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STATEMENT OF ENVIRONMENTAL EFFECTS

Remove 36 Trees
(Condition C.1 requirement of Consent 89/451)

Lot 10 D.P. 285748
No. 24 Scott. Byron Bay.



1 INTRODUCTION.....	3
2 STATUTORY – BYRON SHIRE L.E.P. & 4.15(1) (E.P.A. ACT).....	5
2.1 R2 ZONE OBJECTIVES - R2 Low DENSITY RESIDENTIAL.....	5
2.2 CLAUSE 5.10 HERITAGE CONSERVATION BYRON LEP 2014.....	5
2.3 BYRON LEP - CLAUSE 4.3 HEIGHT OF BUILDINGS.....	5
2.4 BYRON LEP - CLAUSE 4.4 FLOOR SPACE RATIO.....	5
2.5 DEVELOPMENT CONTROL PLAN 2014 PART "D" DWELLINGS GENERAL.....	6
2.6 DCP 2014 PART B SEC B.14 EARTHWORKS.....	11
2.7 DCP 2014 PART B.8 – WASTE MANAGEMENT.....	11
2.8 COASTAL MANAGEMENT SEPP 2018.....	12
2.9 PLANNING FOR BUSHFIRE PROTECTION 2019.....	17
3 SEC. 4.15(1)(B) IMPACT ON ENVIRONMENT.....	17
3.1 EPA ACT SEC 5.5 DUTY TO CONSIDER ENVIRONMENTAL IMPACT.....	17
3.2 BIODIVERSITY CONSERVATION REGULATION 2017.....	18
3.2.1 <i>Sec 7.3 of the Biodiversity Conservation Act 2016</i>	18
3.3 NATIVE FAUNA.....	19
3.4 NATIVE VEGETATION.....	20
3.5 S.E.P.P. 2019 KOALA HABITAT.....	20
3.6 S.E.P.P. No. 55 CONTAMINATED SOIL.....	20
3.7 IMPACT ON SCENIC QUALITY.....	20
3.8 IMPACT ON THE BUILT ENVIRONMENT.....	20
3.9 SOCIAL & ECONOMIC IMPACTS IN LOCALITY.....	20
3.10 RELATIONSHIP TO ADJOINING DEVELOPMENT.....	21
4 SEC. 4.15(1)(C) SUITABILITY OF THE SITE.....	21
4.1 PHYSICAL CONSTRAINTS.....	21
4.2 ACCESS AND PARKING.....	21
4.3 TRAFFIC.....	21
4.4 SERVICES.....	22
4.5 SOIL EROSION.....	22
5 SEC. 4.15(1)(D) SUBMISSIONS UNDER ACT OR REGULATIONS.....	23
6 SEC. 4.15(1)(E) PUBLIC INTEREST.....	23
7 MERIT CONSIDERATIONS.....	23

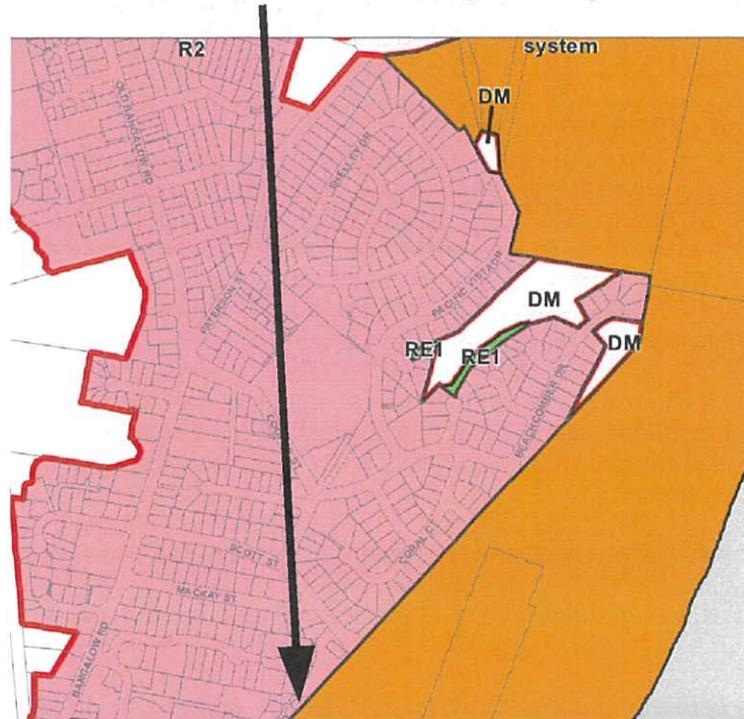
Annexure

- **Amended Development Site & Design Plans.**
- **Bushfire Report - Bushfire Consultancy Australia dated 22/01/2020.**
- **Tree Removal Report – David Sweet Ecologist.**
- **Consent 89/451& Plans**



LOCALITY & ZONING PLAN

Lot 10 D.P. 285748 No. 24 Scott. Byron Bay



1 INTRODUCTION

This report is to accompany a Development Application for the removal of 36 Trees within and about the approved Dwelling and Building Envelope for a Dwelling on Lot 10 D.P. 285748 No. 24 Scott St. Byron Bay.

The property has an area of 378.73m², and is zoned R2 Low Density Residential.

This separated DA for Tree Removal is submitted despite the Dwelling and its Building Envelope already being approved under activated Consent 89/451, as this separate DA is a requirement of Condition C.1 of Consent 89/451 :-

Condition C1

"No tree to be ringbarked, cut down, lopped, removed or damaged or caused to be ringbarked, cut down, lopped, removed or damaged in contravention of the Tree Preservation Order applicable to the land. Council consent is necessary before the removal of any trees including those necessary for construction of roads, parking areas and cabins."

The recently submitted Sec 4.55 application for this site seeks minor changes to the driveway and deck to achieve a deck running beside the building with a parking space beneath it, and it maintains the approved building height planes of the approved Dwelling as per Consent 89.451.

The approved dwelling thus necessitates this current Development Application seeking approval for the removal of 36 Trees, and the placement of Compensatory Landscape Plantings. This DA thus responds to and is required by, Conditions - A3; B1; and C1 and C2 of Consent 89/451.3 being for the "Construction of 9 Cabins".

