



**Development Application**

**Proposed Access Driveway and Garage**

**on Lot 1 DP1208728  
12 Julian Place  
Byron Bay**

**PLANNERS NORTH, June 2024**

## COMPLIANCE AND USAGE STATEMENT

This Development Application has been prepared and submitted under Part 4 of the *Environmental Planning and Assessment Act 1979* by:

### Preparation

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Company: PLANNERS NORTH  
Address: 6 Porter Street, Byron Bay, Bundjalung Country NSW, 2481  
Postal Address: P.O. Box 538, Lennox Head, Bundjalung Country NSW 2478  
In respect of: Proposed driveway and garage.

### Application

Proponent: Giovanni D'Ercole and Miranda Chance  
Address: C/ - PLANNERS NORTH  
P.O. Box 538, Lennox Head, Bundjalung Country NSW 2478  
Land to be developed: Lot 1 DP1208728 12 Julian Place Byron Bay  
Proposed development: Proposed driveway and garage  
Environmental Assessment: Statement of Environmental Effects

### Certificate

I certify that I have prepared the content of this Development Application and to the best of my knowledge:

it is in accordance with the Act and Regulations, and it is true in all material particulars and does not, by its presentation or omission of information, materially mislead.

### Notice

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PLANNERS NORTH declares that it does not have, nor expects to have, a beneficial interest in the subject project. Nor does it have any reportable political donations within the meaning of Section 10.4 of the Act to declare.

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**Kate Singleton RPIA BTP(Hons)**

PARTNERSHIP PRINCIPAL



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Ref: 1756.4715  
Date: June 2024

## 12 Julian Place Byron Bay

### EXECUTIVE SUMMARY

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PLANNERS NORTH has been engaged by Giovanni D'Ercole and Miranda Chance to prepare a Development Application for the construction an access driveway and garage at Lot 1 DP1208728 12 Julian Place. The site has an area of 883.1m<sup>2</sup> and falls some 14m from Brownell Drive in the south towards Julian Place in the North.

The proposal involves the removal of some existing landscaping adjacent to Julian Place Byron Bay.

The proposed development complies with the provisions of Byron Local Environmental Plan 2014 (BLEP14) and Byron Development Control 2014 (BDCP14).

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APPENDIX A Site Photographs

## 1. INTRODUCTION

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*This section of the report identifies the nature of client instructions, relevant background information and the structure of the report.*

### 1.1 BACKGROUND

PLANNERS NORTH has been engaged by Giovanni D'Ercole and Miranda Chance to provide Town Planning advice with respect to the preparation and lodgement of a Development Application with Byron Shire Council in regard to land described as Lot 1 DP1208728, 12 Julian Place Byron Bay.

**Plan 1.1** illustrates a site locality plan identifying the subject land.



*The existing house*

### 1.2 STRUCTURE OF REPORT AND ITS SCOPE

Section 2 of this report describes the physical characteristics of the subject land and its planning context. Section 3 describes in detail the development proposal. Having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979 (the Act), Section 4 sets out an examination of the statutory and policy planning status relating to the land, with particular regard to the development proposal described in Section 3. Section 5 looks at the environmental interactions of the proposal, particularly as specified by Section 4.15(1)(b) and (c) of the Act. The final section of the report undertakes a general review of the project and summation as to the appropriateness of the project considering the planning controls applying to the land, land use needs in the

locality and matters set out for consideration in Section 4.15(1)(e).

### 1.3 SPECIALIST TECHNICAL ADVICE

The Development Application is accompanied by the following information:

- Engineering Report prepared by SDS Civil Enterprises;
- Site Waste Management ; and
- Architectural Plans prepared by Maxime Beaur.

### 1.4 FURTHER INFORMATION

Should Council require any additional information, or wish to clarify any matter raised by this proposal or submissions made to same, Council is requested to consult with **Kate Singleton** prior to determination of this application.



*The existing house screened by landscaping*





0 200m  
Horizontal Scale  
GDA2020 Zone 56

## 2. THE SITE AND ITS CONTEXT

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*This section of the report identifies the subject site and describes its environmental planning context.*

### 2.1 CADASTRAL DESCRIPTION

The subject site, as illustrated in **Plan 2.1**, is described in Real Property terms as 12 Julian Place Lot 1 DP 1208728 Byron Bay. The site has an area of 883.1m<sup>2</sup> and is irregular in shape.

### 2.2 THE SITE

The subject site is located approximately 4.1km or 9 minute drive from Byron Post Office.

The site falls approximately 14 metres from Brownell Drive in the south towards Julian Place in the north. The site contains an existing two storey dwelling house.

Existing landscape planting is located in the vicinity of the proposed driveway and garage.



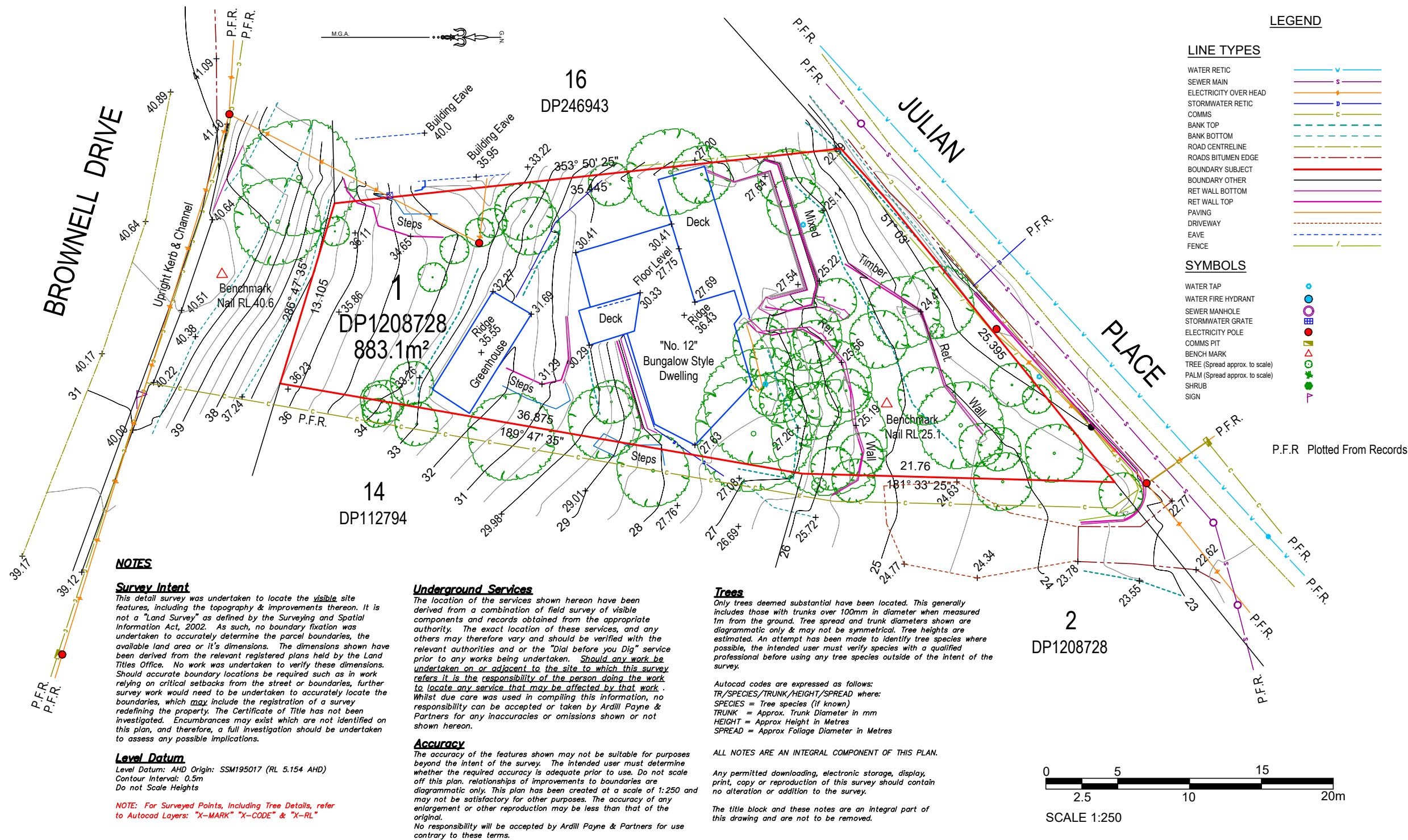
*View from existing terrace*

### 2.3 HISTORY SITE

A number of Development Consents have been issued in relation to the subject property as follows:

- Building Application 37/66 Weekend Cottage approved 14/07/1966;
- Building Application 264/78 Additions to Dwelling approved 18/09/1978. The stamped plans indicate bedroom, dining, living, kitchen and bathroom on the ground floor and main bedroom, bathroom and deck above;
- Development Application 89/212 for Dual Occupancy approved 07/06/1989;
- Building Application 95/2475 Dwelling Additions approved 26/09/1995;
- Development Application 10.2005.441.1 for a multi level dwelling, associated earthworks and vegetation removal including demolition existing buildings was approved on 14/09/2006. The stamped approved plans indicate the clearing of the majority of the site.
- Construction Certificate 10.2005.444.1 Multi level dwelling, associated earthworks and vegetation removal including demolition existing buildings was issued on 26/07/2011;
- Development Application 10.2014.139.1 for a boundary adjustment to rectify an access encroachment was approved 04/06/2014; and
- Subdivision Certificate 15.2014.139.1 for approved boundary adjustment.







### 3. THE DEVELOPMENT PROPOSAL

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*This section of the report defines the site planning objectives utilised in schematic design. Further, this section describes the project by way of text, mapping and statistical information.*

#### 3.1 SITE PLANNING OBJECTIVES

The primary objective of this proposal is to provide legal access to the existing dwelling and covered car parking.



*Existing dwelling*

For the purposes of project design criteria the following site planning objectives have been adopted:

- To provide for legal and appropriate to the existing dwelling house;
- To provide for covered car parking for the existing dwelling;
- Ensure that construction works are appropriately managed to minimise site erosion and maintain the current quality of water exiting the site;
- Review potential site planning hazards with respect to bushfire hazard and geotechnical issues to ensure the development is not likely to present an unreasonable hazard; and
- Ensure that development does not impact on items of early European or Aboriginal significance.

