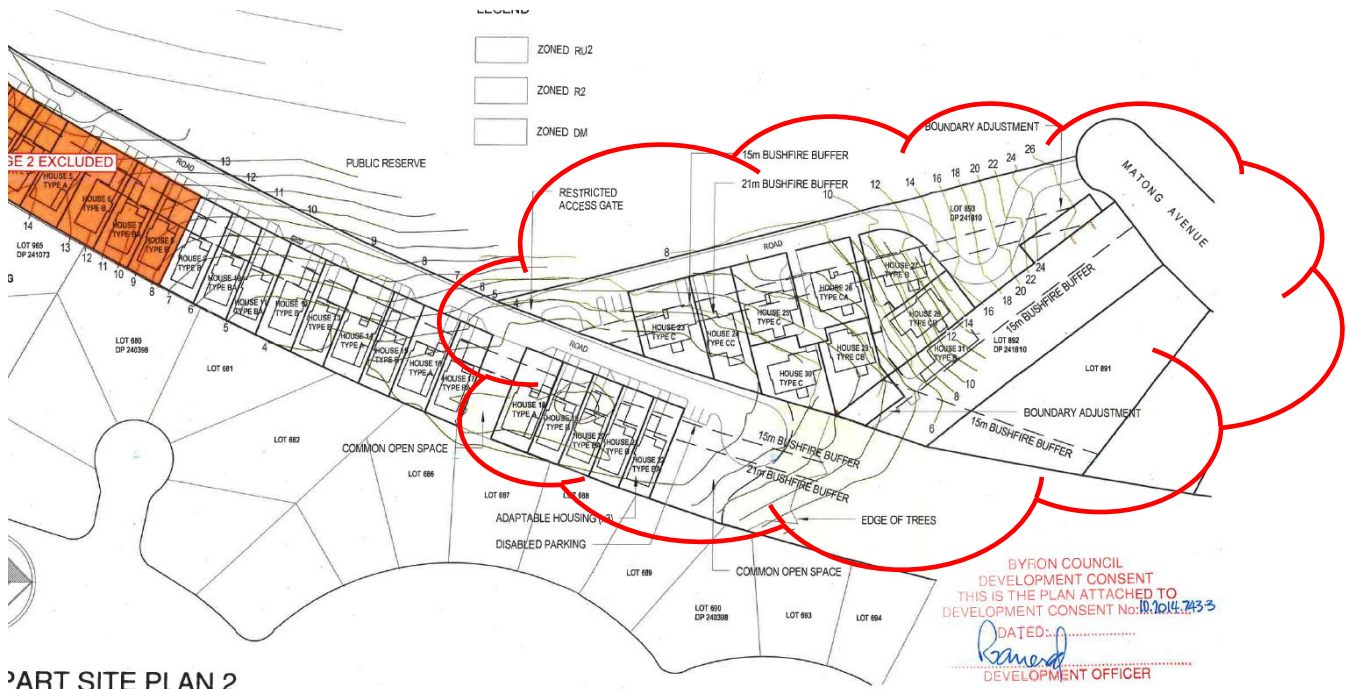


Fig 2. Current approved staging diagram (refer also substage diagrams in attached **separate annexures**).

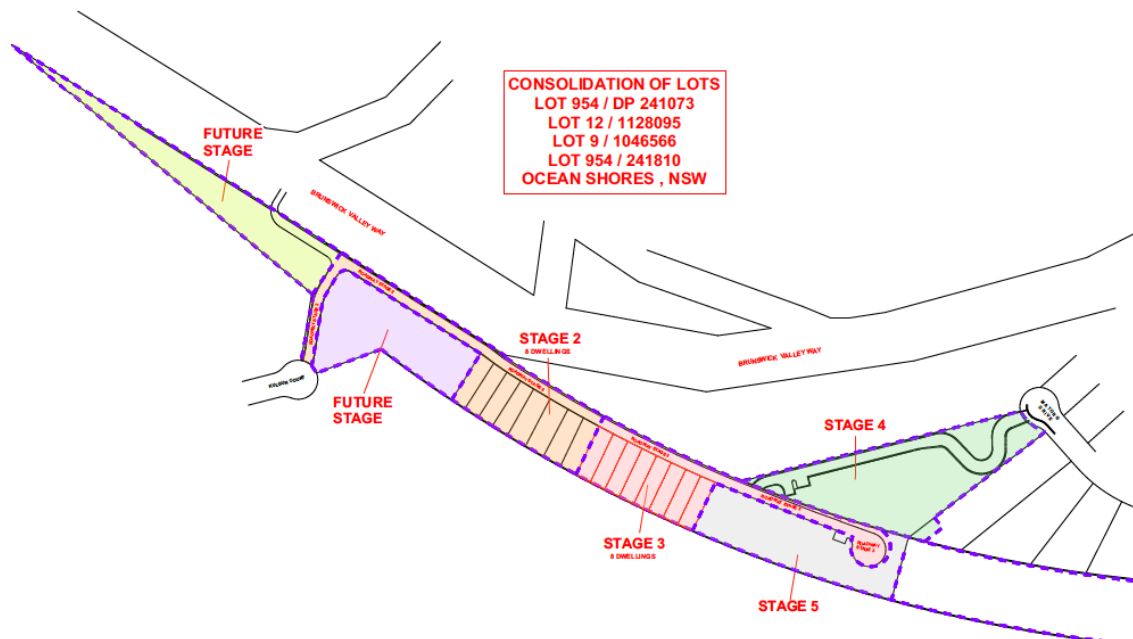


Fig 3. Proposed staging diagram (refer also to full set in the attached **separate annexures**).

