

# SEE

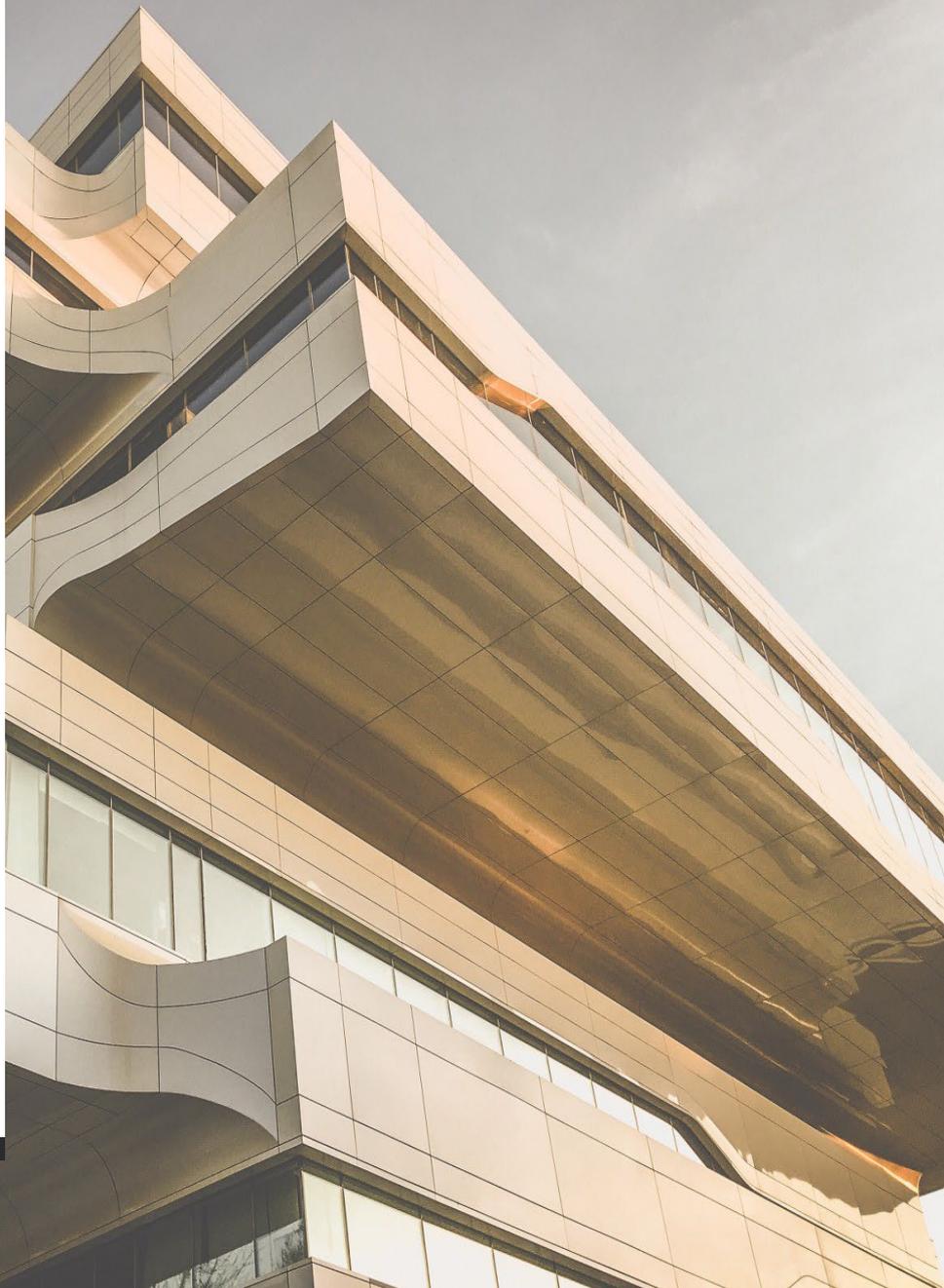
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STATEMENT OF  
ENVIRONMENTAL EFFECTS

Site: 30 Chinbible Avenue,  
Mullumbimby (Lot 159  
DP755687)

Prepared for:  
Sked No.2 Pty Ltd

Ref:  
24013



# DOCUMENT DETAILS

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## USAGE NOTE

This document was prepared for the exclusive use of Sked No.2 to accompany a Development Application to Byron Shire Council seeking approval for the development of land described herein and are not to be used for any other purpose or by any other person or corporation. ELKN accepts no responsibility for any loss or damage suffered howsoever arising to any person or corporation who may use or rely on this document for a purpose other than that described above.

The maps, development plans and exhibits shown in this report are suitable only for this report. No reliance should be placed on this information for any purpose other than for this report. All dimensions, numbers, size, and shape of lots/buildings as shown on plans in this document are subject to detailed design and final survey and may vary subject to conditions of consent issued by the Council.

The information contained in this report is based on independent research undertaken by ELKN. To the best of our knowledge, it does not contain any false, misleading, or incomplete information.

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## ATTACHMENTS

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Attachment 2	Draft Strata Plan <i>Usher &amp; Company</i>
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Attachment 19	Title & Deposited Plan

Attachment 20	BASIX Certificate <i>Senica Consultancy Group</i>
Attachment 21	Preliminary Site Investigation <i>Byron Environmental Consulting</i>
Attachment 22	DA10.2024.154.1 Subdivision Plan <i>Usher &amp; Company</i>

# 1. INTRODUCTION

This Statement of Environmental Effects has been prepared for Sked No.2 to assess the proposed development as required by the Environmental Planning & Assessment Act 1979 and to address issues relevant to this application's assessment and subsequent determination.

This report should be read in conjunction with the plans, drawings and other documents included within the attachments to this report.

## 1.1 Overview

Development consent is sought from Byron Shire Council for:

- Multi-Dwelling Housing
- Strata Subdivision; and
- Ancillary Earthworks, Landscaping, Fencing, Services, Access and Lighting

On part of Lot 159 DP755687, 30 Chinbible Avenue, Mullumbimby.

The development is to be located on proposed Lot 7 under DA10.2024.154.1 which is currently under assessment with Byron Shire Council.

Proposed Lot 7 will provide an area of 8,740m<sup>2</sup> and will be zoned R2 Low Density Residential under the Byron Local Environment Plan 2014. The proposal will deliver twenty-five detached townhouses.

Townhouses are defined as 'Multi-Dwelling Housing' and are permitted with consent in the R2 Low Density Zone. 'Subdivision' is permitted with consent in the R2 Low Density Zone under clause 2.6 of the Byron Local Environmental Plan 2014.

The development proposes two stages as follows:

1. Construction of twelve townhouses including undertaking all associated items including fencing and landscaping, construction of the full extent of services and access including associated lighting, earthworks and strata subdivision.
2. Construction of thirteen townhouses and strata subdivision.

The proposal will provide a Gross Floor Area (GFA) of 2547.23m<sup>2</sup>, a floor space ratio of 0.291:1 and a density of 1 dwelling per 349.6m<sup>2</sup>. All dwellings are single storey.

The proposal includes three variations to two controls of the Byron Development Control Plan 2014. These variations relate to the following:

- Minor intrusions into the building height plane.
- Side boundary setback to dwelling 8A13.
- Internal setbacks between dwellings.

This report examines the existing site location, how the proposed development relates to the environment and locality, and the planning merits of the development concerning its consistency with the relevant legislation.

## 1.2 Purpose

This Statement of Environmental Effects (SEE) is intended to accompany the Development Application prepared by ELKN Pty Ltd for and on behalf of the proponents Sked No.2 Pty Ltd. This report will describe the site, its current and proposed uses and address all the issues relevant to this application's assessment and subsequent determination.

This report should be read in conjunction with the following plans, drawings and assessments identified within **Table 1**:

**Table 1: Plans and Assessments**

Company	Component
Storey Design Collective	<i>Architectural Plans</i>
Usher and Company	<i>Draft Strata Plan</i>
	<i>Level &amp; Detail Survey</i>
	<i>DA10.2024.154.1 Subdivision Plan</i>
Sked No.2 Pty Ltd	<i>Draft Strata Development Contract</i>
Ingen Consulting	<i>Civil Engineering Plans</i>
	<i>Civil Engineering Services Report</i>
	<i>Stormwater Management Plan</i>
	<i>Traffic Impact Statement</i>
Senica Consultancy Group	<i>Waste Management Plan</i>
	<i>BASIX Certificate</i>
Northern Tree Care	<i>Arboricultural Letter</i>
Bushfire Certifiers	<i>Bushfire Threat Assessment</i>
Tweed Byron Local Aboriginal Land Council	<i>Aboriginal Cultural Heritage Report</i>
Blackwood Ecological Services	<i>Landscape Plan</i>
Callister Media & Communications	<i>Community Consultation Report – Part 1</i>

	<i>Community Consultation Report – Part 2</i>
Byron Environmental Consulting	<i>Preliminary Contaminated Land Assessment</i>

### 1.3 Further Information

Should Council require any additional information or wish to clarify any technical matter raised by this proposal or submissions made to same, Council is requested to consult with **Mr Lance Newley** on 0411 887 256 or lance@elkn.com.au before determination of this application.

# 2. THE SITE

## 2.1 Site Details

The subject site is located at 30 Chinbible Avenue, Mullumbimby. The land is situated in a residential area, characterised by a range of lot sizes and street configurations. The site and locality are illustrated in **Figure 1** and **Figure 2**.

The subject site, Lot 159 DP755786, is located to the east of the Brunswick River and to the southeast of the Mullumbimby Show Ground. Residential lots are located to the north, east and south of the site.

The subject site is 12,340m<sup>2</sup> in size and is currently improved by a single storey dwelling house, two garden sheds, a filled in pool structure, agricultural storage building, cattle loading ramp / yard and paddock fencing.

The subject site is mostly regular in shape, albeit does have an irregular boundary shape to the unformed Chinbible Avenue Road Reserve to the west. The site has 18.675m of frontage to unformed Chinbible Avenue Road Reserve. The rear (south) boundary has a length 117.425m. The side (eastern) boundary has a length is 68.77m.