Tree removal to permit approved Dwelling Lot 10 D.P. 285748 No. 24 Scott St. Byron Bay.



One of these cabins is the one subject of this application on Lot 10, which will be subject to a separate Construction Certificate to be submitted following the approval of this application.

As most of the other dwellings approved by Consent 89/451 have been constructed, therefore this Consent is activated under the provisions of Sec 95 of the EPA Act (see Below), and therefore the continuation of its approval through to the now proposed removal of trees, beneath the proposed Dwelling and Driveway Access Area, is able to be approved by Council.

EPA Act 1979 Section 95 Lapsing of consent

- (4) Development consent for: (a) the erection of a building, or (b) the subdivision of land, or (c) the carrying out of a work,; does not lapse if building, engineering or construction work relating to the building, subdivision or work is physically commenced on the land to which the consent applies before the date on which the consent would otherwise lapse under this section.
- (5) Development consent for development other than that referred to in subsection (4) does not lapse if the use of any land, building or work the subject of that consent is actually commenced before the date on which the consent would otherwise lapse.

In this instance works have commenced and Council is able to deal with the current application under the previous Consent 89/451, all be it that this application is a Separate Development Application, required by the previous Consent Condition C1, for any works requiring tree removal (**See Relevant conditions below**)

Relevant Conditions subject of the previous Development Consent 89/451 are:-

A. *The following conditions will be required to be complied with before the release of any Building Application...*

3. *Submission of a detailed landscape plan (in triplicate) for approval in conjunction with the relevant building application indicating the locations, names, mature heights of shrubs and tree species to be planted, and the location of grassed and paved areas.*

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

1. *The site being landscaped. In accordance with the approved landscape plan prior to occupying the development and maintained at all times to the satisfaction of the Works and Services Director.*

C. *The following conditions will need to be complied with at all times.*

1. *No tree to be ringbarked, cut down, lopped, removed or damaged or caused to be ringbarked, cut down, lopped, removed or damaged in contravention of the tree preservation order applicable to the land. Council consent is necessary for construction of roads, parking areas and cabins.*
2. *No scribbly gum trees are to be removed from the site. Minor lopping should be carried out only with the consent of the Planning Director.*

The landscape plantings detailed within the annexed Red Brown Green Report will not only compensate for the 36 trees to be removed, but will also add to this sites habitat value within this residential location (See Annexed Ecologists Report and Plan), and meet the landscaping requirements of Condition B1.

For these reasons it is recommend that this worthy application be approved by Byron Shire Council.



2 STATUTORY – BYRON SHIRE L.E.P. & 4.15(1) (E.P.A. ACT)

The property is located within a R2 Low Density Residential Zone under the provisions of Byron Shire Local Environmental Plan 2014.

The proposed removal of 36 Trees is a permissible landuse, and this application to approve the removal of these trees was a specific requirement of Consent 89/451, which approved the proposed Dwelling on this site.

2.1 R2 ZONE OBJECTIVES - R2 Low Density Residential

To provide for the housing needs of the community within a low density residential environment.

The tree removal assists in providing for the housing needs of the community by optimising the residential use of this Approved Dwelling site, within its constraints, thus maintaining the low density residential environment anticipated by the Consent, and achieving the same level of tree removal anticipated by the current Dwelling Approval on site.

To enable other land uses that provide facilities or services to meet the day to day needs of residents.

No Other land uses are proposed.

2.2 Clause 5.10 Heritage conservation Byron LEP 2014

Note. Heritage items (if any) are listed and described in Schedule 5. Heritage conservation areas (if any) are shown on the Heritage Map as well as being described in Schedule 5.

The subject property is located outside of the mapped “Heritage Conservation Area”, and as such no heritage assessment is required in relation to this application.

Despite this the proposed building addition achieves a blending stepped roof and elevation profile that mirrors the rhythm, bulk and scale of adjacent approved development.

2.3 Byron LEP - CLAUSE 4.3 Height of Buildings

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

- (a) building not exceed spec. max. height from existing ground level to finished roof or parapet,
- (b) height of buildings complements streetscape and character of the local area,
- (c) minimise visual impact, disruption of views, loss of privacy & loss of solar access to existing development.

(2) height of building not to exceed max. height shown for the land on Height of Buildings Map.

Maximum Height Permitted 9m - Max Height Proposed remains at the approved 8.7m.

2.4 Byron LEP - CLAUSE 4.4 Floor Space Ratio

Clause 4.4 of Byron Shire 2014 sets a ratio of 0.5:1 between Gross Floor Area and Site Area.

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

- (a) to ensure that new buildings are appropriate in relation to the character, amenity and environment of the locality,
- (b) to enable a diversity of housing types by encouraging low scale medium density housing in suitable locations,
- (c) to provide floor space in the business and industrial zones adequate for the foreseeable future,
- (d) to regulate density of development and generation of vehicular and pedestrian traffic,
- (e) to set out maximum floor space ratios for dual occupancy in certain areas.

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

(2A) Despite subclause (2), the maximum floor space ratio for dual occupancies on land

Tree removal to permit approved Dwelling Lot 10 D.P. 285748 No. 24 Scott St. Byron Bay.



in Zone R2 Low Density Residential is 0.5:1.

Byron LEP 2014 floor area:

Dwelling - Lower Floor 6.66m², Ground Floor 75.90m², Attic 25.8m² – Total 108.35m².