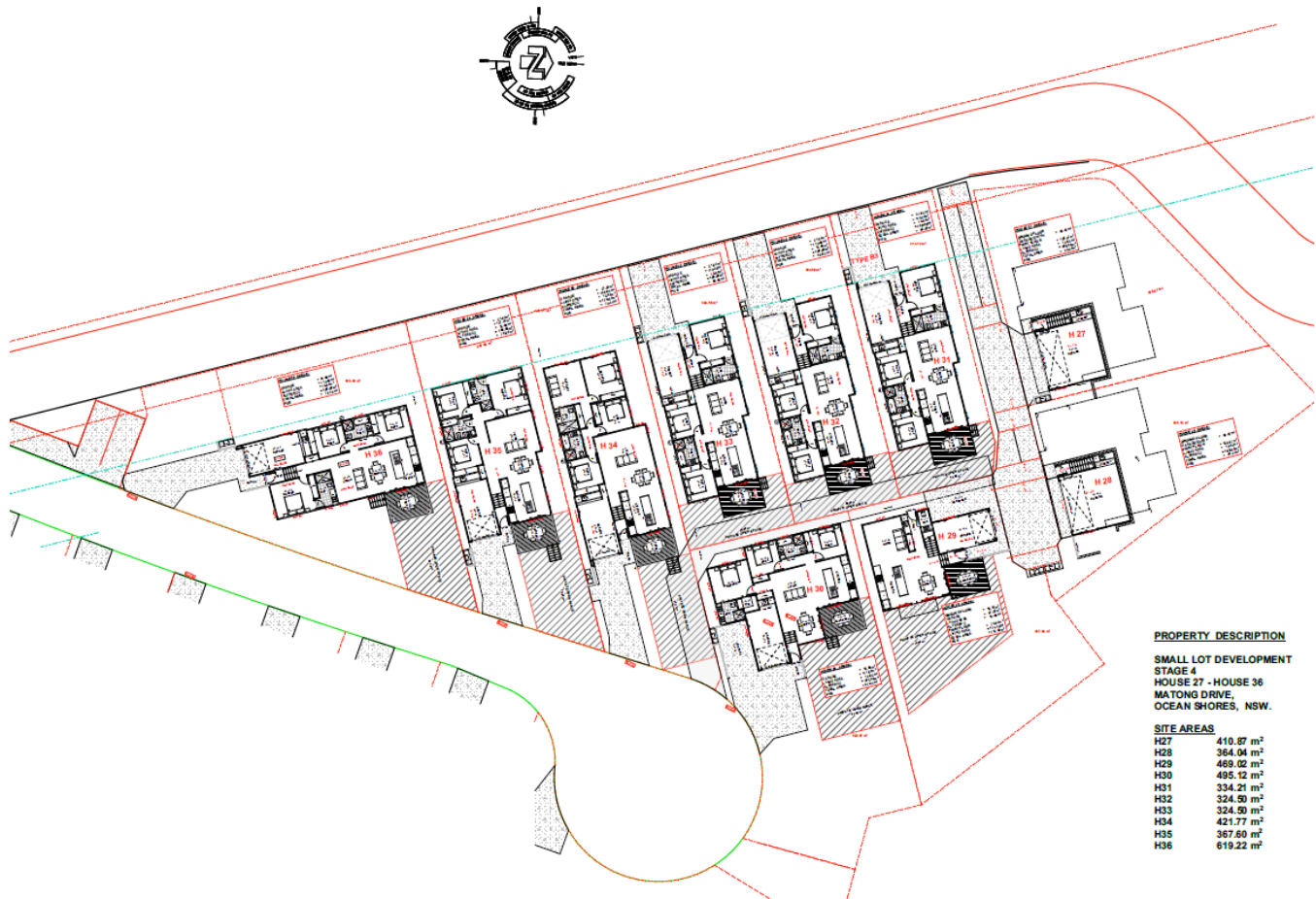


Fig 4. Proposed modified site layout (refer also to full set in the attached **separate annexures**).

Additional modifications are also considered necessary, and these are outlined below (mods 2 to 7).

MODIFICATION No.2 – Modification of condition no.1 as it relates to plan referencing and as it relates to the amended plans lodged relative to the previously approved eight dwellings in Stage 3 (to be amended) and the introduction of the proposed new development configuration containing 10 dwellings. In addition, plan preparer details are also to be amended along with dating as appropriate.

Relevant Modification of condition no.1 to reflect new basic certification / documentation.

MODIFICATION No.3 – Modify condition no.32 to reflect the new certification.

MODIFICATION No.4 – Modify general terms of approval relating to the newly proposed plan set, staging and associated bushfire report.

MODIFICATION No.5 – Modify conditions 13, 14, 15, and 16 to reflect new layout and staging



MODIFICATION No.6 Modification of condition 32 to accurately reflect the new certification attached as it relates to the amended stage 3 design plans.