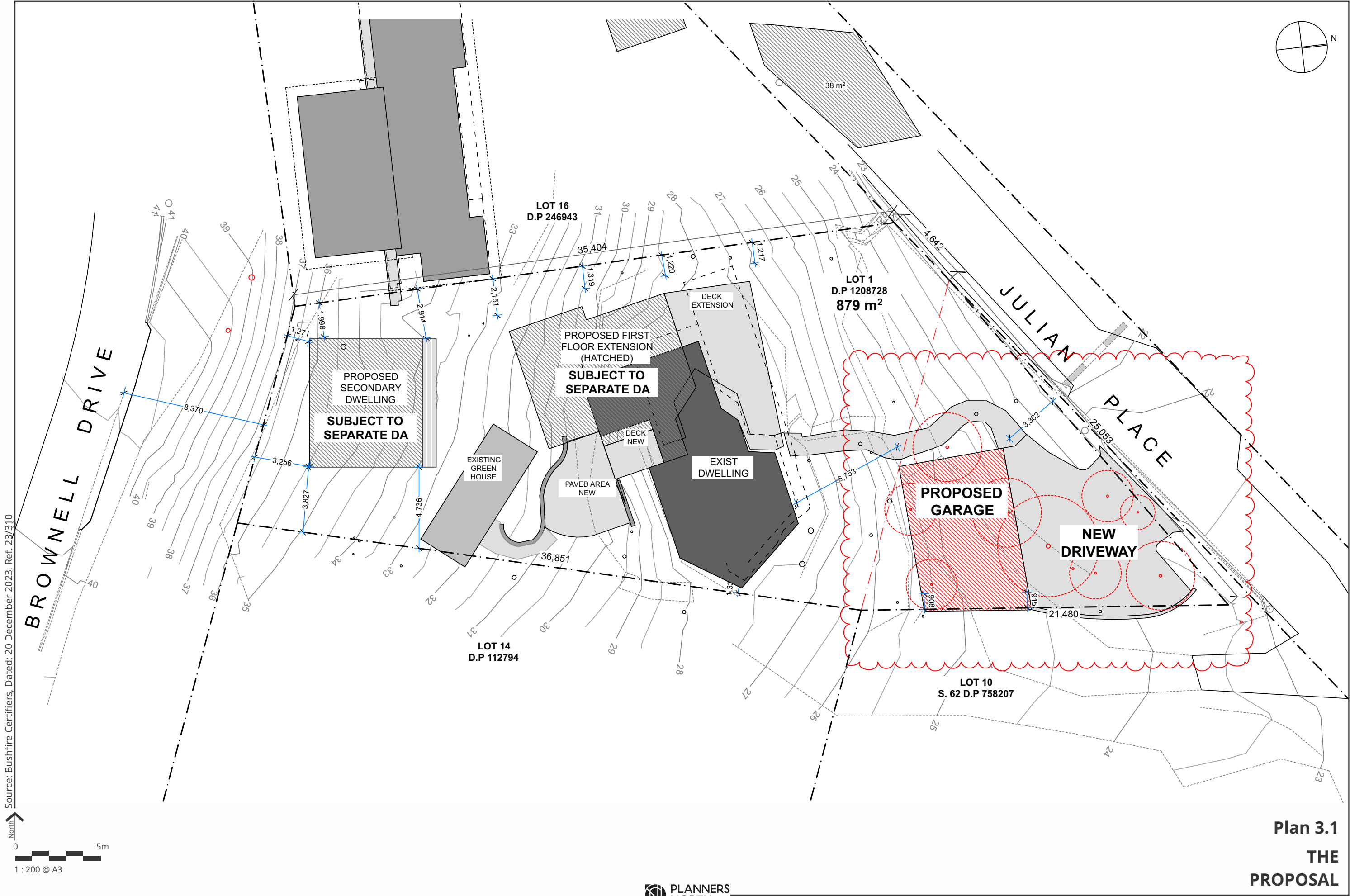
#### 3.2 GENERAL DESCRIPTION OF PROPOSAL

The Development Consent is sought to undertake works to enable the construction of a new driveway and garage with a roof deck to the existing dwelling house. This work is illustrated in the architectural plan set prepared by Maxime Beaur.

The subject land has been accessed via an existing access and driveway for many years. It has recently been drawn to the attention of the owners of 12 Julian Place that the access driveway is actually not located within the property boundaries. The subject application seeks to apply for access to the existing dwelling house. The proposal also provides for the provision of car parking for the dwelling house.



*Boundary with 14 Brownell Drive*



Source: Bushfire Certifiers, Dated: 20 December 2023, Ref. 23/310

The proposed development seeks to ensure materials and finishes are consistent with the existing site development.

Materials and finishes will complement the existing site development.

The proposal involves the removal of existing landscaping comprising palms, shrubs etc.



*Existing site access*

### **3.3 ANCILLARY APPROVALS**

No Ancillary Approvals are sought from the Council. Approval is also sought under section 13 of the Roads Act for the access driveway.



*Existing dwelling*



## 4. STATUTORY AND POLICY PLANNING

Section 4.1 documents the range of planning controls applicable in the subject case pursuant to Section 4.15 (1)(a) of the Act and tabulates the effect of these instruments in the circumstances of the development proposal described at Section 3. Section 4.2 examines policy adopted by Council or other authority applicable in the subject matter which, whilst relevant, are not controls within the meaning of Section 4.15(1)(a).

### 4.1 STATUTORY CONSIDERATIONS

Pursuant to the Environmental Planning & Assessment Act, 1979, a number of statutes are potentially applicable to any single development proposal. This section reviews the range of instruments and notes their application in terms of the subject development application proposal.

#### 4.1.1 DEEMED ENVIRONMENTAL PLANNING INSTRUMENTS

No deemed environmental planning instruments apply to the subject land.

#### 4.1.2 LOCAL ENVIRONMENTAL PLANS

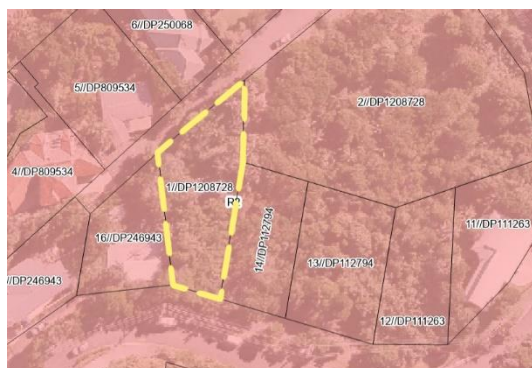
Name: Byron Local Environmental Plan 2014, (BLEP14)

*Application in Subject Case:*

The following provisions of BLEP14 apply to the proposed development.

**Zone:** The land is zoned R2 - Low Density Residential.

#### Land Zoning Map



**Legend**  R2 - Low Density Residential

**Permissibility:** The access driveway and garage are permissible with Council's consent.

**Concurrence:** The proposal does not require concurrence.

**Advertising:** Advertising of this development is not required under BLEP14.

#### Arrangements:

No specific arrangements are required to be in place prior to consent being granted in accordance with BLEP14.

**Special Provisions Applicable:** The following provisions of the BLEP14 are applicable to Council's consideration of the subject proposal:

**Clause 2.3- Zone Objectives:** The objectives of the relevant zones are set out below.

#### Zone R2 Low Density Residential

##### 1 Objectives of zone

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

##### 2 Permitted without consent

*Environmental protection works; Home-based child care; Home occupations*

##### 3 Permitted with consent

*Attached dwellings; Bed and breakfast accommodation; Boarding houses; Business identification signs; Centre-based child care facilities; Dual occupancies; Dwelling houses; Group homes; Health consulting rooms; Home industries; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Pond-based aquaculture; Respite day care centres; Roads; Secondary dwellings; Seniors housing; Tank-based aquaculture; Any other development not specified in item 2 or 4*

#### 4 Prohibited

Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Car parks; Caravan parks; Cemeteries; Charter and tourism boating facilities; Commercial premises; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Entertainment facilities; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Function centres; Health services facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Information and education facilities; Jetties; Local distribution premises; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Passenger transport facilities; Public administration buildings; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Research stations; Residential accommodation; Residential care facilities; Restricted premises; Rural industries; Service stations; Sewage treatment plants; Sex services premises; Signage; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Warehouse or distribution centres; Waste or resource management facilities; Water recreation structures; Water recycling facilities; Water supply systems; Wharf or boating facilities; Wholesale supplies

#### Comment:

The proposed development is consistent with the objectives of the R2 Low Density Residential Zone, providing ancillary residential development within a low density environment.

#### 4.1 Minimum subdivision lot size

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

- (a) to ensure that lot sizes are compatible with local environmental values and constraints,
- (b) to facilitate efficient use of land resources for residential and other human purposes.

(2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires

development consent and that is carried out after the commencement of this Plan.

(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

#### Lot Size Map



Legend  600 m

(4) This clause does not apply in relation to the subdivision of any land—

- (a) by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or
- (b) by any kind of subdivision under the Community Land Development Act 2021.

#### Comment:

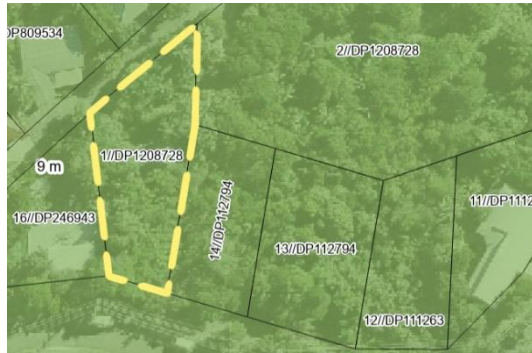
The proposed development does not provide for the subdivision of the site.

#### Clause 4.3 Height of buildings

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

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

### Height of Buildings Map



**Legend**  9m

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

#### Comment:

The maximum height of the proposed garage is well below the maximum permitted height of 9 metres.

### Clause 4.4 Floor space ratio

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

(a) to ensure that new buildings are appropriate in relation to the character, amenity and environment of the locality,

(b) to enable a diversity of housing types by encouraging low scale medium density housing in suitable locations,

(c) to provide floor space in employment and mixed use zones adequate for the foreseeable future,



View of site from Brownell Drive

(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.

### Floor Space Ratio Map



**Legend**  0.4 - 0.44

(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 in Zone R2 Low Density Residential is 0.5:1.

#### Comment:

The proposed works do not generate any additional floor space.



Existing dwelling at 14 Brownell Drive



**4.1.3 DEVELOPMENT CONTROL PLANS**

The following development control plan provisions apply to the subject application.