Based on a Site of 378.8m² with buildings of 108.35m² FA, the FSR is 0.28 : 1

2.5 Development Control Plan 2014 Part "D" Dwellings General

PRESCRIPTIVE MEASURES	COMPLIANCE WITH D.C.P.
<p>Part D.1.2.1:- Building Ht. Plane Objective - reduce overshadowing, maximise privacy, view sharing, optimise access to winter sun. Performance Criteria - progressive setback from side boundaries. Requirement - All walls & roof are to be contained within is a line drawn 1.8 meters vertically above the southern and western side boundaries and then extended, sloping in over the site, at a 45 degree angle. This may exclude pergolas, verandahs, lattice walls & the like.</p>	<p>The recently submitted Sec 4.55 application seeks minor changes to the driveway and deck to achieve a deck running beside the building with a parking space beneath it, maintains the approved building height planes of the approved Dwelling as per Consent 89.451. The tree removal DA does not change these already approved aspects or the Consent.</p>
<p>D1.2.2 Setbacks from Boundaries Objectives 1. varied and interesting streets that harmonise with existing & planned street scapes and development in the locality. 2. good orientation, spacing, living environments - sunlight, shade, wind, weather, amenity, proximity to neighbours. 3. achieve useable and liveable private open space and courtyards. 4. provide flexibility in siting and design of dwelling houses in residential areas. Performance Criteria 1. flexible provided achieve Objectives and Performance Criteria. 2. Street façade of building, open space between it and street - contribute to the attractiveness of the streetscape. Integrate with existing pattern of setbacks, variety in the streetscape. 3. Private open space and common landscaped areas must be useable as part of living environment. Spaces between buildings and the street lack privacy. 4. setback from a street determined on its merits, having regard to: a) the Objectives; b) any specific location DCP; c) existing buildings in the locality; d) the size and shape of the allotment; e) vehicular safety and visibility, particularly on corner sites; f) orientation of allotment re: sun & winds; g) location of private open space, courtyard or landscaped areas; h) the facade building facing the street and landscape treatment visible from street; i) location and treatment of car parking. 5. Notwithstanding above criteria, buildings must comply with the building height plane as detailed in Section D1.2.1. 6. Dwelling house encroach into the side setback and</p>	<p>The tree removals requested relate to the approved building envelope and the recent Sec 4.55 minor changes to the driveway and deck to achieve a deck running beside the building with a parking space beneath. These still relate to the approved Dwelling, and it remains the same development approved by Consent 89/451. It is in keeping with the design and rhythm of the streetscape; being spatially well removed from the adjacent dwellings. Oriented to the North East, the deck achieves good solar orientation for year-round solar access, and amenity.</p>

Tree removal to permit approved Dwelling Lot 10 D.P. 285748 No. 24 Scott St. Byron Bay.



<p>b) Between buildings on a site – 3 metres.</p> <p>4. Swimming Pools and Spas</p> <p>a) outer edge of pool concourse or coping set back min (1) metre from side or rear boundaries, water line min 1.5 m from bndry.</p> <p>b) 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.</p> <p>c) Pool pumps shall be located as far back from a side or rear boundary as practical and if closer than 3 m from either it shall be acoustically shielded.</p>	<p>No Swimming Pool proposed.</p>
<p>D1.2.3 Screening Underfloor Space</p> <p>Objectives</p> <ol style="list-style-type: none"> 1. improve external appearance of elevated buildings. 2. provide compatibility in appearance and character between buildings. <p>Performance Criteria</p> <ol style="list-style-type: none"> 1. underfloor space of elevated buildings be provided with infill panelling, advanced landscaping or other forms of visual screening. 2. In flood liable land screening may not be appropriate. Screening below the flood planning level must have openings to allow for entry and exit of flood water and must be structurally adequate and not reduce the structural capacity of the building during a 1 in 100 year flood event. 3. Where buildings are proposed on bush fire prone land, underfloor screening may be required to comply with specific req of BCA and Australian Standard AS3959 - Construction of Buildings in Bushfire Prone Areas. <p>Prescriptive Measures - No Prescriptive Measures.</p>	<p>Underfloor area is being utilised as vehicle accomodation and access and utility area as previously approved.</p> <p>Not Applicable.</p> <p>Bush fire prone land. See Annexed Bushfire Report.</p>
<p>D1.2.4 Character & Visual Impact</p> <p>Objectives</p> <ol style="list-style-type: none"> 1. retain and enhance unique character of Shire, distinctive landscapes, ecology, towns, villages, rural and natural areas. 2. ensure new development respects and complements important aspects of natural and built environment re existing character. <p>Performance Criteria</p> <ol style="list-style-type: none"> 1. Site, building and landscaping design must address the climate; 2. The street face of building, and front open space contribute to attractiveness of streetscape by - design, materials and landscaping; 3. minimise loss of privacy; 4. integration with existing built & natural environment, & variety in streetscapes; 5. Long, straight walls to be broken up visually by materials / changes in wall plane; 6. verandahs, balconies, pergolas encouraged for visual, climatic and energy efficiency reasons; 7. Well-designed overhanging eaves to protect against heavy rainfall and summer sun, while allowing winter sun penetration; 8. building materials compatible with environment. metal 	<p>The design maintains the built form of the previously approved dwelling. This ensures minimisation of amenity loss.</p>



<p>1.8m high on the boundary, up to either of the following alignment setbacks from the primary street: a) existing building line setback to street; or b) if existing dwelling is forward of building line, in line with the existing dwelling. Fencing forward of this alignment must comply with the front fence requirements. 3. Sight Lines at Intersections fence at intersection of two public roads, satisfactory sight distance must be provided. Min corner splay 4mx4m be provided fence. Landscaping in splay not impede visibility.</p>	
<p>D1.2.6 Balconies - Objectives 1. ensure visual character is consistent with and not dominate the design. Performance Criteria Balconies not dominate visual character of buildings, must be consistent in character with building in materials, colours, dimensions, bulk, scale and proportion. Prescriptive measures - No Prescriptive Measures.</p>	<p>Amended North East balcony blends into the character of the building and do not detract from the amenity of the design.</p>
<p>D1.3.1 On-Site Car Parking - Objectives 1. To provide adequate and visually compatible accommodation for vehicles. Performance Criteria 1. Car parking on the site convenient for access for residents of the dwelling; safe and accessible in terms of visibility, turning and manoeuvring capabilities; and visually compatible with the site and its locality. 2. Car parking structures, including garages and carports, which are visible from the street must be compatible with the dwelling in terms of design and materials, and may form part of the dwelling structure. Prescriptive Measures 1. Refer to Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access for detailed provisions regarding car parking and vehicle access. 2. Council may consent to the location of a carport such that it does not comply with the building height plane in relation to a boundary, having regard to the matters contained in Section D1.2.1 and to the adequacy and safety of vehicular access.</p>	<p>This tree removal request relates also to the amended driveway access and parking area under the dwellings deck, improves the ability for off street parking to be provided, as the previous design did not take into account that ground level access stairs would preclude the use of the northern underfloor area for parking.</p> <p>It is compatible with the dwelling in terms of design and materials, and forms part of the dwelling structure.</p> <p>Additionally there is adequacy and safety of vehicular access.</p>
<p>D1.3.2 Landscaping Objectives 1. enhance the visual quality of residential areas and to improve the residential amenity of the Shire. 2. limit stormwater runoff from residential areas. Performance Criteria - enhance visual quality and improve the residential amenity of the Shire, Council encourages the landscaping of dwelling house allotments in accordance with the principles contained in Chapter B9 Landscaping. Prescriptive Measures 1. where dwelling erected closer than 4.5m to the front boundary, adequate landscaping be provided to street frontage of the lot prior to occupation of the dwelling. Landscaping must be consistent with the principles contained in Chapter B9 Landscaping.</p>	<p>This detailed Development Application seeking the removal of 36 Trees, and the placement of Compensatory Landscape Plantings, proposed the planting of native species as detailed in the annexed Ecologists report. It will enhance the visual quality of the residential neighbourhood and improves the residential amenity of the Shire, on an allotment where the removal of trees is anticipated by the existing Consent for a Dwelling on this site.</p>



