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# ENVIRONMENTAL IMPACT STATEMENT

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Proposed demolition of existing structures  
and construction of a new dwelling to form a  
dual occupancy (detached) development  
and strata subdivision to create two lots

No. 23 Marine Parade, Byron Bay (Lot 4 DP 244699)  
and adjoining Crown Land (Lot 7009 DP 1026798) and Road Reserve

TOWN PLANNING STUDIO

Revision C  
18 December 2024

## Executive Summary

### *The Site*

*This Environmental Impact Statement has been prepared to support a Development Application to construct a new dwelling to form a dual occupancy (detached) development and to strata subdivide Lot 4 DP 244699, No. 23 Marine Parade, Byron Bay. The property is located near the centre of Marine Parade within the Wategos Beach residential precinct, approximately 2.25 kilometres from the Byron Bay town centre. The proposal requires demolition works to be carried out within the private allotment and the adjoining Crown Land. It is proposed to revegetate the Crown Land in accordance with a Vegetation Management Plan. Driveway and drainage works are also proposed within the Marine Parade Road Reserve.*

*The subject property contains land that is mapped as littoral rainforest under State Environmental Planning Policy (Resilience & hazards) 2021. However, the property is located within the R2 Low Density Residential Zone and contains an existing dwelling and ancillary structures.*

### *The Proposal*

*The proposed dwelling comprises a two storey construction located within the northern half of the property. The upper level contains three bedrooms, two bathrooms, kitchen and living spaces. The lower level contains a double vehicle garage, a laundry, storage and a WC. A total gross floor area of 167 square metres is proposed. The dwelling design is accompanied by a BASIX Certificate.*

*Vehicle access will be provided via an upgraded driveway from Marine Parade. It is proposed to collect the new roof (170 m<sup>2</sup>) runoff in a re-use tank (5000l). The overflow from the reuse tank is to be directed into a pit fitted with a stormwater filtration device (ATLAN Stormsacks). The flow from the pit then discharges to the street via kerb adaptor. Minor tree removal works are required to construct the new dwelling and provide Asset Protection Zones. It is proposed to subdivide the property into 2 x strata lots upon the completion of building works. The development comprises 'designated development' and triggers an Environmental Impact Statement.*

### *Consultation*

*Comments were formally requested from various State Government Departments, Byron Shire Council, the Arakwal of Byron Bay and the Tweed Byron Local Aboriginal Land Council as part of the preparation of the Environmental Impact Statement. All comments received have been attached to this document and considered as part of the Environmental Impact Statement. Correspondence was also issued to residential properties that are within the immediate locality of the development site.*

### *Environmental Assessment*

*The Environmental Impact Statement considers the impacts of the proposed development on the natural and built environments. This includes consideration of noise, traffic, air quality, water quality, acid sulfate soils, soil erosion, biodiversity, flooding, coastal erosion, stormwater, bush fire, Aboriginal and non-Aboriginal heritage, energy, waste management, visual, social and cumulative impacts.*

*The Statement is supported by a Biodiversity Assessment, an Aboriginal Cultural Heritage Assessment, a Vegetation Management Plan, Engineering Designs and Servicing Report, a Bush Fire Assessment, a Site Waste Management Plan and Geotechnical Report. These documents detail the environmental viability of the project.*

### *Justification for the proposal*

*A number of alternatives to submitting the proposal are considered within this Environmental Impact Statement. It is concluded that the submission of a Development Application is warranted to meet the requirements of the property owners.*

*The proposal aligns with strategic principles of providing infill development within established residential areas. The Development Application will provide for greater utilisation of the residential land to help meet the strong housing demands within the Byron Shire.*

### *Conclusion*

*This Environmental Impact Statement relates to a proposal to construct a dual occupancy dwelling and strata subdivision within the allotment. The Statement has been prepared in accordance with the Clauses 190 – 192 of the Environmental Planning and Assessment Regulation 2021. This document contains all available information that is relevant to the environmental assessment of the development to which this statement relates.*

*The proposed development has considered the requirements of key State and local planning instruments including State Environmental Planning Policy (Resilience and Hazards) 2021, Byron Local Environmental Plan 2014 and Byron Development Control Plan 2014.*

*The proposed dual occupancy dwelling is permitted with the consent of Council within the R2 Low Density Residential Zone. It is consistent with the objectives of the zone and supports the surrounding residential land uses. The proposal is generally consistent with other local planning controls administered by Byron Shire Council.*

*Lot 4 DP 244699 is 803.2 square metres in area with a suitable frontage to Marine Parade. The land is currently supplied with urban services. The residential allotment has been highly altered from its natural state. Bush fire and ecological constraints can be appropriately managed within the northern area of the land. The land is considered to be suitable for the development proposed.*

*The assessments carried out as part of this Environmental Impact Statement indicate that the proposed development can be completed without significant adverse effects on the natural and built environments. By implementing the recommendations and amelioration measures set out within this statement and supporting documents, it is likely that the proposed development will result in positive land use outcomes.*

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- B. Consultation letters sent to relevant groups
- C. Correspondence received from relevant groups
- D. Deposited Plan 244699 – NSW Land Registry Service
- E. Aboriginal Cultural Heritage Assessment Report – Everick
- F. Biodiversity Development Assessment Report – AWC
- G. Vegetation Management Plan & Landscape Plan - AWC
- H. Engineering Plans – Greg Alderson & Associates
- I. Bush Fire Assessment – Land & Fire Assessments
- J. Site Waste Management Plan – Town Planning Studio (TPS)
- K. Geotechnical Report – OB Geotechnics
- L. Photographs of Residential Development within the Locality – TPS
- M. Visual Impact Assessment – TPS
- N. Documentation from Surveyor – Bennett & Bennett
- O. Traffic Safety Assessment – Greg Alderson & Associates
- P. Stormwater Management Plan – Greg Alderson & Associates
- Q. Development Plans – HGA Studio

## 1.0 Introduction

### 1.1 Structure and Background

This document comprises an Environmental Impact Statement, prepared in accordance with Part 8 Division 5 of the Environmental Planning and Assessment Regulation 2021, and in accordance with the Secretary's Environmental Assessment Requirements, issued by NSW Planning Industry & Environment on 29 February 2024.

The following sections of this report relate to the matters summarised below:

Section 2 – provides a description of the development site.

Section 3 – provides a description and analysis of the development.

Section 4 – provides consideration of Environmental Impacts and the Secretary's Environmental Assessment Requirements.

Section 5 – provides consideration of statutory requirements under Section 4.15 of the Environmental Planning and Assessment Act 1979.

Section 6 – provides environmental management, amelioration and mitigation measures for the proposed development.

Section 7 – provides conclusions and recommendations to this report, including justification for the proposal.

In addition to these sections, Annexures include documentation of relevance to the proposed development and the development site, including the plans of the proposed development. Figures are included throughout the document to provide details of the development and the development site.


### 1.2 Note on the use of this document

This document has been prepared for the use of Byron Shire Council, as the consent authority, and relevant NSW Government Departments, for determining a Development Application for carrying out development on the site. The document is to be used to assist in the assessment of a Development Application and is not intended to be used for any other purpose. The author accepts no liability for any loss, damage, liability or claim arising from the use of this document. This document is protected by copyright.

### 1.3 Details and declaration

The following details are provided in accordance with Part 8, Division 5, Clause 190 of the Environmental Planning and Assessment Regulation 2021:

<i>(a) the name, address and professional qualifications of the person who prepared the statement,</i>
This statement has been prepared by Joe Davidson of 3B Langi Place, Ocean Shores NSW, who holds the tertiary qualification, Bachelor of Regional and Town Planning, from the University of Queensland, 1999.

(b) the name and address of the responsible person,
The responsible person is Joe Davidson of 3B Langi Place, Ocean Shores NSW.
(c) the address of the land: (i) to which the development application relates, or (j) on which the activity or infrastructure to which the statement relates will be carried out,
The Development Application relates to Lot 4 DP 244699, No. 23 Marine Parade, Byron Bay and the adjoining Crown Land (Lot 7009 DP 1026798) and Road Reserve.
(d) a description of the development, activity or infrastructure,
The proposed development relates to the construction of a new dwelling to create a dual occupancy (detached) development and the subdivision of the subject property into two Strata Title lots. Refer also to Section 3 of this document.
(e) an assessment by the person who prepared the statement of the environmental impact of the development, activity or infrastructure, dealing with the matters referred to in this Division,
See Sections 2, 3, 4, 5 and 6 of this Town Planning Report.
Declaration:
<p>I, Joe Davidson, declare that:</p> <ul style="list-style-type: none"> <li>(i) the statement has been prepared in accordance with Part 8, Division 5 of the Environmental Planning &amp; Assessment Regulation 2021, and</li> <li>(ii) the statement contains all available information that is relevant to the environmental assessment of the development, activity or infrastructure to which the statement relates, and</li> <li>(iii) that the information contained in the statement is neither false nor misleading.</li> </ul> <div style="text-align: center;">  </div> <p style="text-align: center;">Joe Davidson MPIA BRTP – 14 November 2024</p>

#### 1.4 Secretary's Environmental Assessment Requirements and Consultation with relevant groups

On 29 February 2024, NSW Planning & Environment issued the Secretary's Environmental Assessment Requirements (SEARs) for the preparation of an Environmental Impact Statement for the proposed development. These are included as an Annexure to this report.

In addition, consultation was carried out with the following groups in accordance with the requirements of NSW Planning and Environment:

- Arakwal
- Byron Shire Council
- Crown Lands
- Cape Byron Marine Park
- Essential Energy
- Heritage NSW
- NBN Co.
- NSW Rural Fire Service
- NSW Planning Industry & Environment - Biodiversity & Conservation Division
- NSW Planning Industry & Environment - National Parks & Wildlife Division
- NSW Planning Industry & Environment - Lands & Water Division
- Telstra
- Transport for NSW
- Tweed Byron Local Aboriginal Land Council
- Water NSW
- Surrounding residents and property owners (namely 25 Marine Parade, 21 Marine Parade, 18 Brownell Drive, 1-20 Brownell Drive, 2-20 Brownell Drive, 24 Brownell Drive, Byron Bay)
- Wategos Beach Protection Association

Copies of consultation letters sent and received are included as an Annexure to this report. It is noted that not all of the groups contacted responded with formal correspondence. The following groups provided written comments as part of either the SEARs or subsequent consultation. Each have been taken into consideration as part of the preparation of the Environmental Impact Statement:

- Arakwal
- Byron Shire Council
- Crown Lands
- Cape Byron Marine Park
- Essential Energy
- Heritage NSW
- NBN Co.
- NSW Planning & Environment – Biodiversity, Conservation & Science Division
- NSW Planning Industry & Environment - Fisheries
- NSW Department of Planning, Housing and Infrastructure
- Telstra
- Transport for NSW
- Tweed Byron Local Aboriginal Land Council
- Water NSW

It is noted that no comments were received from surrounding residents.



### 1.5 List of required approvals

The proposed development requires the following approvals to enable it to be carried out:

- a) Bush Fire Safety Authority under Section 100B of the Rural Fires Act 1997 to carry out a Special Fire Protection Purpose (ie. a residential subdivision) within a mapped bush fire prone area. Concurrent approval is sought under the Rural Fires Act 1997, defining the proposal as Integrated Development under Section 4.46 of the Environmental Planning and Assessment Act 1979.
- b) Approval under Section 138 of the Roads Act 1993 to carry out vehicle access works within the adjacent Council road reserve. A separate Section 138 application will be submitted for these works.
- c) Approvals under Section 68 of the Local Government Act 1993 to undertake water supply and sewer connection works for the new dwelling. A separate Section 68 application will be submitted for these works.

### 1.6 Supporting information

This Environmental Impact Statement is accompanied by the following supporting documents which are included as Annexures to this document. These documents form part of the Development Application and should be read in conjunction with the Environmental Impact Statement.

- An Aboriginal Cultural Heritage Assessment prepared by Everick Consulting.
- A Biodiversity Development Assessment Report prepared by AWC.
- A Vegetation Management Plan prepared by AWC.
- Engineering Designs for vehicle access, a Sediment & Erosion Control Plan and a Stormwater Management Plan prepared by Greg Alderson and Associates.
- A Bush Fire Assessment prepared by Land and Fire Assessments.
- A Site Waste Management Plan prepared by Town Planning Studio.
- Plans of the proposed development prepared Harley Graham Architects.
- A Geotech Report prepared by OB Geotechnics.
- A Traffic Safety Assessment prepared by Greag Alderson & Associates.
- Survey Plan prepared by Bennett and Bennett.

## 2.0 Description of the site

### *Location and site description*

The proposed development primarily relates to an 803.2 square metre allotment of land and located within the Wategos Beach residential locality, which is part of the Byron Bay township. The privately owned allotment is formally described as Lot 4 in Deposited Plan 244699. It is located at No. 23 Marine Parade, Byron Bay. The Byron Bay locality is located within the east of the Byron Local Government Area. Refer to Figure 1 below which shows the location of the site in context to the Byron Local Government Area. Refer to Figure 2 which shows the location of the site within the Byron Bay locality.

The proposed development also involves works within Crown Land adjoining to the east of the privately owned allotment and within the road reserve to the north.