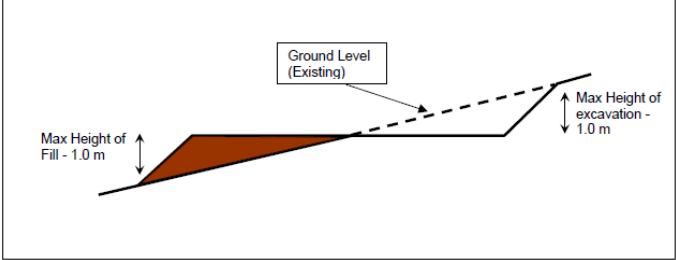
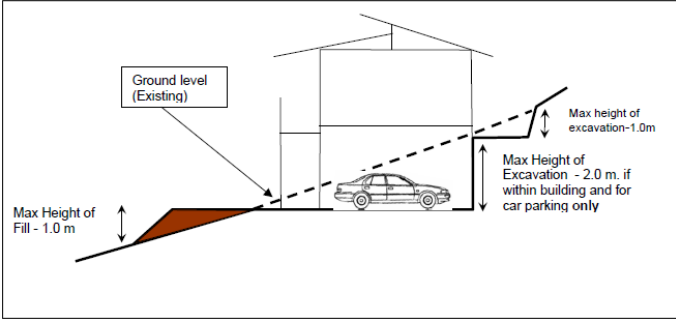
**Name:** Byron Development Control Plan 2014 (BDCP14)

*Application in Subject Case:*

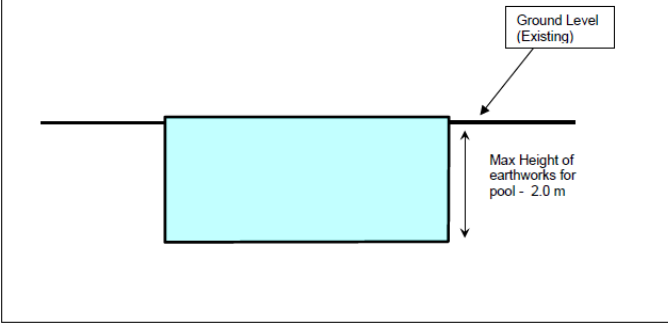
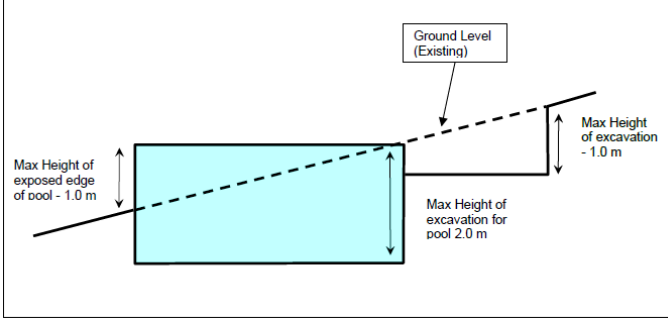
**Chapter B14 – Excavation and Fill**

|                | <b>Provisions</b>   | <b>Compliance</b>  |
|----------------|---|--|
| <b>B14.1</b>   | <b>Introduction</b>   |  |
| <b>B14.1.1</b> | <b>Purpose of this Chapter</b>  |  |
|                | The purpose of this Chapter is to limit and control the extent of excavation and fill within development projects for aesthetic, character, engineering and geotechnical reasons, and to promote the appropriate use of <b>earthworks</b> for thermal sustainability and insulation.                            |  |
| <b>B14.1.2</b> | <b>Aims of this Chapter</b>   |  |
|                | 1. To ensure that development applications for <b>earthworks</b> address aesthetics, character, engineering and geotechnical factors.   | A previous Geotechnical Report prepared by Soils Surveys Engineering accompanies the application. That report envisaged excavation up to 7.5m in depth.<br>The proposed garage will require excavation with a maximum depth of 2.698 metres. |
|                | 2. To ensure that the character, bulk and scale of development remain compatible with the unique environment that has been created by the area's natural features and its historical built character.   | The character, bulk and scale of the development is compatible with the existing dwelling house and surrounding development in the locality.   |
|                | 3. To control the extent of <b>earthworks</b> , so that the bulk, scale and appearance of development remain compatible with the character and visual amenity of the Shire's towns, villages, rural areas and natural landscapes.   |  |
|                | 4. To promote the appropriate use of well designed <b>earthworks</b> to achieve compatible and positive design outcomes in terms of improved landscapes, streetscapes, thermal sustainability and insulation in buildings and developments.   | The earthworks have been appropriately designed to provide for car parking on a site which falls some 14m from Brownell Drive towards Julian Place.  |
|                | 5. To prevent cumulative deterioration in the attractiveness of the Shire's built environment as a result of large scale <b>earthworks</b> , buildings and structures that by themselves may not appear highly significant, but that collectively and progressively contribute to reduced character and appeal. | The context of the proposed development in the existing streetscape is considered appropriate and will not reduce the character and appeal of the area.  |
|                | 6. To minimise the need for extensive engineering works required to support and manage large scale <b>earthworks</b> .  | The proposed earthworks are confined to the garage.  |
|                | 7. To minimise risks of geotechnical instability, landslip and surface movement associated with development in the Shire.   | Previous applications for the site have included a geotechnical assessment.  |
| <b>B14.1.3</b> | <b>Application of this Chapter</b>  |  |
|                | This Chapter applies to all earthworks that require development consent on land to which Byron LEP 2014 applies.  |  |

|              | Provisions  | Compliance  |
|--------------|---|---|
| <b>B14.2</b> | <b>Excavation and Fill in all Zones</b>   |   |
|              | <b>Objectives</b>   |   |
|              | 1. To ensure that towns, villages, commercial, industrial, residential and rural areas maintain overall compatibility with the Shire's natural features and its historical built character.   |   |
|              | 2. To control the extent, character, bulk and scale of <b>earthworks</b> so that both individual and cumulative earthworks over time do not detract from the existing and desired future character of their immediate locality, and the surrounding area.   |   |
|              | 3. To promote the use of <b>earthworks</b> to create landscapes and streetscapes that make a positive contribution to the existing and desired future character of their immediate locality and the surrounding area.   |   |
|              | <b>Performance Criteria</b>   |   |
|              | 1. Development proposals must demonstrate that proposed <b>earthworks</b> will be compatible with the low rise, low to medium density form, scale and desired future character of their locality and immediate surrounds. Proposals must demonstrate that <b>excavation</b> and <b>fill</b> will be limited to ensure that: | The proposed garage is appropriately sited to minimise earthworks required and result in an appropriate building for the location.  |
|              | a) Adverse visual impacts, bulk and scale of both the proposed <b>earthworks</b> and the resultant overall development are minimised;   | The proposed earthworks are not considered likely to impact adversely on the visual amenity of the area.  |
|              | b) Overshadowing of adjoining private and <b>public land</b> is avoided;  | The proposed earthworks do not result in overshadowing of adjoining private or public land.   |
|              | c) The scale and character of the resultant landform and buildings will remain compatible with their surrounds and with the desired future character of the locality;   | The proposed scale and character of the resultant landform is considered to be compatible with the surrounds.   |
|              | d) Resultant drainage characteristics and systems both on the site and in the locality will be consistent with Chapter B3 Services and with <b>Water Sensitive Urban Design</b> Principles.   | The scale and character of the resultant landform and building is compatible with that of the existing surrounding development.<br>A stormwater concept plan has been prepared in accordance with the requirements of Chapter B3. |
|              | e) The need for engineering and support works is minimised;   | The location and nature of the proposed earthworks minimise the need for engineering and support works.   |
|              | f) Risk of geotechnical instability and/ or landslip is minimised.  | A geotechnical report has been prepared for previous applications approved for the subject site.  |
|              | 2. Where <b>earthworks</b> are designed to facilitate and/ or improve thermal sustainability and insulation in buildings and developments rather than as structural or landscape elements, development proposals must demonstrate the particular benefits to be gained from those <b>earthworks</b> .                       | The proposed earthworks are provided to cater for car parking and respond to the topography of the site and are not designed specifically to facilitate or improve thermal sustainability.  |

|  | Provisions  | Compliance   |
|--|---|--|
|  | 3. <b>Earthworks</b> must be designed to ensure that the community /pedestrian scale and character of commercial areas will be retained and reinforced.   | Not applicable   |
|  | 4. Where filling is proposed to mitigate flooding and stormwater issues, details are to be submitted with the application demonstrating the <b>fill</b> will not have a significant adverse impact on the flow characteristics of flood waters or detrimentally increase the level of flooding or stormwater on other properties or development.  | Not applicable   |
|  | 5. Lots that are identified as having stability problems either on Council's GIS mapping or through the development assessment process (slopes greater than 15 degrees, land that has historically been used for uncontrolled filling, or land that is constrained by springs or wet areas etc.) are to adequately address geotechnical constraints through the submission of a detailed geotechnical report prepared by a suitably qualified professional. | A geotechnical report has been prepared for previous applications approved for the subject site.                         |
|  | The development application shall also incorporate preliminary design detail for footings, driveways and storm water management to demonstrate how the risk is adequately managed. In certain circumstances the geotechnical constraints will prevent properties from being developed for infill development and applications will not be approved.   |  |
|  | <b>Prescriptive Measures</b>  |  |
|  | 1. Unless otherwise stated below, <b>excavation</b> and filling must be limited to a depth of 1 metre. See Figure B14.1.  |  |
|  |  <p><b>Figure B14.1 - General Excavation and Fill Requirements</b></p>  |  |
|  | 2. The maximum <b>excavation</b> restriction is not applicable where the <b>excavation</b> is incorporated into the <b>dwelling</b> structure to satisfy minimum car parking requirements up to a maximum height of 2 metres. For details see Figure B14.2.   | Given the existing dwelling house on the property, it is not able to incorporate the garage into the existing structure. |
|  |  <p><b>Figure B14.2 - Excavation and Fill for Car Parking</b></p>   |  |



|  | Provisions  | Compliance   |
|--|---|--|
|  | 3. Batters and cuttings to be landscaped with appropriate native shrubs and ground covers to prevent erosion and not left exposed to the elements. Stripped top soil to be stockpiled on site and used to top dress disturbed areas.  | Noted  |
|  | 4. Where <b>earthworks</b> are proposed for swimming pools, the <b>earthworks</b> to have a maximum depth of no more than 2 metres. Where swimming pools are partially benched into the side of a hill to create an infinity edge or similar, the pool to extend no more than 1 metre out of the ground. For details see Figures B14.3 and B14.4. | Not applicable   |
|  |  <p><b>Figure B14.3 - Pool on level land</b></p>  |  |
|  |  <p><b>Figure B14.4 - Pool on sloping land</b></p>   |  |
|  | 5. Where pools are to be located on sloping land or on land considered by Council as geotechnically constrained, 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.              |  |
|  | 6. Where in-ground water tanks and effluent disposal systems are proposed, there are no specific restrictions limiting the depth of <b>earthworks</b> . Where required details on geotechnical and <b>acid sulfate soils</b> constraints to be submitted with the development application.  | Not applicable   |
|  | 7. Basement <b>car parks</b> - Any development application that seeks consent for a basement <b>car park</b> will need to have regard to the provisions contained within Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access.  | The proposed garage caters for a single dwelling only. |
|  | 8. Filling on the floodplain - Any development application that seeks consent to <b>fill</b> land within the <b>flood planning area</b> will need to have regard to the provisions contained within Chapter C2 Areas Affected by Flood.   | Not applicable   |
|  | 9. Engineering detail by a suitably qualified structural or geotechnical engineer to be submitted for earthworks on   | An engineering assessment accompanies the application. |

|  | Provisions   | Compliance  |
|--|--|---|
|  | land with a gradient exceeding 15% or where cut and fill of more than 1 metre is proposed.   |   |
|  | 10. 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. | The Plan Set adequately identifies areas of cut and fill. |