MODIFICATION No.7 – Modify conditions as needed in respect of the levying and payment conditions relating to water and sewer headworks and contributions.

4.0 Statutory Assessment

4.1 *Byron Local Environmental Plans 1988 & 2014*

The proposed modification is considered minor in both content and impact and therefore remains consistent with the requirements of the *Byron Local Environmental Plan 2014* and previous statutes applicable at the time of the original approval.

The development will continue to be carried out as previously approved, with the modification being of a nature that will only improve the amenity of surrounding residents and improve the efficiency and orderly construction of the works required.

No inconsistency with the local LEP is evident.

4.2 *Environmental Planning and Assessment Act 1979*

The appropriate mechanism to amend the major project approval is via s4.55(2) of the Act.

Section 4.55(2) of the Act, states:-

- (2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—
- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and
 - (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and
 - (c) it has notified the application in accordance with—
 - (i) the regulations, if the regulations so require, or
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
 - (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.
- Subsections (1) and (1A) do not apply to such a modification.
- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.
 - (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.
 - (5) (Repealed)

This application has been made in accordance with the above provisions. To be clear, this proposal is a modification that is consistent with the terms of Section 4.55(2).



The rationale being related to the proposed increase in yield and the need for associated contemporary bushfire and engineering assessments.

4.3 Environmental Planning and Assessment Regulations 2000

The proposal remains consistent with the requirements of the *Environmental Planning and Assessment Regulations 2000* as they apply to the development. The development will be carried out as previously approved.

An amended Basix Certificate has been appended to this report as per the regulations.

4.4 Byron Development Control Plan (BDGP)

The proposed modification seeks to introduce a more streamlined modern and climatically responsive design orientation for the previously approved dwellings (8 as proposed) within the previous stage 3 (now stage 4).

The proposed modifications to the approved built form can best be summarised as follows:-

- a. Addition of two new dwellings.
- b. Provision of access to each dwelling internally (from either Kulgun Ct or Matong Drive), with the likely exception of houses 26, 27, 31-33, which will likely use the Matong dve access predominantly.
- c. Adoption of a design philosophy more closely aligned to a modern aesthetic.
- d. Retention of three bedrooms in each dwelling.
- e. Adherence to previously approved / agreed, bushfire management measures; and
- f. Integration of additional site topography data and therefore the amended plans show a more accurate representation of existing levels and proposed sub structure treatments.

The proposed amendments are graphically (and typically) shown in architectural set at **Appendix A**.

A table of compliance against the relevant DCP controls is provided in the following pages.



The following is an assessment of the proposal against the relevant Sections of Byron Development Control Plan 2014.

Table. Applicable Council Controls and Related Compliance

Part D: Chapter D1- Residential Accommodation in Urban, Village and Special Purpose Zones	
Application of this Chapter	
<p>This Chapter specifies the controls that apply to Development Applications seeking consent for various forms of residential accommodation development that is located in Residential, Village, Mixed Use, Business, Industrial and Special Purpose zones throughout the Shire, ie Zone Nos. R2, R3, R5, RU5, B1, B2, B4, B7, IN1, IN2, SP1, SP2 and SP3.</p> <p>The types of residential development to which this Chapter applies include the following: Attached dwelling; Dual Occupancy; Dwelling House; Expanded Houses; Multi Dwelling Housing; Residential Flat Building; Secondary Dwellings; Semi- Detached Dwelling; Shop Top Housing and Studios.</p>	<p>Complies - The subject site is located in a Low Density Residential zone and proposes erection of a Multi Dwelling Housing. As a result, the subject site and proposed development is to have regard to this Chapter.</p>
D1.2 General Provisions	
D1.2.1 Building Height Plane	
<p>The building height plane in combination with boundary setbacks prescribed in this DCP, and building height prescribed in the Byron LEP 2014, form the maximum building envelope for all residential development other than for shop top housing and ancillary dwellings in Zones IN1, IN2 and B7.</p>	<p>Complies – The proposed dwellings are located considerate of the site boundaries, site features, and building height limit. The proposal does not exceed the maximum height limit of 9m considerate of the building height plane as defined by BDCP2014.</p> <p>Refer to Appendix A – Architectural Plans for further detail.</p>
<p>An exemption from the building height plane may be considered in relation to one or more boundaries in the following circumstances:</p> <p>a) where the floor level is required to be above ground level to comply with Council's requirements for flood protection; or</p> <p>b) for the zero lot line boundaries of semi-detached dwellings and attached dwellings; or</p> <p>c) in circumstances referred to in Prescriptive Measure 2. of Section D1.2.2.</p>	<p>N/A- The proposed development does not breach the building height plane.</p> <p>Refer to Appendix A – Architectural Plans for further detail.</p>
D1.2.2 Setbacks and Boundaries	
<p>Local Roads - A minimum setback of 4.5 metres must be maintained from the primary front boundary.</p>	<p>Complies – The dwellings are setback a minimum of 49m from Matong Dve. Refer to Appendix A – Architectural Plans for further detail.</p>
<p>Classified roads- A minimum setback of 9 metres applies to these roads from the primary front boundary. A variation to 6.5 metres may be sought for single storey dwellings or single storey elements of two storey dwellings. (NB. The provisions under SEPP Infrastructure 2007 apply to such developments).</p>	<p>Complies – The subject site fronts Brunswick Valley Way and is setback a total of 65m from the edge of the Brunswick Valley Way seal.</p>
<p>Garages and carports are to be set back 5.5m from the front boundary except from classified roads where the setbacks under (b) are to apply.</p>	<p>Complies – The site fronts a Local Road under the Roads Act 1993 and therefore this control is applicable. Refer to Appendix A – Architectural Plans for further detail.</p>