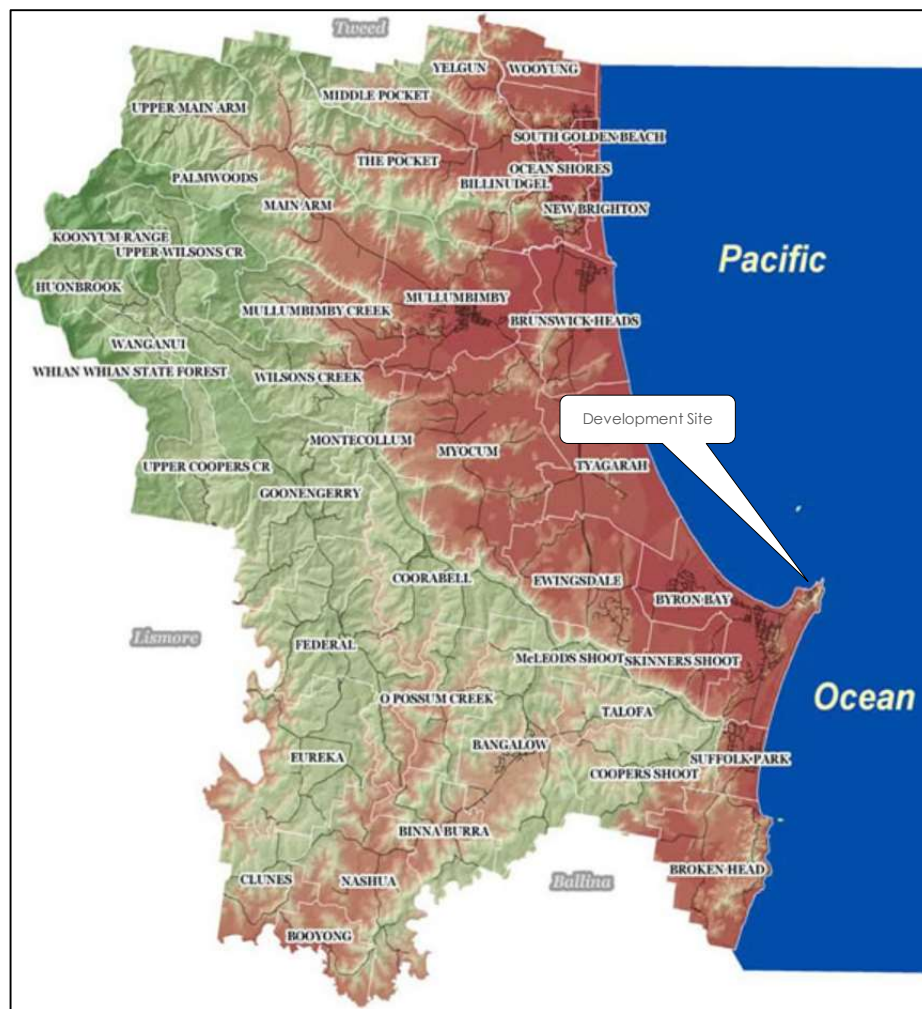


Figure 1 – Location Plan showing the site of the proposed development within the Byron Local Government Area (Byron Shire Council)

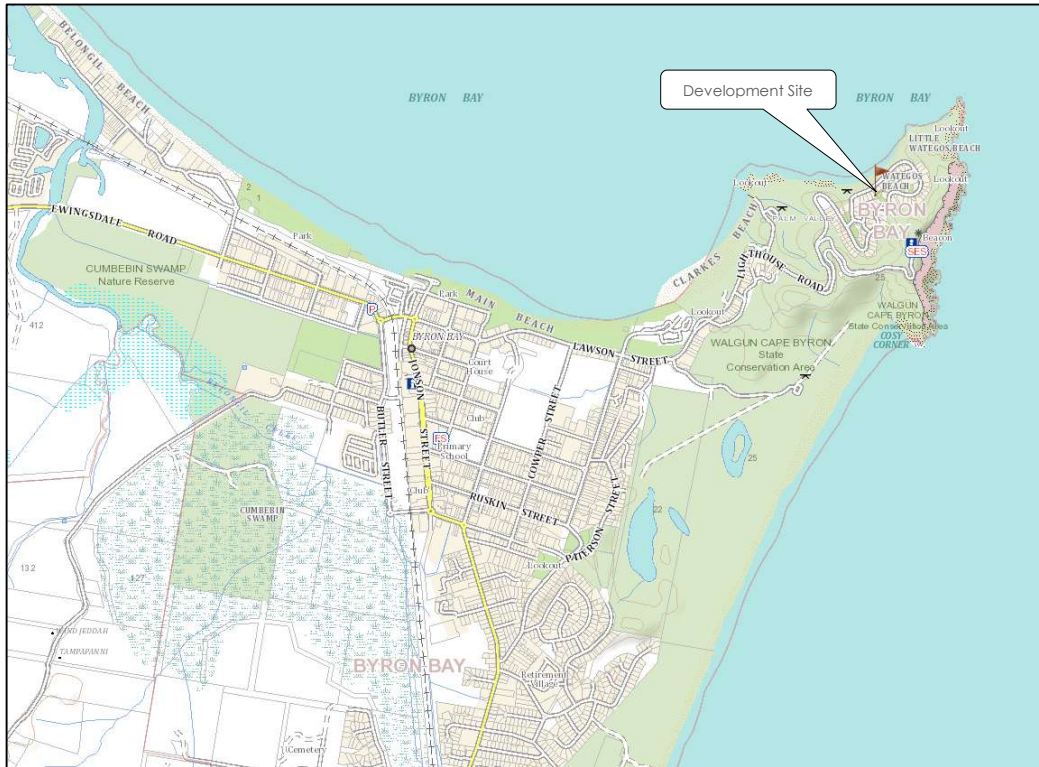


Figure 2 – Byron Bay Locality Plan (NSW LPI)

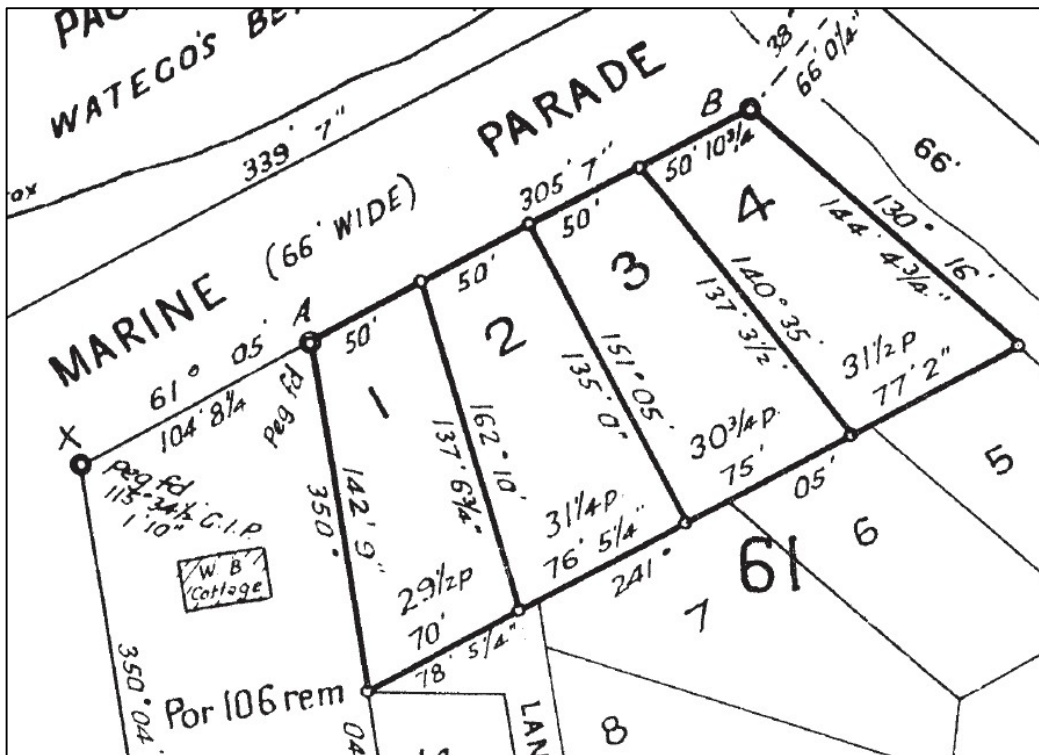


Figure 3 – Extract from Deposited Plan 244699 showing Lot 4 (NSW LPI)

Lot 4 DP 244699 has a four sided configuration with a slope from south to north towards Marine Parade. The levels of the land range from 7.55 metres AHD at the north-eastern corner of the property, to 20.65 metres AHD at the south-eastern corner.

Vehicle access to the site is available from both Marine Parade and the rear lane (Pandanus Place). The existing dwelling uses the rear lane access. A garage space within the north of the property is provided with an access driveway from Marine Parade, however this driveway extends into the adjoining Crown reserve and cannot be used as part of the proposed development.

Refer to Figure 5 for aerial photograph of the site.

#### *Improvements and Land Uses*

Lot 4 DP 244699 contains an established single storey dwelling with associated vehicle access and parking. Two driveways are provided to the property, one from Marine Parade to the north and the other from Pandanus Place to the south. An uncovered parking area is located on the southern side of the existing dwelling. A double vehicle garage is located within the north of the property (with access from Marine Parade). A review of historic planning files for the property issued by Byron Shire Council located a number of approvals, including approvals for the existing dwelling and garage.

#### *Vegetation cover*

The property contains predominantly planted landscape vegetation, but also contains some native plants that are endemic to the local area.

A detailed description of the vegetation within the site is provided within the Biodiversity Development Assessment Report that is attached as an Annexure to this document.

#### *Soil conditions*

The following description has been reproduced from the attached Report on Geotechnical Site Investigation prepared by OB Geotechnics:

Reference to geological mapping by the Geological Survey of New South Wales 1:250,000 series 'Tweed Heads' sheet indicates the site is underlain by formation from the Silurian aged of Palaeozoic Era and from the Neranleigh-Fernvale Group, which typically comprise "Greywacke, Slate Phyllite Quartzite".

The report confirms that the site of the proposed development is classified as a "Class P" site in accordance with the provisions of AS 2870-20116 (Residential Slab and Footings). It also notes that acid sulfate soils are not present in this area, based on mapping from the NSW Planning Portal Spatial Viewer.

#### *Zoning*

The private property and the adjoining Crown Land and road reserve are located within the R2 Low Density Residential Zone under Byron Local Environmental Plan 2014.

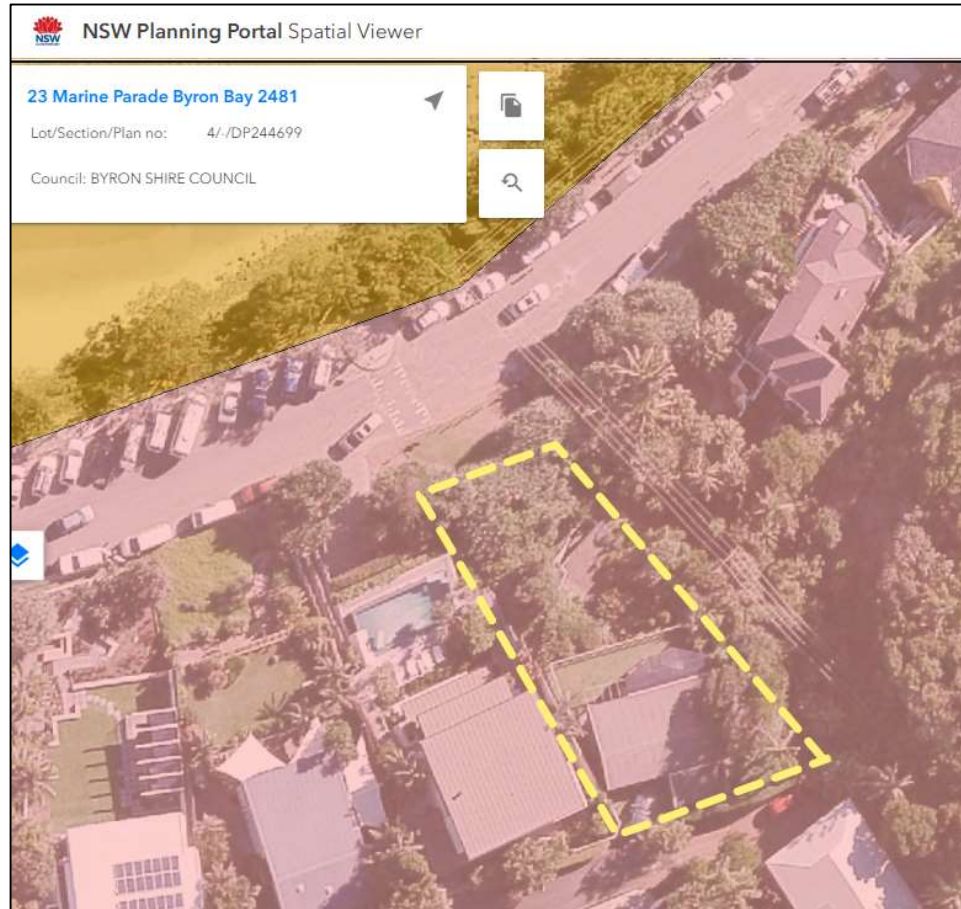


Figure 4 – Zoning Plan (NSW Planning Portal Spatial Viewer)

#### *Surrounding Land Uses*

The adjoining allotment to the west comprises a privately owned property that contains a multi level dwelling. A privately owned property containing a double storey dwelling adjoins to the south. A two storey dwelling occupies a residential allotment on the opposite side of the Crown Land to the east. Wategos Beach is located on the opposite side of Marine Parade to the north.