### Chapter C3 – Visually Prominent Sites

|               | Provisions   | Compliance |
|---------------|--|------------|
| <b>C3.1</b>   | <b>Introduction</b>  |            |
|               | <p>The outstanding landscape character of Byron Shire is an important element of the Shire's visual quality and appeal for both residents and visitors. Council is committed to ensuring that the Shire's landscape character and visual quality are maintained and where possible enhanced in the development process.</p> <p>Visual quality can be a subjective judgement depending on a person's aesthetic taste, preference for natural or built landscapes and whether the person is a visitor or a resident of the Shire. The visual quality of an area can be strongly influenced and affected by the treatment of visually prominent sites and locations. These include land in the coastal zone, ridgetops and nearby lands, escarpments, environmentally sensitive sites on sloping land and any site where development has the potential to degrade visual amenity.</p>   |            |
| <b>C3.1.1</b> | <b>Aims of this Chapter</b>  |            |
|               | <p>The Aims of this Chapter are:</p> <ol style="list-style-type: none"> <li>1. to promote Byron Shire's natural features, vegetation and topography as key components of its visual character and appeal;</li> <li>2. to control development including land use, earthworks, vegetation clearing, built form and civil works in order to preserve and enhance the visual, cultural, ecological and landscape values of visually prominent sites and locations;</li> <li>3. to ensure that development blends into the natural surroundings and does not intrude on the skyline when viewed from public land;</li> <li>4. to minimise the visual impact of development when viewed from adjacent land, public reserves, public areas and waterways;</li> <li>5. to ensure that development is designed to respect and, where reasonable, to preserve and/or share existing views and vistas;</li> <li>6. to ensure that development does not occur on or near any ridgeline unless no other alternative location for the development is available on the land, and then only when design will ensure protection of visual amenity and scenic values.</li> </ol> |            |

|               | Provisions   | Compliance  |
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| <b>C3.1.2</b> | <b>Application of this Chapter</b>   |   |
|               | <p>This Chapter applies to <b>visually prominent development</b> on a <b>visually prominent site</b> on land subject to Byron LEP 2014</p> | <p>Visually prominent development is defined as any development located on a <i>visually prominent site</i> or development in a location that has the potential to impact the visual or scenic character of a <i>visually prominent site</i>.</p> <p>A <i>visually prominent site</i> means land that is wholly or partly within the Coastal Zone and land in RU1 Primary Production, RU2 Rural Landscape with a height of 60m AHD or greater.</p> <p>Coastal Zone means the same as it does in the Coastal Management Act 2016 i.e:</p> <ul style="list-style-type: none"> <li>a) the Coastal Wetlands and Littoral Rainforest Area</li> <li>b) the Coastal Vulnerability Area</li> <li>c) the Coastal Environment Area</li> <li>d) the Coastal Use Area</li> </ul> <p>The subject site is partly located within the Littoral Rainforest mapped area and is located within the proximity area to Littoral Rainforest. The site is also identified as located within the Coastal Use area and the Coastal Environment Area in accordance with State Environmental Planning Policy Resilience and Hazards (2021). A Visual Impact Statement is therefore required in relation to the proposed development.</p> |
| <b>C3.2</b>   | <b>General Provisions</b>  |   |
| <b>C3.2.1</b> | <b>Visual Impact Assessment</b>  |   |
|               | <b>Objectives</b>  |   |
|               | <p>1. <i>To retain and enhance the unique character of Byron Shire and its towns, villages, rural, coastal and natural areas.</i></p>      | <p>As demonstrated in the Visual Impact Statement provided, the proposal is consistent with the retention and enhancement of the unique character of the Wategos locality.</p>  |
|               | <p>2. <i>To ensure that development does not adversely impact on the Shire's scenic character and visual quality.</i></p>                  | <p>The proposed Visual Impact Statement identifies the relationship of the development with the existing natural and built environment and it is considered that the character and visual quality</p>   |



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|  | Provisions   | Compliance   |
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|  |  | of the area will not be harmed by the proposed development.  |
|  | 3. <i>To ensure that where possible new development contributes to enhancement of the Shire's scenic character and visual quality</i>  | The proposal will contribute to the character of the area.   |
|  | 4. <i>To ensure adequate information is available to properly assess visual impact.</i>  | It is submitted that adequate information has been provided to properly address visual impact.   |
|  | <b>Performance Criteria</b>  |  |
|  | There are no Performance Criteria for this item  |  |
|  | <b>Prescriptive Measures</b>   |  |
|  | Unless Council determines in a particular case that the proposed development is not likely to create adverse visual impacts, Development Applications seeking consent for <b>visually prominent development</b> must be accompanied by a Visual Impact Statement that includes, but is not necessarily limited to: | The following Visual Impact Statement has been prepared:   |
|  | 1. detailed description and photographs of the site and surrounds, including existing vegetation, topography, slope, surrounding development and other features that may affect visual impact;   | <b>Appendix A</b> of this report includes photographs of the site as taken from Julian Place and Brownell Drive, as well as the Marine Parade and beachfront areas. Given the existing topography and siting of development, the proposed driveway and garage are not likely to result in adverse impacts on existing views from surrounding properties. |
|  | 2. description of the proposed development, including proposed earthworks, vegetation removal, built form, design, height, bulk, scale, roofline, materials, colour schemes, external surface finishes, fencing and landscape treatment;   | The proposed development provides for excavation comprising a maximum depth of 2.698m. An existing approval enables the removal of the vegetation illustrated on Drawing 03.   |
|  | 3. a description of the measures proposed to ameliorate visual impacts;  | Measures to ameliorate visual impact include the retention of existing vegetation within the Brownell Drive road reserve and where possible, along the Julian Place boundary. Further, the proposed materials and finishes will reduce the visual impact of the built form.  |
|  | 4. provision of graphic evidence to illustrate the proposal, including models and or photomontages where relevant;   | The architectural Plan Set includes appropriate images of the proposed location of the new garage.   |
|  | 5. description of the visual prominence of the site and visual impact of the development, including responses to the following questions:  |  |
|  | a) can the site be viewed from public locations, including public reserves, waterways, beaches and roads?  | The site is well screened from Julian Place and Brownell Drive. The proposed driveway and garage are not able to be viewed from the beach.   |

|               | Provisions  | Compliance  |
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|               | b) is the site located on a high topographical location such as a hillside, ridgeline, knoll or crest?  | The site is located on the lower part of a hillside.  |
|               | c) can the site be viewed from the beach front?   | The proposed site is not able to be viewed from the beach front.  |
|               | d) is the site located on land that slopes at a grade of more than 20%?   | The site slopes at a grade of more than 20%.  |
|               | e) would proposed development on the site visually disrupt the skyline when viewed from a public location by protruding above any ridgeline, or above adjacent buildings?   | The proposed development will not disrupt the skyline when viewed from any public location by protruding above any ridgeline, or above adjacent buildings.  |
|               | f) would proposed development on the site have the potential to obstruct views to and or from another visually prominent location?  | The proposed development does not have the potential to obstruct views to or from another visually prominent location.  |
|               | g) would the development on the site have the potential to result in a loss of significant views from another property?   | The proposed driveway and garage will not have the potential to result in a loss of significant views from another property. The siting will retain views from adjacent properties.   |
|               | h) would development on the site become visually prominent due to the removal of vegetation that would otherwise screen the development?  | As previously noted, the majority of site vegetation has been proposed for removal under a previously activated consent. The removal of vegetation is not likely to significantly increase the visual prominence of the proposal. |
|               | i) how will the development be visually integrated with the surrounding natural landscape and built environment?  | The proposed materials and finishes, and retention of existing vegetation, where not impacted by the building footprint, will ensure the integration of the proposal with the surrounding natural and built environment.          |
|               | j) how will the development incorporate measures to avoid reflection of sunlight from glazed surfaces?  | The proposed materials and finishes are not reflective.   |
| <b>C3.2.2</b> | <b>Assessment of Impacts on Views and View Sharing</b>  |   |
|               | <b>Objectives</b>   |   |
|               | 1. To ensure that (where possible) new development does not impact unreasonably on the views of another property.<br>2. To encourage view sharing where possible.   |   |
|               | <b>Performance Criteria</b>   |   |
|               | There are no Performance Criteria for this item.  |   |
|               | <b>Prescriptive Measures</b>  |   |
|               | Where any proposed development has potential to impact upon views from another property to a significant vista, landscape or to one or more <b>visually prominent sites</b> and locations, the supporting information must include the following: |   |
|               | 1. An assessment of the <b>value of the view that may be affected</b> .   | The site and adjoining developments presently enjoy water views of Wategos across to  |

|  | Provisions  | Compliance   |
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|  | <p>Regard should be given to past NSW Land and Environment Court Planning Principles including:</p> <p><i>Water views are valued more highly than land views</i></p> <p><i>Iconic views (e.g. of the Cape Byron Lighthouse) are valued more highly than views without icons</i></p> <p><i>Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured</i></p>   | <p>Tyagarah Nature Reserve. The proposed location of the garage and driveway will not significantly impact on views from surrounding properties.</p> |
|  | <p>2. Consider from <b>what part of the property the views are obtained</b>.</p> <p><i>For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic</i></p>  | <p>The proposed garage and driveway will not adversely impact on the existing views from surrounding properties.</p>                                 |
|  | <p>3. Assessment of the <b>extent of the impact</b>.</p> <p><i>This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating</i></p>   | <p>The proposed garage and driveway access will not impact on views from 14 Brownell Drive or surrounding properties.</p>                            |
|  | <p>4. Assessment of the <b>reasonableness of the proposal that is causing the impact</b>.</p> <p><i>A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.</i></p> | <p>It is submitted that the proposal is consistent with relevant planning controls.</p>  |
|  | <p>For more information regarding the background context of the above principles please refer to <i>Tenacity Consulting v Warringah Council</i> [2004] NSWLEC 140.</p>  |  |