Figure 1: Site in its local context (Source: Nearmap)



Figure 2: Site (Source: Nearmap)

The site details are provided below in **Table 2**.

**Table 2:** Site Details

Site Address	30 Chinbible Avenue, Mullumbimby
Site Property Description	Lot 159 DP 755687 Parish of Billinudgel County of Rous
Registered Owner	Kenneth Cecil Ryan William John Ryan
Site Area	12,340m <sup>2</sup>
Easements / Covenants / Restrictions	Land excludes minerals and is subject to reservations and conditions in favour of the crown.
Existing Land Use	<ul style="list-style-type: none"> <li>• Dwelling House &amp; Ancillary Structures</li> <li>• Extensive Agriculture (Cattle Grazing) &amp; Ancillary Structures</li> </ul>
Local Environmental Planning Instrument	Byron Local Environmental Plan 2014

A site analysis is provided in **Table 3**.

**Table 3:** Site Analysis

Existing structures within the subject site	<ul style="list-style-type: none"> <li>• Single storey dwelling house.</li> <li>• Two garden sheds.</li> <li>• Filled in pool structure.</li> <li>• Agricultural storage building.</li> <li>• Cattle loading ramp / yard; and</li> <li>• Paddock fencing.</li> </ul>
Site topography	The site is general flat albeit grades from west to east and north to south with spot heights ranging from approximately RL 7.59m AHD to 6.91m AHD.
Vegetation within the subject site	The subject site is predominately cleared of vegetation. Some ornamental landscaping is present around the existing dwelling house and one tree is located adjacent the horse stables. The site is predominately grassed.
Infrastructure Services	The subject site is connected to essential infrastructure, including water, telecommunications, and electricity. The site is currently service by onsite effluent disposal. Reference should be made to <b>Attachment 4</b> , which contains the infrastructure service location.
Allotment Dimensions	The subject site is regular in shape, albeit does have an irregular boundary shape to the unformed Chinbible Avenue Road Reserve to the west. The site has 136.795m of frontage to Garden Avenue and 104.74m of frontage to unformed Chinbible Avenue Road Reserve. The rear (south) boundary has a length 117.425m. The side (eastern) boundary has a length is 108.77m.
Adjoining land uses	<p>The subject site is adjoined to the following land uses.</p> <ul style="list-style-type: none"> <li>• East – Residential Lots / Dwelling Houses.</li> <li>• North – Proposed Residential Lots / Dwelling House.</li> <li>• South – Residential Lots / Dwelling Houses.</li> <li>• West – Unformed Road Reserve &amp; Brunswick River.</li> </ul>

Refer Existing Conditions plan (drawing J1295A\_C004) within the Civil Engineering Plans under **Attachment 5**.

A constraint and other mapping summary are provided in **Table 4**. This table provides a summary of the Byron Local Environmental Plan 2014 mapping and Byron Shire Council GIS mapping layers that are publicly available.

**Table 4:** Constraint & Other Mapping Summary

Zoning	R2 Low Density Residential
Additional Permitted Uses	No
Coastal Erosion Hazard Areas	No
Drinking Water Catchment	No

Floor Space Ratio	0.5:1
Building Height	9m
Heritage Items	No
Minimum Lot Size	600m <sup>2</sup>
Acid Sulfate Soils	No
Multiple Occupancy Community Title	No
Endangered Ecological Communities 2023	No
Environmental – Open Forest Restoration Potential	No
Big Scrub Rainforest Remnants (2016)	No
Cape Byron Marine Park DPI	No
Fly Fox Camp Locations	No ~ 366m to nearest mapped location
High Environmental Value Vegetation (2023)	No
Koala Habitat – Koala Plan of Management – Byron Shire Council	No
Koala Management Precincts	No
Koala Planning Area	Yes
Brunswick Valley Landcare Dunecare Groups	No
Brunswick Valley Landcare Locality Groups	No
National Parks	No
Vegetation Communities (2023)	No
Wildlife Corridors 2023 (Adopted)	No
Flood Model Catchment Boundary	Flood Model Catchment 2020 North Byron
Fill Exclusion Zone	No
Flood Planning Area (Areas Affect by Flood – refer to Byron Shire Development Control Plan 2014 Chapter C2)	Yes
Flood Planning Area (West Byron)	No
North Byron 2020 100yr 2100 CC Hazard	Low
Flood Prone (Liable) Lands (land susceptible to flooding by the PMF event Refer to Byron Shire Development Control Plan 2010 Chapter 1: Park K	Yes
Erosion Precinct	No

Bushfire Vegetation Categories	Yes – Vegetation Buffer
Dip Site	No
Spray Dips	No
Farmland Protection s9.1	Committed Urban Use or Rural Residential Zone
North Coast Regional Plan 2041	Byron Urban Growth Boundary
Coastal Use Area	Yes
Coastal Environment Area	Yes
Coastal Wetland	No
Littoral Rainforest	No
Proximity Area for Coastal Wetland	No
Proximity Area for Littoral Rainforest	No
Biodiversity Value Map	No

## 2.2 Previous Approvals

There are no approvals of relevance identified on the Byron Shire Council DA Tracker.

## 2.3 Current Development Applications

The site is currently subject to development application DA10.2024.154.1. DA10.2024.154.1 proposes subdivision of the site into seven lots, including associated:

- Earthworks.
- Services upgrades.
- Access upgrades.
- Tree removal.
- Demolition; and
- Existing dwelling bushfire upgrades

The proposal will be located on proposed Lot 7 within the subdivision proposed under DA10.2024.154.1. Lot 7 will provide a size of 8740m<sup>2</sup>. The subdivision layout proposed under DA10.2024.154.1 is provided under **Attachment 22** and is identified in **Figure 3**.

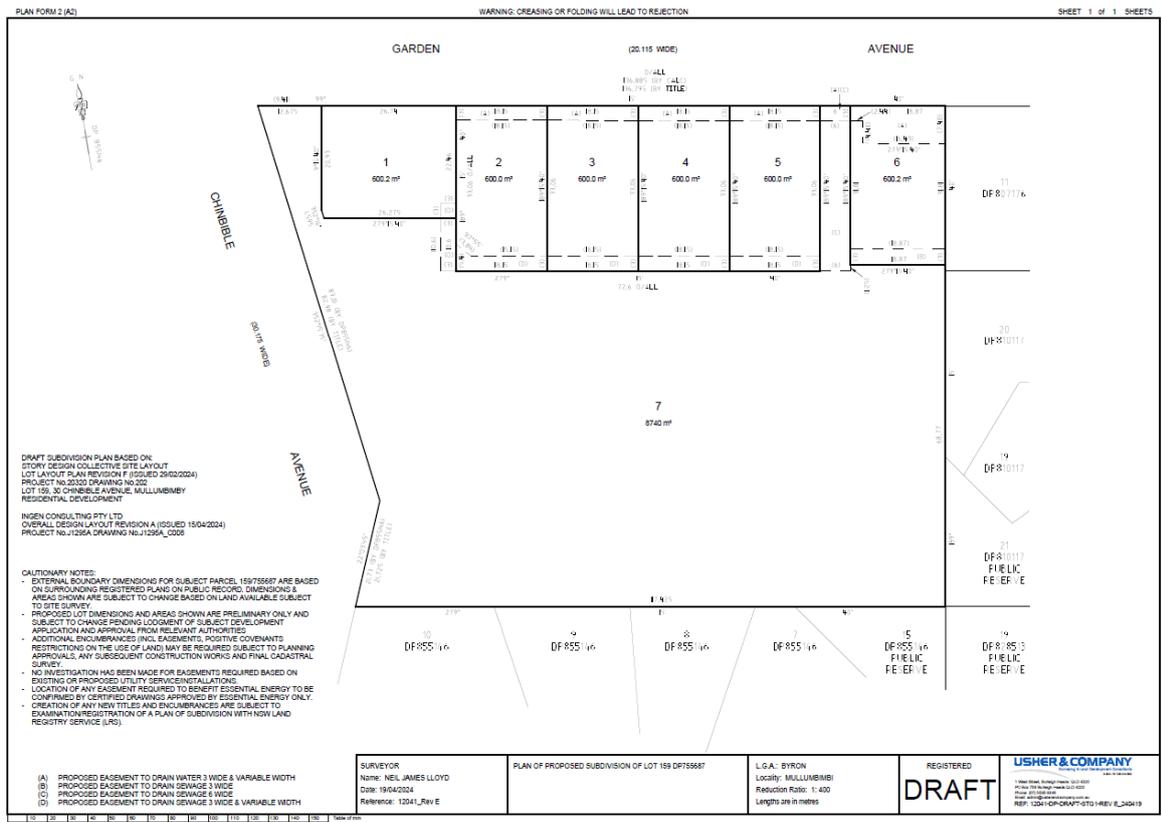


Figure 3: Subdivision Plan DA10.2024.154.1 (Source: Usher & Company)

DA10.2024.154.1 proposes the removal of all improvements on the site, with exception of the existing dwelling house. The existing dwelling is to be retained on proposed Lot 1.

DA10.2024.154.1 triggers a requirement to provide 14 replacement trees. DA10.2024.154.1 proposes that six of the replacement plantings will occur as street trees in the Garden Avenue Road Reserve in front of proposed Lots 1 to 6.

It is proposed the remaining 8 trees would be planted in proposed Lot 7 as part of the future development of proposed Lot 7. The requirement to plant these trees as part of a future development of Lot 7 is proposed to be captured by way of positive covenant to be registered on Lot 7.

The proposal sought under this application has captured this tree planting requirement. Refer discussion under **Section 3**.

## 2.4 Easements/Restrictions/Covenants

The title identifies the Land excludes minerals and is subject to reservations and conditions in favour of the crown. There are no other easements, restrictions or covenant identified on title.

See **Attachment 19** for a copy of Title and Deposited Plan.

# 3. THE DEVELOPMENT

Development consent is sought from Byron Shire Council for:

- Multi-Dwelling Housing;
- Strata Subdivision; and
- Ancillary Earthworks, Landscaping, Fencing, Services, Access and Lighting.