#### *Services*

The allotment has access to the following services:

- Water Supply – a Byron Shire Council water main is located within the Marine Parade road reserve to the north of the property. The existing dwelling is connected to this supply.
- Sewerage Connection – a Byron Shire Council sewer main is also located within the adjacent Marine Parade road reserve. The existing dwelling in the south of the site is connected to the Council sewer network.
- Telecommunications – provided to the property via Telstra/NBN infrastructure (extending from the Marine Parade road reserve).



- Electricity – overhead electricity lines pass through the adjoining Crown Land from Marine Parade to Brownell Drive. The existing dwelling in the south of the private lot is connected to this service.
- Stormwater drainage – stormwater naturally drains to the north towards the adjacent road reserve.
- Waste and Recyclables Collection – available within the Byron Bay locality with roadside collection.

#### *Constraints*

Byron Shire Council's online mapping tool indicates that the property is subjected to bush fire hazards. However, the land is not within a mapped acid sulfate soil area, a coastal erosion area or a flood area.



Figure 5 – Aerial Photograph of the Site (Metromap)

## 3.0 Description and analysis of the development

### 3.1 General

Development consent is sought to demolish existing structures and construct a new dwelling to form a dual occupancy (detached) development within the allotment. It is also proposed to subdivide the property into two strata lots. Demolition works include the removal of a garage, driveway, retaining structures and a staircase, some of which encroach into the adjoining Crown Land.

The proposed dwelling comprises a two storey construction located within the northern half of the property. The upper level contains three bedrooms, two bathrooms, kitchen and living spaces. The lower level contains a double vehicle garage, a laundry, storage and a WC. A total gross floor area of 167 square metres is proposed.

The built form includes a skillion roof over masonry walls on concrete flooring. Timber battens are proposed on the external walls to give the appearance of lightweight construction. An improved driveway and turning area are proposed within the site. Landscaping is proposed adjacent to the new dwelling. Vegetation management works are also proposed within the adjoining Crown Land.

The proposed dwelling has a setback of 5.0 metres to the eastern property boundary, 2.0 metres to the western property boundary and 6.5 metres to the Marine Parade street frontage. The proposed building has been carefully located to maintain a bush fire buffer to the adjacent Crown Reserve without requiring the removal of significant native vegetation.

Refer to the Annexures of this document for Architectural plans of the proposed dwelling prepared by Harley Graham Architects. These plans are accompanied by a BASIX Certificate to meet energy efficiency requirements under State Environmental Planning Policy (Sustainable Buildings) 2022.

The proposed subdivision is described below:

Proposed Lot	Proposed Area
A	401.6 m <sup>2</sup>
B	401.6 m <sup>2</sup>
Total	803.2 m <sup>2</sup>

The proposed subdivision layout provides for the proposed dwelling to be contained within Lot B and the existing dwelling to be contained within Lot A. The common boundary between the two lots is located on the northern side of the existing dwelling. No changes are proposed to this existing dwelling, including vehicle access which will be retained from the rear lane. The proposed dwelling takes access from Marine Parade.

Refer to the Annexures of this document for civil engineering designs for vehicle access and stormwater services. Note that the existing dwelling is

currently connected to water, sewer, telecommunications and electricity services. It is proposed to improve the access arrangements within the Marine Parade road reserve with an upgraded driveway entry.

### 3.2 Objectives of the development

The objectives of the development are detailed below:

- a) To facilitate residential development in the form of a dual occupancy (detached) development in accordance with the requirements of Byron Local Environmental Plan and Byron Development Control Plan 2014.
- b) To facilitate the subdivision of the property in accordance with the requirements of Byron Local Environmental Plan 2014 and Byron Development Control Plan 2014.
- c) To identify and protect littoral rainforest vegetation having regards to the aims and objectives of State Environmental Planning Policy (Resilience & Hazards) 2021.
- d) To identify and manage any anticipated impacts of the development, both direct and indirect, on the natural and built environments.
- e) To remove encroachments within the adjoining Crown Land and revegetate to an acceptable standard.
- f) To minimise impacts on threatened species, populations, ecological communities and their habitats having regards to Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994 that relate to the operation of the Environmental Planning and Assessment Act 1979 in connection with the terrestrial and aquatic environment.
- g) To acknowledge the attributes of adjoining and adjacent land uses and natural features within the design of the development.
- h) To determine the suitability of the site for the development.
- i) To identify and manage any cumulative impacts from the development on the natural and built environments.

### 3.3 Analysis of feasible alternatives to the carrying out of the development having regard to its objectives, including the consequences of not carrying out the development

The following alternatives to carrying out the proposed dual occupancy/subdivision development have been considered:

#### 1. Do nothing

The subject allotment contains an established dwelling and vacant land that is suitable for a second dwelling. The vacant land is not constrained by substantial vegetation cover, it is located within the R2 Low Density Residential Zone. It has access to urban services including water supply, electricity, telecommunications and sewer infrastructure. Doing nothing would be an underutilisation of the lot and would be a poor outcome for the property.



2. Revegetate the cleared land

The cleared land sits to the north of the established dwelling within the 803.2 square metre allotment. The property is affected by bush fire constraints. Revegetating the cleared area of the allotment where the proposed dwelling is to be constructed would increase bush fire constraints within the site and threaten the established dwelling and development within neighbouring allotments.

3. Submit a Development Application to demolish the existing dwelling and construct a larger dwelling and secondary dwelling

A Development Application was submitted in 2013 for a large dwelling and secondary dwelling. This was granted consent (No. 10.2013.158.1). However, the owners at the time did not proceed with the construction. The current owners do not wish to construct the previously approved design.

4. Submit a Development Application for a multi dwelling development on the lot

This alternative would go beyond the landowners desired dwelling density for the property and create additional bush fire buffers that could impact the adjacent littoral rainforest. The lot size is below the 1,000sqm minimum prescribed for multi-dwelling development. The proposal that is the subject of this Environmental Impact Statement appropriately minimises the density of the development to a dual occupancy arrangement.

Consideration of the above alternatives indicates that the proposed dual occupancy/strata subdivision development is an appropriate planning solution for the site. Alternative 1 is considered to be an underutilisation of the site and does not achieve the objectives of the proposal. Alternative 2 would exacerbate bush fire threats within the locality. Alternative 3 does not meet the needs of the landowner. Alternative 4 exceeds the appropriate scale of development within the site.

## 4.0 Consideration of Environmental Impacts and Environmental Assessment Requirements

### 4.1 Identifying Principles of Ecologically Sustainable Development

The following principles of ecologically sustainable development have been applied in considering the environmental impacts of the proposed development:

- (a) *the precautionary principle*, namely, if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by:
  - (a) careful evaluation to avoid, wherever practicable, serious or irreversible damage, and
  - (b) an rigorous and science-based assessment of the risk – weighted consequences of various options;
- (b) *inter-generational equity*, namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,
- (c) *The conservation of biological diversity and ecological integrity* should be a fundamental consideration in decision-making, including in the formulation, adoption and implementation of any economic and other development plan, program or project. Biological diversity means the diversity of life and comprises:
  - i. Genetic diversity (the variety of genes in a population)
  - ii. Species diversity (the variety of species)
  - iii. Ecosystem diversity (the variety of communities and ecosystems).
- (d) *improved valuation, pricing and incentive mechanisms*, namely, Environmental factors should be included in the valuation of assets and services such as:
  - (a) the polluter pays principle, where those who generate pollution and waste should bear the costs of containment, avoidance or abatement,
  - (b) the user of goods and services should pay prices based on the full life cycle of the costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,
  - (c) environmental goals, having been established, should be pursued in the most cost effective way.

### 4.2 Aboriginal Cultural Heritage

Everick Heritage Pty Ltd were engaged to complete an Aboriginal Cultural Heritage Assessment for the proposed development. Refer to the Annexures of this document. The report concludes:

- No previously recorded Aboriginal sites are located within the project Area.
- No Aboriginal objects, or areas that meet the threshold for being designated as Potential Archaeological Deposits (PADs) were identified within the Project Area.
- The Project Area is of low to moderate Aboriginal archaeological sensitivity when the proximity to resource areas (Wategos Beach) and culturally significant areas (Walgun – Cape Byron) is considered. However, the archaeological potential is low given the previous ground disturbance. The original land surface of the Project Area has been completely reworked/removed during previous construction activities including cutting and benching for terraces, garden beds, the driveway, the existing shed/garage and the existing dwelling. The entire Project Area meets the definition of disturbed land.
- This notwithstanding, isolated stone artefacts have been identified in disturbed contexts elsewhere in the Wategos Beach area, along Brownell Drive. Should any original ground surfaces remain within the Project Area, the potential for isolated stone artefacts in secondary contexts cannot be entirely discounted.

The report includes four recommendations including:

- Cultural monitoring of initial ground disturbing works;
- An unexpected finds procedure;
- Discovery of human remains.

The report acknowledges that additional archaeological investigations in the form of test excavation are not warranted for the Project Area.

#### 4.3 Biodiversity

The Environmental Impact Statement is supported by a Biodiversity Development Assessment Report prepared by AWC. This is provided as an Annexure to this document. The Biodiversity Development Assessment Report provides a thorough examination of the potential impacts of the development on biodiversity.

#### 4.4 State Environmental Planning Policy (Resilience & Hazards) 2021

The Biodiversity Development Assessment Report by AWC addresses the potential impacts of the development having regards to the coastal wetland mapped under State Environmental Planning Policy (Resilience & Hazards) 2021. Refer to the Annexures of this Statement.

#### 4.5 National Parks & Wildlife Service Estate

The nearest land that is administered by the National Parks and Wildlife Service is located on the opposite side of the Marine Parade road reserve to the north. The proposed development will have no direct impact on these lands. Indirect impacts (eg. stormwater drainage) are considered as part of this Environmental Impact Statement.

#### 4.6 Historic Heritage

The subject allotment was surveyed on 8 August 1962 as part of a four lot subdivision. The property is not identified within Byron Local Environmental Plan 2014 as containing any heritage items. Attending the property did not identify any historically significant buildings or land uses.

A review of Schedule 5 (Environmental Heritage) of Byron Local Environmental Plan 2014 identified 28 local heritage items within the Byron Bay locality. The nearest item to the subject site is the Cape Byron Lighthouse and associated buildings which are located over 100 metres to the south-east.

A search of Byron Shire Council's Records indicates that the subject property has approvals for residential development dating back to 1966.

Historic photographs of Wategos Beach, including that below from 1940, show no early development of the site.

In this context, correspondence with Heritage NSW enabled the subject Environmental Impact Statement to proceed without a Non-Aboriginal Heritage Assessment (a copy of this correspondence is attached). It is noted that each year a number of Development Applications are submitted for the Wategos Beach precinct and approved by Byron Shire Council without any requirement for a Non-Aboriginal Heritage Assessment.



Figure 6 – Photograph of Wategos Beach from 1940's (Source: Byron Bay Historical Society)

#### 4.7 Acid Sulfate Soils

The mapping below issued by Byron Shire Council indicates that the subject property is not located within an area of potential acid sulfate soils.

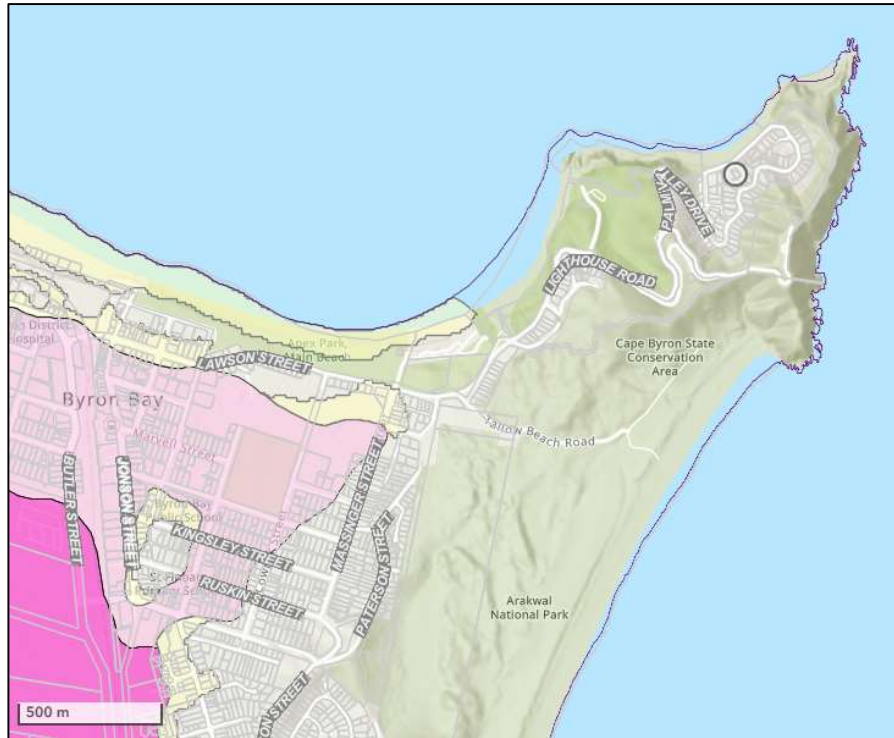


Figure 7 – Potential Acid Sulfate Soils Mapping (Byron Shire Council, 2024)

#### 4.8 Soils and Soil Erosion

The proposal will require minor excavation works to provide footings, water, sewer, electricity and telecommunication services for the proposed development. Excavations will generally be completed using hand tools and machinery. It is estimated that less than 30 cubic metres of soil will be disturbed as part of the development.