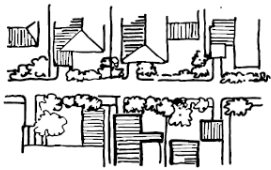
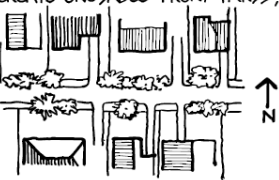
## Chapter D1 - Residential Accommodation in Urban, Village and Special Purpose Zones

|               | Provisions   | Compliance   |
|---------------|--|--|
| <b>D1.2</b>   | <b>General Provisions</b>  |  |
| <b>D1.2.1</b> | <b>Building Height Plane</b>   |  |
|               | <b>Objectives</b>  |  |
|               | 1. To ensure that residential development is designed to minimise impacts on solar access and privacy on adjoining properties, and on the views from adjacent existing buildings.  |  |
|               | 2. To ensure that the occupants of the building or buildings will enjoy the optimum use of winter sunlight and summer shade.   |  |
|               | 3. To establish spatial separation of residential dwellings and domestic outbuildings from the street, and between allotments, to provide a varied and interesting streetscape, optimise microclimate, and mitigate excessive bulk in built-form.  |  |
|               | 4. To establish neighbourhoods that offer a high level of amenity and sense of openness with buildings that are cognisant of, and blend with, the scale and streetscape character of the locality.   |  |
|               | 5. To provide flexibility in application of the Building Height Plane for steeply sloping and constrained sites to optimise building orientation and location and mitigate off-site impacts (ie. overshadowing, overlooking).  |  |
|               | <b>Performance Criteria</b>  |  |
|               | <p>1. Developments must be set back progressively from the site boundaries as height increases so that they:</p> <ul style="list-style-type: none"> <li>a) do not adversely affect existing or future development on adjoining properties by way of overshadowing, impinging on privacy or obstructing views.</li> <li>b) establish spatial separation between residential dwellings (including domestic outbuildings) from the street and other public reserves, and between allotments, to provide a varied and interesting streetscape, optimise microclimate, and mitigate excessive bulk in built-form.</li> <li>c) integrate with surrounding developments, public reserves and the predominant streetscape character to offer a high level of amenity and establish a sense of openness.</li> </ul> <p>2. Developments must respond to the constraints of the site (eg. slope, orientation, configuration/shape) to optimise solar access for the private open space and solar power infrastructure of the development site and adjoining properties.</p> | <p>The proposed garage provides for a very minor encroachment into the building height plain which is related to the slope of the site and is not considered likely to result in adverse impacts on adjacent sites.</p> <p>The site falls some 14m from Brownell Drive towards Julian Place and an encroachment into the building height plane of the degree proposed is not unusual in this location.</p> <p>The proposal is accompanied by solar access diagrams, which demonstrate the development is not likely to significantly impact on adjacent development.</p> |
|               | <b>Prescriptive Measures</b>   |  |



|               | Provisions  | Compliance |
|---------------|---|------------|
|               | 1. The <b>building height plane</b> in combination with boundary <b>setbacks</b> prescribed in this DCP, and <b>building height</b> prescribed in the Byron LEP 2014, form the maximum building envelope for all residential development other than for <b>shop top housing</b> and ancillary <b>dwellings</b> in Zones IN1, IN2 and B7.  |            |
|               | 2. Variation to the <b>building height plane</b> may be considered in relation to one or more boundaries in the following circumstances: <ul style="list-style-type: none"> <li>a) where the floor level is required to be above ground level to comply with Council's requirements for flood protection; or</li> <li>b) for the zero lot line boundaries of <b>semi-detached dwellings</b> and <b>attached dwellings</b>; or</li> <li>c) in circumstances referred to in Prescriptive Measure 2. of Section D1.2.2.</li> <li>d) where unavoidable site constraints (slope, orientation, configuration/shape) intensify off-site impacts such as overshadowing (provided the impacts are addressed in accordance with Development Controls related to Privacy and Solar Access) and mitigation measures are included in the design to the fullest extent possible.</li> </ul> |            |
| <b>D1.2.2</b> | <b>Setbacks from Boundaries</b>   |            |
|               | <b>Objectives</b>   |            |
|               | 1. <i>To achieve varied and interesting streets that complement and harmonise with existing and planned streetscapes and development in the locality.</i>   |            |
|               | 2. <i>To achieve good orientation and spacing of residential developments that achieve high quality living environments relative to sunlight, shade, wind and weather protection, residential amenity and proximity of neighbouring development.</i>  |            |
|               | 3. <i>To achieve effective use of <b>allotments</b> to create useable and liveable private open space and courtyards.</i>   |            |
|               | 4. <i>To provide flexibility in siting and design of <b>dwelling house</b> development in urban residential areas.</i>  |            |
|               | 5. <i>To ensure that development in residential areas seeks to minimise any negative impacts on neighbours caused by siting.</i>  |            |
|               | <b>Performance Criteria</b>   |            |
|               | 1. <b>Setback</b> requirements may be flexible provided they are demonstrated to achieve the above Objectives and Performance Criteria.<br>2. The street façade of a building, and any open space between it and the street must contribute to the general attractiveness of the streetscape by means of good design, appropriate materials and effective landscaping. A reasonable degree of integration with the existing pattern of <b>setbacks</b> must be balanced with the need to provide variety in the streetscape.<br>3. Private open space and common landscaped areas of the site must be useable as part of the living environment available for the occupants of the development. Council   |            |

|  | Provisions   | Compliance |
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|  | <p>will discourage the provision of bare spaces between buildings and the street which are unusable because they lack privacy, or because they are inappropriately planned or treated for climate control.</p> <p>4. The <b>setback</b> from a street frontage for a building that is part of a residential development will be determined on its merits, having regard to:</p> <ul style="list-style-type: none"> <li>a) the Objectives;</li> <li>b) any provisions of this DCP applying to the specific location;</li> <li>c) the position of any existing buildings in the locality;</li> <li>d) the size and shape of the <b>allotment</b>;</li> <li>e) the effect on vehicular safety and visibility, particularly on corner sites;</li> <li>f) the orientation of the <b>allotment</b> and the proposed <b>dwelling</b> with regard to the sun and prevailing winds;</li> <li>g) the proposed location of any private open space, courtyard or landscaped areas;</li> <li>h) the facade of the proposed building or buildings which will face the street and the proposed landscape treatment of that part of the <b>allotment</b> which is visible from the street;</li> <li>i) the location and treatment of any car parking areas or car parking structures on the site.</li> </ul> <p>5. Notwithstanding any of the above criteria, buildings must comply with the <b>building height plane</b> as detailed in Section D1.2.1.</p> <p>6. <b>Dwelling house</b> development may be permitted to encroach into the side <b>setback</b> and <b>building height plane</b> where it enhances the design of buildings, complements the streetscape and does not adversely affect privacy, solar access, microclimate, traffic safety or amenity of adjoining development.</p> <p>7. When considering applications for variations to minimum <b>setbacks</b> nominated below in the Prescriptive Measures, Council will have regard to:</p> <ul style="list-style-type: none"> <li>a) the Objectives;</li> <li>b) compliance with the Performance Criteria;</li> <li>c) the visual impact of the variation on the streetscape;</li> <li>d) the impact of the variation on the amenity, privacy, views and access of surrounding properties;</li> <li>e) the existing and future status of the road;</li> <li>f) potential traffic impacts and required sight lines as per AS2890; and</li> <li>g) compliance with the Building Code of Australia.</li> </ul> <p>8. The Development must seek to minimize any impacts on neighbouring properties through considerate siting and design</p> |            |

|  | Provisions  | Compliance   |
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|  | <p>FLEXIBLE SETBACKS CREATE INTEREST, MAXIMISE PRIVATE, OPEN SPACE,</p>  <p>AND ALLOW THE BUILDING TO BE LOCATED WITH THE BEST ORIENTATION.</p> <p>UNIFORM SETBACKS CAN BE MONOTONOUS, CREATE UNUSABLE FRONT YARDS,</p>  <p>AND FORCE ORIENTATION OF BUILDINGS UNRELATED TO CLIMATE OR SITE FEATURES.</p> <p><b>Figure D1.1 – Setbacks</b></p>  |  |
|  | <p><b>Prescriptive Measures</b></p> <p>Strict compliance with the following minimum <b>setback</b> prescriptive measures will not necessarily be sufficient by itself to meet the Objectives.</p> <ol style="list-style-type: none"> <li>1. Minimum Street Frontage Setbacks <ol style="list-style-type: none"> <li>a) Local Roads - A minimum <b>setback</b> of 4.5 metres must be maintained from the primary front boundary.</li> <li>b) <b>Classified roads</b>- A minimum <b>setback</b> of 9 metres applies to these roads from the primary front boundary. A variation to 6.5 metres may be sought for single storey <b>dwelling</b>s or single storey elements of two storey <b>dwelling</b>s. (NB. The provisions under SEPP Infrastructure 2007 apply to such developments)</li> <li>c) Garages and carports are to be set back 5.5m from the front boundary except from <b>classified roads</b> where the <b>setbacks</b> under (b) are to apply.</li> <li>d) Corner <b>allotments</b> on local or secondary roads - <b>setbacks</b> may be reduced to 3m on one frontage.</li> <li>e) 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 <b>setback</b> of 4.5 metres applies including to garages and carports. Consideration may be given to <b>setback</b> variations in <b>Heritage Conservation Areas</b> where strict compliance with these provisions would result in conflict with the Chapter and Section Objectives specified in Chapter C1 Non-Indigenous Heritage. No development is permitted within the building <b>setbacks</b> other than garbage storage facilities, mail boxes, landscaping and driveways. Car parking must not be provided within <b>setbacks</b>, other than informal parking within the driveway (i.e. parking not required</li> </ol> </li> </ol> | <p>The proposed garage is setback a minimum of 3.362 metres from Julian Place. Given the nature of this street and the existing built form, this setback is considered appropriate. Any increase in setback will require an increase in excavation. The design of the driveway is appropriate to enable a visitor vehicle to be parked wholly within the site.</p> |