<p>2. At least 25% of the site must consist of deep soil areas. The deep soil area must not include any areas used for the management of on-site sewage effluent.</p>	<p>(See Annexed “redbrowngreen” report dated 3/12/2020).</p>
<p>D1.3.3 Expanded House - Objectives 1. facilitate dwelling house comprising separate building components. Performance Criteria - No Performance Criteria. Prescriptive Measures 1. No habitable outbuilding more than 20m from the wall of the main building, measured wall to wall at closest point; 2. main building to contain living area including the kitchen; 3. A maximum of three outbuildings may be connected to the main building by paths with an all-weather surface; 4. No separate driveway, car parking area, garage or carport structure is to be provided to service any outbuilding; 5. One max 45m² excluding decks, verandahs, patios, balconies and the like; and the others max 30m²; 6. No kitchen, sink or the like (no food preparation); 7. outbuildings max two bedrooms (inc ensuite or bathroom); 8. A maximum of only one laundry is permitted per dwelling.</p>	<p>Not Applicable.</p>

2.6 DCP 2014 Part B Sec B.14 Earthworks.

The objectives of the 1 m maximum earth works required under this Clause are:

To minimise Environmental Impact.

To blend the development into the site.

To minimise erosion risk.

To minimise disturbance to the natural landform.

To encourage designs which blend into the natural landform.

Site works are limited to the removal of 36 trees to accommodate the already approved dwelling, and the recently requested foundations for the slab beneath the driveway to the dwelling, however these are hidden by the proposed boundary plantings recommended in the annexed Ecologists report, from view of the adjacent dwelling to the south.

It thus meets Councils Design Criteria as set within DCP 2014.

The development is designed to minimise site works and to ensure no adverse impact by the instigation of erosion control measures prior to site works commencing.

2.7 DCP 2014 Part B.8 – Waste Management.

Waste minimisation Objectives

1. To minimise resource requirements and construction waste through reuse and recycling and the efficient selection and use of resources.
2. To minimise demolition waste by promoting adaptability in building design and focussing upon end of life deconstruction.
3. To encourage building designs, construction and demolition techniques in general which minimise waste generation.
4. To maximise reuse and recycling of household waste and industrial/commercial waste.

Waste management Objectives

5. To assist applicants in planning for sustainable waste management, through the preparation of a Site Waste Minimisation and Management Plan.
6. To assist applicants to develop systems for waste management that ensure waste is transported and disposed of in a lawful manner.
7. To provide guidance in regards to space, storage, amenity and management of waste management facilities.

Tree removal to permit approved Dwelling Lot 10 D.P. 285748 No. 24 Scott St. Byron Bay.



8. To ensure waste management systems are compatible with collection services.
9. To minimise risks associated with waste management at all stages of development.

WASTE MANAGEMENT

The annexed plans show the proposed Bin Storage locations adjacent to the driveway, adjacent to the collection point.

All organic waste will be composted on site.

Waste Management will be achieved by providing a 240lit Rubbish Bin, 240 lit Green Waste Bin, and a 240lit Recycling Bin for the dwelling.

All waste during the proposed removal of 36 trees to accommodate the already approved dwelling, and the future building waste from the dwelling, will be stored in skips on site, with a recycling skip and a rubbish skip, to minimise land fill which results from the works proposed on site.

2.8 COASTAL MANAGEMENT SEPP 2018

Lot 10 D.P. 285748 No. 24 Scott St. Byron Bay



Coastal Area

Division 1 Coastal wetlands and littoral rainforests area

10 Development on certain land within coastal wetlands and littoral rainforests area

(1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the *Coastal Wetlands and Littoral Rainforests Area Map* only with development consent:

(a) the clearing of native vegetation within the meaning of Part 5A of the *Local Land Services Act 2013*, (b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the *Fisheries Management Act 1994*,

(c) the carrying out of any of the following:

- (i) earthworks (including the depositing of material on land),
- (ii) constructing a levee,
- (iii) draining the land,
- (iv) environmental protection works,

Tree removal to permit approved Dwelling Lot 10 D.P. 285748 No. 24 Scott St. Byron Bay.



(d) any other development.

Note. Clause 17 provides that, for the avoidance of doubt, nothing in this Part:

- (a) permits the carrying out of development that is prohibited development under another environmental planning instrument, or
 - (b) permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.
- (2) Development for which consent is required by subclause (1), other than development for the purpose of environmental protection works, is declared to be designated development for the purposes of the Act.
- (3) Despite subclause (1), development for the purpose of environmental protection works on land identified as “coastal wetlands” or “littoral rainforest” on the *Coastal Wetlands and Littoral Rainforests Area Map* may be carried out by or on behalf of a public authority without development consent if the development is identified in:
- (a) the relevant certified coastal management program, or
 - (b) a plan of management prepared and adopted under Division 2 of Part 2 of Chapter 6 of the *Local Government Act 1993*, or
 - (c) a plan of management approved and in force under Division 6 of Part 5 of the *Crown Lands Act 1989*.
- (4) A consent authority must not grant consent for development referred to in subclause (1) unless the consent authority 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.
- (5) Nothing in this clause requires consent for the damage or removal of a priority weed within the meaning of clause 32 of Schedule 7 to the *Biosecurity Act 2015*.
- (6) This clause does not apply to the carrying out of development on land reserved under the *National Parks and Wildlife Act 1974* if the proposed development is consistent with a plan of management prepared under that Act for the land concerned.