All works will be undertaken in accordance with the Sediment & Erosion Control Plan prepared by Greg Alderson & Associates (see Annexures of this report). The installation of sediment and erosion controls and the short term exposure of soils will ensure no significant impacts on the natural and constructed drainage lines adjacent to the development site.

#### 4.9 Flooding

Byron Shire Council's web mapping indicates that the subject property is not affected by flooding. Refer to the figure below.

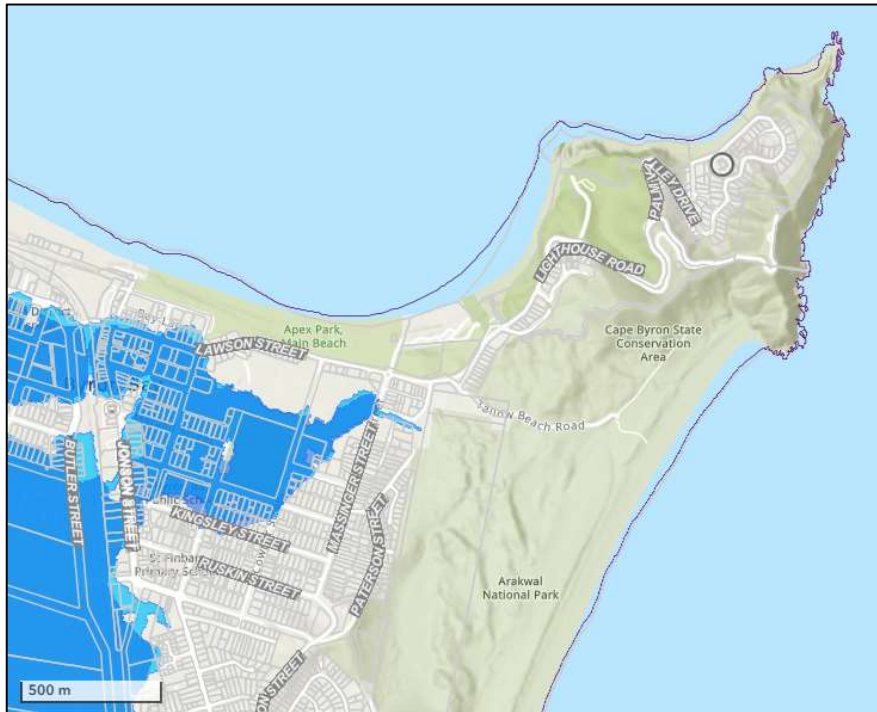


Figure 8 – 1 in 100 year flood mapping (Byron Shire Council, 2024)

#### 4.10 Stormwater

Stormwater disposal arrangements have been designed by Lucena Engineering. Details are provided as an Annexure to this Statement. The design will ensure that all stormwater from future residential development can be appropriately managed without adverse impacts on the adjacent wetland.

#### 4.11 Groundwater

The Annexures of this Statement provide a Report on Geotechnical Site Investigation prepared by OB Geotechnics. This report raises no issues with respect to groundwater impacts.

#### 4.12 Bush Fire

A Bush Fire Assessment is provided as an Annexure to this Environmental Impact Statement. The report confirms that the proposed development can be constructed in accordance with Planning for Bushfire Protection 2019. The proposed development will not result in an increased risk of bush fire attack on residential properties in the locality.

#### 4.13 Energy

The proposed dual occupancy dwelling is designed by a local architect with energy efficient elements suited to the Byron Bay climate. The development is also supported by a BASIX Certificate under State

Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. The small duration of the construction phase (approximately 8 months) will not place high demands on energy consumption.

#### 4.14 Air quality

Construction equipment required for the proposed subdivision will include small diesel powered excavators, generally within the 1.6 tonne range, under boring equipment and hand tools. A larger excavator will be used for bulk earthworks. Construction works associated with the proposed development is expected to be completed over an 8 month period.

The small quantity of earthworks to be undertaken (ie. less than 30 cubic metres of excavation) will require only approximately 30 hours of machine operation. These operations will result in negligible alterations to local air quality.

#### 4.15 Coastal Erosion

The mapping below from Byron Shire Council's online mapping portal confirms that the subject property is not within a predicted coastal erosion area.

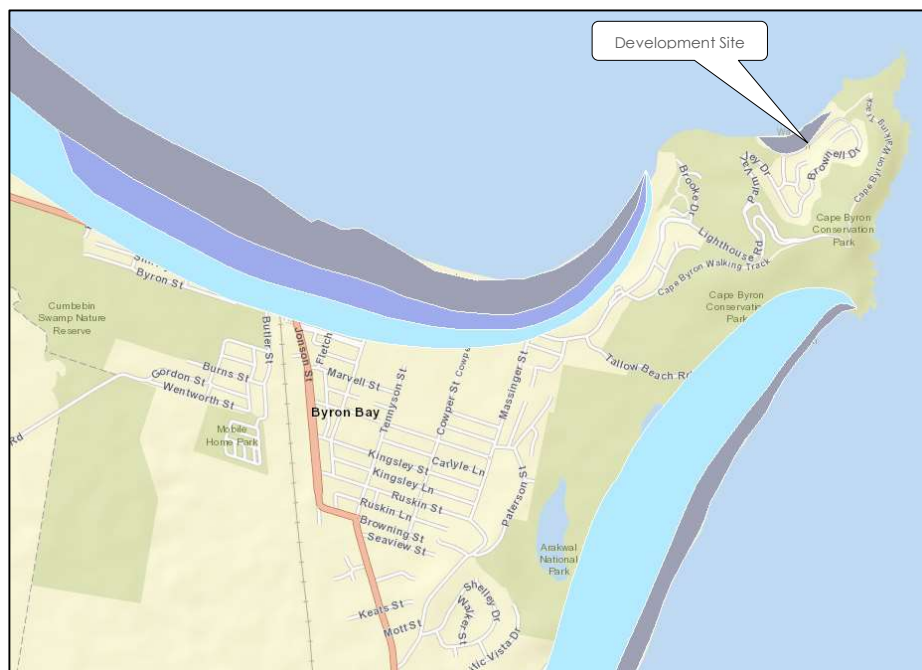


Figure 9 – Coastal Erosion Mapping (Byron Shire Council, 2021)

#### 4.16 Traffic

The development site is located near the centre of Marine Parade. Marine parade links with Brownell Drive to provide a loop road within the Wategos residential precinct. Refer to the Annexures of this Statement for vehicle access designs prepared by Greg Alderson and Associates. These show minor crossover works within the Marine Parade road reserve. In

addition, a Traffic Safety Statement prepared by Greg Alderson and Associates concludes:

*The proposed strata subdivision is estimated to result in 0.85 additional peak hour vehicle trips and 9 additional daily vehicle trips which will create a new total of 1.7 peak hour vehicle trips and 18 daily vehicle trips from the site. As the peak hour vehicle trips is less than 5, the site can be considered low impact.*

*Although the Marine Parade access way falls on a 10km/hr shared zone, a conservative practical maximum speed of 40km/hr has been assumed for this assessment. The sight distance from the proposed access driveway has been determined to be compliant with the required minimum SSD in all directions.*

The proposed development will create a short term increase in traffic movements during the approximate 6 month construction phase. Sufficient area is available within the driveway to park construction vehicles. Such will have insignificant impact on local traffic.

#### 4.17 Visual Impacts

The existing residential property is located on the southern side of Marine Parade. The topography rises from street level, which has an RL of 5.22m AHD, to the rear of the property, which has an RL of 20.65m AHD. The proposed development comprises an architecturally designed home that is set into the sloping site. The existing dwelling forms a backdrop to the new development. Vegetation within the Marine Parade road reserve will be retained to provide only filtered views from public spaces. The proposal is therefore unlikely to present any adverse visual impacts.

#### 4.18 Noise Impacts

The construction phase of the proposed development will require machinery and tradespersons to attend the site over an approximate 6 month period. Such will include small diesel powered excavators, generally within the 1.6 tonne range, hand tools and vehicle movements. Noise impacts associated with construction operations are proposed to be minimised by limiting construction hours. The limited duration of the construction will provide limited cause for external noise complaints, nor will it trigger a need for a detailed noise assessment. The future use of the site for residential purposes is consistent with the objectives of the zone and will not result in any offensive noise impacts.

#### 4.19 Social Impacts

As part of the preparation of the Environmental Impact Statement, letters were delivered to residential properties surrounding the development seeking their comments with regards to the proposal. Although no responses were received during this consultation process, it is understood that the Environmental Impact Statement will be formally exhibited by Byron Shire Council as part of the assessment of the Development Application.



The 803.2 square metre allotment was created in 1962 as part of a four lot subdivision. The entire property is located within the R2 Low Density Residential Zone. Given the zoning, there is a reasonable expectation that residential development will occur throughout the allotment. Ten examples of dual occupancy development and two multi-dwelling housing developments are located within the Wategos Beach precinct.

The proposal does not create opportunities for excessive densities nor an overdevelopment of the site. The proposal will result in acceptable social impacts within the residential locality.

#### 4.20 Cumulative Impacts

The proposed development relates to an existing residential allotment that is within a residential precinct of Byron Bay. The lot is one of four lots that were registered as part of Deposited Plan 244699. Approximately 80 residential properties are located within the Wategos Beach locality. The proposed additional dwelling within Lot 4 DP 244699 is insignificant in the context of the site and will not result in adverse cumulative impacts.

#### 4.21 Consideration of Principles of Ecologically Sustainable Development

In assessing the environmental impacts of the proposed development, the Principles of Ecologically Sustainable Development as listed within Section 4.1 of this document have been considered. A summary of the assessment considerations is provided below.

##### *Precautionary Principle*

The Ecological Assessment accompanying this Environmental Impact Statement includes assessments of significance which indicate that the proposed development will not have significant impacts on threatened species, populations or their communities. The development will not have threats of serious or irreversible environmental damage.

##### *Inter-generational Equity*

The Development Application is supported by a Vegetation Management Plan and a Landscape Plan to ensure that the development does not compromise the health, diversity and productivity of the environment for the benefit of future generations.

##### *Conservation of Biological Diversity and Ecological Integrity*

The Development Application is supported by a Biodiversity Development Assessment Report, a Vegetation Management Plan and a Landscape Plan. The development will result in vegetation management works that enhance biological diversity and ecological integrity. Refer to the Annexures of this Statement.

*Improved valuation, pricing and incentive mechanisms*

The proposal aligns with the fourth principle of ecologically sustainable development in that it seeks to off-set environmental impacts associated with the proposed development through Vegetation Management works. Details of such works are provided within the Vegetation Management Plan for the site.

## 5.0 Statutory considerations

### 5.1 NSW Environmental Planning and Assessment Regulation 2021

The proposal does not raise any significant issues under the NSW Environmental Planning and Assessment Regulation 2021. A Construction Certificate will be obtained prior to the commencement of building works to confirm that the proposed construction meets the Building Code of Australia and relevant fire safety standards.

### 5.2 Section 100B of the Rural Fires Act 1997

The property is located within an area that is subject to bush fire hazards. The proposed subdivision is considered to be a Special Fire Protection Purpose and requires a Bush Fire Safety Authority under Section 100B of the Rural Fires Act 1997. A Bush Fire Assessment Report prepared by Land & Fire Assessments is provided as an Annexure to this Statement. It concludes that bush fire measures can be applied to achieve a satisfactory development having regards to Planning for Bush Fire Protection 2019.

### 5.3 Marine Estate Management Act 2014

The private allotment is located approximately 30 metres from Wategos Beach, where the mean high water mark provides a boundary to the Cape Byron Marine Park. Despite its proximity, the proposed development does not trigger any assessment requirements under the Marine Estate Management Act 2014.

### 5.4 Section 1.7 of the Environmental Planning & Assessment Act 1979

Section 1.7 of the Environmental Planning & Assessment Act 1979 provides that 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. The provisions of these latter acts relate to the conservation of threatened species.

Section 1.6 of the Biodiversity Conservation Act 2016 includes the following relevant definitions:

*ecological community means an assemblage of species occupying a particular area.*

*threatened species means a critically endangered species, an endangered species or a vulnerable species listed in Schedule 1.*

Refer to the Annexures of this Environmental Impact Statement which include a Biodiversity Development Assessment Report prepared by AWC. This document appropriately addresses this legislation.



Figure 10 – Historical Aerial Photograph from 1965 showing the development site clear of significant vegetation (NSW Spatial Services)

## 5.5 Matters for Consideration under Section 4.15 of the Environmental Planning & Assessment Act 1979

### 4.3.1 Section 4.15(1)(a)(i) The Provisions of any Environmental Planning Instrument

#### State Environmental Planning Policy (Biodiversity & Conservation) 2021

State Environmental Planning Policy (Biodiversity & Conservation) 2021 is considered as part of the report prepared by AWC. Refer to the Annexures of this Report.

#### State Environmental Planning Policy (Transport & Infrastructure) 2021

Clause 2.122 of State Environmental Planning Policy (Transport & Infrastructure) 2021 refers to Schedule 3 which lists traffic generating development that requires specific consideration as part of a Development Application. The proposed dual occupancy development is not of a size or capacity that triggers these assessment requirements.