On part of Lot 159 DP755687, 30 Chinbible Avenue, Mullumbimby.

The following sections provide discussion of the elements of the proposal.

## 3.1 Deferred Commencement

As referenced within Section 2.3, the proposal will be located on proposed Lot 7 of the subdivision proposed under DA10.2024.154.1. DA10.2024.154.1 will deliver several items including but not limited to servicing and demolition of structures on the site that will be required to facilitate this proposal.

As such it is proposed that a deferred commencement arrangement be included on this proposal requiring the allotments proposed within DA10.2024.154.1 to be registered prior to being able to commence building work. It is proposed that the deferred commencement period be 5 years from the date of issue of development consent.

## 3.2 General Description

The proposal will result in twenty-five single storey detached townhouses. **Table 5** provides a summary of the yield particulars of the development.

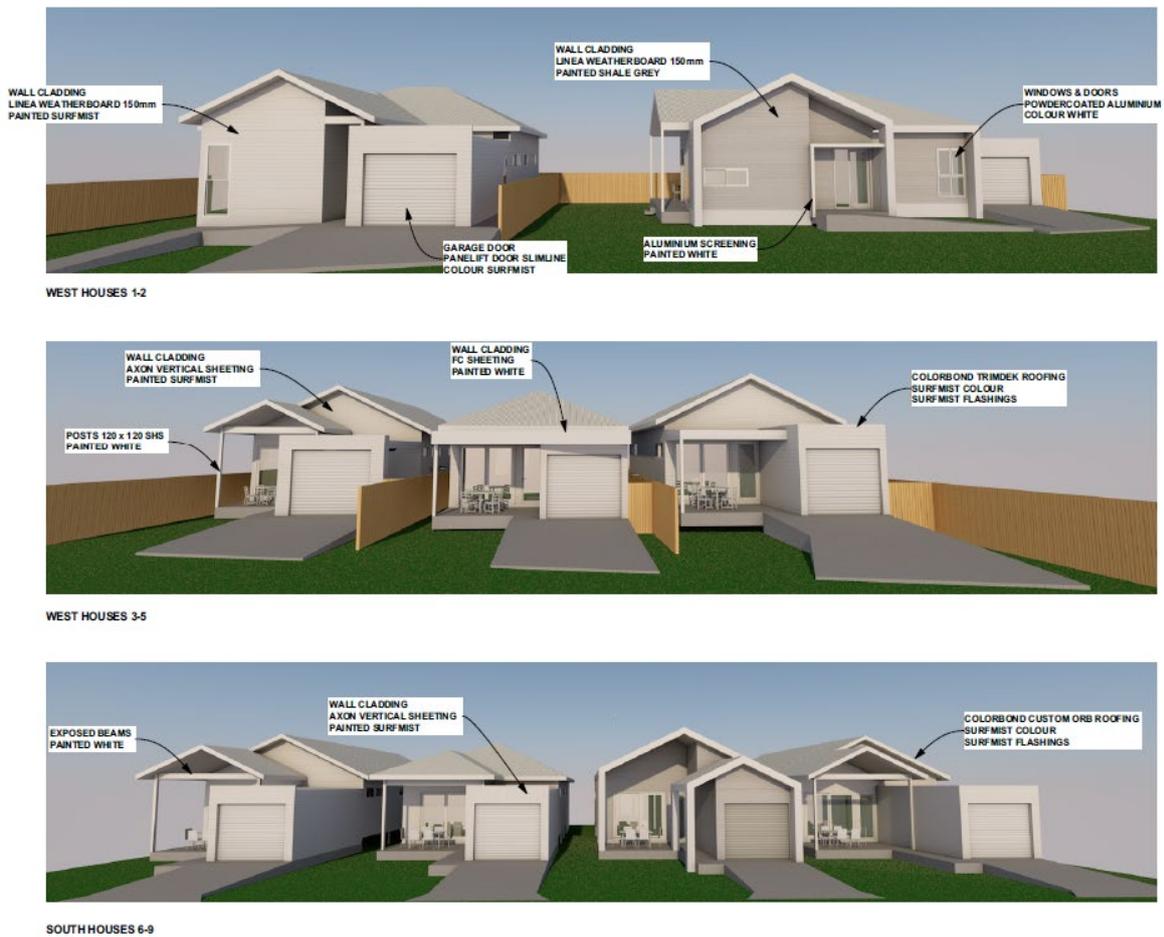
**Table 5. General Development Summary**

Site Area	8,740.8m <sup>2</sup>	
Dwellings	Total	25
	1 Bed	4
	2 Bed	1
	3 Bed	20
Density	1 dwelling per 349.6m <sup>2</sup>	
Gross Floor Area	2547.23m <sup>2</sup>	
Floor Space Ratio	0.291:1	
Carparking	46 x resident spaces and 10 x visitor parking spaces	

The proposal provides Architectural form that is complimentary to the existing character of the local area. The materials used are consistent with those found in the locality, albeit modern.

The proposed roofing is a pitched form with colourbond sheeting complimented with a mix of facades, raked ceilings, battens and weatherboard cladding. A mix of colours including “surf mist” roof sheeting and garage doors to “shale grey” cladding, timber decking and exposed beams painted white are proposed.

The proposed built form is shown below in **Figure 4** and **Figure 5**.



**Figure 4:** Proposed Built Form (Source: Story Design Collective)



**Figure 5:** Proposed Built Form (Source: Story Design Collective)

Refer to the Architectural Plans included under **Attachment 1** for design and location details.

### 3.3 Staging

The development proposes two stages. For clarity, the documentation included in this application refers to stage 2A and stage 2B. Stage 1 is the subdivision proposed under DA10.2024.154.1. Each stage is as follows:

#### 3.3.1 Stage 2A

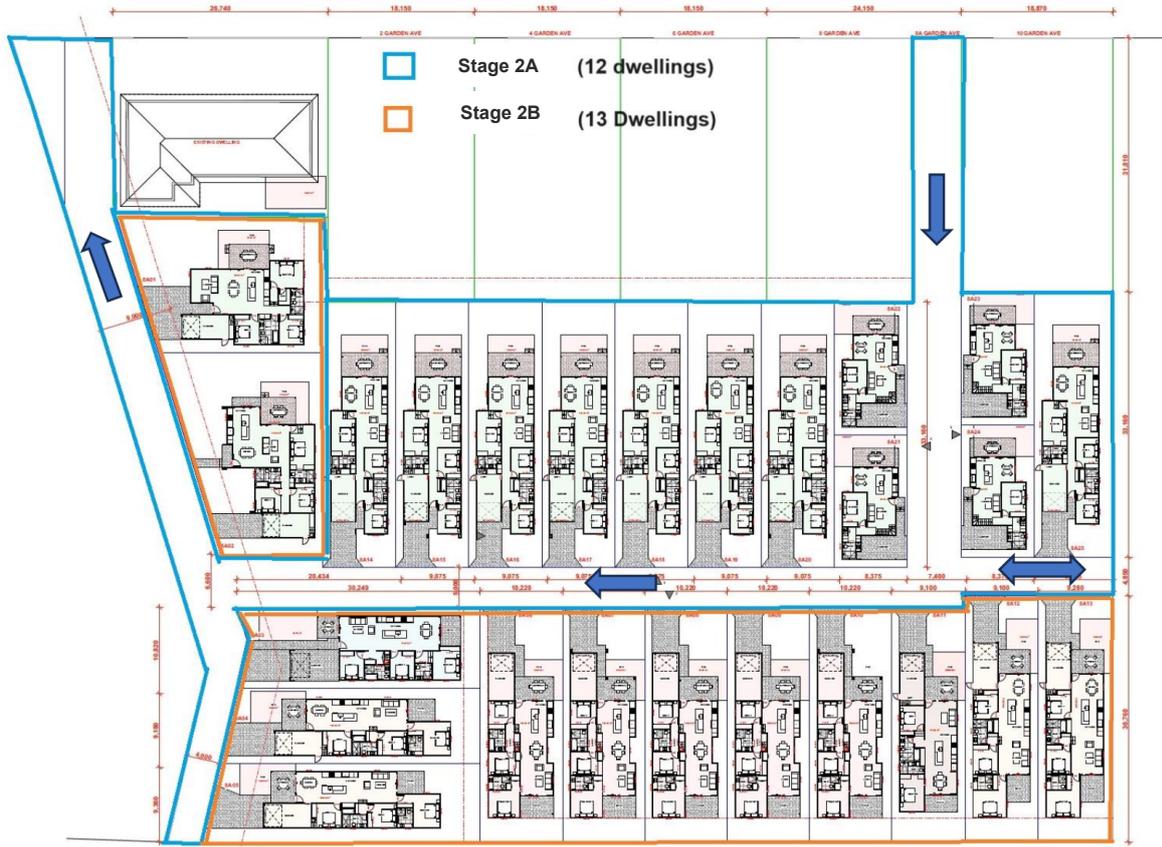
- Construction of all infrastructure include sewer, water, power, telecommunications, stormwater, driveway, common landscaping, lighting and perimeter fencing.
- Construction of dwellings 8A14, 8A15, 8A16, 8A17, 8A18, 8A19, 8A20, 8A21, 8A22, 8A23, 8A24, 8A25 and all associated fencing and landscaping.
- Stage 1 Strata Subdivision.

#### 3.3.2 Stage 2B

- Construction of dwellings 8A01, 8A02, 8A03, 8A04, 8A05, 8A06, 8A07, 8A08, 8A09, 8A10, 8A11, 8A12, 8A13, and all associated fencing and landscaping.

- Stage 2 Strata Subdivision.

This staging is depicted in **Figure 6**.



**Figure 6:** Staging

### 3.4 Access and Parking

It is proposed to construct an entry driveway off Garden Avenue on the eastern part of the site, and an exit driveway west of the existing dwelling that will be retained on proposed Lot 1 under DA10.2024.154.1, near the horizontal curve into Chinbible Avenue. The blue arrows in **Figure 7** show the proposed direction of travel. The majority of the internal driveway will be one way. Only a short section on the eastern side will be two-way to provide access to the four lots fronting that dead-end road section.