|        | Provisions  | Compliance |
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|        | <p>by the DCP). Stacked car parking is not permitted within <b>setbacks</b>.</p> <p>2. Minimum Side and Rear Boundary <b>Setbacks</b></p> <p>a) Side and rear <b>setbacks</b> are to be a minimum 900mm, with all <b>dwelling</b>s also complying with the requirements of the <b>building height plane</b>.</p> <p>b) In urban residential areas, Council may consent to the construction of one or more building walls set back less than 900mm from a side or rear boundary, such that the building/s cannot comply with the <b>building height plane</b>, where:</p> <p>i) such wall or walls contain no openings; and</p> <p>ii) it is demonstrated to Council's satisfaction that the development, if carried out, would improve the siting or orientation of the <b>dwelling/s</b> or the provision of private open space; and would not significantly:</p> <ul style="list-style-type: none"> <li>increase the overshadowing of adjoining properties; or</li> <li>reduce the level of privacy enjoyed by adjoining properties.</li> </ul> <p>c) Applications for zero lot line development will only be considered where the relevant lot or lots are part of an integrated design, and where all buildings set to a zero lot line are constructed prior to issue of a Subdivision Certificate.</p> <p>3. Minimum <b>Setbacks</b> for <b>Dual Occupancies</b> and <b>Secondary Dwellings</b></p> <p>a) Side and rear <b>setback</b> – 1.5 metres for single storey, and must comply with the <b>building height plane</b></p> <p>4. Minimum <b>Setbacks</b> for <b>Residential Flat Buildings</b> and <b>Multi-Dwelling Housing</b></p> <p>b) Side and rear <b>setback</b> – 1.5 metres for single storey, otherwise governed by the <b>building height plane</b>.</p> <p>c) Between buildings on a site – 3 metres.</p> <p>5. Minimum <b>Setbacks</b> for <b>Swimming Pools</b> and <b>Spas</b></p> <p>a) 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.</p> <p>b) Pools should not be located within the street frontage <b>setback</b>, 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> |            |
| D1.2.3 | <b>Privacy</b>  |            |
|        | <b>Objectives</b>   |            |
|        | <p>1. To ensure buildings do not unduly affect existing or future development on adjoining properties by impinging on privacy or obstructing views.</p>   |            |



|               | Provisions  | Compliance   |
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|               | <ol style="list-style-type: none"> <li>To ensure buildings are designed to optimise privacy for internal and external spaces while allowing for casual surveillance of the street and other public spaces.</li> <li>To ensure that building design is cognisant of site constraints (slope, orientation, configuration/shape) and addresses privacy accordingly.</li> </ol>   |  |
|               | <b>Performance Criteria</b>   |  |
|               | <ol style="list-style-type: none"> <li>Developments must be set back progressively from the site boundaries in accordance with the Building Height Plane to establish spatial separation between buildings and property boundaries to not adversely affect existing or future development on adjoining properties by impinging on privacy.</li> <li>Windows of developments must include design elements (screening, landscaping, opaque glazing) to protect the privacy of adjacent properties where: <ol style="list-style-type: none"> <li>encroachments into the Building Height Plane are proposed; and/or</li> <li>site constraints (slope, orientation, configuration/shape) necessitate, to ensure the continued protection of adjacent privacy.</li> </ol> </li> <li>All parts of any decks, terraces and balconies located in the Building Height Plane are designed to have generous building separation and screens to avoid loss of amenity and visual privacy.</li> </ol> | The siting of the proposed garage will not impact on privacy.  |
|               | <b>Prescriptive Measures</b>  |  |
|               | <ol style="list-style-type: none"> <li>Where a direct view exists into the private open space of an adjoining dwelling, the outlook from windows, landing stairs, terraces, decks and balconies must be screened by privacy screens which achieve at maximum 50% transparency, or obscured by landscaping.</li> <li>Decks, terraces, balconies and other external living areas within 4 metres from a side or rear boundary and with a floor level greater than 1.0m above ground level (existing) will require a privacy screen unless it can be demonstrated that there will be negligible overlooking and/or privacy impacts.</li> </ol>   |  |
| <b>D1.2.4</b> | <b>Solar Access</b>   |  |
|               | <b>Objectives</b>   |  |
|               | <ol style="list-style-type: none"> <li>To ensure that residential development is designed to optimise solar access and thereby not significantly overshadow living areas (decks, living rooms, bedrooms, kitchens etc.), private open spaces and existing solar power installations of both the development site and adjoining properties.</li> </ol>   |  |
|               | <b>Performance Criteria</b>   |  |
|               | <ol style="list-style-type: none"> <li>Development must be designed cognisant of microclimate to promote energy efficiency and ensure that residents of the development site enjoy optimum use of winter sunlight and summer shade in living areas (decks, living rooms, bedrooms, kitchens etc.) and private open space.</li> </ol>  | As indicated in the diagrams prepared, the proposed garage will not result in significant adverse impact on solar access of existing properties. |

|               | Provisions   | Compliance   |
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|               | <ol style="list-style-type: none"> <li>Development must respond to the constraints of the site (eg. slope, orientation, configuration) and be appropriately located to ensure residential development does not significantly overshadow the living areas (decks, living rooms, bedrooms, kitchen, bedroom etc.) and private open spaces of adjoining properties.</li> <li>Development must ensure that living areas (decks, living rooms, bedrooms, kitchens, etc.), private open spaces and existing solar power installations of development on the site and adjoining properties will have solar access between the hours of 9.00am to 3.00pm on any day.</li> </ol>  |  |
|               | <b>Prescriptive Measures</b>   |  |
|               | <ol style="list-style-type: none"> <li>Except where there is no possibility of overshadowing, proposed development comprising two storeys or greater must be accompanied by shadow diagrams over the subject and adjoining sites for the summer solstice (21st December) and winter solstice (21 June) at the times of 9am, 12pm and 3pm. Shadow cast by fences, roof overhangs and changes in level are to be considered and should be indicated on shadow diagrams submitted. Plans must clearly differentiate the existing situation with the proposed situation to fully demonstrate the extent of the proposed overshadowing.</li> <li>Shadow diagrams must demonstrate that proposed dwellings are to achieve a minimum of: <ol style="list-style-type: none"> <li>two hours sunlight between 9am and 3pm on June 21 for private open spaces; and</li> <li>three hours of sunlight between 9am and 3pm on June 21 over a portion of their north-facing living areas (decks, living rooms, bedrooms, kitchens etc.).</li> </ol> </li> <li>Shadow diagrams must demonstrate that neighbouring dwellings are to achieve a minimum of: <ol style="list-style-type: none"> <li>two hours of sunlight to at least 50% of private open spaces between 9am and 3pm on June 21; and</li> <li>three hours of sunlight between 9am and 3pm on June 21 over a portion of north-facing living areas (decks, living rooms, bedrooms, kitchens etc.).</li> <li>where overshadowing by existing buildings is greater than the abovementioned, sunlight is not to be further restricted.</li> </ol> </li> <li>New dwelling design should minimise overshadowing on existing adjacent solar panels where other reasonable design alternatives are possible.</li> </ol> | As indicated in the Solar Access diagrams accompanying the application, the proposal is consistent with these prescriptive measures. |
| <b>D1.2.6</b> | <b>Character &amp; Visual Impact</b>   |  |
|               | <b>Objectives</b>  |  |
|               | <ol style="list-style-type: none"> <li>To retain and enhance the unique character of Byron Shire and its distinctive landscapes, ecology, towns, villages, rural and natural areas.</li> </ol>   |  |
|               | <ol style="list-style-type: none"> <li>To ensure that new development respects and complements those aspects of an area's natural and built environment that are important to its existing character.</li> </ol>   |  |
|               | <b>Performance Criteria</b>  |  |
|               | <ol style="list-style-type: none"> <li>Development should demonstrate how siting, design and character are consistent with the relevant Residential</li> </ol>   |  |

|               | Provisions  | Compliance  |
|---------------|---|---|
|               | <p>Character Narrative, as contained in the corresponding locality chapter in Part E of this DCP.</p> <p>2. Site, building and landscaping design must address the climate;</p> <p>3. The street face of a building, together with any open space between it and the street, must contribute to the general attractiveness of the streetscape by means of good design, appropriate materials and effective landscaping;</p> <p>4. Development should be designed to minimise loss of privacy;</p> <p>5. There must be a reasonable degree of integration with the existing built and natural environment, balanced with the desirability of providing for variety in streetscapes;</p> <p>6. Long, straight wall areas will be discouraged and must be broken up visually by a combination of building materials and/or changes in the wall plane;</p> <p>7. The provision of verandahs, balconies, pergolas and other protective outdoor elements will be encouraged for visual, climatic and energy efficiency reasons;</p> <p>8. Well-designed overhanging eaves should be provided where feasible to protect against heavy rainfall and summer sun, while allowing winter sun penetration;</p> <p>9. All building materials must be compatible in character with their surrounding environment. Any metal roof must have a colorbond or equivalent finish and no roof may be highly reflective. White or light-coloured roofing may be approved where it is demonstrated that it is not likely to be visually intrusive. Details of building materials and surface colours must be submitted for assessment with a development application.</p> | <p>The proposed development has been designed to address the climate.</p> <p>Existing vegetation between the dwelling and the streetscape will be preserved where not impacted by the building footprint and will contribute to the general attractiveness of the streetscape.</p> <p>The proposal has been designed to maintain privacy for adjacent development.</p> <p>The proposed building integrates with the existing built form and the streetscape.</p> <p>The proposed materials are considered to be compatible with existing surrounding development.</p> |
|               | <p><b>Prescriptive Measures</b></p> <p>There are no Prescriptive Measures.</p>  |   |
| <b>D1.2.7</b> | <b>Fences</b>   |   |
|               | <b>Objectives</b>   |   |
|               | <p>1. <i>To enable residents to erect fences to provide for a sense of privacy, noise reduction and security.</i></p> <p>2. <i>To ensure that fences do not remove the sense of safety in the street that pedestrians gain from the casual observation by residents.</i></p> <p>3. <i>To ensure that fences do not unduly reduce opportunities for casual social interaction in the community.</i></p> <p>4. <i>To ensure that fences do not become a dominant built element in the streetscape.</i></p> <p>5. <i>To exclude unwanted light from vehicles in particular circumstances.</i></p>  | <p>Proposed fencing does not form part of the subject application.</p>  |