State Environmental Planning Policy (Resilience & Hazards) 2021 –  
Chapter 4 – Remediation of Land

Chapter 4 of State Environmental Planning Policy (Resilience & Hazards) 2021 provides requirements to consider site contamination when assessing a Development Application. The subject allotment was registered as part of Deposited Plan 244699 which was surveyed on 8 August 1962. The site contains an established dwelling house. Council records indicate that the site has had continuous residential usage for over five decades. The proposed development comprises a new dwelling within the north of the lot. An inspection of the property on 30 July 2024 did not identify any land contaminating issues. The nature of the development and the context of the site are such that further assessment under State Environmental Planning Policy (Resilience & Hazards) 2021 is not warranted for this proposal.

State Environmental Planning Policy (Resilience & Hazards) 2021 –  
Chapter 2 – Coastal Management

Chapter 2 of State Environmental Planning Policy (Resilience & Hazards) 2021 provides matters for consideration with respect to Development Applications in the coastal zone.

A small area of the allotment (adjacent to the northern and eastern property boundaries), the Marine Parade road reserve and the adjoining Crown Land includes land that is mapped as comprising "littoral rainforest" under this policy. Refer to the Figure below.

Clause 2.7 of the State Environmental Planning Policy (Resilience & Hazards) 2021 includes the following:

- (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.

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.



Figure 11 – Littoral rainforest mapping (SEPP Resilience & Hazards 2021)

As the proposed development includes works, creation of an Asset Protection Zone and strata subdivision of the site within the mapped littoral rainforest area, the proposal is declared to be 'designated development' under this State Environmental Planning Policy. Accordingly, the Development Application is submitted with this Environmental Impact Statement.

The development site is identified as being within a "proximity area for littoral rainforests", under State Environmental Planning Policy (Resilience and Hazards) 2021, Chapter 2. Clause 2.8 is as follows:

*Clause 2.8 - Development on land in proximity to coastal wetlands or littoral rainforest*

*(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) 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.*

The property is also mapped within a Coastal Environment Area and a Coastal Use Area under this policy.

The following comments are made with respect to Chapter 2 Part 2.2 Divisions 2 and 3 of State Environmental Planning Policy (Resilience and Hazards) 2021, which relates to Coastal Environment Areas:

Division 3 – Coastal Environment Area Considerations	Likelihood of proposal having an adverse impact on corresponding consideration
13 Development on land within the coastal environment area (1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—	Low



(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,	
(b) coastal environmental values and natural coastal processes,	Low
(c) the water quality of the marine estate (within the meaning of the <a href="#">Marine Estate Management Act 2014</a> ), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,	Low
(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,	Low
(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,	Nil
(f) Aboriginal cultural heritage, practices and places,	Low
(g) the use of the surf zone.	Nil
Division 3 – Consent Authority Considerations	
(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that— (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or	Complies
(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or	N/A
(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.	N/A
(3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of <a href="#">Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</a> .	Noted
Division 4 – Coastal Use Area	
	Likelihood of proposal having an adverse Impact on



	corresponding consideration
<p>14 Development on land within the coastal use area</p> <p>(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—</p> <p>(a) has considered whether the proposed development is likely to cause an adverse impact on the following—</p> <p>(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,</p>	Nil
(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,	Nil
(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,	Low
(iv) Aboriginal cultural heritage, practices and places,	Low
(v) cultural and built environment heritage, and	Nil
Division 4 – Consent Authority Considerations	
<p>(b) 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>	Complies
(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.	Complies
(2) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of <a href="#"><i>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</i></a> .	Noted

Byron Local Environmental Plan (LEP) 2014

*LEP 2014 Land Use Table – Zone R2 Low Density Residential Zone*

The site of the proposed dual occupancy (detached) dwelling and associated works are located within the R2 Low Density Residential Zone under Byron Local Environmental Plan 2014. Dual occupancies are listed as a land use that is permitted with the consent of Council in the zone. Subdivision is permitted under Clause 2.6 of Byron Local Environmental Plan 2014. The Objectives of the zone are as follows:

- 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

The proposal includes a new dwelling directly to the north of the established home within the site. This dwelling comprises a double storey building that will maintain the low density residential environment. The proposed strata subdivision is consistent with other dual occupancy subdivisions within the precinct. The proposed development is consistent with the objectives of the R2 Low Density Residential Zone.

*LEP 2014 Clause 2.6 – Subdivision*

Clause 2.6 requires development consent to be sought for subdivision. Accordingly, the Development Application seeks consent for two strata title lots and common property.

*LEP 2014 Clause 4.1 – Minimum Subdivision Lot Size*

The minimum subdivision lot size map under Byron Local Environmental Plan 2014 prescribes a minimum lot size of 600 square metres for Torrens Title subdivision within this property. However, no minimum is prescribed for strata title subdivision.

*LEP 2014 Clause 4.4 – Floor Space Ratio*

Clause 4.4 provides that the maximum floor space ratio for residential development within the subject site is 0.4:1. The proposed development meets this control as detailed in the table below:

Site Area	796.70 sqm
Existing Dwelling GFA	85.46 sqm
Proposed Dwelling GFA	173.90 sqm
Total GFA	259.36 sqm
Proposed FSR	0.33:1

*Clause 5.21 – Flood Planning*

The subject site is not constrained by flooding in a 1 in 100 year event. Clause 5.21 does not apply to this proposal.

*LEP 2014 Clause 6.2 – Earthworks*

The provisions of this clause are summarised within the table below:

Requirement	Comment
The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.	The objective of this clause is addressed through compliance with the provisions discussed in this table below.
Development consent is required for earthworks unless the earthworks are exempt development under this Plan or another applicable environmental planning instrument.	Development consent is requested for the proposed earthworks.
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,	The site falls towards the Marine Parade street frontage. The proposed development will continue this drainage pattern, but in a controlled manner in accordance with an approved stormwater management plan. The stability of soils will be maintained through high level engineering and well managed construction works. The development will not result in a detrimental impact on drainage and soil stability in the locality.
(b) the effect of the development on the likely future use or redevelopment of the land,	The proposed earthworks specifically support the redevelopment of the land for ongoing residential use.
(c) the quality of the fill or the soil to be excavated, or both,	The proposed development will not require external fill to be brought to the site (other than landscaping soils and gravel). The material to be excavated is clean earth that is typical of the Wategos locality. Soils will be reused within the site or disposed of to an approved location.
(d) the effect of the development on the existing and likely amenity of adjoining properties,	All excavations are to be treated with extensive sediment controls that will maintain the amenity of adjoining properties, Marine Parade and Wategos Beach.
(e) the source of any fill material and the destination of any excavated material,	No fill is to be brought into the site (other than landscape soils and gravel). Excavated material is to be reused on site where possible. All material remove from the site will be disposed of to an approved location.
(f) the likelihood of disturbing relics,	A search carried out within the Aboriginal Heritage Information Management System found that the

	property does not contain any Aboriginal items or places. The subject allotment was created as part of a residential subdivision. Refer to the attached Aboriginal Heritage Assessment prepared by Everick.
(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,	The residential allotment is removed from any drinking water catchment. It is acknowledged that the Cape Byron Marine Park extends to the high water mark on Wategos Beach. All excavations are to be treated with extensive sediment controls that will maintain the quality of runoff towards this sensitive environmental feature.
(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.	The proposal will incorporate extensive erosion and sedimentation controls to minimise and mitigate impacts from the proposed earthworks.

*LEP 2014 Clause 6.6 – Essential services*

The subject allotment has access to required services as discussed in the table below:

Required arrangements	Comment
The supply of water	A separate application will be made under Section 68 of the Local Government Act 1993 to provide a second water metre to the site to service the new dwelling. All reticulated water is supplied by Byron Shire Council.
The supply of electricity	Electricity services are currently available to the existing dwelling and to the garage within the north of the property. The proposed dwelling will connect to the existing supply with a second meter.
The disposal and management of sewage	The proposed dwelling will connect to existing sewer infrastructure which services the established dwelling. All internal sewer drainage connects to Byron Shire Council's sewer network.
Stormwater drainage or on-site conservation	An Engineering Design provided within the Annexures of this Statement indicates that stormwater from the new residential dwelling will be disposed to Marine Parade.
Suitable vehicular access	Vehicle access for the new dwelling shall be provided from Marine Parade in accordance with the civil engineering plans within the Annexures of this Statement. Adequate area is available within the site to park vehicles associated with the proposed development. No changes are proposed to the vehicle access and parking arrangements for the established dwelling.

### 5.3.2 Section 4.15(1)(a)(ii) The Provisions of any Draft Environmental Planning Instrument

No draft Environmental Planning Instruments have relevant implications for the proposed development.

### 5.3.3 Section 4.15(1)(a)(iii) The Provisions of any Development Control Plans

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

##### *DCP 2014 Chapter B1 – Biodiversity*

This chapter applies to development on, or adjacent to, any land with natural features including littoral rainforest. The Objectives of the chapter are to:

1. Identify, retain and restore native vegetation and habitats for native species in patches of a size and configuration that will enable existing plant and animal communities to survive in the long term and support climate adaptation.
2. Identify and retain high carbon storage ecosystems (e.g. blue carbon systems such as salt marsh, mangroves and sea grasses), wildlife corridors and refugia.
3. Provide development controls that prevent the degradation or loss of ecological values and or biodiversity.
4. Provide guidance on the information required to enable informed decision-making.
5. Ensure that construction and operational impacts of development are avoided and or mitigated using current best practice standards.
6. Provide guidance on acceptable measures to avoid or minimise the impact of proposed development on biodiversity including proposals affected by Part 7 of the Biodiversity Conservation Act 2016 and the Koala Habitat Protection SEPP 2019.
7. Compensate for unavoidable habitat losses in accordance with applicable legislation, or in the absence of such legislation, contemporary best practice.

The attached Biodiversity Development Assessment Report prepared by AWC confirms the assessment pathway for the proposed development and addresses the applicable development controls.

Refer to the attached Architectural Plans which confirm the trees that are to be removed from the site. The property was inspected by Peter Gray Arborist. Particular attention was given to the two Pandanus Palms that are located within the front of the property. The Arborist commented as follows:

*I can inform you that tree # 41 is mature aged and in good condition. It has some issues with a couple of dead heads but overall looks like it should last for the medium term (10-15 years). Tree # 45 is of similar age. It is in poor condition with a number of dead heads and with ongoing health issues. It is unlikely to survive more than the short term (up to 5 years).*

Refer to the Annexures of this document for a Biodiversity Development Assessment Report prepared by AWC for details in relation to vegetation impacts.

*DCP 2014 Chapter B3 – Services*

*DCP 2014 Chapter B3.2.1 – Provision of Services*

Refer to comments under Clause 6.6 of Byron Local Environmental Plan 2014.

*DCP 2014 Chapter B3.2.3 – Stormwater Management*

An Engineering Design provided within the Annexures of this Statement indicates that stormwater from the proposed dwelling and access driveway can be directed to the Marine Parade road reserve in a controlled manner.

*DCP 2014 Chapter B4.2.5 – Car Parking Requirements*

Chapter B4.2.5 refers to Table B4.1 for car parking provision for residential development. A double vehicle garage is provided for the proposed dwelling. Vehicle manoeuvring plans prepared by Greg Alderson and Associates confirm that vehicles can enter and exit the site in a forward direction to/from Marine Parade. Refer to the Annexures of this Statement.

Vehicle parking arrangements for the existing dwelling will remain unchanged. A formed driveway from the rear lane provides access to a parking space on the southern side of the dwelling. The approved plans under Building Application No. 6.1971.2100.1 show a carport structure covering the nominated parking space. Per Table B4.1 of Byron DCP 2014, this single space is sufficient for the established 1 x bedroom dwelling.

It is noted that the approved plans under Building Application No. 6.1971.2100.1 also show a single vehicle garage within the north of the property. However, the Survey Plans accompanying this Statement confirm that vehicles are unable to access this garage without passing through the adjacent Crown Land. Correspondence with NSW Crown Lands confirmed that these encroachments are unauthorised and must be removed.