The internal driveway has been designed to cater for the safe and efficient manoeuvring of a Medium Rigid Vehicle (MRV), as defined in AS2890.2:2002. The MRV is suitable to represent a typical garbage truck and a fire fighting vehicle. Refer to the Civil Engineering Plan under **Attachment 5** which include design vehicle swept paths, which demonstrate the adequacy of the proposed internal access road.

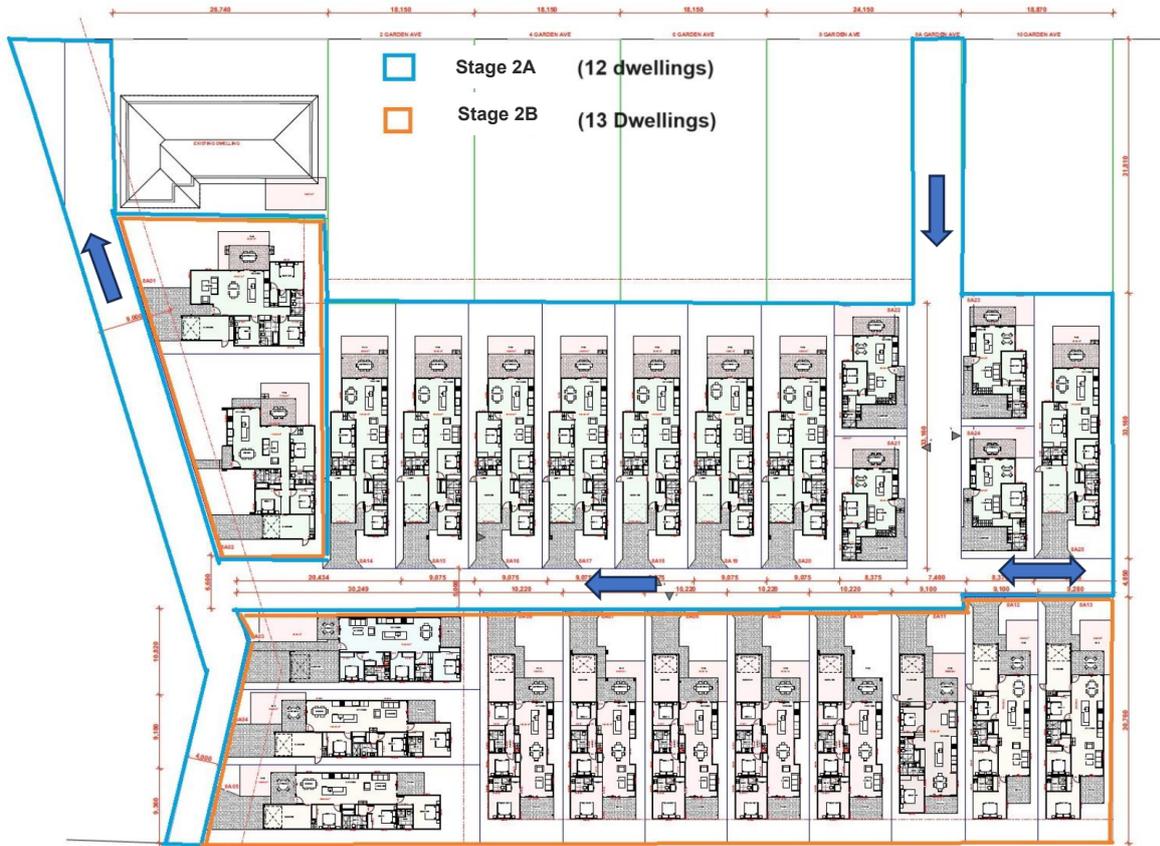


Figure 7: Internal road direction of travel (Source: Ingen Consulting)

Each one-bedroom dwelling has one parking space under a carport. The two-bedroom dwelling has one parking space under a carport. Each three-bedroom dwelling has one covered space (either carport or garage) and space for second car to park in the driveway, under a stacked arrangement.

Refer to Traffic Impact Statement under **Attachment 9** for further detail.

### 3.5 Waste Management

The development is to be serviced via Councils three bin system. A Waste Management Plan is contained within **Attachment 10**. The location of the bin storage area is identified on the Architectural Plans within **Attachment 1**.

### 3.6 Setbacks & Building Height Plane

The setbacks proposed vary in their extent to each boundary. **Table 6** provides a summary of the closest boundary setbacks proposed for the development. Refer Architectural Plans within **Attachment 1** for full setback detail. It is noted that the setbacks to each boundary are variable.

The site is battle-axe in configuration. Consistent with the guidance provided for such allotments within State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 the site is considered to have three side boundaries and one rear boundary.

**Table 6. Setback Summary**

Setback	
Northern (Side)	5.24m to wall (8A01) 2.862m to OMP (8A01) 1.1m to OMP (8A23) 4m to wall (8A23)
Eastern (Side)	3m to wall (8A01) 2.55m to OMP (8A01) 1.16m to wall (8A13)* 710mm to OMP (8A13) 1.67m to wall (8A25) 1.22m to OMP (8A25)
Southern (Rear)	1.7m to wall (8A05) 1.25m to OMP (8A05)
Western (Side)	9m to wall (8A02) 9m to OMP (8A01 Garage)

The sites eastern and southern boundaries adjoin existing dwellings. The building height plane has been applied in these locations. **Table 7** provides a summary of the dwellings with interface to these boundaries and their extent of compliance with the building height plane requirements.

**Table 7. Building Height Plane Compliance Summary**

Dwelling	BHP Compliant
8A05	No*
8A06	No*
8A07	No*
8A08	Yes
8A09	Yes
8A10	No*
8A11	No*
8A12	Yes
8A13	Yes
8A25	No*

\* Represents a variation to the requirements of the BDCP 2014. Setback and building height plane variations are discussed under **Section 5.2**.

## 3.7 Building Height

The proposal provides single storey-built form. **Table 8** provides summary of the height of each dwelling:

**Table 8. Building Height Summary**

Dwelling	Storeys	Height	Attic
8A01	1	6.134m	No
8A02	1	5.992m	No
8A03	1	5.912m	No
8A04	1	5.674m	No
8A05	1	5.874m	No
8A06	1	5.923m	No
8A07	1	6.025m	No
8A08	1	5.931m	No
8A09	1	5.925m	No
8A10	1	6.081m	No
8A11	1	5.821m	No
8A12	1	5.752m	No
8A13	1	5.867m	No
8A14	1	5.642m	No
8A15	1	5.740m	No
8A16	1	5.755m	No
8A17	1	5.819m	No
8A18	1	5.850m	No
8A19	1	5.822m	No
8A20	1	5.817m	No
8A21	1	5.978m	Yes
8A22	1	6.062m	Yes
8A23	1	5.939m	Yes
8A24	1	6.017m	Yes
8A25	1	5.796m	No

The proposal provides a loft within dwellings 8A21, 8A22, 8A23 and 8A24. These spaces are consistent with the definition of “attic”. As contained within the definition of a storey an ‘attic’ is not counted as a storey.

The lofts provide both a PMF level refuge and a multipurpose room for uses such as study or home office space. A loft floor plan has been provided in the Architectural Plans within **Attachment 1**.

## 3.8 Water, Sewer and Other Service Connections

All urban services are available to the site and will be connected to the new development. The location of the existing services is provided in **Attachment 4**. No capacity constraints are applicable because of the proposal.

The proposed water and sewer connections are identified within the Civil Engineering Services Report contained within **Attachment 6**.

Stormwater will be treated and managed as identified within the Stormwater Management Plan contained within **Attachment 7**.

## 3.9 Fencing

The proposal will utilise 1.8m high timber good neighbour fencing throughout. The location of fencing is identified within the Architectural Plan under **Attachment 1** and Landscape Plan under **Attachment 14**.

## 3.10 Bushfire

The site is mapped as bushfire prone land. The site is identified within the vegetation buffer. The proposal will be completed in accord with the Bushfire Threat Assessment included under **Attachment 12**. The bushfire report identifies variable BAL levels for dwelling construction across the site. **Table 9** summarises the minimum BAL level each of the dwellings will be constructed too.

**Table 9. BAL Level Summary**

Dwelling	BAL level
8A01	29
8A02	29
8A03	29
8A04	29
8A05	29
8A06	12.5
8A07	12.5
8A08	12.5
8A09	12.5
8A10	12.5
8A11	12.5
8A12	12.5
8A13	Low
8A14	19
8A15	12.5
8A16	12.5
8A17	12.5
8A18	12.5
8A19	12.5
8A20	12.5

8A21	12.5
8A22	12.5
8A23	12.5
8A24	12.5
8A25	Low

The proposal is consistent with the acceptable solutions of Planning for Bushfire Protection 2019 with exception of the access arrangements. A performance solution and consultation with the NSW Rural Fire Service has been undertaken in relation to site access. Refer Bushfire Threat Assessment included under **Attachment 12**.

### 3.11 Strata Subdivision

The proposal will strata subdivide the twenty-five detached townhouses over two stages of 12 and 13 dwellings respectively. See **Figure 8** and **Figure 9** below for the proposed strata subdivision.

