



17 April 2023

Propel Investment Management Pty Ltd
Attn: Mr Mark Howard

Email: mark@propelinvest.com.au

Dear Mr Howard

DEVELOPMENT ADVISORY PANEL – TUESDAY 28 MARCH 2023 AT 2PM

Property: LOT: 11 DP: 593328, LOT: 14 DP: 792128, 60 Bangalow Road BYRON BAY, LOT: 1 DP: 525896, 58 Bangalow Road BYRON BAY NSW 2481

This letter comments on the Development Advisory Panel meeting on the above date which comprised of input from Council staff representing the disciplines of planning, infrastructure, resource recovery, environmental health, ecological and development engineering.

The aim of this Panel is to provide preliminary information and assistance to intending applicants in respect of Council's statutory and policy requirements. The matters raised at the meeting are not exhaustive. It is the responsibility of the Applicant to prepare a comprehensive development application (DA) addressing all relevant site constraints, the requirements of relevant legislation including the Environmental Planning & Assessment Act 1979 and Environmental Planning & Assessment Regulation 2021, applicable environmental planning instruments and development control plans.

It is possible that proposals that appear to be consistent with Council's statutory and policy requirements may be found not to be consistent upon detailed examination of any development application lodged. Any indications or information from the Development Advisory Panel in no way prejudice the assessment and determination of any DA or related application.

The DAP meeting is not able to provide a detailed assessment of the development proposal, indicate the likely outcome of the ensuing development assessment process or speculate on Council's view on specific issues should such issues be raised or subsequently in public submissions. For these reasons, it is recommended that this early pre-lodgement stage that all requirements of applicable State Environmental Planning Policies, the Byron Local Environmental Plan 2014 (LEP 2014) and Byron Shire Development Control Plan 2014 (DCP 2014) be fully complied with.



TRADITIONAL HOME OF
THE BUNDJALUNG PEOPLE

ALL COMMUNICATIONS TO BE
ADDRESSED TO THE GENERAL MANAGER

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Present: Mark Howard (Development Manager), Jarrod Gillies (Town Planner), Tony Cromack (Engineer), Matt Martino (Architect)

Council Staff: Steve Denize (Senior Town Planner), Greg Smith (Team Leader Planning Services), Jeff Begovic (Team Leader Development Engineering) and Honor O’Harae (Development Support Officer)

Apologies: Ian Colvin (Ecologist)

Owner: Ms K Amos

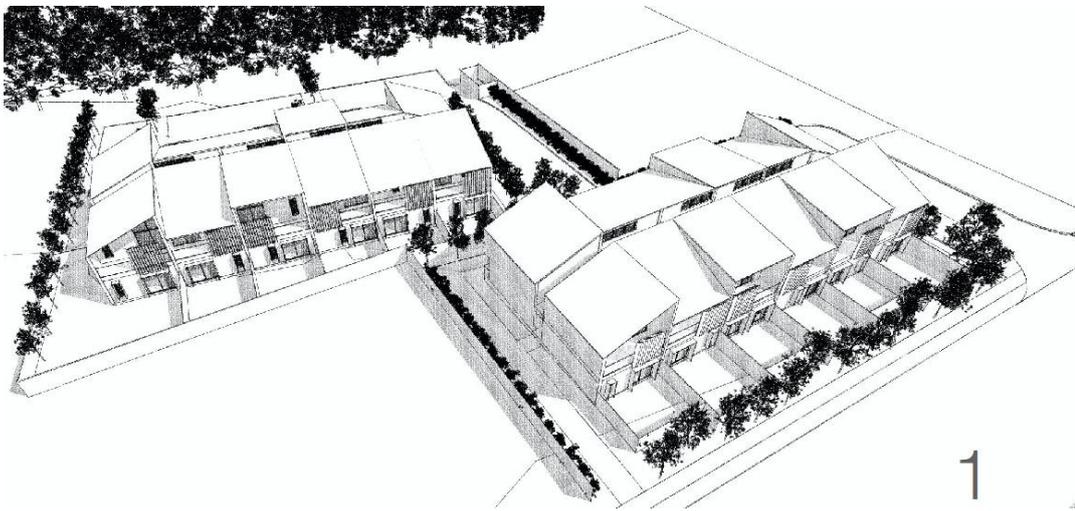
Commenced: 11.00am **Concluded:** 12.00

Fee Paid: \$ 600, Receipt No. 28618919718, Date paid: 16/11/2022

Proposal:

The applicant proposes twenty-four (24) two level affordable (Worker Housing) dwelling units, 30 internal car parks spaces excluding 4 parks designed for the external council road stub, appropriate internal vehicle manoeuvring space, communal space and rubbish bin storage etc. as per the plans below:





1

Property Description:

The property is described as LOT: 11 DP: 593328, LOT: 14 DP: 792128, 60 Bangalow Road BYRON BAY, LOT: 1 DP: 525896, 58 Bangalow Road BYRON BAY NSW 2481. The land is within Zone No. R2 Low Density Residential under the Byron Local Environmental Plan 2014. Council's Geographic Information Systems identifies that the land is affected by the following physical constraints:

- Flood Liable Land
- Acid Sulfate Soils Class 2 and 5
- Bushfire prone land
- High Conservation Value HEV Vegetation, BDCP 2014 Chapter B1.2.1 - 50m buffer from SEPP wetland edge, this was effective from 15.12.2020 to SEPP & C2 Environmental Conservation Zone.
- Resilience and Hazards SEPP 2021 Coastal Wetlands & Coastal Wetlands 100m Buffer Clause 2.8





Issues and Advice:

General Advice

Please refer to [Application requirements \(nsw.gov.au\)](http://nsw.gov.au) for a list of the mandatory documents and drawings that are required to accompany a DA. Refer also to [Apply for a Development Application](#). A [DA Lodgement Matrix and Checklist](#) is available to download on Council's website.

The Environmental Impact Statement (EIS) must address at a minimum the relevant provisions of LEP 2014, DCP 2014, applicable State Environmental Planning Policies, the matters for consideration in section 4.15 of the *Environmental Planning and Assessment Act, 1979* and any additional matters for consideration under the *Environmental Planning and Assessment Regulation 2021*.

Applicant Questions

Item 1

With 24 affordable housing units planned we will generate traffic additional traffic onto Bangalow Rd. How can we work with council to ensure that we provide a improved long term solution.

Comment:

The development application must be accompanied by a traffic assessment in accordance with the requirements of section B4.2.1 of Chapter B4 of DCP 2014. The assessment is to be consistent with TfNSW's Guide to Traffic Generating Developments and is to address, but not be limited to, the following:

- The impacts associated with the Bangalow Road intersection and nearby access driveways and intersections.
- Clause 2.119 of State Environmental Planning Policy (Transport and Infrastructure) 2021.
- Conflicts with the existing approved development consent for the site and ancillary works.
- Upgrade the side road off Bangalow Road providing access to the site to comply with prescriptive measure 9 of B3.2.1 of DCP 2014, including a turning head and any necessary road widening/dedication.
- Details to demonstrate access and parking compliance with Chapter B4 of DCP 2014 and AS 2890, including turning templates for service vehicles (garbage/recycling, bush fire, delivery, etc.).

Preliminary engineering plans must be submitted with the development application for the road upgrade works required to mitigate traffic impacts and for the road upgrade of the side road off Bangalow Road. Consideration should be given to amending the currently approved turning head arrangement to align with the proposed access driveway. Street parking provisions must be consistent with Development Design Specification D1 – Geometric Road Design of the Northern Rivers Local Government Development Design and Construction Manuals.

Item 2

Trees need to be removed for the development. By planting native trees along the Coastal Wetlands boundary and removing exotic and weed species from the area we aim to provide ecological improvement.

Comment

Any removal of exotic weeds and environmental restoration work within the SEPP wetland area would activate designated development. Environmental repair and replanting outside of the SEPP wetland may impact fire & BAL assessment and stormwater management options.

Also consider BDCP 2014 B1.2.1 (effective from 15.12.2020) Development Envelope Controls which require a 50m 'ecological setback' from development. B1.2.1 needs to be fully reviewed and considered in concert with Resilience and Hazards SEPP 2021 Coastal Wetlands 100m Buffer Clause 2.8.

Note Councils Ecologist comments below regarding stormwater discharge and management works in relation to SEPP requirements and potential impacts on wetland and 100m buffer area and BDCP 2014 50m setback area.

See also overall comments from Councils Ecologist below.