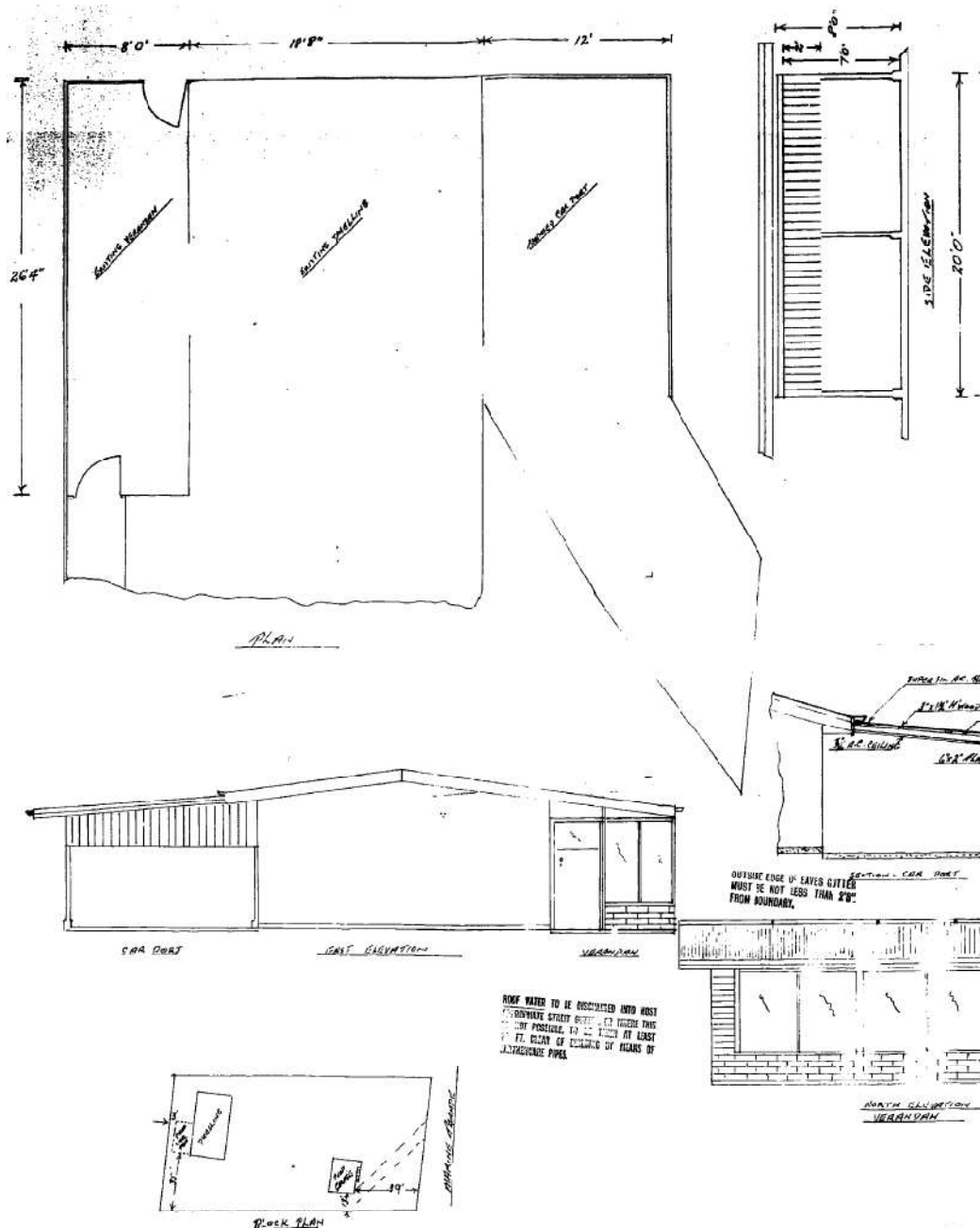


Figure 12 – Extract of approved plan from Building Application No. 5.1971.2100.1 showing carport on the southern side of the existing dwelling with access from the rear lane (no changes are proposed to the access and parking arrangements for this dwelling)

*DCP 2014 Chapter B14.2 – Excavation and Fill in All Zones*

The Prescriptive Measures of Chapter D14.2 provide that excavation and filling must be limited to a depth of 1.0 metre, with exemptions allowable for garages and swimming pools. The design includes excavations of greater than 1.0 metre to accommodate the proposed vehicle parking spaces and a storeroom within the lower level, plus bedroom spaces within the upper level.

A variation to the Prescriptive Measures is requested for the following reasons:

- Part 3 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 allows excavations of up to 3.0 metres in depth as part of the Housing Code. This state wide legislation indicates that Byron Shire Council's Development Control Plan is unnecessarily restrictive.
- The proposed basement parking requires access from a driveway with a compliant gradient under AS2890. This gradient has directly influenced the proposed extent of earthworks within the development site.
- The proposed earthworks will be stabilised by retaining structures and backfilled to reduce visual impacts.
- The proposed development includes landscaping to reduce potential visual impacts from earthworks. A landscaping plan is provided within the Architectural plans.
- The proposed earthworks will create a basement arrangement that is very similar to nearby dwellings located at No. 21 Marine Parade, 27 Marine Parade & 29 Marine Parade. Byron Shire Council recently granted approval to Development Application No. 10.2024.63.1 at 19 Marine Parade with earthworks in excess of 6.8 metres. In addition, multiple examples are available within Byron Shire Council's DA Tracker of basements being approved as part of residential developments with similar scale earthworks. Refer to the images on the following page of this document for examples, including 41 Cowper Street, Byron Bay, 7-9 Brownell Drive, Byron Bay, 21 Marine Parade, 27 Marine Parade, Byron Bay and 19 Brownell Drive, Byron Bay. The images below and those provided within the Annexures of this Town Planning Report show that the proposed development will be consistent with the character of established development within the locality.
- The sloping site requires excavations to create level building areas. It is unavoidable for deep earthworks to be required. These works cover a small footprint and will be indiscernible once the development is completed.





Figure 13 – Established dwelling with basement at 26 Brownell Drive which is to the south-west of the development site with frontage to Pandanus Place



Figure 14 – Basement approved within DA 10.2019.528.1 at 19 Brownell Drive, Byron Bay

[illegible]

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Figure 17 – Established dwelling with basement at 21 Marine Parade which adjoins the development site to the east

*DCP 2014 Chapter D1.2 – General Provisions for Residential Accommodation*

*DCP 2014 Chapter D1.2.1 – Building Height Plane*

The proposed development has been designed in consideration of the requirements of the building height plane (BHP), despite exceedances of the control at the western property boundary

A variation to the prescriptive measures of Chapter D1.2.1 is requested given compliance with the Objectives and Performance Criteria as discussed below.

Objectives	Comment
(a) 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.	The Architectural Plans include shadow diagrams which detail overshadowing from the proposed development within the site. Refer to further discussion below.
(b) To ensure that the occupants of the building or buildings will enjoy the optimum use of winter sunlight and summer shade.	The proposed development has been carefully designed with partly covered north facing private open space areas that allow solar access in winter and shade in summer.

(c) To establish spatial separation of residential dwellings and domestic outbuildings from the street, and between allotments, to provide a varied and interesting streetscape,	The Site Plan and Northern Elevation of the proposed development provided within the Architectural plans confirms suitable spatial separation from the street and to adjoining allotments. The proposed development will positively contribute to a varied and interesting streetscape.
(d) optimise microclimate, and mitigate excessive bulk in built-form.	The attached Architectural plans and photographs of established properties within the Wategos Beach locality confirm that the proposed development is smaller in scale compared to other approved residential development, including the adjoining property to the west. The Development Application does not proposal excessive bulk in built form.
(e) 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.	As above. The photographs provided within the Annexures of this Town Planning Report show multiple examples of existing dwellings that have similar scale and boundary setbacks to that proposed. The proposed dual occupancy development is aligned with the streetscape character of the locality.
(f) 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).	<p>The development site is constrained by steep slopes with levels of RL20.65m at the southern boundary falling to RL6.28m at the northern boundary.</p> <p>It is inevitable that encroachments occur into the building height plane in sloping sites. Byron Shire Council regularly endorses variations to this control in the Wategos locality.</p> <p>The main encroachment within the development site occurs along the centre of the western boundary. The neighbouring property to the</p>

	east contains a multi level dwelling that sits significantly higher than the proposed dwelling.
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Performance Criteria	Comment
1. Developments must be set back progressively from the site boundaries as height increases so that they do not adversely affect existing or future development on adjoining properties by way of overshadowing, impinging on privacy or obstructing views.	<p>The development site is constrained by bush fire hazards which require a 5 metre setback to the eastern property boundary. This requirement pushes the proposed dwelling to the west. It is not practical to setback the upper level further from the western property boundary than the lower level as this would compromise bush fire asset protection zones. Instead, the lower level is set into the sloping site. Both levels are setback more than the standard 1.5m minimum specified for dual occupancy development.</p> <p>The design includes appropriate privacy screening to the adjacent property to the west. All deck and living areas are orientated to the north.</p> <p>The attached Architectural plans include shadow diagrams demonstrating minimal impacts on the adjacent residential property.</p>
2. Developments must be set back progressively from the site boundaries as height increases so that they: a) do not adversely affect existing or future development on adjoining properties by way of overshadowing, impinging on privacy or obstructing views.	<p>The adjoining property to the west enjoys ocean views to the north over Marine Parade. The proposed encroachments into the building height plane do not compromise these views.</p> <p>The design of the development provides for a north facing balcony area that maximise ocean views rather than overlooking neighbouring residences.</p>

	<p>Shadow diagrams are provided within the attached Architectural plans showing limited impacts on neighbouring properties.</p> <p>The bush fire constraints require a 5 metre asset protection zone to the east that prevents a progressively setback design for the upper level. However, the lower level is set into the sloping site and achieves compliance with Council's minimum 1.5 metre setback for dual occupancy development.</p>
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.	<p>The Site Plan and Northern Elevation Plan provided with the Architectural set confirm suitable spatial separation from the street and to adjoining allotments. The proposed development will positively contribute to a varied and interesting streetscape.</p>
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.	<p>The proposed development will integrate with surrounding developments and complement the streetscape character. The north facing terrace area offer a high level of amenity and a sense of openness.</p>
3. 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>Shadow diagrams are provided within the attached Architectural plans showing limited impacts on neighbouring properties.</p>

The Prescriptive Measures of Chapter D1.2.1 provide that variations to the building height plane may be considered in relation to one or more boundaries 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.

It is clear from attending the site that, like most properties in the Wategos Beach locality, steep slopes are a constraint for residential development. In addition, this site is constrained by a bush fire asset protection zone of 5 metres in width adjacent to the eastern property boundary. The Architectural design has responded to these constraints by excavating the lower level into the slope. Building height plane encroachments are exacerbated by the slope of the land from south to north.

The development has been carefully designed to orientate the terrace area to the north, overlooking the Pacific Ocean rather than neighbouring properties. The bedroom and living areas do not face towards the side boundaries of the allotment.

Shadow diagrams are provided within the attached Architectural plans showing limited impacts on neighbouring properties. The adjoining neighbour enjoys ocean views to the north and does not rely on views across the subject property. It is requested that Byron Shire Council grant approval to the Development Application with a variation to the building height plane given the slope and bush fire constraints. It is noted that similar variations have been granted on other development sites within the Wategos Beach precinct.

#### *DCP 2014 Chapter D1.2.2 – Setbacks from Boundaries*

Chapter D1.2.2 includes the following setback requirements for development that has frontage to a rear lane:

Rear Lane or unformed roads - 3 metres, unless it is the primary frontage to the development (eg. Shirley Lane, Byron Bay) in which case a setback of 4.5 metres applies including to garages and carports.

Chapter D1.2.2 also includes the following setback requirements for local roads and garages/carports:

Local Roads - A minimum setback of 4.5 metres must be maintained from the primary front boundary.

Garages and carports are to be set back 5.5m from the front boundary except from classified roads where the setbacks under (b) are to apply.

Chapter E5.10 of DCP 2014 also includes the following provisions for the Wategos Beach residential area:

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.

Considering the above controls, the proposed dual occupancy dwelling meets the prescriptive requirements for the Marine Parade frontage. The DCP 4.5 metre building setback and 5.5 metre garage setback are achieved. The proposal also complies with the minimum 1.5 metre setback on the side boundaries.

No changes are proposed to the setbacks of the existing dwelling which is accessed from the rear lane.

## Chapter C2 – Areas Affected by Flood

The development site is not within an area to which flooding controls apply.

### DCP 2014 Chapter D6 – Subdivision

#### DCP 2014 Chapter D6.2.1 – Subdivision Design Guidelines

Objectives	Comment
1. Site Design	Chapter D6.2.1 provides that a Site and Context Analysis Plan is not required for a strata subdivision proposal.
2. Climate Control and Aspect	The topography of the site allows for good solar access to each of the proposed lots. The sloping site and the configuration of buildings within the property ensures that they will not significantly overshadow one another and will have access to summer breezes.
3. Hazards	Each lot is affected by bush fire constraints. However, the positioning of the proposed dwelling provides spatial separation to maintain an asset protection zone.
4. Vegetation Removal	The impact of the proposed development on local vegetation has been considered as part of the Biodiversity Assessment attached to this document.
5. Riparian Buffers and Land Fronting Watercourses	The site is located over 40 metres from the nearest mapped stream.
6. Landscaping	The proposed infill subdivision does not create any additional roadways to require new street plantings.
7. Roads	No additional roads are proposed.
8. Street Lighting	The proposed infill subdivision does not create any additional roadways to require new lighting.
9. Public Open Space and Public Reserves	Byron Section 7.11 Developer Contributions Plan will levy funds for public open space provision.
10. Stormwater Management	An Engineering Design provided within the Annexures of this Statement indicates that stormwater from the proposed dwelling and access driveway can be directed to Marine Parade in a controlled manner.
11. Utility Services	All required utility services are proposed to be provided as part of the subdivision. Common trenching will be used where possible.



12. Provision of Potable Water Supply	The proposed allotments are to be connected to the reticulated water supply network.
13. Sewer	Sewer connection is to be provided to each of the proposed allotments.
14. Strata Title, Community Title and Stratum Subdivision	The proposal comprises Strata Title subdivision of a proposed dual occupancy (detached) development.

*DCP 2014 Chapter D6.4 – Urban Residential Subdivision*

*DCP 2014 Chapter D6.4.1 – Lot Size and Shape*

Objectives	Comment
1. To provide lots of sufficient size to satisfy the needs of future residents, and which will accommodate well designed and innovative development	The proposed allotments have sufficient area to accommodate the existing dwelling and a well designed dual occupancy dwelling.
2. To encourage diversity in lot size and opportunities for a variety of housing choice	The proposed configuration increases the variety for housing design within the Byron Bay locality.
3. To ensure that lot design takes into account the natural features of the site and locality.	The proposed allotments have been designed having regards to the slope and physical limitations of the land.