Response: The subject development is to take place on Low Density Residential R2 Zoned lands, with the development occurring over a site already approved for a dwelling, with this separate application being lodged to remove the trees as required by Condition C.1 of Consent 89/451. Also, the development areas within site are separated from the coast to the east by a cleared fire trail and protected Coastal Habitat, and “Littoral Rainforest” and “Coastal Wetlands” do not occur proximate to the site.

To this end the proposal totally satisfies the protection requirements of Division 1.

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

Note. The *Coastal Wetlands and Littoral Rainforests Area Map* identifies certain land that is inside the coastal wetlands and littoral rainforests area as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” or both.

- (1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the *Coastal Wetlands and Littoral Rainforests Area Map* unless the consent authority is satisfied that the proposed development will not significantly impact on:
 - (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
 - (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.
- (2) This clause does not apply to land that is identified as “coastal wetlands” or “littoral rainforest” on the *Coastal Wetlands and Littoral Rainforests Area Map*.

Response: The subject development is to take place on Low Density Residential R2 Zoned lands, with the development occurring over a site already approved for a dwelling, with this separate application being lodged to remove the trees as required by Condition C.1 of Consent 89/451. Also, the development areas within site are separated from the coast to



the east by a cleared fire trail and protected Coastal Habitat, and “Littoral Rainforest” and “Coastal Wetlands” do not occur proximate to the site.
To this end the proposal totally satisfies the protection requirements of Division 1.

Division 2 Coastal vulnerability area

Note. At the commencement of this Policy, no *Coastal Vulnerability Area Map* was adopted and therefore no coastal vulnerability area has been identified.

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the *Coastal Vulnerability Area Map* unless the consent authority is satisfied that:

- (a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- (b) the proposed development:
 - (i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and
 - (ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and
 - (iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- (c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Response: The subject development is to take place on Low Density Residential R2 Zoned lands, with the development occurring over a site already approved for a dwelling, with this separate application being lodged to remove the trees as required by Condition C.1 of Consent 89/451. Also, the development areas within site are separated from the coast to the east by a cleared fire trail and protected Coastal Habitat, and “Littoral Rainforest” and “Coastal Wetlands” do not occur proximate to the site.

To this end the proposal totally satisfies the protection requirements of Division 2.

Division 3 Coastal environment area

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

- (b) coastal environmental values and natural coastal processes,
- (c) the water quality of the marine estate (within the meaning of the *Marine Estate Management Act 2014*), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- (f) Aboriginal cultural heritage, practices and places,
- (g) the use of the surf zone.

(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or

- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Tree removal to permit approved Dwelling Lot 10 D.P. 285748 No. 24 Scott St. Byron Bay.



(3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*.

Response: The subject development is to take place on Low Density Residential R2 Zoned lands, with the development occurring over a site already approved for a dwelling, with this separate application being lodged to remove the trees as required by Condition C.1 of Consent 89/451. Also, the development areas within site are separated from the coast to the east by a cleared fire trail and protected Coastal Habitat, and “Littoral Rainforest” and “Coastal Wetlands” do not occur proximate to the site.

The property is located within the mapped Coastal Environment Area, however it is unlikely to be impacted by Coast Processes, other than flooding.
To this end the proposal totally satisfies the protection requirements of Division 3.

Based on the modified nature of the site, a long standing residential area and review of historical and cultural records of the site, it is unlikely to hold important significance or cultural objects related to Aboriginal culture. If any uses such as fishing/hunting occurred on the distant beach and swamp areas, then the use of these distant areas off site for commercial, residential and recreational purposes for over 100 years, has made research into the value of these areas, and their cultural interpretation, almost impossible.

Given the nature of the site i.e. it has been modified by urban and commercial development and construction of utility services, it is not considered to hold any archaeological values other than those associated with the early white settlement and their associated urban and commercial activities, and landuse practices. The site is not mentioned in Aboriginal Heritage registers held by Byron Shire Council and NPWS, as containing historical or cultural objects or being a site of significance.

Given its location within the coastal plain prior to modification of the area by white settlement, it is likely to have been traversed by Aboriginal people as part of their hunting/gathering in the general foreshore and wetland area. Although no evidence can be found confirming this, the site, which is located well removed from the foreshore area, is unlikely to be of cultural significance. No shell or bone waste is evident within soil profiles within this previously developed site.

On this basis the proposed development does not detract from the Coastal Environment. To this end the proposal totally satisfies the protection requirements of Division 3.

Division 4 Coastal use area

14 Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

(a) has considered whether the proposed development is likely to cause an adverse impact on the following:

- (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
- (iv) Aboriginal cultural heritage, practices and places,
- (v) cultural and built environment heritage, and

(b) is satisfied that:

- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
- (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or



(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

(2) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*.

Division 5 General 15 Development in coastal zone generally—development not to increase risk of coastal hazards

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

Not Applicable

16 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Not Applicable

17 Other development controls not affected

Subject to clause 7, for the avoidance of doubt, nothing in this Part:

(a) permits the carrying out of development that is prohibited development under another environmental planning instrument, or

(b) permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.

Not Applicable as the land use is permissible under Byron LEP 2014.