Corner allotments on local or secondary roads setbacks may be reduced to 3m on one frontage.	N/A – The subject site is not located on a corner allotment.
Rear Lane or unformed roads - 3 metres, unless it is the primary frontage to the development (eg. Shirley Lane, Byron Bay) in which case a setback of 4.5 metres applies including to garages and carports. Consideration may be given to setback variations in Heritage Conservation Areas where strict compliance with these provisions would result in conflict with the Chapter and Section Objectives specified in Chapter C1 Non-Indigenous Heritage.	N/A – The site does not border a rear lane or unformed road.
Side and rear setback – 1.5 metres for single storey; otherwise governed by the building height plane.	Complies – The minimum setback to the adjoining Matong Drive property is 1.5m All dwellings are located a minimum of 2m apart. Refer to Appendix A – Architectural Plans for further detail.
Between buildings on a site – 3 metres.	Complies in principle – The proposed buildings provide for varied setback separations internal to the site, with the minimum being 2m at the closest, with a significant proportion being compliant with the 3m requirement. Variation is considered warranted in this instance given that the proposal: a. complies with the building height plane b. adopts a single storey format c. has acknowledged the variation and minimised overlooking opportunities by way of design based ameliorative measures that minimise privacy and overlooking and overshadowing opportunities. Refer to Appendix A – Architectural Plans for further detail.
The outer edge of the pool concourse or coping must be set back a minimum of one (1) metre from the side or rear boundaries, with the water line being a minimum of 1.5 metres from those boundaries.	N/A – The proposal does not include the provision of a pool. Refer to Appendix A – Architectural Plans for further detail.
Pools should not be located within the street frontage setback, except on sites where private open space can be accommodated only in this location or other site attributes support this outcome.	N/A – The proposal does not include the provision of a pool. Refer to Appendix A – Architectural Plans for further detail.
Pool pumps shall be located as far back from a side or rear boundary as practical and if closer than 3m from either it shall be acoustically shielded.	N/A – The proposal does not include the provision of a pool. Refer to Appendix A – Architectural Plans for further detail.
D1.2.5 Fences	
The height of fences should not exceed: Front fence: 1.2m metres.	Complies – Refer to Appendix A – Architectural Plans for more information
Side fence: 1.2m within the building line setback and 1.8m for the remainder.	Complies – Refer to Appendix A – Architectural Plans for more information
Rear fence: 1.8 metres. Where the rear fence is the primary frontage front fence height provisions may apply.	Complies – Refer to Appendix A – Architectural Plans for more information
Front fences and side fences within the building line setback higher than 1.2 metres but not higher than 1.8 metres may be permitted for properties: i) adjoining land used for business or commercial purposes, in cases where screening from the adjoining	Complies – Refer to Appendix A – Architectural Plans for more information



<p>business activity is necessary to protect residential amenity;</p> <p>ii) where it is demonstrated that traffic noise and light impacts from car headlights on a public road will create adverse impacts on residential amenity in the absence of the higher fence;</p> <p>iii) necessary for safety, noise mitigation purposes or to enclose the primary open space area.</p>	
<p>Any front fence higher than 1.2 metres must be:</p> <p>i) located not less than 50cm inside the front boundary with the area in front of the fence to be landscaped; or</p> <p>ii) articulated with recessed sections of a minimum 0.9 x 0.9 metres at a maximum interval of 5 metres to allow planting of vegetation to reduce the impact of the fence.</p>	<p>Complies – Refer to Appendix A – Architectural Plans for more information.</p>
<p>For corner allotments; fencing of the secondary frontage will be allowed up to 1.8m high on the boundary, up to either of the following alignment setbacks from the primary street:</p> <p>a) the established building line setback to the street; or b) if the existing dwelling is forward of the established building line setback, in line with the existing dwelling. Fencing forward of this alignment must comply with the front fence requirements</p>	<p>N/A – The proposal is not located on a corner allotment.</p>
<p>Where a visually solid fence is proposed at the intersection of two public roads, satisfactory sight distance must be provided for traffic using the road. A minimum corner splay of 4m x 4m must be provided in the fence. Landscaping or planting in the splay area must not impede driver visibility and must contain low shrubs and ground covers and/or clear trunked canopy shade trees to maintain sight lines.</p>	<p>N/A – The proposal is not located at the intersection of two public roads. Refer to Appendix A – Architectural Plans for more information</p>
<p>D1.6 Multi Dwelling Housing, Residential Flat Building and Attached Dwellings</p>	
<p>Each dwelling must have access to an individual courtyard at ground level having a minimum area of 30m² and a minimum length and width each of 4 metres, not including any area used exclusively for the circulation or parking of vehicles. The courtyard must be designed to facilitate access to winter sunshine and must be landscaped to Council's satisfaction.</p>	<p>Complies – Each proposed allotment has sufficient area for the provision of private open space to accommodate a courtyard at the minimum area required. Each of the proposed dwellings provide private open space on the ground level.</p> <p>Refer to Appendix A – Architectural Plans for further detail.</p>
<p>The private open space area must not include any areas used for the management of on-site sewage effluent.</p>	<p>N/A – The subject site has suitable access to public sewer mains and does not propose the use of on-site sewerage effluent system.</p> <p>Refer to Appendix A – Architectural Plans for further detail.</p>
<p>D1.6.2 Open Space Balcony</p>	
<p>This provision is only activated when it is not possible to allocate private open space at ground level.</p>	<p>N/A.</p> <p>Refer to Appendix A – Architectural Plans for further detail.</p>
<p>A private open space balcony must have a minimum area of 15m² and a minimum length and width of 2.4 metres. A private open space balcony must be demonstrated to have appropriate orientation and adequate provision for winter sun and summer shade.</p>	<p>N/A – sufficient pos has been provided at the ground level for each dwelling.</p> <p>Refer to Appendix A – Architectural Plans for further detail.</p>