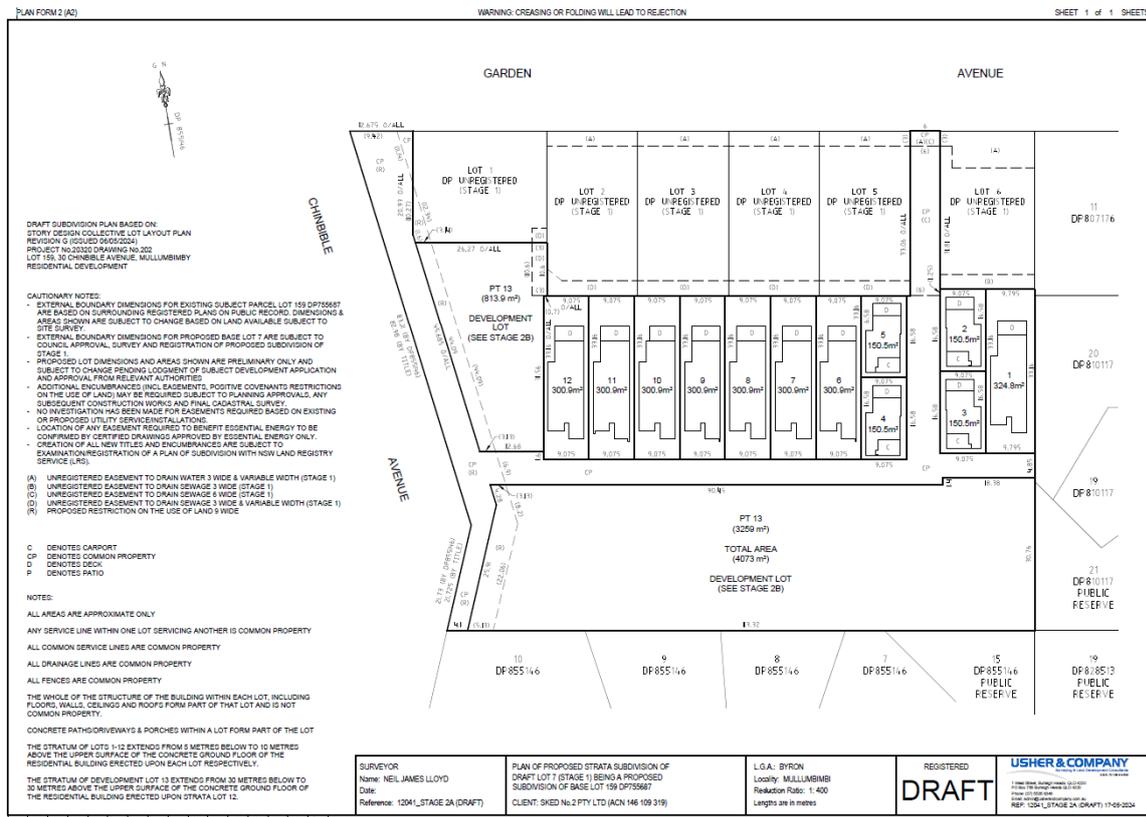


Figure 8: Proposed Strata Subdivision Plan Stage 2A (Source: Usher & Company)



### 3.13 Adaptable Units

The proposal will include 3 adaptable units that meet the requirements of AS4299. These units are 8A01, 8A02 and 8A03. Refer Architectural Plans under **Attachment 1**.

## 4. REFERRALS

### 4.1 Concurrence

The proposal does not trigger any Concurrence requirements listed in the Byron Local Environmental Plan (BLEP) 2014 or other Environmental Planning Instrument.

### 4.2 Integrated Development

The proposal is integrated development for the purposes of Councils' assessment, refer **Table 10**.

**Table 10.** Integrated Development

Act	Provision	Approval	Comment
<i>Coal Mine Subsidence Compensation Act 2017</i>	s22	approval to alter or erect improvements, or to subdivide land, within a mine subsidence district	<b>N/A</b> – The site is not in a Mine Subsidence District
Fisheries Management Act 1994	s144	Aquaculture permit	<b>N/A</b> – The proposal does not seek consent for aquaculture
	s201	permit to carry out dredging or reclamation work	<b>N/A</b> – The proposal does not include dredging or reclamation work.
	s 205	permit to cut, remove, damage or destroy marine vegetation on public water land or an aquaculture lease, or on the foreshore of any such land or lease	<b>N/A</b> – The proposal does not seek to remove, damage, or destroy marine vegetation.
	s 219	permit to: (a) set a net, netting or other material, or (b) construct or alter a dam, floodgate, causeway or weir, or (c) otherwise create an obstruction, across or within a bay, inlet, river or creek, or across or around a flat	<b>N/A</b> – The proposal does not include any form of obstruction across or within a bay, inlet, river or creek, or across a flat
Heritage Act 1977	s 58	approval in respect of the doing or carrying out of an act, matter or thing referred to in s 57 (1)	<b>N/A</b> – The site does not contain an item listed on the State Heritage Register.
<i>Mining Act 1992</i>	ss 63, 64	grant of mining lease	<b>N/A</b> – The proposal does not seek or require a mining lease.
<i>National Parks and Wildlife Act 1974</i>	s 90	grant of Aboriginal heritage impact permit	<b>N/A</b> – An Aboriginal Cultural Heritage Due Diligence report has been completed as part of site investigations.

			The report indicates no Aboriginal sites or Aboriginal places are on the site or within a 50m buffer of the site. See <b>Attachment 13</b> . No Aboriginal Heritage Impact Permit will be required.
<i>Petroleum (Onshore) Act 1991</i>	s 16	grant of production lease	<b>N/A</b> - The proposal does not seek nor require a petroleum production lease.
<i>Protection of the Environment Operations Act 1997</i>	ss 43 (a), 47 and 55	Environment protection licence to authorise carrying out of scheduled development work at any premises.	<b>N/A</b> - The proposal does not trigger the requirement for an Environmental Protection Licence.
	ss 43 (b), 48 and 55	Environment protection licence to authorise carrying out of scheduled activities at any premises (excluding any activity described as a "waste activity" but including any activity described as a "waste facility").	<b>N/A</b> - The proposal does not trigger the requirement for an Environmental Protection Licence.
	ss 43 (d), 55 and 122	Environment protection licences to control carrying out of non-scheduled activities for the purposes of regulating water pollution resulting from the activity.	<b>N/A</b> - The proposal does not trigger the requirement for an Environmental Protection Licence.
Roads Act 1993	s 138	consent to: (a) erect a structure or carry out a work in, on or over a public road, or (b) dig up or disturb the surface of a public road, or (c) remove or interfere with a structure, work or tree on a public road, or (d) pump water into a public road from any land adjoining the road, or (e) connect a road (whether public or private) to a classified road	<b>N/A</b> - Byron Shire Council is the Road authority. Integrated Roads Act approval is not required.
<i>Rural Fires Act 1997</i>	s 100B	authorisation under section 100B in respect of bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes	<b>YES</b> - The site is mapped as bushfire prone land. Subdivision requires a bushfire safety authority under S100B of the Rural Fires Act.
<i>Water Management Act 2000</i>	ss 89, 90, 91	water use approval, water management work approval or activity approval under Part 3 of Chapter 3	<b>YES</b> - The site is located within 40m of mapped waterway (Brunswick River). A controlled activity

			approval will be required under the Water Management Act 2000.
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# 5. PLANNING ASSESSMENT

Section 5 documents the range of planning controls applicable to this application under Section 4.15 of the *Environmental Planning and Assessment Act 1979* and considers the proposal's consistency with these requirements. The following planning documents have been considered in this report:

- Byron Local Environmental Plan 2014.
- Byron Development Control Plan 2008.
- State Environmental Planning Policy (Resilience and Hazards) 2021.
- State Environmental Planning Policy (Planning Systems) 2021.
- State Environmental Planning Policy (Biodiversity and Conservation) 2021.
- State Environmental Planning Policy (Transport and Infrastructure) 2021.

## 5.1 Byron Local Environmental Plan 2014

### Clause 1.2 – Aims of the Plan

The aims of the plan set out under Clause 1.2 are as follows:

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) to progressively respond to changes in the natural, social and economic environment in a way that is consistent with the following principles of ecologically sustainable development—*
  - (i) the precautionary principle—this principle means that where there are threats of serious or irreversible damage to the community's ecological, social or economic systems, a lack of complete scientific evidence should not be used as a reason for postponing measures to prevent environmental degradation (In some circumstances this will mean actions will need to be taken to prevent damage even when it is not certain that damage will occur.),*
  - (ii) the principle of intergenerational equity—this principle means that the present generation must ensure that the health, integrity, ecological diversity, and productivity of the environment is at least maintained or preferably enhanced for the benefit of future generations,*
  - (iii) the principle of conserving biological diversity and ecological integrity—this principle aims to protect, restore and conserve the native biological diversity and enhance or repair ecological processes and systems,*
  - (iv) the principle of improving the valuation and pricing of social and ecological resources—this principle means that users of goods and services should pay prices based on the full life cycle costs (including the use of natural resources at their replacement value, the ultimate disposal of any wastes and the repair of any consequent damage),*
  - (v) the principle of eliminating or reducing to harmless levels any discharge into the air, water or land of substances or other effects arising from human activities that are likely to cause harm to the environment,*
  - (vi) the principle of encouraging a strong, growing and diversified economy that promotes local self reliance, and recognises and strengthens the local community and its social capital in ways that safeguard the quality of life of future generations,*
  - (vii) the principle of providing credible information in open and accountable processes to encourage and assist the effective participation of local communities in decision making,*
- (b) to integrate local planning provisions with applicable regional and State planning controls and policies,*
- (c) to provide a framework for land use management in Byron,*
- (d) to promote and coordinate the orderly and economic use and development of land,*
- (e) to build and sustain community resilience by encouraging a diversity of housing choice and affordable housing in appropriate localities,*
- (f) to encourage development that contributes to a vibrant, socially-diverse community,*
- (g) to encourage development that contributes to a strong, growing and diversified economy,*
- (h) to ensure the timely provision and coordination of community services and facilities,*
- (i) to protect, manage and restore the natural environment and biodiversity of Byron,*
- (j) to protect the cultural heritage of Byron, including the conservation of built heritage and Aboriginal heritage,*
- (k) to provide for public involvement and participation in environmental planning and assessment,*
- (l) to minimise conflict between land uses within a zone and adjoining zones and ensure minimal impact of development on the amenity of adjoining and nearby land uses*

**Comment:** The proposal relates to multi-dwelling housing and strata subdivision within the *R2 Low Density Residential Zone*. The proposal is consistent with the aims of the plan regarding its general level of compliance, consistency with the locality character and permissibility in the subject zone.