18 Hierarchy of development controls if overlapping

If a single parcel of land is identified by this Policy as being within more than one coastal management area and the development controls of those coastal management areas are inconsistent, the development controls of the highest of the following coastal management areas (set out highest to lowest) prevail to the extent of the inconsistency:

(a) the coastal wetlands and littoral rainforests area,

(b) the coastal vulnerability area,

(c) the coastal environment area,

(d) the coastal use area

Not Applicable

Conclusion

The subject development is to take place on Low Density Residential R2 Zoned lands, with the development occurring over a site already approved for a dwelling, with this separate application being lodged to remove the trees as required by Condition C.1 of Consent 89/451. Also, the development areas within site are separated from the coast to the east by a cleared fire trail and protected Coastal Habitat, and “Littoral Rainforest” and “Coastal Wetlands” do not occur proximate to the site.

The removal of 36 trees to accommodate the already approved dwelling, and the recently requested variation of the Deck and Access design, does not aggravate the impact of the development within the Coastal Zone.



On this basis the proposed development does not detract from lands deemed to be either (a) the coastal wetlands and littoral rainforests area,; (b) the coastal vulnerability area,; (c) the coastal environment area,; (d) the coastal use area.

To this end the proposal totally satisfies the protection requirements of State Environmental Planning Policy (Coastal Management) 2018.

2.9 Planning for Bushfire Protection 2019

To assist in the assessment of this application by the RFS under the provisions of Planning for Bush Fires 2006, the following assessment is provided.

The removal of 36 trees to accommodate the already approved dwelling, and the recently requested small changes to the deck and parking on R2 Zoned land, in relation to an already approved building, will not alter the existing scenic amenity of the residential environment as the dwelling sites sit well below the main ridge, and this minimises visual impact.

Added to this vegetation is to be retained about the boundaries, and the site is to be further intensively landscaped. The blending style of the dwelling meets previously Consent and Design approvals.

The site sits within a Mapped Bushfire Threat Area, and to this end **a report prepared by Bushfire Consultancy Australia dated 22/01/2020 is annexed.**

The property is exposed to a Bushfire Attack Level of BAL 40.

To this end, the amended deck will need to be constructed of non flammable materials.

A Fire Hydrant is located at the access point into the property, and this is to be redesigned to sit below the level of the road to ensure its accessibility and at the same time permit the use of the driveway for access.

An existing Fire Trail is maintained within the National Park to the east of the property boundary.

3 Sec. 4.15(1)(b) IMPACT ON ENVIRONMENT

The removal of 36 trees to accommodate the already approved dwelling, and the recently requested amendments to the design of the Deck on the south eastern side of the approved dwelling so that it can be used as the location of the parking space below, with the access driveway relocated slightly to provide access to the relocated parking space beneath this deck, do not alter this previously approved developments ability to blend into the area, and minimise its impact over this developed urban site.

This separate application being lodged to remove the trees as required by Condition C.1 of Consent 89/451 is supported by the annexed Ecologists report, which also proposes compensatory plantings.

On this basis the proposal minimises the impact of the tree removal necessary to permit the construction of the already approved Dwelling on Lot 10.

3.1 EPA Act Sec 5.5 Duty to consider environmental impact

(1) For the purpose of attaining the objects of this Act relating to the protection and enhancement of the environment, a determining authority in its consideration of an activity shall, notwithstanding any other provisions of this Act or the provisions of any other Act or of any instrument made under this or any other Act, examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity.

As stated above, the approved residential site, does necessitate the removal of native vegetation, to this end this separate application is lodged to remove the trees as required by Condition C.1 of Consent 89/451.

Tree removal to permit approved Dwelling Lot 10 D.P. 285748 No. 24 Scott St. Byron Bay.



The Ecologists report that accompanies this Tree Removal DA is annexed for your information.

On this basis the proposal results in development meets the Sec 5.5 requirements of the EPA Act in that it results in the “protection and enhancement of the environment”.

3.2 Biodiversity Conservation Regulation 2017

The Biodiversity Conservation Regulation 2017 sets out threshold levels for when the Biodiversity Offsets Scheme will be triggered. The threshold has two elements:

- Whether the amount of native vegetation being cleared exceeds a threshold area, or
- Whether the impacts occur on an area mapped on the Biodiversity Values map published by the Minister for the Environment

If clearing and other impacts exceeds either trigger, the Biodiversity Offset Scheme applies to the proposed development including biodiversity impacts prescribed by clause 6.1 of the Biodiversity Regulation 2017.

If the Biodiversity offsets scheme is not triggered, the test of significance detailed in section 7.3 of the Biodiversity Conservation Act 2016 must be used to determine whether a local development is likely to significantly affect threatened species.

As can be seen from the following extract from the Biodiversity Values map, as published by the Minister for the Environment, the proposed development sits outside the areas mapped on the Biodiversity Values map.

Lot 10 D.P. 285748 No. 24 Scott St. Byron Bay



3.2.1 Sec 7.3 of the Biodiversity Conservation Act 2016

Sec 7.3 Test for determining whether proposed development or activity likely to significantly affect threatened species or ecological communities, or their habitats

Tree removal to permit approved Dwelling Lot 10 D.P. 285748 No. 24 Scott St. Byron Bay.



(1) The following is to be taken into account for the purposes of determining whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats:

(a) in the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,

In these areas of the Shire, the following Endangered or rare species could occur:

Endangered or rare tree species:-

Acianthus amplexicaulis;	Acronychia littoralis	(Scented Acronychia)
Amorpha sp.		(Rusty Plum)
Archidendron muellerianum		(Veiny Lace Flower)
Cordyline congesta;	Cryptocarya foetida	(Stinking cryptocarya)
Endiandra hayseii		(Velvet Laurel)
Syzygium hodgkinsoniae		(Red Lilli Pilli)
Syzygium moorei		(Durobby)
Thozetia racemosa;	Randia moorei	(Spiny Gardenia)

Endangered or rare Bat Species:-

Chalinolobus nigrogriseus	(Whorrie Bat)
Miniopterus australis	(Mini Bent Wing Bat)
Nyctophilus bifax	(Small Cave Bat)

Endangered or rare animal Species:-

Phascolarctos cinereus	(Koala)
Potorous tridactylus	(Potoroo)

As stated above, the approved residential site, does necessitate the removal of native vegetation, to this end this separate application is lodged to remove the trees as required by Condition C.1 of Consent 89/451.

The Ecologists report that accompanies this separate Tree Removal DA, which details all tree species to be removed, and a full list of compensatory plantings, is annexed for your assessment.