<p>Balconies and/or eaves may overhang minimum length or width dimensions of private courtyards or other private open space balconies, subject to compliance with the building height plane, and provided that adequate access to winter sun and summer shade is demonstrated for all potentially shaded balconies and/or courtyards.</p>	<p>Complies – As per the above comments this provision is only activated when it is not possible to allocate private open space at ground level. The proposal provides for private open space on the ground floor level and therefore this control is not strictly applicable.</p> <p>Refer to Appendix A – Architectural Plans for further detail.</p>
D1.6.3 Landscaping	
<p>Refer to Chapter B9 Landscaping.</p> <p>The following design requirements apply to multi dwelling housing, attached dwellings and residential flat buildings developments:</p> <ul style="list-style-type: none"> a) retention of suitable existing vegetation; b) screen planting to street frontages and driveway areas, to provide privacy between dwelling houses and around the boundaries of the site; c) provision of pleasant landscaped settings for the enjoyment of residents; d) planting selection that relates to building scale and mass. <p>The common landscaped area of the site must not be less than the total of the areas required for each dwelling house, calculated from the following table, less the total of the areas of approved private courtyards and approved private open space balconies in accordance with Chapter D1 Residential Development in Urban and Special Purpose Zones.</p> <p>-Large (over 85m² in floor plan area) requiring 90m² landscaped Area is to be provided.</p>	<p>Complies– The design is such that each site is generously sized and each dwelling includes in excess of 90m² of landscaped area (some significantly so).</p> <p>See Appendix A – Architectural Plans for further information.</p>
D1.6.4 On-Site Car Parking	
<p>Refer to Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access for detailed provisions regarding vehicle access, numbers, dimensions and layout of car parking spaces.</p> <p>Multi Dwelling Housing: 1 space per 1 or 2 bed unit, 2 spaces per 3 or more bed unit, 1 visitor space per 4 dwellings or part thereof. Each dwelling to have at least one covered car space.</p>	<p>Complies – Each dwelling provides for a minimum of one undercover space and allocation of an area for a further uncovered space (or carport in some circumstances).</p> <p>The proposal includes three (3) visitor parking spaces at the south western corner. These spaces are incorporated within the common property area of the site.</p> <p>Refer to Appendix A – Architectural Plans for further detail.</p>
<p>Large areas of car parking must be broken up by variation in layout, pavement treatment, landscaping, mounding and/or other means to Council's satisfaction.</p>	<p>N/A – The proposal does not include the provision of large car parking area/s. This control is therefore not applicable.</p> <p>Refer to Appendix A – Architectural Plans for further detail.</p>
D1.6.5 Sound Proofing	
<p>Division walls between dwellings must be of sound-resisting construction to Council's satisfaction.</p>	<p>Complies – Refer to Appendix A – Architectural Plans for further detail.</p>
<p>The floors in single storey multi-dwelling housing, residential flat buildings and attached dwellings must be so constructed or treated as to minimise the conduct of sound between dwellings.</p>	<p>Complies – Refer to Appendix A – Architectural Plans for further detail.</p>
D1.6.6 Clothes Drying Facilities	
<p>The minimum provision of clothes drying facilities must be at the rate of 7.5 metres of line per dwelling, located in suitably screened external drying areas.</p>	<p>Complies – Refer to Appendix A – Architectural Plans for further detail.</p>