| Provisions   | Compliance  |        |             |             |            |  |            |   |  |
|--|---|--------|-------------|-------------|------------|--|------------|---|--|
| <div>6. To ensure that the design and placement of fences do not adversely impact traffic or pedestrian safety.</div> <div>7. To ensure provision for access by safety and emergency vehicles and personnel.</div>   |   |        |             |             |            |  |            |   |  |
| Performance Criteria   |   |        |             |             |            |  |            |   |  |
| <div>1. Fences must not:<div><div>a) impair driver or pedestrian visibility at road intersections;</div><div>b) prevent residents of a <b>dwelling</b> from casually observing the adjacent street;</div><div>c) detract from the streetscape in terms of fencing design, materials, scale or colours;</div><div>d) prevent emergency access by safety and emergency vehicles and personnel.</div></div></div> <div>2. Gates or openings in fences must facilitate safe entry and exit conditions for vehicles to and from public roads. Fences must not create or contribute to unsafe sight distance restrictions for vehicles entering or exiting neighbouring properties.</div> <div>3. Fencing of corner <b>allotments</b> must allow for reasonable enclosure of rear yard areas for privacy and security, while minimising the impact of the fence on the street scene, safe sight distance and traffic and pedestrian safety.</div>  |   |        |             |             |            |  |            |   |  |
| Prescriptive Measures  |   |        |             |             |            |  |            |   |  |
| <div>1. <u>Height of Fences</u></div> <div>a) The height of fences should not exceed:</div> <div><b>Table D1.1 – Height of Fences</b></div> <table><tr><th>Fence Location</th><th>Height</th></tr><tr><td>Front Fence</td><td>1.2 metres.</td></tr><tr><td>Side Fence</td><td>1.2 metres within the building line <b>setback</b> and 1.8 metres for the remainder.</td></tr><tr><td>Rear Fence</td><td>1.8 metres. Where the rear fence is the primary frontage front fence height provisions may apply.</td></tr></table> <div>Note: A front fence is any fence or like barrier erected forward of the building line setback, whether it is erected on the boundary or not.</div> <div>b) Front fences and side fences within the building line <b>setback</b> higher than 1.2 metres but not higher than 1.8 metres may be permitted for properties:<div><div>i) adjoining land used for business or commercial purposes, in cases where screening from the adjoining business activity is necessary to protect residential amenity;</div><div>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;</div></div></div> | Fence Location  | Height | Front Fence | 1.2 metres. | Side Fence | 1.2 metres within the building line <b>setback</b> and 1.8 metres for the remainder. | Rear Fence | 1.8 metres. Where the rear fence is the primary frontage front fence height provisions may apply. |  |
| Fence Location   | Height  |        |             |             |            |  |            |   |  |
| Front Fence  | 1.2 metres.   |        |             |             |            |  |            |   |  |
| Side Fence   | 1.2 metres within the building line <b>setback</b> and 1.8 metres for the remainder.              |        |             |             |            |  |            |   |  |
| Rear Fence   | 1.8 metres. Where the rear fence is the primary frontage front fence height provisions may apply. |        |             |             |            |  |            |   |  |



|               | Provisions  | Compliance  |
|---------------|---|---|
|               | <p>iii) necessary for safety, noise mitigation purposes or to enclose the primary open space area.</p> <p>c) 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><b>2. Corner Allotments</b></p> <p>Fencing of the secondary frontage will be allowed up to 1.8m high on the boundary, up to either of the following alignment <b>setbacks</b> from the primary street:</p> <p>a) the established building line <b>setback</b> to the street; or</p> <p>b) if the existing <b>dwelling</b> is forward of the established building line <b>setback</b>, in line with the existing <b>dwelling</b>.</p> <p>Fencing forward of this alignment must comply with the front fence requirements.</p> <p><b>3. Sight Lines at Intersections</b></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> |   |
| <b>D1.3</b>   | <b>Dwelling Houses</b>  |   |
|               | <p>This Section outlines the controls applicable specifically to <b>dwelling house</b> development. It must be read in conjunction with the general provisions set out in Sections D1.1 and D1.2. In this Section, a reference to a <b>dwelling house</b> also includes a reference to an <b>expanded house</b>.</p> <p>Character Narratives for each township are available in Part E of this DCP.</p>   |   |
| <b>D1.3.1</b> | <b>On-Site Car Parking</b>  |   |
|               | <b>Objectives</b>   |   |
|               | 1. <i>To provide adequate and visually compatible accommodation for vehicles.</i>   |   |
|               | <b>Performance Criteria</b>   |   |
|               | <p>1. Car parking must be provided on the site in a manner which is convenient in terms of access for residents of the <b>dwelling</b>; safe and accessible in terms of visibility, turning and manoeuvring capabilities; and visually compatible with the site and its locality.</p> <p>2. Car parking structures, including garages and carports, which are visible from the street must be compatible with the <b>dwelling</b> in terms of design and materials, and may form part of the <b>dwelling</b> structure.</p>   | A garage providing car parking for 2 vehicles is provided for the proposed development. |
|               | <b>Prescriptive Measures</b>  |   |
|               | 1. Refer to Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access for detailed provisions regarding car parking and vehicle access.  |   |

|               | Provisions   | Compliance   |
|---------------|--|--|
|               | 2. Council may consent to the location of a carport such that it does not comply with the <b>building height plane</b> 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.   |  |
| <b>D1.3.2</b> | <b>Landscaping</b>   |  |
|               | <b>Objectives</b>  |  |
|               | 1. <i>To enhance the visual quality of residential areas and to improve the residential amenity of the Shire.</i>  |  |
|               | 2. <i>To limit stormwater runoff from residential areas.</i>   |  |
|               | <b>Performance Criteria</b>  |  |
|               | To enhance the visual quality and improve the residential amenity of the Shire, Council encourages the landscaping of <b>dwelling house allotments</b> in accordance with the principles contained in Chapter B9 Landscaping.  |  |
|               | <b>Prescriptive Measures</b>   |  |
|               | <ol style="list-style-type: none"> <li>In cases where a <b>dwelling</b> is to be erected closer than 4.5 metres to the front boundary, Council will require, as a condition of approval, adequate landscaping to be provided to the street frontage of the lot prior to occupation of the <b>dwelling</b>. Landscaping must be consistent with the principles contained in Chapter B9 Landscaping.</li> <li>At least 25% of the site must consist of <b>deep soil areas</b>. The <b>deep soil area</b> must not include any areas used for the management of on-site sewage effluent.</li> </ol> | Existing vegetation within the front setback will be retained where not impacted by the driveway and garage. |

#### Chapter E5 – Certain Locations in Byron Bay and Ewingsdale

|              | Provisions   | Compliance  |
|--------------|--|---|
| <b>E5.4</b>  | <b>Development Controls</b>  |   |
| <b>E5.10</b> | <b>Wategos Beach</b>   |   |
|              | <b>Where this Section Applies</b>  |   |
|              | This section applies to the <b>residential accommodation</b> within Wategos Beach identified as Pocket C in the residential character narrative.   |   |
|              | <b>Objectives</b>  |   |
|              | <ol style="list-style-type: none"> <li><i>To ensure that the siting and design of dwellings do not detract from the streetscape and the residential character of the area.</i></li> <li><i>To minimise development impact on adjoining properties, environment and public domain.</i></li> <li><i>To provide additional considerations to the controls within Chapter D1 Residential Accommodation in Urban, Village &amp; Special Purpose Zones.</i></li> </ol> | The proposed alterations and additions and new structures are consistent with ensuring the maintenance of the residential character of the streetscape and the area in general. Potential impacts on adjacent properties have been minimised. |
|              | <b>Performance Criteria</b>  |   |
|              | <ol style="list-style-type: none"> <li>Garage and basements should be designed to minimise the amount of site excavation required.</li> <li>Development should seek to avoid removal of established native vegetation.</li> <li>Development shall provide a high quality landscape that seeks to enhance the amenity and function of the</li> </ol>  | The proposed garage has been designed to minimise excavation, providing for car parking for 2 vehicles.   |

|  | Provisions   | Compliance   |
|--|--|--|
|  | <p>development and respects the sites topography and surrounding environment.</p> <p>4. Sufficient site area is to remain as permeable surfaces and development bulk should reflect the low-density residential zone, within a two storey vernacular and through the use of lightweight materials.</p> <p>5. Being the most easterly residential estate in Australia, development should integrate with the landscape through the use of colours and materials, retention of native vegetation and landscaping.</p> <p>6. View retention of neighbouring development to be considered as part of each development</p>  |  |
|  | <b>Prescriptive Measures</b>   |  |
|  | <p>1. Basements and subterranean car parks are to have a maximum footprint of 50 square metres.</p> <p>2. Dwellings and hardstand areas including swimming pools are to have a maximum site coverage of 50%. (i.e. 50% of the site is to consist of landscaping, deep soil area and vegetation retention)</p> <p>3. To limit excavation, the front setback for garages and carports may be reduced to 2.5 metres provided the variation will minimise the amount of excavation required, and access complies with AS2890.1.</p> <p>4. Geotech reports are to be included with development applications addressing slope stability issues, construction methodology and include details of any anchoring proposed.</p> <p>5. Development is to utilise lightweight building and cladding materials where possible as opposed to heavy materials such as concrete.</p> <p>6. Landscaping Plans are to be submitted with the development application in accordance with Chapter B9: Landscaping. Plantings are to be dominated by natives endemic to the North Coast of NSW. Significant vegetation to be retained onsite including any littoral rainforest, to be incorporated into the Landscape Plan.</p> <p>7. Applications are to be accompanied by a Visual Impact Assessment in accordance with Chapter C3: Visually Prominent Sites, Visually Prominent Development and View Sharing. This is to include an assessment of impacts on views and view sharing as outlined in Tenacity Consulting v Warringah Council [2004] NSWLEC 140.</p> <p>8. A stormwater concept plan is to be submitted in accordance with Chapter B3: Services. The plan must include details to mitigate and manage stormwater flows entering (i.e. upstream catchments), within and leaving the site.</p> | <p>The area of the garage is 52m<sup>2</sup> and is considered generally consistent with this requirement.</p> <p>A Visual Impact Statement and Stormwater Concept Plan accompany the application.</p> |

#### 4.1.4 STATE ENVIRONMENTAL PLANNING POLICIES

A search undertaken on the NSW Planning Portal on 6 December 2023 indicated that the following SEPPs as being applicable to the land.

- SEPP (Biodiversity and Conservation) 2021
- SEPP (Exempt and Complying Development Codes) 2008

- SEPP (Housing) 2021
- SEPP (Industry and Employment) 2021
- SEPP (Planning Systems) 2021
- SEPP (Primary Production) 2021
- SEPP (Resilience and Hazards) 2021
- SEPP (Resources and Energy) 2021
- SEPP (Sustainable Buildings) 2022
- SEPP (Transport and Infrastructure) 2021
- SEPP No 65—Design Quality of Residential Apartment Development

Of these, the following SEPPs are of particular relevance to the subject application.