Performance Criteria	Comment
1. Lots must be of sufficient area to allow for the siting of a dwelling and ancillary buildings, including provisions for private open space, solar access, vehicle access and parking. Lots must provide sufficient effluent disposal areas where required.	The two proposed allotments have areas of 401.6m <sup>2</sup> which are sufficient to site dwellings, ancillary buildings, private open space and parking areas.
2. Lot sizes must enable dwellings and driveways to be sited to protect natural or cultural features, and must respond to site constraints including topography, bushland, soil erosion, drainage, and bushfire risk.	The land is prone to bush fire constraints but these can be managed through construction standards and asset protection zones. Soil erosion is to be managed in accordance with the attached Erosion and Sediment Control Plan prepared by Greg Alderson and Associates. Drainage arrangements have been carefully engineered to protect the adjacent Marine Park. The proposal will enhance natural features of the area through plantings within the adjacent Crown Land.
3. To provide useable areas, lot sizes may need to be increased where sites are steep or contain significant constraints or landscape features including watercourses and easements.	Although the site contains littoral rainforest mapping, usable areas are available within each of the proposed lots.
4. Lot design must enable the construction of a built form that is	The adjacent residential areas to the south, west and east contain a mix of

sympathetic to the established character of the area.	single and double storey dwellings, as well as dual occupancy and multi-dwelling development. The proposed development will provide for future housing that complements this established character.
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Prescriptive Measures	Comment												
1. Lot sizes must not be less than the minimum area specified in Byron LEP 2014 on the lot size map.	These controls do not apply to strata subdivisions.												
2. For lots that are not typical rectangular shaped lots, Table D6.1 indicates Council's preferred minimum lot sizes in urban subdivisions:  <b>Table D6.1 – Preferred Minimum Lots Sizes – Urban Subdivision</b> <table border="1"> <thead> <tr> <th>Type of lot</th><th>Minimum lot area</th></tr> </thead> <tbody> <tr> <td>General lot</td><td>See <a href="#">lot size map (BLEP2014)</a></td></tr> <tr> <td>Corner lot</td><td>650 m<sup>2</sup></td></tr> <tr> <td>Hatchet-shaped lot (excluding access handle)</td><td>800 m<sup>2</sup></td></tr> <tr> <td>Hatchet-shaped lot adjacent to public reserve (excluding access handle)</td><td>650 m<sup>2</sup></td></tr> <tr> <td>Fan-shaped lot (minimum frontage 7m)</td><td>650 m<sup>2</sup></td></tr> </tbody> </table>	Type of lot	Minimum lot area	General lot	See <a href="#">lot size map (BLEP2014)</a>	Corner lot	650 m <sup>2</sup>	Hatchet-shaped lot (excluding access handle)	800 m <sup>2</sup>	Hatchet-shaped lot adjacent to public reserve (excluding access handle)	650 m <sup>2</sup>	Fan-shaped lot (minimum frontage 7m)	650 m <sup>2</sup>	These controls do not apply to strata subdivisions.
Type of lot	Minimum lot area												
General lot	See <a href="#">lot size map (BLEP2014)</a>												
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Hatchet-shaped lot (excluding access handle)	800 m <sup>2</sup>												
Hatchet-shaped lot adjacent to public reserve (excluding access handle)	650 m <sup>2</sup>												
Fan-shaped lot (minimum frontage 7m)	650 m <sup>2</sup>												
3. Proposed lots containing existing dwellings must not result in that lot having a floor space ratio lower than that specified on the floor space ratio map.	The maximum floor space ratio is not exceeded as part of the subdivision development.												
4. Lots must provide an appropriate shape and area to accommodate an unconstrained building envelope with minimum dimensions of 12 metres by 15 metres.	Each lot has adequate area to accommodate a 12m x 15m building envelope.												
5. Hatchet-shaped lots must have a minimum frontage of 6 metres (i.e. 3 metre driveway and provision for services, landscaping etc). This may translate as 3 metres frontage each if reciprocal rights of carriageway provide shared access to 2 or more adjoining lots. Consideration will be given to a further reduction in lot width for four or more lots where the pavement widths comply with the Northern Rivers Development and Design Manual.	No hatchet shaped lots are proposed.												
6. The access handle of hatchet-shaped lots must be landscaped in accordance with the requirements of Chapter B9 Landscaping. A landscaping plan must be submitted with the development application for subdivision. Such details could incorporate, for example a meandering driveway with landscaping elements, passing bays, different pavement treatments and kerb blisters incorporating landscaping beds.	No hatchet shaped lots are proposed.												

#### DCP 2014 Chapter D6.4.2 – Access Design

Objective	Comment
1. To ensure provision of safe and effective access to properties.	The proposed dwelling will be provided with safe and effective access.

Performance Criteria	Comment
1. Driveways and access must form an integral part of the overall design of the subdivision.	The existing dwelling will retain its approved access from the rear lane. The proposed dwelling is provided with

	improved access from Marine Parade. These arrangements are as key component of the subdivision design.
2. Driveway and access design is to provide a safe and efficient entrance/exit to individual lots.	The proposed dwelling will be provided with safe and effective access. No changes are proposed to the access arrangements for the existing dwelling.

Prescriptive Measures	Comment
1. Applications must demonstrate that vehicle access can be provided to each lot created by the subdivision in accordance with Chapter B3 Services. In certain circumstances, due to topography and other constraints, the driveway will need to be designed and constructed at the subdivision stage.	Refer to the Annexures of this Environmental Impact Statement for an Engineering design to upgrade the access arrangements to Marine Parade to meet Byron Shire Council's requirements.
2. Additional standards may apply in bushfire prone areas as per the requirements of the NSW Rural Fire Service.	The site is within a bush fire prone area. Concurrent approval is requested under Section 100B of the Rural Fires Act 1997. Refer to Bush Fire Assessment included as an Annexure to this Town Planning Report.

#### DCP 2014 Chapter B4.2.3 – Vehicle Access and Manoeuvring Areas

Objectives	Comment
1. Driveways and manoeuvring areas are to be designed and constructed in accordance with the requirements of the current editions of Australian Standard 2890 and the Northern Rivers Local Government Development & Design Manual.	Refer to the Annexures of this Environmental Impact Statement for an Engineering design to upgrade the access arrangements to Marine Parade to meet Byron Shire Council's requirements.
2. All parking and service areas shall be provided with sufficient manoeuvring areas to allow vehicles to enter and leave the site in a forward direction. Dwelling houses and dual occupancy developments are exempt from this requirement except when located on roads with high traffic volumes or with short sight distances, or on roads with other traffic safety issues.	Refer to comments under Item 1 above.
3. Designs for manoeuvring areas are to be in accordance with the current editions of Australian Standard 2890 and must include a swept path analysis for the relevant design vehicle.	Refer to comments under Item 1 above.
4. Driveways, manoeuvring areas and parking areas, including loading & unloading areas, should be sealed with an all weather surface, such as asphalt, bitumen seal, concrete, pavers or other similar treatment. Porous paving should be provided,	The proposed internal driveway will be paved with concrete to meet this requirement.

where soils are capable of high infiltration rates, for parking spaces (other than those for people with disabilities) and domestic driveways. Gravel surfaces are generally not acceptable in urban locations and some rural situations (issues such as noise, dust, and erosion need to be considered).	
<p>6. Internal driveways for more than three dwellings should have a minimum driveway width of 5.5 metres to facilitate two way access. The driveway width may be reduced to a minimum width of 3.5m where there are no potential internal driveway conflicts or traffic safety issues having regard to the following:</p> <ul style="list-style-type: none"> <li>a) a minimum driveway width of 5.5m is provided for at least the first 6 m from the property boundary;</li> <li>b) adequate passing opportunities are provided;</li> <li>c) good sight distance is available;</li> <li>d) slope of driveway is not excessive;</li> <li>e) frontage roadway has less than 3000 vehicle trips per day;</li> <li>f) traffic and pedestrian volumes on the driveway.</li> </ul>	The proposed subdivision creates strata lots that are suitable for the existing and proposed dwelling.
7. Where driveways are to be negotiated by a waste collection vehicle, they must have a maximum gradient of 16% at any one point.	No future driveways will be required to be negotiated by a waste collection vehicle. All collection will be from the Marine Parade road reserve.

#### *DCP 2014 Chapter D1.2.3 – Screening the Underfloor Space of Buildings*

The proposed development is set into the sloping site and does not require any subfloor screening. The proposal meets the requirements of Chapter D1.2.3.

#### *DCP 2014 Chapter D1.2.4 – Character and Visual Impact*

Refer to comments under Chapter D1.5.2 below.

#### *DCP 2014 Chapter D1.2.5 – Fencing*

The proposal does not include any fencing that exceeds the prescriptive measures set out within Chapter D1.2.5.

#### *DCP 2014 Chapter D1.2.6 – Balconies*

The Architectural design locates a modest balcony area on the northern side of the development to maximise views. Given the slope of the property, the balcony will not be easily visible from Marine Parade. The development is satisfactory in terms of Chapter D1.2.6.

*DCP 2014 Chapter D1.2.7 – Pedestrian and Cycle Access*

Adequate area is available within the site to accommodate bicycle parking where required.

*DCP 2014 Chapter D1.5 – Dual Occupancy & Semi-Detached Dwellings*

*DCP 2014 Chapter D1.5.1 – On-site Car Parking*

The proposed development provides sufficient parking for the development. A double vehicle garage is provided within the site.

*DCP 2014 Chapter D1.5.2 – Character*

The objective of Chapter D1.5.2 is to ensure that the siting and design of dual occupancy development does not detract from the streetscape and the residential character of urban areas. The proposal comprises an infill development with a new dwelling proposed to the north of an established home.

Refer to the Annexures of this Town Planning Report for photographs of over 40 properties within the Wategos Beach residential precinct taken on 2 March 2024. These images show the mixed character of dwelling designs, but also show new buildings under construction that represent an emerging character. A review of the attached Architectural plans indicates that the proposed dwelling design is cognisant with the character of both the established and soon to be completed buildings.

The proposal incorporates a modern design with extensive north facing landscaped terrace areas. The design will contribute to streetscape character and local amenity.

*DCP 2014 Chapter D1.5.3 – Adjoining and Adjacent Development*

A review of the Wategos Beach locality found a number of dual occupancy developments near to the site. The closest, located 70 metres to the south-west, comprises a multi-level attached dual occupancy development at 9 Marine Parade. Additional examples are located at 3 Marine Parade, 34-36 Pandanus Place and 32 Brownell Drive/2 Pandanus Place. Development Consent No. 10.2020.312.1 was recently granted for a dual occupancy (detached) development at 40 Brownell Drive. Refer to mapping provided within the Annexures of this Town Planning Report which identifies surrounding dual occupancy and multi-dwelling developments.

The adjacent property to the west of the development site (21 Marine Parade) is improved by a multi level dwelling house containing three storeys, a swimming pool and a basement parking area. A double storey dwelling house is located within the adjoining property to the south (20 Brownell Drive). Multi level developments

containing swimming pools and basement garages are located on the opposite side of Pandanus Place to the south-west. Given the existing development directly surrounding the development site, the proposal will provide for a compatible form of development within the residential property.

*DCP 2014 Chapter D1.5.4 – Private Open Space*

Sufficient area has been provided as part of the development to provide 30 square metre private open space areas for each dwelling. The existing dwelling retains over 100 square metres of patio/balcony space on its northern and eastern sides.

A balcony and an outdoor room are proposed on the northern side of the proposed dwelling. These have a combined area of 46.8 square metres. Note that the outdoor living area has doors that open to the east to connect to the adjoining balcony and windows to the north to allow access to winter sunlight and summer breezes. This arrangement is deemed to satisfy the requirements of Chapter D1.5.4.

*DCP 2014 Chapter D1.5.5 – Landscaping*

The existing development meets Council's Development Control Plan requirements for the provision of 90 square metres of landscaping per dwelling. At least 25% of the site consists of deep soil areas.

*DCP 2014 Chapter D1.5.6 – Sound Proofing*

The dual occupancy development does not require any sound proofing as the two dwellings are detached.

*DCP 2014 Chapter E5.10 – Wategos Beach*

The Objectives, Performance Criteria and Prescriptive Measures of this chapter are discussed in the tables below:

Objectives	
1. To ensure that the siting and design of dwellings do not detract from the streetscape and the residential character of the area.	Refer to the photographs provided within the Annexures of this Town Planning Report which show the streetscape of Marine Parade and the mixed character of dwelling within the Wategos Beach locality. Refer also to discussion below.
2. To minimise development impact on adjoining properties, environment and public domain.	The proposed development has been designed so that it is excavated into the sloping site to minimise impacts on adjoining properties and the public

	domain. The proposed earthworks will be backfilled and the site landscaped to minimise visual and environmental impacts. Consultation with a local Arborist did not identify any trees of major significance within the site. Landscaping is proposed to enhance the natural environment at the completion of the development.
3. To provide additional considerations to the controls within Chapter D1 Residential Accommodation in Urban, Village & Special Purpose Zones.	The additional controls are discussed below.