D1.6.7 Equity of Access and Mobility	
Provision for access and mobility must be made pursuant to Chapter B13 Access and Mobility.	<p>Complies – The proposal is considerate of both access and mobility. The site is accessed from Kulgun and Matong Drive and includes use of a common driveway that is suitable in width to accommodate for a B85 vehicle.</p> <p>The proposed dwellings have sufficient separation (in accord with national construction and design standards) to accommodate for maintenance and manoeuvrability between the buildings.</p> <p>Refer to Appendix A – Architectural Plans for further detail.</p>
D1.6.8 Pipes and Vents	
All service pipes and vents must be concealed within the walls of residential flat buildings, multi-dwelling housing and attached dwellings. Provision of recessed service pipes in external walls may be acceptable where it is demonstrated that the proposal is consistent with the Objectives.	<p>Complies –The proposed Architectural plans demonstrate all service pipes and vents are concealed within the walls.</p> <p>Refer to Appendix A – Architectural Plans for further detail.</p>
Access to pipes and vents must be provided as required by relevant authorities.	<p>Complies – Considered within Architectural plans.</p> <p>Refer to Appendix A – Architectural Plans for further detail.</p>
D1.6.9 TV Antennae	
Each development must be provided with a common television reception system designed to minimise adverse visual impacts whilst enabling high quality reception for each dwelling.	<p>Complies –Considered within Architectural plans.</p> <p>Refer to Appendix A – Architectural Plans for further detail.</p>

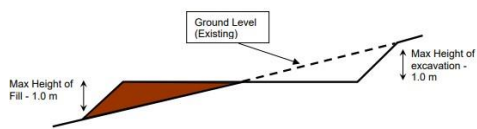


Part B: Chapter B9- Landscaping	
B9.4 Multi Dwelling Housing, Attached Dwellings and Residential Flat Buildings	
<p>The following design requirements apply to multi dwelling housing, attached dwellings and residential flat buildings developments:</p> <ul style="list-style-type: none"> a) retention of suitable existing vegetation; b) screen planting to street frontages and driveway areas, to provide privacy between dwelling houses and around the boundaries of the site; c) provision of pleasant landscaped settings for the enjoyment of residents; d) planting selection that relates to building scale and mass. 	<p>Complies – No additional tree removal is required in respect of the proposed modification</p> <p>See Appendix A – amended plans for further information.</p>
<p>The common landscaped area of the site must not be less than the total of the areas required for each dwelling house, calculated from the following table, less the total of the areas of approved private courtyards and approved private open space balconies in accordance with Chapter D1 Residential Development in Urban and Special Purpose Zones.</p> <p>- Large (over 85m² in floor plan area) requiring 90m² landscaped area is to be provided.</p>	<p>Complies– The proposal includes in excess of 90m² of common landscaped area that is generated as a result of the gross building area maximum being part of the proposal.</p> <p>See Appendix A – Architectural Plans for further information.</p>
B9.4.2 Common Landscaped Area	
<p>The common landscaped area of the site must be in accordance with Section B9.4.1.</p>	<p>Complies – The proposed development retains suitable vegetation on the site. The proposed development is constant with this control.</p>
<p>A minimum of 75% of the total common landscaped area of the site must consist of deep soil areas. Areas of landscaping over underground car parks, and the like, cannot be included in the calculation of deep soil areas.</p>	<p>Complies- the proposal enjoys access to the significant residue forest lands (which remain part of the site) which are located to the south east of the site. Access to this area will be enforced within the strata document.</p> <p>Refer to Previous Consents for further information.</p>
<p>The landscape design must address:</p> <ul style="list-style-type: none"> a) the retention and provision of appropriate trees on the site; b) the use of earth mounding and terraced areas to create useful and visually pleasing recreation areas and to assist screening; c) the orientation of landscape areas with regard to sunlight and prevailing winds; d) the provision of sufficient areas adequately shaded against the summer sun and giving adequate access to the winter sun. 	<p>Complies – Refer to Appendix A- modified plans for further information.</p> <p>A condition of consent requiring a Landscape plan prior to is issue of a construction certificate is also invited.</p>
<p>Areas used for the management of on-site sewage effluent must be excluded from calculations of the common landscaped area.</p>	<p>N/A</p>

Part B: Chapter B14 – Excavation and Fill

B9.4 Multi Dwelling Housing, Attached Dwellings and Residential Flat Buildings

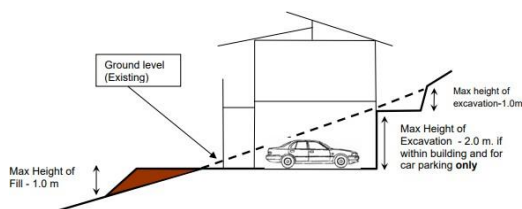
Unless otherwise stated below, excavation and filling must be limited to a depth of 1 metre. See figure below.



Complies – Whilst the site is challenging, given existing topography, the proposal complies, with all houses demonstrating compliance inclusive of houses 27 and 28 only exceeding the 1m restriction due to self-supportive retaining to provide car parking. In this regard excavation and filling is required to ensure compliant site access and suitable building pads for the buildings are provided.

See **Appendix A – Architectural Plans** and **Appendix B – Engineering Plans** for further information.

The maximum excavation restriction is not applicable where the excavation is incorporated into the dwelling structure to satisfy minimum car parking requirements up to a maximum height of 2 metres.