#### **Clause 1.9A – Suspension of Covenants, Agreements and Instruments**

**Comment:** The title identifies the Land excludes minerals and is subject to reservations and conditions in favour of the crown. There are no other easements, restrictions of covenant identified on title. See **Attachment 19** for a copy of Title and Deposited Plan.

There are no covenants, easements or restrictions that would need to be varied release or modified, nor will Council need to utilise Clause 1.9A to facilitate the proposed development.

#### **Clause 2.3 – Zone Objectives and Land Use Table**

The site is zoned *R2 Low Density Residential* under the Byron Local Environmental Plan 2014. Multi-Dwelling Housing is identified as permissible with consent within the Land Use Table and Strata Subdivision is permissible with development consent in the zone by virtue of Clause 2.6 of the LEP.

The relevant objectives of the R2 zone are addressed below, together with the proposal's response.

*The objectives of the zone are:*

- *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.*

**Comment:** The proposed development is consistent with the above objectives. The proposal, through its use of single storey detached built form, and compliance with the density controls for multi dwelling housing is providing for the housing needs of the community in a low-density residential environment. Specifically, it is noted the proposal provides a density of less than 1 dwelling per 333m<sup>2</sup>, which is established as the maximum density for such developments within the Byron Development Control Plan 2014.

#### **Clause 2.6 – Subdivision – Consent Requirements**

**Comment:** The proposal seeks development consent for the strata subdivision in accord with Clause 2.6.

#### **Clause 4.1 – Minimum Subdivision Lot Size**

**Comment:** N/A - The proposal seeks consent for multi-dwelling housing and strata subdivision. This clause does not apply to the proposal.

#### **Clause 4.1A – Minimum Subdivision Lot Size for Strata Plan Schemes in Certain Zones**

**Comment:** N/A - The subject site is located wholly within R2 Low Density Zone. The clause does not apply to the proposal.

#### **Clause 4.1E – Minimum Lot Size for Certain Residential Accommodation**

**Comment:** The proposal includes multi dwelling housing. Proposed Lot 7 will provide an area of 8,740m<sup>2</sup> and will be zoned R2 Low Density Zone. The lot exceeds the minimum 1000m<sup>2</sup> requirement for multi-dwelling housing in the zone.

### Clause 4.3 – Height of Buildings

**Comment:** The subject site is identified on the *Height of Buildings Map* with a maximum building height of 9m. The maximum building height proposed is 6.134m.

### Clause 4.3A – Measurement of Height of Building

**Comment:** The site is not located on the building height allowance map. All building height has been measured from ground level (existing).

### Clause 4.4 – Floor Space Ratio

**Comment:** The proposal will provide 2547.23m<sup>2</sup> of GFA. Lot 7 which will be created as part of DA10.2024.154.1 will provide an area of 8740m<sup>2</sup>. This provides an FSR of 0.291:1. The site is mapped with a maximum FSR of 0.5:1.

### Clause 4.5 – Calculation of Floor Space Ratio

**Comment:** The FSR has been calculated as per Clause 4.5.

### Clause 4.6 – Exceptions to Development Standards

**Comment:** N/A - The proposal does not seek to vary any development standards.

### Clause 5.21 – Flood Planning

**Comment:** The site is mapped as flood prone land. As part of the development application a detailed Flood Assessment has been completed. The Flood Assessment is included under **Attachment 8**. The Flood Assessment considers and addresses the matters contained within Clause 5.21.

### Clause 5.22 – Special Flood Consideration

**Comment:** The site is mapped as flood prone land. As part of the development application a detailed Flood Assessment has been completed. The Flood Assessment is included under **Attachment 8**. The Flood Assessment addresses the matters contained within Clause 5.22.

### Clause 6.2 – Earthworks

**Comment:** The following comments are provided against the consideration of Clause 7.2.

*(2) Development consent is required for earthworks unless the earthworks are exempt development under this Plan or another applicable environmental planning instrument.*

**Comment:** The proposal will require minor earthworks within the site to allow for the construction of services and driveway. Minor grading may also be required as part of stormwater management measures.

Consent for the proposed earthworks is being sought as part of this development application.

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

*(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*

**Comment:** The proposal will require minor earthworks within the site to allow for the construction of services and driveway. Minor grading may also be required as part of

stormwater management measures. The works will not have detrimental impact on drainage patterns and soil stability.

*(b) the effect of the development on the likely future use or redevelopment of the land,*

**Comment:** The proposed earthworks are ancillary to the proposed development and is required to facilitate the proposed development. As the earthworks are ancillary to the development proposal, they will have no detrimental impact on the future use of the land.

*(c) the quality of the fill or the soil to be excavated, or both,*

The extent of material to be exported or imported to the site is not currently known, however given the minor nature of the works, material is unlikely to be exported from the site. Any material imported and exported will occur in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the NSW Environment Protection Authority 'Waste Classification Guidelines'.

*(d) the effect of the development on the existing and likely amenity of adjoining properties,*

The proposed levels at the boundaries of the site are described on the Civil Engineering Plans under **Attachment 5**. The plan indicates that ground level (existing) is maintained to the major of property boundaries.

*(e) the source of any fill material and the destination of any excavated material,*

The source or destination of imported or excavated material is not currently known. The material will be sourced or disposed of in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the NSW Environment Protection Authority 'Waste Classification Guidelines'.

It is expected that a condition of consent would be included to this effect.

*(f) the likelihood of disturbing relics,*

The site has been subject to historic disturbance. To assess the likelihood of disturbing relics, The Tweed Byron Local Aboriginal Land Council was contacted to complete a due diligence report (refer **Attachment 13**). The report did not identify any known items of Aboriginal cultural heritage on or with 50m of the site. The likelihood of disturbing relics is extremely low.

*(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*

The site is not located within a drinking water catchment. Stormwater will be treated consistent with the requirements of Byron Shire Council.

*(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,*

All sediment and erosion control measures will be put in place during construction.

### Clause 6.6 – Essential Services

**Comment:** The proposal will be connected to all essential services. Services will be provided to the site as outlined in the Stormwater Management Plan at **Attachment 7**, Civil Engineering Services Report at **Attachment 6** and Civil Engineering Plans at **Attachment 5**.

### Clause 6.17 – Affordable Housing in Employment, Mixed Use and Residential Zones

**Comment:** The Byron Development Control Plan elaborates further on when Council will consider the matters relating to affordable housing in the LEP. This is identified as follows:

*Council shall consider the matters listed in clause 6.7 Affordable housing in residential and business zones of LEP 2014 when considering development applications in Zones R2, R3, B2 or B4 for:*

- a) subdivision of 25 or more lots where a diversity of lot sizes can be provided;*
- b) residential accommodation of 25 or more dwellings where a diversity of dwelling types can be provided;*
- c) redevelopment of existing housing where a reduced number of dwellings and/or a reduced diversity of dwelling types are proposed.*

The proposal will provide 25 dwellings and consistent with that established by the Byron Development Control Plan 2014, Clause 6.17 will be considered by Council.

While the proposal does not specifically propose affordable housing as defined by planning legislation. The proposal provides a built form that is underrepresented in the Mullumbimby location, but which will contribute significantly and positively to housing choice and provide an alternative, more affordable housing option to the alternative of buying or renting a traditional 3- or 4-bedroom house on a freehold allotment which dominates existing housing stock in Mullumbimby.

Further within the proposal a mixture of bedroom numbers is proposed including four smaller, affordable one-bedroom dwellings.

The proposal will make a significant and positive contribution to housing choice within Mullumbimby locality and while Council must consider this clause, it is not considered necessary to impose condition or covenants regarding the provision, maintenance or retainment of affordable housing.

**Clause 6.18** – The clause identifies that it applies to development within the affordable housing contribution area. A review of the LEP indicates it does not yet contain an ‘affordable housing contribution scheme map’. As such the site is considered to not be within an ‘affordable housing contribution area’ as defined in Clause 6.18 and the clause is not applicable.

## 5.2 Byron Development Control Plan 2014

The Byron Development Control Plan (BDCP) 2014 applies to the Byron LGA and the subject site. The provisions contained within the BDCP are intended to form a guideline under which development can take place which meet the underlying objectives of the Byron Local Environmental Plan 2014. Where demonstrated, scope exists to allow meritorious assessment through alternate solutions where practicable.

**Table 11** summarises the applicable sections and demonstrates where compliance is achieved, or a variation sought for the proposal.

**Table 11: Byron Development Control Plan 2014 Summary Table**

<b>Chapter B2 – Tree and Vegetation Management</b>
<p>The proposal does not trigger a BDAR and as such Chapter B1 identifies that consideration of Chapter B2 is the correct pathway for the development.</p> <p>The proposal will remove ornamental landscaping only. Refer Arborist Letter under <b>Attachment 11</b>. The provisions of Chapter B2 are not triggered by the proposal.</p>
<b>Chapter B3 – Services</b>
<p>The proposal meets the requirements of Chapter B3 – Services. An assessment of the controls of Chapter B3 is contained within <b>Attachment 18</b>.</p> <p>Services are proposed to be provided to the development in accord with the Civil Engineering Services Report under <b>Attachment 6</b>, Civil Engineering Plans under <b>Attachment 5</b>, and Stormwater Management Plan under <b>Attachment 7</b>.</p>
<b>Chapter B4 – Traffic Planning, Vehicle Parking, Circulation and Access</b>
<p>The proposal meets the requirements of Chapter B4 – Traffic Planning, Vehicle Parking, Circulation and Access. An assessment of the controls of Chapter B4 is contained within <b>Attachment 18</b>.</p> <p>Access to the site and existing road conditions have been assessed within the Traffic Safety Assessment under <b>Attachment 9</b>.</p>
<b>Chapter B8 – Waste Management</b>
<p>The proposal meets the requirements of Chapter B8 – Waste Management. An assessment of the controls of Chapter B8 is contained within <b>Attachment 18</b>.</p> <p>Waste will be managed in accord with the Waste Management Plan under <b>Attachment 10</b>.</p>
<b>Chapter B9 – Landscaping</b>
<p>The proposal meets the requirements of Chapter B9 – Landscaping. An assessment of the controls of Chapter B9 is contained within <b>Attachment 18</b>.</p>
<b>Chapter C2 – Areas Affected by Flood</b>
<p>The proposal meets the requirements of Chapter C2 – Areas Affected by Flood. An assessment of the provision of Chapter C2 is contained within in the Flood Assessment under <b>Attachment 8</b>.</p>
<b>Chapter D1 – Residential Accommodation in Urban, Village &amp; Special Purpose Zones</b>
<p>Refer <b>Attachment 18</b> for a detailed assessment against each of the relevant controls. The proposal seeks three variations to two controls of Chapter D1. These variations are discussed below:</p> <p><b><u>Variation No.1 – D1.2.1 Building Height Plane – Control 1</u></b></p> <p>This control establishes a building height plane for residential development. Six of the dwellings within the proposal have minor intrusion into the building height plane. These dwellings are 8A05, 8A06, 8A07, 8A10, 8A11 and 8A25. Refer Architectural Plan under <b>Attachment 1</b> for demonstration of the building height plane and the location of the intrusions within it.</p> <p>The site is flood prone land which requires the dwellings to be raised above ground level. Consistent with D1.2.1 Control 2, a variation to the building height plan can be considered. Ultimately, most of the intrusion is a result of the need to raise the floor levels for flood immunity.</p> <p>The proposal achieves both the performance criteria and objectives noting:</p>