3.3 NATIVE FAUNA

Mammal, Reptile, Bird and Bat Species:

The study area was traversed on foot, with fauna identified by tracks, scats, and visual sighting, as well as sightings by local residents.

REPTILES

Skinks	
Lampropholis delicata	(Common Garden Skink)

AMPHIBIANS None found.

BIRDS - (Sighted in regrowth trees about Wright Place to the east of the site)

Cracticus torquatus	(Grey Butcher-Bird)
Dacelo novaeguineae	(Kookaburra)
Gymnorhina tibicen hypoleuca	(Magpie)
Malurus cyaneus	(Superb Blue Wren)
Philemon corniculatus	(Noisy Friarbird)
Rhipidura leucophrys	(Willie Wagtail)
Strepera graculina	(Pied Currawong)
Trichoglossus moluccanus	(Rainbow Lorikeet)

NATIVE MAMMALS

No Native Mammals have been identified or sighted other than flying foxes and bats in the general area. No habitat for them exists on this mostly cleared site.



3.4 NATIVE VEGETATION

The site was extensively disturbed by vegetation clearance during the early part of last century when timber was extracted from the area. This was followed by residential development. As stated in the introduction, all development is restricted to the previously approved dwelling areas within the site, thus minimising adverse environmental impact associated with the removal of 36 trees to accommodate the already approved dwelling, and the recently requested deck and access redesign.

3.5 S.E.P.P. 2019 KOALA HABITAT.

1. The site is within schedule 1.
2. The site is under 1 ha.
3. Few Koala food trees present within the site.
4. The site is removed from known Koala corridors.
5. No Plan of Management is required.

3.6 S.E.P.P. No. 55 CONTAMINATED SOIL

The removal of 36 trees to accommodate the already approved dwelling, and the recently requested small changes to this approved dwelling building, are not likely to intersect contaminated soils, particularly as it relates to a sand sub-base which would not have been able to be used by Agriculture in the past.

As such soil tests are not deemed necessary on this urban allotment.

3.7 IMPACT ON SCENIC QUALITY

The removal of 36 trees to accommodate the already approved dwelling, and the recently requested small changes to the deck and parking on R2 Zoned land, in relation to an already approved building, will not alter the existing scenic amenity of the residential environment as the dwelling site sits well below the main ridge to the west, and this minimises visual impact.

Added to this vegetation is to be retained about the boundaries, and the site is to be further landscaped as per the annexed Ecologists report.

The blending style of the dwelling meets previous Consent and Design approvals.

Thus the previously planned tree removal for the site, is anticipated, and the resultant dwelling development over the areas to be cleared, will have no adverse impact on the planned and already approved visual amenity of the area.

3.8 IMPACT ON THE BUILT ENVIRONMENT

The removal of 36 trees to accommodate the already approved dwelling, and the recently requested small changes to the deck and parking, optimise urban potential within the approved nature of the site, and the requirements of Councils LEP and DCP's.

The tree removal requested, which will facilitate the construction of the already approved dwelling, will promote the proper future planning of the area, and it will do not change the approved and planned character of the previously approved dwelling.

On this basis the works proposed relate to an already approved built form, and they will not detract from the approved amenity of the area or the anticipated visual integrity of the adjacent dwellings to the south and west.

3.9 SOCIAL & ECONOMIC IMPACTS IN LOCALITY

The proposed development will assist in broadening the social and amenity base of the shire. Further, this development will provide a use totally compatible with the sites location in an established Urban Development Area, and is of a low density and comparable scale, compatible with the approved residential character of the area.



The proposal assists in strengthening and broadening specific sectors of the local economy as the removal of 36 trees, to achieve the construction of the already approved Dwelling, will meet housing needs, and the construction will add to the activity levels of the Shires' building sector.

As such the proposed tree removal and subsequent Dwelling will have a positive economic, cultural and social effect within the Byron Shire.

3.10 RELATIONSHIP TO ADJOINING DEVELOPMENT

The removal of 36 trees to accommodate the already approved dwelling, and the recently requested small changes to the deck and parking, optimise urban potential within the developed nature of the site, and the requirements of Councils LEP and DCP's.

The building is spatially well removed from adjacent dwellings to minimise amenity loss, and maintain privacy levels.

The previously submitted Sec 4.55 amendments to the deck and parking do not alter the approved built form, height or shape of the structure, already approved for this site, and the requested tree removal is anticipated by the very nature of the activated Dwelling Consent that relates to the site under DA 89/45.

4 Sec. 4.15(1)(c) SUITABILITY OF THE SITE

The removal of 36 trees to accommodate the already approved dwelling, and the recently requested small changes to the deck and parking on R2 Zoned land, in relation to an already approved building, will not alter the existing scenic amenity of the residential environment as the dwelling sites sit well below the main ridge to the west, and this minimises visual impact.

Added to this vegetation is to be retained about the boundaries, and the site is to be further intensively landscaped as per the annexed Ecologists Report.

The blending style of the dwelling meets already activated Consent and Design approvals.

As such the overall social impact and environmental impact of the requested tree removal, with compensatory plantings proposed, will achieve the already approved Dwelling for this site, and therefore the social and environmental outcomes will be positive.

This is particularly so as it meets the consent objectives already set for the property under activated Consent 89/451.

4.1 PHYSICAL CONSTRAINTS

The removal of 36 trees to accommodate the already approved dwelling, occurs on a generally unconstrained site.

Bushfire impact can be managed as per the attached Bushfire Report, and added to this, vegetation is to be retained about the boundaries, and the site is to be further intensively landscaped.

The blending style of the dwelling meets previously Consent and Design approvals.

4.2 ACCESS AND PARKING

Adequate parking is proposed for the site, with access off the existing internal driveway.

4.3 TRAFFIC

The removal of 36 trees to accommodate the already approved dwelling, will not result in any increase in traffic volumes within the area beyond that already anticipated by the existing approval for a dwelling on this site.

As such, the proposed development will not adversely impact on traffic movement systems within the area. Good sight distance exists at the access points. This good sight distance, coupled with the 50 km/hr. speed limit, optimises traffic safety.