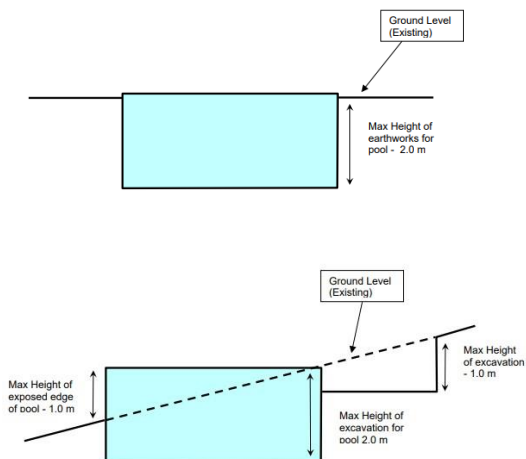
Complies – refer to comments above.

See **Appendix A – Architectural Plans** for further information.

Batters and cuttings to be landscaped with appropriate native shrubs and ground covers to prevent erosion and not left exposed to the elements. Stripped topsoil to be stockpiled on site and used to top dress disturbed areas.

Can Comply – refer to the attached engineering details and furthermore a condition of consent relating to this requirement is invited.

Where earthworks are proposed for swimming pools, the earthworks to have a maximum depth of no more than 2 metres. Where swimming pools are partially benched into the site of a hill to create an infinity edge or similar, the pool to extend no more than 1 metre out of the ground. See figures below.



N/A – The proposal does not include a swimming pool and therefore this control is not applicable.

Where pools are to be located on sloping land or land considered by Council as geotechnically constrained,

N/A – The proposal does not include a swimming pool and therefore this control is not applicable.



appropriate geotechnical investigations to be carried out by a suitably qualified engineer. Details to be submitted with the development application demonstrating that the site is suitable for the proposed pool.	See Appendix A – Architectural Plans for further information.
Where in-ground water tanks and effluent disposal systems are proposed, there are not specific restrictions limiting the depth of earthworks. Where required details on geotechnical and acid sulfate soils constraints to be submitted with the development application.	N/A – The proposal does not include inground water tanks.
Basement car parks- Any development application that seeks consent for a basement car park will need to have regard to the provisions contained within Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access.	N/A – The proposal does not include basement car parking. Therefore, this control is not applicable.
Filling on the floodplain – Any development application that seeks consent to fill land within the flood planning area will need to have regard to the provisions contained within Chapter C2 Areas Affected by Flood.	N/A – The area of the proposed modification is not within a designated floodplain area and therefore this control is not applicable.
Engineering detail by a suitably qualified structural or geotechnical engineer to be submitted for earthworks on land with a gradient exceeding 15% or where cut and fill of more than 1 metre is proposed.	Complies – See Appendix B – Engineering Plans for further information.
A site plan shall be provided that shows all areas of cut and fill on the site and specifically identifies any areas over one metre.	Complies – See Appendix B –Engineering Assessment for further information.

PART B: CHAPTER B3 –SERVICES

The purpose of this Chapter is to identify the minimum requirements necessary to adequately service development for water, sewer, stormwater management, on-site effluent disposal and other necessary infrastructure. The aims of this chapter are to protect the environment and public health, to ensure developments are adequately serviced with necessary infrastructure and to enable Council to plan and co-ordinate the installation of necessary services.

A Dial Before You Dig search indicates the site has suitable access to potable water, sewer, electricity, telecommunications and stormwater. Further details demonstrating suitability can be found within **Appendix B – Engineering Report**, which demonstrates that each stage has access to essential services.

PART B: CHAPTER B2 –PRESERVATION OF TREES AND OTHER VEGETATION

The purpose of this control is to prescribe the trees and other vegetation to which clause 5.9 of *BLEP2014* applies in order to protect natural ecosystems and existing landscape amenity. The aims of this chapter are to protect vegetation which contributes to the biodiversity, social and amenity of Byron Bay, prescribe trees and other vegetation to which clause the details of previous clause 5.9 of *BLEP2014* applied, provide guidance in respect to submission, assessment and determination of applications and to specify vegetation removal that is exempt from this DCP.

It should be noted that clause 5.9 has been removed from *BLEP2014* as a result of the introduction of *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* and coinciding *Biodiversity Conservation Regulation 2017*. The vegetation communities within the subject site (relative to the modification) are not considered to be reflective of an Endangered Ecological Community listed under the *Biodiversity Conservation Act 2016* or a Threatened Ecological Community under the *Environment Protection and Biodiversity Conservation Act 1999*.

NB. Refer also to previous consents on this land in respect of Ecological assessment.

PART B: CHAPTER B4 –TRAFFIC PLANNING, VEHICLE PARKING, CIRCULATION AND ACCESS

The proposal includes ten (8) new townhouses and the retention of three (3) existing dwelling houses, one (1) of which is proposed to be incorporated within the Multi Dwelling Housing product. All proposed new townhouses have three (3) bedrooms and car parking at the ground level consisting of a single garage and a secondary space. Some secondary spaces are covered including for Lots 3, 4, 5, 6 with Lots 1, 7, 8 and 9 not covered. The proposal also includes two (2) visitor parking spaces being sufficient for the nine (9) townhouses within the Multi Dwelling Housing scheme. The visitor car spaces are incorporated within the common property area of the site. The following breakdown of car parking as per *BDCP (2014)* is provided below (Table 6):

Table. Car Parking Rates and Compliance

Use	Car parking Rate	Required	Provided
Multi dwelling housing	<p>1 or 2 bedroom = 1 spacesper dwelling</p> <p>3 or more bedroom = 2 spaces per dwelling</p> <p>1 visitor space per 4dwellings or part thereof.</p> <p>Each dwelling to have atleast one covered car space.</p>	<p>Proposed 10 x three (3) bed townhouses @ two spaces per dwelling.</p> <p>Each dwelling to have at least one (1) coveredcar space.</p> <p>1 visitor space per 4 dwellings or part thereof.</p>	<p>20 spaces</p> <p>3 x visitor spaces</p> <p>Proposal complies</p>
Total		23	23 Including visitor spaces.