- 1 – The extent of the intrusions is generally limited to the upper portion of roof and eaves. Refer Architectural Plans under **Attachment 1**.
- 2 – The dwellings which intrude into the building height plane utilise a roof form which centralises the highest point of the roof within the dwelling and maximises the setback of the high point away from the property boundary. Refer Architectural Plans under **Attachment 1**.
- 3 – All dwellings are single storey and utilise high level windows along the boundaries to maintain privacy and amenity. Refer Architectural Plans under **Attachment 1**.
- 4 – Other than dwelling 8A13 all dwellings that have a minor intrusion into the building height plane provide greater than the minimum side and rear setback required by the Byron Development Control Plan 2014. Refer Architectural Plans under **Attachment 1**.
- 5 – Solar access analysis undertaken as part of the Architectural design demonstrates all adjoining properties retain compliant solar access consistent with that required by the Byron Development Control Plan 2014. Refer Architectural Plans under **Attachment 1**.
- 6 – The proposal will be largely non-visible from the public realm and therefore will not dominate the street and will preserve the streetscape amenity.

The proposal, inclusive of the minor building height plane intrusions will not result in adverse amenity impacts.

Councils support for the proposed variation is requested.

**Variation No.2 – D1.2.2 Setbacks from Boundaries – Control 4a)**

The control requires multi dwelling housing to be setback from side and rear boundary a minimum of 1.5m to the wall. All dwellings, except dwelling 8A13 provide greater than 1.5m to wall from the side and rear boundaries. Dwelling 8A13 provides a setback to wall from side boundary of 1.16m.

The proposal achieves both the performance criteria and objectives noting:

- 1 – Dwelling 8A13 is single storey and utilise high level windows along the boundaries to maintain privacy and amenity. Refer Architectural Plans under **Attachment 1**.
- 2 – Solar access analysis undertaken as part of the Architectural design demonstrates all adjoining properties retain compliant solar access consistent with that required by the Byron Development Control Plan 2014. Refer Architectural Plans under **Attachment 1**.
- 3 – Dwelling 8A13 does not adjoin residential land. Dwelling 8A13 adjoins public reserve.
- 4 – The proposal will be largely non-visible from the public realm and therefore will not dominate the street and will preserve the streetscape amenity.

The proposal, inclusive of the side setback variation to dwelling 8A13 will not result in adverse amenity impacts.

Councils support for the proposed variation is requested.

**Variation No.3 – D1.2.2 Setback from Boundaries – Control 4b)**

The control requires multi dwelling housing to provide 3m setback between dwelling on the site. The smallest separation provided between dwellings within the proposal is 1.88m between dwellings 8A25 and 8A23 / 8A24. The separation between all other dwellings is similar or greater in extent.

The proposal achieves both the performance criteria and objectives noting:

- 1 – All dwellings are single storey and utilise high level windows along the boundaries to maintain privacy and amenity. Refer Architectural Plans under **Attachment 1**.
- 2 – The use of reduced separation between the dwellings enables greater setbacks to the north for all dwellings. This maximises solar access to the dwellings and provides for solar access to all dwellings private open space
- 3 – The use of reduced separation between the dwellings enables greater provision of useable private opens space for each of the dwellings
- 4 – Solar access analysis undertaken as part of the Architectural design demonstrates all subject dwellings achieved compliant solar access consistent with that required by the Byron Development Control Plan 2014. Refer Architectural Plans under **Attachment 1**.

The proposal, inclusive of the reduced setbacks between dwellings will not result in adverse amenity impacts.

Councils support for the proposed variation is requested.

#### Chapter D6 – Subdivision

The proposal meets the requirements of Chapter D6 – Subdivision. An assessment of the controls of Chapter D6 is contained within **Attachment 18**.

#### Chapter E3 – Mullumbimby

The proposal meets the requirements of Chapter E3 – Mullumbimby. An assessment of the controls of Chapter E3 is contained within **Attachment 18**.

## 5.3 State Environmental Planning Policies

### 5.3.1 SEPP (Resilience and Hazards) 2021

#### Chapter 2 – Coastal Management

This Policy aims to manage development in the coastal zone and protect the environmental assets of the coast through a planning framework that promotes the objects of the Coastal Management Act 2016.

The ‘coastal zone’ is defined as being the area of land comprising one or more of the following coastal management areas:

- coastal wetlands and littoral rainforest area.
- coastal vulnerability area.
- coastal environment area; and
- coastal use area.

The site is mapped as being located within the ‘coastal environment area’ and ‘coastal use area’. **Table 12** provides comments against the provisions of the SEPP:

**Table 12: SEPP (Resilience and Hazards) 2021 Assessment**

2.10 Development on land within the coastal environment area			
2.10 (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:			
2.10(1)(a)	The integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment	The proposed includes relatively small volumes of earthworks; therefore, the integrity and resilience of the biophysical, hydrological, and ecological environment is not expected to be impacted. The proposal will incorporate appropriate stormwater management measures.	Complies
2.10(1)(b)	Coastal environmental values and natural coastal processes	No adverse impact will occur through the proposed development. Accordingly, it is submitted the proposal will not impact values or processes.	Complies
2.10(1)(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.	The proposed development is not in proximity to any sensitive coastal lakes identified in Schedule 1, nor will the proposal have any impact on the water quality of any other marine estates.	Complies
2.10(1)(d)	Marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms	The site is clear of any marine vegetation, native vegetation, fauna habitats, undeveloped headlands, and rock platforms.	Complies
2.10(1)(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	No adverse impact will occur, given the location of the site. The proposal is not envisaged to impact access to any key coastal area.	Complies

2.10(1)(f)	Whether the proposed development is likely to cause an adverse impact on Aboriginal cultural heritage, practices and places.	The site is not known to contain any heritage items or places. The site is also disturbed from past activities. An Aboriginal Cultural Heritage Due Diligence report has been completed as part of site investigations. The report indicates no Aboriginal sites or Aboriginal Places are on the site or within a 50m buffer of the site. See <b>Attachment 13</b> .	Complies
2.10(1)(g)	Whether the proposed development is likely to cause an adverse impact on the use of the surf zone.	The site is well clear of the surf zone. As a result, no adverse impact will occur.	Complies
(2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that:			
2.10(2)	(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.	Refer to the above comments, which confirm no adverse impact will occur.	Complies
<b>2.11 Development on land within the coastal use area</b>			
2.11(1)(a)	Development consent must not be granted unless it is demonstrated that:  (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 environmental heritage, and	The development, while located within the mapped coastal use area, is separated from the foreshore, contains no significant vegetation, and will not impact the surf zone.  The proposal incorporates stormwater management in accordance with Byron Shire Council requirements.  The site is not known to contain any heritage items or places. The site is also disturbed from past activities. An Aboriginal Cultural Heritage Due Diligence report has been completed as part of site investigations.	Complies

		<p>The report indicates no Aboriginal sites or Aboriginal Places are on the site or within a 50m buffer of the site. See <b>Attachment 13</b>.</p> <p>In accordance with this clause development consent can be granted as the proposal is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1).</p>	
2.11(1)(b)	<p>Is satisfied that -</p> <p>(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or</p> <p>(ii) if that impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that impact, or</p> <p>(iii) if that impact cannot be minimised - the development will be managed to mitigate that impact, and</p>	As above.	Complies
2.11(1)(c)	Has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.	As above.	Complies
<b>2.12 Development in coastal zone generally—development not to increase risk of coastal hazards</b>			
2.12(1)	The proposed development is not likely to cause an increased risk of coastal hazards on the land or other land.	The site is not within a coastal hazard area.	N/A
<b>2.13 Development in coastal zone generally—coastal management programs to be considered</b>			
	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.	No coastal zone management program applies to the land.	N/A
<b>2.17 Flexible zone provisions</b>			
	Flexible zone provisions do not apply to land to which the SEPP applies.	The proposal does not rely upon flexible zone provisions.	Complies

#### Chapter 4 – Remediation of Land

The objective of SEPP (Resilience and Hazards) 2021 is to promote the remediation of contaminated land to reduce the risk of harm to human health or any other aspect of the environment. Clause 4.6 of the SEPP relates to contamination and remediation that should

consider when determining a development application. A consent authority must first consider whether a site is contaminated. If the land is contaminated, the consent authority must be satisfied that the land is suitable in its contaminated state, or it will be suitable after remediation for the proposed development.

The proposal will result in twenty-five detached townhouses constructed over two (2) stages of 12 and 13 dwellings respectively. The history of the allotment is unknown; therefore, a Preliminary Site Investigation has been prepared in support of the application and is provided at **Attachment 21**. The assessment indicates the site is suitable for the proposed development and residential use.