Performance Criteria	
(a) Garage and basements should be designed to minimise the amount of site excavation required.	The proposed excavation works have been deemed necessary by the project Architects to provide a level parking area that is accessible from Marine Parade, a storeroom and bedroom spaces. The use of earthworks limits impacts on neighbouring properties.
(b) Development should seek to avoid removal of established native vegetation.	Refer to the Annexures of this Statement for a Biodiversity Development Assessment Report and a Vegetation Management Plan.
(c) Development shall provide a high quality landscape that seeks to enhance the amenity and function of the development and respects the sites topography and surrounding environment.	The Architectural Plans nominate landscape plantings within the proposed northern lot to complement the new dwelling construction.
(d) 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	The Architectural plans nominate permeable surfaces within the development site.  A review of the Wategos Beach locality was undertaken on Saturday 02/03/2024. Refer to the Annexures of this Town Planning Report for photographs

through the use of lightweight materials.	<p>of over 40 established dwellings within Marine Parade, Brownell Drive and Pandanus Place. It is evident that proposed development is cognisant with the bulk and scale of existing development and development that is under construction within this residential precinct. The photographs show multiple examples of residential development in the zone with three or more storeys. In addition, multiple examples of masonry, concrete and select brickwork constructions are provided.</p> <p>It is clear that the proposed development does not compromise the character of the low density residential zone in this locality.</p>
(e) 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.	The Architectural plans provide details of colours and materials that integrate with the landscape.
(f) View retention of neighbouring development to be considered as part of each development.	The Architectural design has carefully considered view retention, noting that the dwelling within the adjoining property to the west is elevated above the dwelling that is proposed within the subject site.

Prescriptive Measures	
1. Basements and subterranean car parks are to have a maximum footprint of 50 square metres.	<p>A variation is formally requested to this prescriptive control to allow the proposed development to provide a double vehicle garage and a small storage space with a total floor area of 70.7 square metres. Note that part of the basement comprises a plant room containing a water tank to contribute to the sustainability of the new dwelling.</p>



	<p>Byron Development Control Plan 2014 requires the proposed dual occupancy dwelling to be provided with at least 2 x on-site parking spaces that are capable of being covered. The topography of the site with a steep incline adjacent to the Marine Parade frontage has resulted in an Architectural design with basement parking and modest storage that require more substantial earthworks than envisaged by this control.</p> <p>AS2890 provides the maximum driveway gradient that can be achieved from Marine Parade, considering the crossover within the road reserve.</p> <p>It is submitted that this control is unnecessarily restrictive as, once completed, basements are not visible from public or private properties. The development site will be landscaped to enable the completed works to be visually acceptable. It is evident from a review of existing development within the locality that this prescriptive development control has not been adhered to on multiple other projects. The Development Application proposes a residential development that is consistent with the character of the neighbourhood. A variation to this control is assessed as being acceptable for this site.</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)	The Architectural plans provide details of compliance with this control.
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	The proposed garage to be accessed from Marine Parade has a setback of over 5.5 metres.

required, and access complies with AS2890.1.	
4. Geotech reports are to be included with development applications addressing slope stability issues, construction methodology and include details of any anchoring proposed.	A geotechnical report is provided with the Development Application.
5. Development is to utilise lightweight building and cladding materials where possible as opposed to heavy materials such as concrete.	The project Architects took into consideration the surrounding development, the topography of the site, the marine environment and the positioning of the development site within a bush fire buffer area when determining the proposed construction materials. The proposed mix of timber and masonry is deemed to be appropriate in this setting. The proposed construction is consistent with the character of development within the Wategos Beach locality.
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.	A Landscape Plan is provided with the Development Application. Refer to the Architectural Plans prepared by HGA.
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.	A Visual Impact Assessment is provided with the Development Application.

<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>A Stormwater Concept Plan is provided with the Development Application.</p>
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#### 5.3.4 Section 4.15(1)(b) The likely Impacts of the Proposed Development

In assessing the subject proposal, Council must consider the likely impacts of the development, including environmental impacts, on both the natural and built environments, and social and economic impacts in the locality. These considerations are addressed within Section 4.0 and the Annexures of this report.

#### 5.3.5 Section 4.15(1)(c) Suitability of the Site for the Proposed Development

Lot 4 DP 244699 comprises an 803.2 square metre allotment located within the Wategos Beach residential area of Byron Bay. The private property, the adjoining Crown Land and road reserve are located within the R2 Low Density Residential Zone under Byron Local Environmental Plan 2014.

The allotment has a slope from south to north. It contains an established single storey dwelling, a detached garage and vehicle access driveways from Marine Parade and Pandanus Place. The allotment was created on 26 March 1973 as part of a four lot subdivision. A review of historic planning files for the property issued by Byron Shire Council identified a number of approvals, including approvals for the existing dwelling and the redevelopment of the site to create a new dwelling and secondary dwelling.

Vehicle access is available directly from Marine Parade and Pandanus Place. Both are public roads with bitumen sealed surfaces. The proposed driveway upgrade to Marine Parade is provided with good sightlines to the east and west.

The size and configuration of Lot 4 DP 244699 can comfortably accommodate the proposed dual occupancy (detached) development. Each of the proposed lots have an area of over 400 square metres, with a total site area above the 800 square metre minimum prescribed by Byron Local Environmental Plan 2014.

Proposed Lot B contains the existing dwelling within the property. Proposed Lot A contains the proposed dual occupancy dwelling and access driveway.

The attached Biodiversity Development Assessment Report confirms that the property is not significantly constrained by ecological values.

The site is assessed as being suitable for the proposed development.

#### 5.3.5 Section 4.15(1)(e) The Public Interest

The proposed development has been carefully designed to ensure no significant adverse impacts occur on the adjacent littoral rainforest. The proposal is compliant with the provisions of Byron Local Environmental Plan 2014. Only minor variations are proposed to Byron Development Control Plans 2014 in relation to the building height plane and earthworks associated with the basement design.

The proposed dual occupancy / strata subdivision development is permitted with the consent of Council within the R2 Low Density Residential Zone. The proposal does not compromise the public interest.

## 6.0 Environmental Management

### 6.1 Proposed amelioration and mitigation measures

This section lists the amelioration and mitigation measures proposed in response to the Consideration of Environmental Impacts and Environmental Assessment Requirements outlined within Section 4.0. The intent of these measures is to reduce the impacts of the development on the natural and built environments. The measures are outlined below with additional details provided throughout this document and its Annexures.

### 6.2 Sediment & Erosion Controls

It is proposed to provide erosion and sedimentation control measures in accordance with the documentation prepared by Greg Alderson and Associates Engineers within the Annexures of this Statement. The recommended sediment and erosion controls are in accordance with the Northern Rivers Development Design and Construction Manual. This Manual provides development standards for development infrastructure design and construction within a number of Northern Rivers Shires, including the Byron Shire.

The installation of sediment and erosion controls and the short term exposure of soils will ensure no significant impacts on the littoral rainforest area adjacent to the development.

### 6.3 Stormwater Management

A stormwater management design has been prepared for the development is provided as an Annexure to this document. The design, prepared by Greg Alderson & Associates, is appropriate for the small scale residential development within the site.

### 6.4 Environmental Repair and Enhancement

The proposal is accompanied by a Biodiversity Development Assessment Report and a Vegetation Management Plan prepared by AWC. This Assessment includes recommendations to undertake environmental repair and enhancement works within the adjoining Crown Land.

### 6.5 Construction and Noise Management

It is anticipated that construction works associated with the proposed subdivision will be completed within an 8 month period. To minimise impacts on surrounding residents, the proposed construction works are to be limited to the following hours in accordance with the requirements of Byron Shire Council:

- Monday to Friday, from 7am to 6pm
- Saturday, from 8am to 1pm
- No construction work is to take place on public holidays, nor on Saturdays or Sundays adjacent to public holidays.

Noise generation from construction machinery is also to be managed in accordance with the requirements of Byron Shire Council for the benefit of surrounding residents. Construction noise is to be limited to the background noise level plus 20dB(A), noting that the L10 noise level must

be measured over a period of not less than 15 minutes when the construction site is in operation.

#### 6.6 Waste, Fuel and Chemical Management

The proposed subdivision development is not likely to generate large quantities of waste. Relevant contractors will be responsible for the removal of their own waste from the site. A Site Waste Management Plan has been prepared for the proposal which details potential waste generation and management. This plan is provided as an Annexure to this document. No diesel or other chemicals is to be stored within the site at any time during the construction phase. All machinery to be used within the development will be fuelled by the relevant contractor before being delivered to the site.

#### 6.7 Traffic and Pedestrian Management

All construction vehicles will be managed by the building contractor for the duration of construction works. Vehicles will be parked off-street where possible to minimise impacts on traffic movements. All works to be completed within the Marine Parade road reserve will be in accordance with relevant approvals under the Local Government Act 1993 and the Roads Act 1993. Safety and construction fencing will be used to exclude members of the public from work areas. If required by the consent authority, a Traffic Management Plan will be prepared to manage pedestrian and traffic safety.

#### 6.8 Environmental Emergency Management

The Principal Contractor will issue each personnel and/or sub-contractor that operates within the development site with their standard emergency management protocols. These include the provision of material safety data sheets, material identification, containment, clean up and disposal.

#### 6.9 Aboriginal Heritage Management

Per the recommendations of the attached Everick Report, Aboriginal monitors will attend the site during bulk earthworks. If any suspected aboriginal artefacts are uncovered or identified during construction works, such work is to cease immediately and the Arakwal, the Tweed Byron Local Aboriginal Land Council and NSW Environment and Heritage are to be notified. The services of the Arakwal/Tweed Byron Local Aboriginal Land Council and a suitably qualified individual are to be engaged to determine if genuine artefacts were uncovered during works.

#### 6.10 Bush Fire Management

All bush fire protection arrangements are to be completed in accordance with the Bush Fire Assessment report prepared by Land and Fire Assessments.

#### 6.11 Vibration Management

The building contractor is to manage vibration through the use of appropriate machinery. Earthworks will be undertaken using excavators with general purpose excavator buckets rather than pneumatic hammers.

## 7.0 Recommendations and Conclusion

### 7.1 Recommendations

The Environmental Impact Statement is accompanied by supporting documents, including a Biodiversity Assessment, a Bush Fire Assessment, an Aboriginal Cultural Heritage Assessment and engineering designs. These documents and Sections 6 & 7 of this Statement include recommendations for the completion of the development having regards to the environmental values of the site. These recommendations form part of the proposed development. In particular, they include:

- Provision of Sediment & Erosion Controls during construction in accordance with the Engineering Plans prepared by Greg Alderson and Associates.
- Implementing Stormwater Quality and Management in accordance with the Engineering Services Report prepared by Greg Alderson and Associates.
- Undertaking Environmental Repair and Enhancement works via a Vegetation Management Plan in accordance with the documentation prepared by AWC.
- Applying Waste, Fuel and Chemical Management protocols in accordance with a Site Waste Management Plan and the prevention of fuel storage/chemical within the development site.
- Implementing Environmental Emergency Management protocols as directed by the Principal Development Contractor.
- Having Aboriginal monitors attend the site during bulk earthworks and implementing an Aboriginal Heritage find procedure.

### 7.2 Justification for the proposal

Lot 4 in Deposited Plan 244699 was created on 26 March 1973 as part of a four lot subdivision. It is an 803.2 square metre allotment that is within the R2 Low Density Residential Zone. The property contains an existing house and ancillary structures, as well as vacant land that contains landscape vegetation.

Byron Local Environmental Plan 2014 prescribes a maximum floor space ratio of 0.5:1 on this site. The proposed dual occupancy development meets this requirement. The proposed dual occupancy and strata subdivision facilitates the appropriate development of an otherwise underutilised property.

The proposal aligns with strategic principles of providing infill development within established residential areas. The Development Application will provide for greater utilisation of the residential land to help meet the strong housing demands within the Byron Shire.

### 7.3 Conclusion

This Environmental Impact Statement relates to a proposal to construct a dual occupancy development and strata subdivision within the allotment. The Statement has been prepared in accordance with the Clauses 190 -

192 of the Environmental Planning and Assessment Regulation 2021. This document contains all available information that is relevant to the environmental assessment of the development to which this statement relates.

The proposed development has considered the requirements of key State and local planning instruments including State Environmental Planning Policy (Resilience & Hazards) 2021, Byron Local Environmental Plan 2014 and Byron Development Control Plan 2014.

The proposed dual occupancy dwelling is permitted with the consent of Council within the R2 Low Density Residential Zone. It is consistent with the objectives of the zone and supports the surrounding residential land uses. The proposal is generally consistent with other local planning controls administered by Byron Shire Council.

Lot 4 DP 244699 is 803.2 square metres in area with a suitable frontage to Marine Parade. The land is currently supplied with urban services. The northern area of the allotment has been highly altered from its natural state. Ecological and bush fire constraints can be appropriately managed within appropriate design and construction. The land is assessed as being suitable for the development proposed.

The assessments carried out as part of this Environmental Impact Statement indicate that the proposed development can be completed without significant adverse effects on the natural and built environments. By implementing the recommendations and amelioration measures set out within this statement and supporting documents, it is likely that the proposed development will result in positive land use outcomes.

The proposal is submitted for assessment with an understanding that consent may be granted subject to conditions of consent. Please advise the Applicant should further details be required to clarify any issues that may arise during assessment.



## Reference List

- AWC, 2024, Biodiversity Development Assessment Report
- Byron Shire Council, 2024, Byron Shire Council Online Mapping
- Everick Heritage Pty Ltd, 2024, Aboriginal Cultural Heritage Assessment
- Greg Alderson & Associates, 2024, Civil Engineering Designs
- Land and Fire Assessments, 2024, Bush Fire Assessment Report
- Lismore City Council, 2017, Northern Rivers Local Government Development Design and Construction Manual
- Morand D.T., 1994, Soil Landscapes of the Lismore-Ballina 1:100,000 Sheet report, NSW Department of Land and Water Conservation, Sydney.
- NSW Government, 2004, Managing Urban Stormwater – Soils and Construction Vol 14<sup>th</sup> Edition March 2004'
- NSW Government, 2013, Guide to Traffic Generating Developments - Updated traffic surveys

## **Annexures**