The required car parking is provided on the site including visitor car parking as per Chapter B4 – Traffic Planning, Vehicle Parking, Circulation and Access.

Site access is proposed from Kulgun Court and Matong Drive. The proposed driveway width may be reduced to 3.5m where there are no potential internal driveway conflicts or traffic safety issues. The proposed driveway layout is considered to be safe and fit for the purpose and is consistent with Council requirements, specifically Chapter B4: Traffic Planning, Vehicle Parking, Circulation and Access of BDCP2014 as below:

Internal driveways for more than three (3) dwellings should have a minimum driveway width of 5.5m to facilitate two-way access. The driveway width may be reduced to a minimum width of 3.5m where there are not potential internal driveway conflicts or traffic safety issues having regard to the following:

- a) a minimum driveway width of 5.5m is provided for at least the first 6m from the property boundary;
- b) adequate passing opportunity is provided;
- c) good sight distance is available;
- d) slope of driveway is not excessive;
- e) frontage roadway has less than 3000 vehicle trips per day; and
- f) traffic and pedestrian volumes on the driveway.

The proposal meets each of the above requirements.

Part B: Chapter B8 Waste Minimisation and Management

B8.3.1 Demolition of Buildings or Structures

A Site Waste Minimisation and Management Plan (SWMMP) must be submitted with Development Applications seeking consent for demolition. The SWMMP must demonstrate that the proposed development will:

- a) pursue adaptive reuse opportunities of buildings/structures
- b) identify all waste likely to result from the demolition, and opportunities for reuse of materials. Refer to Table B8.1;
- c) facilitate reuse/recycling by using the process of 'deconstruction', where various materials are carefully dismantled and sorted;
- d) reuse or recycle salvaged materials on-site where possible;
- e) allocate an area for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation, and access and handling requirements);
- f) provide separate collection bins or areas for the storage of residual waste;
- g) clearly 'signpost' the purpose and content of the bins and storage areas;
- h) implement measures to prevent damage by the elements, odour and health risks, and windborne litter;
- i) minimise site disturbance, limiting unnecessary excavation.

Complies – A new SWMMP is not considered necessary given that the previous one is sufficient and the increase in yield is minimal.

Appropriate conditions of consent are considered suitable in this regard.

Refer to previous consents and submitted wmp's in this regard.



<p>When implementing the SWMMP the applicant must ensure that:</p> <ul style="list-style-type: none">a) footpaths, public reserves, street gutters are not used as places to store demolition waste or materials of any kind without Council approval;b) any material moved offsite is transported in accordance with the requirements of the Protection of the Environment Operations Act (1997);c) waste is only transported to a place that can lawfully be used as a waste facility;d) generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the EPA and relevant Occupational Health and Safety legislation administered by WorkCover NSW.;e) documentary evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained. <p>Note: Materials that have an existing reuse or recycling market should not be disposed of in a landfill. Table B8.1 provides a list of some potential reuse/ recycling options. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.</p>	
<p>Recycling and waste collection services in Byron Shire provide for two primary levels of onsite waste storage and collection facilities. Council provides a kerbside pickup service utilising 80 Litre, 140 Litre and 240 Litre 'wheelie bins'. For larger developments where waste generation is predicted to exceed the aforementioned capacities a bulk bin service is required, for which the land owner and/ or occupier must enter into a contractual arrangement with a service provider.</p>	<p>Complies – Refer to previous consents and submitted wmp's in this regard.</p>



PART D: CHAPTER D6 –SUBDIVISION

This chapter seeks to ensure that the environment, the nature of future development and the aspirations of the community are given due consideration in all subdivision proposals. The primary purpose of this Chapter is to provide guidelines, controls and standards for subdivisions in Byron Shire.

The proposed future strata titling is considerate of the applicable development controls within this chapter. The considerations given include site design, hazards, vegetation removal, landscaping, roads, lighting, stormwater management, utility services, potable water, sewer and strata title development controls.

Refer also to the attached **Architectural Plans** and **Engineering Report**.



5.0 Conclusion

The proposed modification seeks to formalise an obvious and acceptable efficiency in the capacity and suitability of the site. This will facilitate additional housing and ease pressures on this front, whilst also maximising the opportunities available on unconstrained land.

Having regard to the background and alternative impacts, the proposed modification is considered to warrant the support of Council. Accordingly, the formal approval of Byron Shire Council is respectfully requested.

Should Council have any questions regarding the modification please do not hesitate to contact the undersigned.

Regards,

Adam Smith
Director



Appendices



APPENDIX A

Architectural Plans



APPENDIX B

Engineering Assessment



APPENDIX C

Existing Consent



APPENDIX D

Basix Assessment



APPENDIX E

Bushfire Assessment