**Title:** State Environmental Planning Policy (Resilience and Hazards) 2021

**Published:** 1 March 2022

**Abstract:**

The aim of this policy is to specify specific arrangements for Coastal management; hazardous and offensive development and remediation of land.

**Chapter 2 Coastal management**

Part 2.2 Development controls for coastal management areas

Division 1 Coastal wetlands and littoral rainforests area

**2.7 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,*
- (d) *any other development.*



*Existing property to the south*

**Note—**

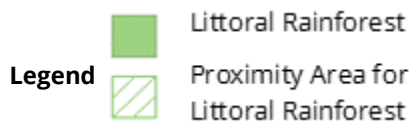
*Clause 2.14 provides that, for the avoidance of doubt, nothing in this Part—*

- (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 subsection (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 subsection (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

### Coastal Wetlands and Littoral Rainforest Map



under Division 2 of Part 2 of Chapter 6 of the Local Government Act 1993, or

- (c) a plan of management under Division 3.6 of the Crown Land Management Act 2016.
- (4) A consent authority must not grant consent for development referred to in subsection (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 section 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 section 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.

#### Comment:

The subject site contains a small strip of land marked as littoral rainforest, adjacent to the eastern boundary. No works are proposed within this portion of the site.

### 2.8 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 section does not apply to land that is identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map.

#### Comment:

The proposed works are located in the proximity to littoral rainforest the proposal is not considered likely to result in significant adverse impacts in relation to matters identified in Clause 2.8. Excavation has been minimised in accordance with requirements of BDCP14.



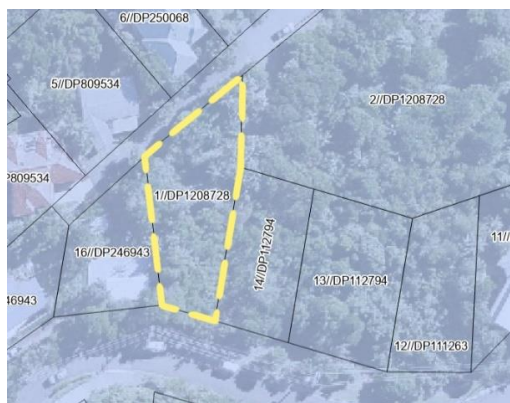
Existing access

### 2.10 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,

### Division 3 Coastal environment area

#### Coastal Environment Area Map



#### Legend Coastal Environment Area

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

#### Comment:

The proposed development is not considered likely to adversely impact on marine vegetation or native vegetation.

### Division 4 Coastal use area

#### Coastal Use Area Map



#### Legend Coastal Use Area

#### 2.11 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 section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

**Comment:**

The proposed development is sited on land zoned R2 Low Density Residential. The proposal is unlikely to cause significant adverse impact on access to and along the foreshore of beach. Existing views to public places and foreshores are not likely to be impacted by the alterations and additions to the existing dwelling house and the visual amenity of the area will be maintained. Aboriginal Cultural Heritage, Practice and Places are unlikely to be adversely impacted.

Division 5 General

**2.12 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.*

**Comment:**

The proposed development is not likely to cause increased risk of coastal hazards on other land given the significant distance of the site from the surf zone.

**2.13 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.*

**Comment:**

No certified coastal management program applies.

**Chapter 4 Remediation of land**

**4.6 Contamination and remediation to be considered in determining development application**

(1) A consent authority must not consent to the carrying out of any development on land unless—

(a) it has considered whether the land is contaminated, and

(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and

(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

(3) The applicant for development consent must carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority may



require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.

(4) The land concerned is—

(a) land that is within an investigation area,

(b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,

(c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land—

(i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and

(ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

#### Comment:

A number of previous site investigations have been undertaken in relation to approved development on the land. It is considered that no further investigations are required to be undertaken in accordance with the proposed development.



Existing terraced lawn

#### 4.1.5 CERTIFIED DRAFT PLANS

No draft plan is known to exist which would impinge upon the subject proposal.

#### 4.1.6 SPECIFIC ENVIRONMENTAL PLANNING & ASSESSMENT ACT REQUIREMENTS

The proposed development does not comprise designated development, rely on existing use rights or comprise exempt or complying development. The proposal is not State Significant Development.

#### 4.1.7 PART 7 OF BIODIVERSITY CONSERVATION ACT 2016 AND PART 7A OF FISHERIES MANAGEMENT ACT 1994

##### Biodiversity Value Map



##### Legend Biodiversity Values

Pursuant to Section 1.7, "This Act has effect subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994 that relate to the operation of this Act in connection with the terrestrial and aquatic environment."

As indicated on the plan below, a small portion of this site along the eastern boundary is mapped as containing Biodiversity Values. No works are proposed within the mapped area.

#### 4.1.8 INTEGRATED DEVELOPMENT CONSIDERATIONS

The proposal does not comprise Integrated Development

#### 4.2 CONTRIBUTION PLANS

The existing residential allotment does not trigger a requirement for the payment of additional contributions.

#### 4.3 LOCAL POLICY CONTROLS

Other than the provisions described in the above, it is understood that no specific policy of Council is applicable to the subject project.



*Existing deck area*

#### 4.4 STATE GOVERNMENT POLICY

No particular State Government Policy documents are applicable to the proposed development.

#### 4.5 ANCILLARY LEGISLATION

The applicant is aware that in addition to the consent authority's approval of the subject application, the provisions of the following statutes may regulate development in the manner proposed:

Coastal Management Act 2016 No 20

Coastal Protection Act 1979 No 13

Dividing Fences Act 1991 No 72

Local Court Act 2007 No 93

Roads Act 1993 No 33

Rural Fires Act 1997 No 65

Soil Conservation Act 1938 No 10



*Existing dwelling house*



## 5. ENVIRONMENTAL INTERACTIONS

This section of the report expands on the contextual description of the physical environment given in Section 2, and undertakes an analysis of environmental interactions (particularly those at aspects of S.4.15 (1) (b) and (c) relevant in the subject circumstances) applicable to the proposed development with specific reference to the site planning objectives specified in Section 3.1 of the report. Further, this section reviews a range of comprehensive environmental management measures, again aimed at specifically addressing adopted site planning objectives.

### 5.1 ACCESS

#### Objective

*To provide for legal and appropriate vehicular access to the site with covered car parking for existing dwelling.*

The proposed development provides for vehicular access maintained within the property boundary and the provision of associated covered carparking. It is submitted that the proposed access and parking arrangements are appropriate given the context of the site and the existing local road network.



Existing development on the southern side of Brownell Drive

### 5.2 SOILS

#### Objective

*Ensure that construction works are appropriately managed to minimise site erosion and maintain the current quality of water exiting the site.*

Adequate measures are able to be implemented to minimise potential impacts on the site in terms of erosion and sedimentation.

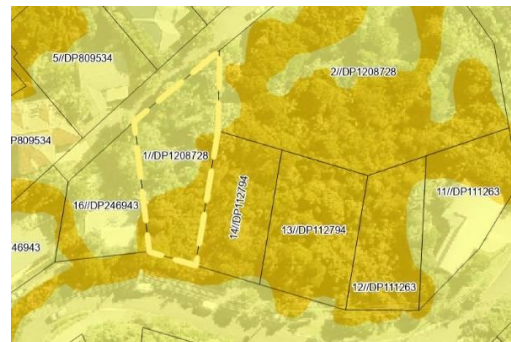
A stormwater management plan also accompanies the Development Application.

### 5.3 HAZARDS

#### Objective

*Review potential site planning hazards with respect to bushfire hazard and geotechnical issues to ensure the development is not likely to present an unreasonable hazard.*

#### Bushfire Prone Land Map



**Legend**  **Vegetation Category 2**

**Vegetation Buffer**

A previous Geotechnical report has been undertaken for the subject site. Proposed excavation for the garage has been minimised and it is submitted that the development does not pose significant risk in relation to land stability.

A bushfire threat assessment has been prepared by Bushfire Certifiers and concludes that the development is appropriate for the site subject to the recommendations contained in that report.

## 5.4 CULTURAL CONSIDERATIONS

### Objective

*Ensure that development does not impact on items of early European or Aboriginal significance.*

The subject land has been disturbed and there are no apparent items of early European cultural significance. A search of the AHMIS data base on 8 February 2024 in relation to Lot 1 DP 1208728 and a 50m buffer disclosed no known Aboriginal sites or places. The landscape where the proposed alterations and additions are sited is not a landscape of the type referred to in Step 2b of the DECCW Due Diligence Code (DECCW 2010). Accordingly, in accordance with the code, it is concluded that there is a low probability of Aboriginal objects occurring at this site.



*Existing vegetation along the boundary with 14 Brownell Drive*

## 6. CONCLUSION

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*This section sets out our concluding remarks in relation to the Development Application.*

The proposed development to construct new access and garage for the existing dwelling house have been designed having due consideration for potential impacts on existing surrounding development, particularly in relation to views and solar access.

The proposed development application is permissible under the BLEP14 and is consistent with the provisions of BDCP14.



*Existing terrace*

In our opinion, the development can be seen to satisfy a legitimate need and proposed driveway and garage are capable of construction and use in a manner which mitigates potential adverse impacts consistent with the zone objectives detailed in Council's LEP. We submit its approval would be in the public interest within the meaning of Section 4.15(1)(e) of the Act.

A handwritten signature in black ink, appearing to read 'Kate Singleton'.

**Kate Singleton RPIA BTP(Hons)**

Partnership Principal

**PLANNERS NORTH**

## APPENDICES

### REFERENCES

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- BSC. (2014). *Byron Local Environmental Plan 2014*. Byron Shire Council
- BSC. (2014). *Byron Development Control Plan 2014*. Byron Shire Council
- DECCW. (2010). *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW*. Department of Environment Climate Change and Water. Issued 13 September 2010.
- DoPE. (2022). *The North Coast Regional Plan 2041*. Department of Planning & Environment.
- Morse et al. (1993). *Soil and Water Management for Urban Development*. Morse & McVey & Associates for NSW Department of Housing.

## APPENDICES

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### **APPENDIX A**

#### Site Photographs



## APPENDICES



Properties to the south of the subject site (right of image)



Properties to the south of the subject site

## APPENDICES



The site as viewed from Brownell Drive



14 Brownell Drive – existing dwelling, fence and landscaping

## APPENDICES



Boundary with 14 Brownell Drive – existing fence and landscaping



Looking westward towards boundary with 14 Brownell Drive – existing fence and landscaping



## APPENDICES



14 Brownell Drive as viewed from Brownell Drive



View from beach looking towards the site

## APPENDICES



View from beach looking towards the site



View from beach looking towards the site