- Every DA is different and is assessed/approved on its merits;
- In terms of impacts to SEPP coastal wetlands, the approval process would consider the intensity and scale of any potential impacts to SEPP coastal wetlands. For small developments (such as the single dwelling at Keats Street), the maximum buffer was achieved for the site by locating the dwelling as far as possible from the wetland. Further, as a single dwelling within mown lawn, the scale of the impact is relatively low; and
- The proposal could be considered as large-scale development in terms of size, scale, number of dwellings and large areas of infrastructure (car parking). Further, the large surface area of the development would generate substantial stormwater which must be treated and disposed of. The proposal also would have indirect impacts such as noise and light. On this basis, any reduction of the setback distance (ie. a variation) must be based on the nature of the proposal and must also take into account the philosophy of 'avoid & minimise'. In this regard, the proposal may have 'avoided' the wetlands, but the design could certainly be improved to minimise biodiversity impacts. As noted, the stormwater aspect of the project is significant and needs further information supplied.

Conclusion – Integration between fire engineer, ecologist, stormwater engineer and design team is highly recommended as is the retention of a BPAD Level 3 certified fire engineer.

Item 3

We have assumed a 20m APZ from the line of native tree vegetation and a 29BAL design for bushfire protection. Overall we plan to improve the ability to fight fire for all the surrounding properties.

Comment:

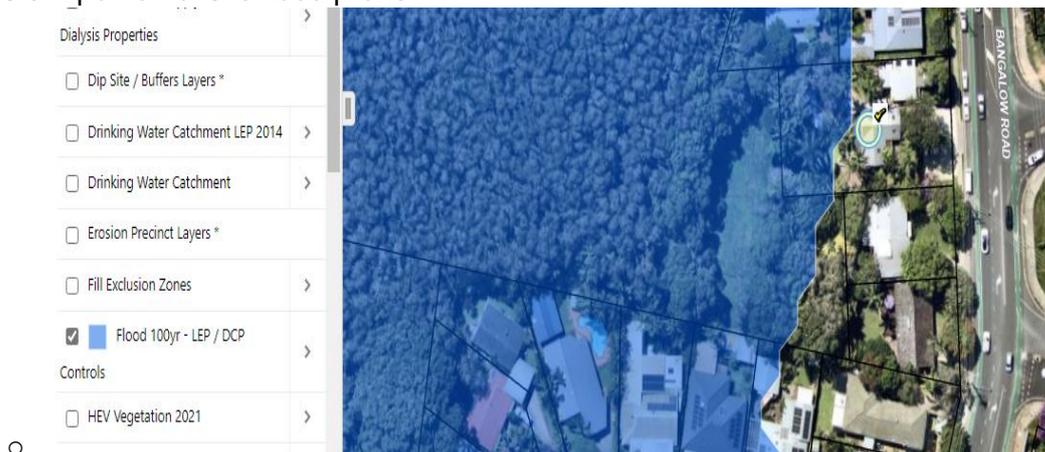
The depth of the APZ and BAL response proposed will be established by the applicant's ecologist, fire engineer, stormwater engineer and planner working together. Council will assess the resultant proposal in a similarly coordinated manner.

Additional Advice

Planning

Steve Denize

- It was clarified by the applicant that this will not be an affordable Housing application prepared under the Housing SEPP Chapter 2 Affordable Housing. The applicant did however indicate that the housing product proposed be targeted in the market as more affordable worker accommodation. The applicant must consider the requirements of BLEP 2014 6.17 & 18 Affordable Housing in Business and Residential Zones.
- The applicant indicated that they may include a strata subdivision in this application but that that would depend on the provision of access to an adjoining development. Applicant to advise.
- Public Exhibition and fee's – Applicant confirmed that development would be less than 20 million thus application would be subject to a Level 2 exhibition. It is requested that a Quantity Surveyor assessment of development cost be provided.
- There is an existing sewer line through lot 14 and No 60 – See Council Sewer Engineer comments
- Class 5 Acid Sulphate Soil BLEP 2014 6.1 – see comment below under Environmental Health
- Earthworks – volume and location and management as per BLEP 2014 6.2 & BDCP 2014 Chapter B.14 Excavation & Fill. Consider impact of BDCP 2014 Chapter B1 Biodiversity B1.2.1 50m setback from SEPP wetland area and wetland SEPP 100m buffer area
- Bush Fire category 1 as per updated Council Geocortex mapping 12.7.2022. BPAD Certified Fire Engineer working closely with Ecologist
- Western portion of site flood prone