4.4 SERVICES

The retention of the approved dwelling design in terms of bedrooms and layout, maintains the approved service load anticipated from this already approved Dwelling site.

It this remains within the design capacity of the West Byron Sewerage treatment works, Water Mains in the area, and Essential Energy and Telstra infrastructure.

Sewer Invert level adjacent permits gravity disposal of effluent from the development site.

4.5 SOIL EROSION

The site works proposed to achieve the removal of 36 trees to accommodate the already approved dwelling, and the subsequent construction of the approved dwelling, will occur following the construction of small berms of straw bails, filter mesh fences or similar, to be positioned and secured by metal stakes e.g. star pegs, in rills down hill from site works. These porous bails will act to reduce water velocity and collect sediment during the construction of the parking area and landscaping.

This inexpensive method of sediment control will afford additional protection to the local drainage system. The collected sediment will need to be removed from these porous berms from time to time to ensure proper functioning, and after heavy rain straw bails may need to be replaced as they fill with fine sediment.

General Notes – Soil and Water Management

- No disturbed area is to remain denuded longer than 30 days.
- All erosion and siltation control measures are to be placed as the first step in grading.
- All stormwater and sewer lines not in streets are to be mulched and seeded within 15 days after backfill. No more than 150 metres are to be opened at any one time.
- Electrical power, telephone and gas supply trenches are to be compacted, seeded, and mulched within 15 days after backfill
- All temporary earthbanks, diversions and sediment control devices are to be machine compacted, seeded and mulched for temporary vegetation cover within 10 days of completion of grading. Straw or hay mulch is required.
- All fills are to be left with a lip at the top of the slope at the end of each days operation.
- Cut and fill slopes are to be seeded & mulched within 10 days of completion of grading.
- Any disturbed areas not paved, sodded or built upon are to be seeded within 15 days with Sudan grass or equivalent, and mulched with straw or hay mulch at the rate of 2 tonnes per hectare.
- Refer to Soil and Water Management for Urban Development NSW Department of Housing, January 1993
- All sediment control devices as specified in the soil and water management plan at locations marked "EC" and maintained in place till grass is re-established at completion of construction.

Sediment traps as shown "ST" to be placed across all pit entrances.

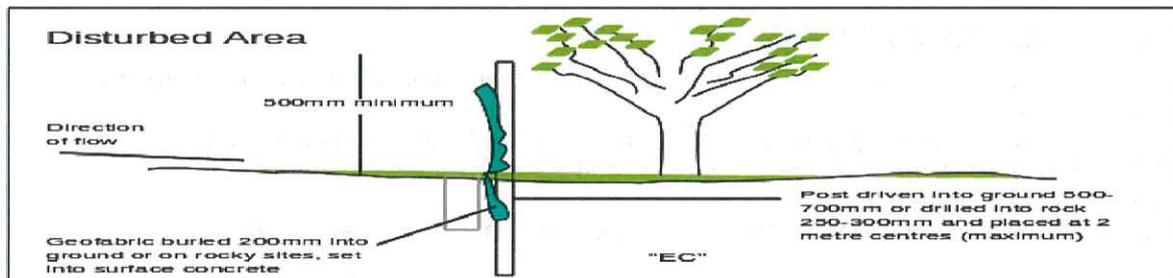


Figure 1: Construction of a geofabric-lined 'silt' fence

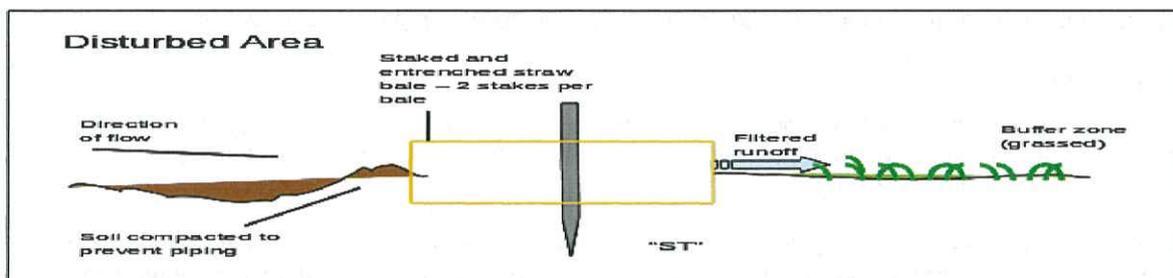


Figure 2: Cross-section of a properly installed straw bale bund



5 Sec. 4.15(1)(d) SUBMISSIONS UNDER ACT OR REGULATIONS

Not Applicable.

6 Sec. 4.15(1)(e) PUBLIC INTEREST

The removal of 36 trees to accommodate the already approved dwelling, on R2 Zoned land, in relation to an already approved building, will not alter the planned and anticipated scenic amenity of the residential environment, particularly as the dwelling site sits well below the main western ridge, and this minimises visual impact.

Added to this, vegetation is to be retained about the boundaries, and the site is to be further intensively landscaped (See Annexed Ecologists Report). The blending style of the dwelling meets previously issued Consent and Design approvals.

As such the overall social impact of this Infill Development is positive.

7 MERIT CONSIDERATIONS

It is considered that the removal of 36 trees to accommodate the already approved dwelling, will still achieve a compatible, visual soft and well screened building, particularly as boundary vegetation is retained, and additional plantings are proposed to compensate for some of the tree loss.

In addition, the approved Dwelling is designed such that the development is low key, and the overall design provides broken roof lines and elevations, and blends with the planned low density development direction set for this sector of Byron Bay under LEP 2014 and DCP 2014, in particular it maintains the already approved built form of the area.

Further to these factors, the resultant building, which requires the removal of the trees beneath it and its access, will not disrupt the visual integrity of the area following completion of the development, particularly considering the soft architectural lines of the already approved building, and the screening effected of the proposed landscaping and retained boundary vegetation.

The net result of these factors is that the already approved Dwelling on this site will have a positive social and environmental impact, despite the removal of 36 trees, as anticipated by the already activated Consent 89/451.

CHRIS LONERGAN. B.A. (Town Planning – U.N.E.)
10th. Dec. 2020.