### 5.3.2 SEPP (Transport and Infrastructure) 2021

The objective of this policy is to facilitate the effective delivery of infrastructure across NSW. The policy includes specific planning provisions and development controls for 25 types of infrastructure works or facilities.

The proposal includes construction of 25 detached dwellings, but the proposal does not include any swimming pools. The construction of stormwater water services will involve penetration of the ground within 2m of existing underground powerlines.

The application will require referral to Essential Energy under Clause 2.48.

Note: the proposal is not integrated or concurrent development under the Transport and Infrastructure SEPP 2021. Further assessment under SEPP (Transport and Infrastructure) 2021 is not required.

### 5.3.3 SEPP (Planning Systems) 2021

SEPP (Planning Systems) 2021 applies to the state of NSW. The SEPP identifies development that is considered either State Significant or Regional Development. The proposal is not considered State Significant Development or State Significant infrastructure.

Part 2.4 of the SEPP outlines development for which a Regional Planning Panel (RPP) exercises consent authority functions of the Council. A review of the schedule identifies the SEPP is not triggered in this instance, and Byron Shire Council is the consent authority for the proposal.

### 5.3.4 SEPP (Primary Production) 2021

#### Chapter 2 – Primary Production and Rural Development

Part 2.27 of the SEPP requires the Consent Authority to consider the proposed development's effects on oyster aquaculture before determining a development application and if it suspects that development may have an effect, must give notice of the application to the Secretary of the Department of Industry.

The proposal is significantly separated from any oyster aquaculture areas and will not negatively impact same. Notification of the application to the Secretary of the Department of Industry is not required.

## 6. OTHER ITEMS

### 6.1 Biodiversity Conservation Act 2016

The site is not included on the Biodiversity Value Map. Refer **Figure 10**.



**Figure 10:** Biodiversity Value Mapping Extract

### 6.2 Designated Development

The proposed development is not captured by any of the development types in Schedule 3 Part 2 of the Environmental Planning and Assessment Regulation 2021 and is therefore not designated development.

### 6.3 Byron Shire Community Participation Plan

Consistent with the definitions contained within the Byron Shire Community Participation Plan 2019, the proposal is 'community significant development'. 'Community significant development' requires consultation with the community prior to lodgement of development application. Community consultation as required by the Byron Shire Community Participation Plan 2019 has been undertaken. Refer Community Consultation Report included under **Attachment 15** and **Attachment 16**.

## 7. SECTION 4.15 - EVALUATION

In determining a Development Application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the Development Application:

*(a) the provisions of:*

*(i) any environmental planning instrument, and*

**Comment:** The relevant aspects of the Byron Local Environmental Plan 2014 have been addressed within Section 5.1 of this report and the relevant State Environmental Planning Policies have been addressed within Section 5.3.

*(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

**Comment:** No draft EPI's apply that would impact the proposal.

*(iii) any development control plan, and*

**Comment:** Relevant aspects of the Byron Development Control Plan 2014 have been addressed within Section 5.2.

*(iiia) Any planning agreement that has been entered into or any draft planning agreement that a developer has offered to enter into under section 7.4.*

**Comment:** No existing or draft planning agreements apply to the site.

*(iv) the regulations that apply to the land to which the Development Application relates,*

**Comment:** None of the additional matters for consideration listed within the Environmental Planning and Assessment Regulation 2021.

*(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

Primary Matters	Proposal
Context & Setting	<p>The subject land is zoned for low density residential development. The surrounding area comprises of residential development of similar zoning. The proposal is consistent with the design and scale of development found in the locality and intended by the Council's development controls.</p> <p>Importantly when considering the existing context and setting of the locality, it is important to note the site and surrounding area is located in a 'transition area' as identified in Chapter E3 of the Byron Development Control Plan 2014.</p> <p>The description of 'transitional area' in this Chapter of the Byron Development Control Plan 2014 is as follows:</p> <p><i>earmarking an area for change incorporating pockets of low-rise medium density homes that match the amenity of traditional free-standing homes, while introducing contemporary dwelling forms for old and young singles and families – retaining attributes that are valued by the community. How the area will look and feel in the future is likely to evolve, and in some cases notably</i></p> <p>As identified, how the locality will look and feel in the future is likely to evolve, and in some cases notably. The site and the surrounding areas are intended to accommodate development that may alter the existing character of the locality.</p> <p>The proposal provides a low rise-built form that provides the similar amenity to traditional detached dwelling houses, and which will provide contemporary dwellings for down sizers, young singles and families.</p>
Transport, Access & Parking	<p>The proposed development is consistent with Council's requirements for access to the site. A Traffic Impact Statement has been prepared and included under <b>Attachment 9</b>. The assessment indicates the proposed development is appropriate from a transport, access and parking perspective.</p>
Utilities	<p>The proposed development will be connected to all utilities including water, sewer, stormwater, power, and telecommunications. The design of these items is discussed and identified within the Civil Engineering Service Report under <b>Attachment 6</b> Civil Engineering Plans under <b>Attachment 5</b> and Stormwater Management Plan under <b>Attachment 7</b>. The design of these items is consistent with Councils standards.</p>
Heritage	<p>The site is not identified on Schedule 5 of the BLEP 2014 as containing an Item of Environmental Heritage. The site is not known to contain any items of Aboriginal cultural heritage. See Aboriginal Cultural Heritage Report within <b>Attachment 13</b>.</p>
Water	<p>The proposal has been assessed under the BASIX system and achieves the relevant water use reduction targets. Refer BASIX Certificate under <b>Attachment 20</b>.</p>
Soils	<p>Erosion and sedimentation controls will be required to be implemented by the proponent before undertaking works associated with the development. These measures are outlined within the Stormwater Management Plan under <b>Attachment 7</b>.</p>
Air & Microclimate	<p>Appropriate measures will be incorporated into the construction phase to mitigate any opportunities for noise and dust to be emitted from the site. Condition of development consent can be imposed to impose relevant requirements in this regard.</p>
Flora & Fauna	<p>The proposal will remove ornamental garden only. The proposal includes the planting of the remainder of the offset tree planting proposed under</p>

	DA10.2024.154.1. The trees to be planted are to be species of local endemic natives.  The proposal does not exceed the clearing threshold for a BDAR.
Hazards	The proposal's identified hazard constraints include:  <ul style="list-style-type: none"> <li>- Flooding</li> <li>- Bushfire</li> </ul> <p>A Flood Assessment and Bushfire Threat Assessment are included in this report. The recommendation of these reports has been incorporated into the development. The hazards applicable to the site can be appropriately managed in accord with the relevant legislation and Council policies.</p>
Waste	Waste generated by the development is to be managed in accordance with Council requirements. A waste management plan has been prepared and included under <b>Attachment 10</b> . Waste will be managed in accord with this plan.
Energy	The proposal has been assessed under the BASIX system and achieves relevant energy use reduction targets. Refer to BASIX Certificate under <b>Attachment 20</b> .
Noise & Vibration	Construction activities relating will adhere to the Council's specified hours of operation and any consent conditions relating to the existing residential amenity during the construction period.
Site Design & Internal Layout	The proposal is consistent in scale and form of development in the local area.
Construction	Construction activities will be completed per Council conditions of consent and Work Cover requirements.

The proposal is unlikely to have negative impact upon the natural or built environment or negative social or economic impacts in the locality.

*(c) the suitability of the site for the development*

Primary Matters	Proposal
Does the proposal fit in the locality?	<p>The proposal is for twenty-five detached townhouses over two (2) stages of 12 and 13 dwellings respectively. Importantly when considering the proposal fit within the locality, it is important to note the site and surrounding area is located in a 'transition area' as identified in Chapter E3 of the Byron Development Control Plan 2014.</p> <p>The description of 'transitional area' in this Chapter of the Byron Development Control Plan 2014 is as follows:</p> <p style="padding-left: 40px;"><i>earmarking an area for change incorporating pockets of low-rise medium density homes that match the amenity of traditional free-standing homes, while introducing contemporary dwelling forms for old and young singles and families – retaining attributes that are valued by the community. How the area will look and feel in the future is likely to evolve, and in some cases notably</i></p> <p>As identified, how the locality will look and feel in the future is likely to evolve, and in some cases notably. The site and the surrounding areas are intended to accommodate development that may alter the existing character of the locality.</p>

	The proposal is consistent with the character statement identified for the area within Byron Development Control Plan 2014 and fits in the locality.
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*(d) any submissions made per this Act or the regulations,*

Primary Matters	Proposal
Local, State and Federal Legislation	The proposal is compliant with the relevant legislation, as addressed within this report. Council must consider any submission to the application made as part of the development assessment process.

*(e) the public interest.*

Primary Matters	Proposal
The public interest	This proposed multi-dwelling housing and strata subdivision has been designed to be compatible with the existing and desired future amenity of the locality. The development is generally consistent with the development controls for the locality. As such, the proposal is in the public interest.

## 8. CONCLUSION

This Statement of Environmental Effects, when read in conjunction with the accompanying documents, addresses the issues relevant to the Council's assessment of this application.

Development consent is sought from Byron Shire Council for:

- Multi-Dwelling Housing
- Strata Subdivision; and
- Ancillary Earthworks, Landscaping, Fencing, Services, Access and Lighting

On part of Lot 159 DP755687, 30 Chinbible Avenue, Mullumbimby.

The development is to be located on proposed Lot 7 under DA10.2024.154.1 which is current under assessment with Byron Shire Council. The development will be completed in two stages.

Regarding the issues raised herein, it is considered that approval of the Development Application is warranted, subject to the application of reasonable and relevant consent conditions.

The grounds for this approval are summarised below:

- The development is permissible with consent and the proposed multi-dwelling housing and strata subdivision will provide additional housing opportunities for the community.
- The development has been demonstrated to be suitable for site and locality.
- The development has been demonstrated to comply with the Byron Local Environmental Plan 2014.
- The development has been demonstrated to be consistent with the Byron Development Control Plan 2014 and where variations are sought the proposal achieved the corresponding objectives; and
- The proposal is in the public interest.

Council's support for the proposed development is respectfully requested.



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