- Mosquito risk zone – requires screen solutions etc
- Tweed Byron land Council Area – do AIMS investigation and proactive consultation if necessary.
- SEPP coastal policy and buffer area
- Site zoned R2 Low Density res & western portion of lot 14 C2 Environmental Conservation Zone which overlaps SEPP wetland area. To west adjoins Deferred matter zone and rail corridor

Zone C2 Environmental Conservation

1 Objectives of zone

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Environmental facilities; Extensive agriculture; Oyster aquaculture; Recreation areas; Roads

4 Prohibited

Business premises; Hotel or motel accommodation; Industries; Local distribution premises; Multi dwelling housing; Pond-based aquaculture; Recreation facilities (major); Residential accommodation; Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Tank-based aquaculture; Warehouse or distribution centres; Any other development not specified in item 2 or 3

- BLEP 2014 defines proposal as Multi Dwelling Housing thus 'permitted with consent'
- BLEP 2014 Height 9m & FSR 0.5:1
- Likely applicable BDCP 2014 chapters.
 - B2 Tree and Vegetation Management,
 - B3 Services,
 - B4 Traffic Planning Vehicle Parking, Circulation & Access. 1 cps per 1 or 2 bed – 2 per 3 or more bed & 1 visitor space per 4 dwellings,
 - B5 Providing for Cycling including showing where e-bikes may be recharged.
 - B8 Waste Minimisation – B8.4.2 Prescriptive Measures c) multi dwelling housing and attached dwellings in the form of townhouses and villas must include either individual waste/recycling storage areas for each dwelling or a communal facility in the form of a waste/recycling storage room (or rooms) designed in accordance with Appendix B8.4 and the Better Practice Guide for Waste Management in Multi-Unit Dwellings,
 - B9 – a landscaping Plan is required, B.11 Planning for Crime Prevention – more than 20 dwellings thus a formal Crime Risk Assessment required,
 - B.13 Access and Mobility – see B13.2.2 Prescriptive Measures 1. a) to c) inclusive. Council notes that at least 10% of the development should be designed as 'adaptable housing'. It is recommended to incorporate this into the design as early as possible to ensure compliance can be achieved, particularly given the current proposal only offers multi-level housing which may be difficult to adapt.
 - B.14 Excavation & Fill, C.2 Areas Affected by Flood,
 - D1 Residential Accommodation in Urban D1.2 General provisions e.g. BHP and side setbacks etc apply as does
The applicant sought a relaxation of Chapter D1.2.2 Prescriptive Measure with regards to a reduced setback to the classified road at second level from 9 to 6.5m. BDCP 2014 allows for 'dual path' assessment i.e., non-compliance with prescriptive measure can be justified subject to assessment against relevant Objectives and Performance Criteria. This evaluation could also be informed / integrated with an assessment under Chapter B11 (Crime Prevention). It is recommended to contact Transport for NSW to determine if there are any planned upgrades or widening of Bangalow Road that might impact the proposed setback.
 - D1.6 Multi Dwelling Housing i.e., they are not mutually exclusive.
- In accordance with Council's Community Participation Plan 2019 (CPP) the development is of such a scale, ie more than 10 dwellings, that the applicant is required to engage in pre-lodgement consultation on this application. How the applicant should go about this is guided by the CPP [Community Participation Plan - Byron Shire Council \(nsw.gov.au\)](https://www.nsw.gov.au/community-participation-plan).

Water & Sewer

- Because existing sewer lines run across the development site the applicant will need to liaise with Council's sewerage engineers to determine if and how these lines should be relocated.
- The applicant should also engage with Council's sewerage engineers regarding the need for contributions.

Ecologist

Council's Ecologist Ian Colvin has reviewed the application and makes the following initial comments.

Key issues for the site are:

- *SEPP R&H Coastal wetlands (and biodiversity value land) within the majority of Lot 14*
- *Loss of native vegetation*
- *Compensation for the loss of native vegetation*
- *Compliance with 'red flag' requirements of Chapter B1 of Byron DCP*
- *Stormwater treatment/disposal*

Notes on review of the Biodiversity preliminary assessment (Blackwood Ecology April 2023) and other supporting documents:

- *The BMAT tool report results appear correct with regard to the development being within residential land with a minimum lot size of 600m², and hence a native vegetation clearing threshold of 0.25 ha.*
- *The project concept has been designed to avoid directly impacting SEPP R&H Coastal wetlands, although appears to directly abut the wetland boundary. As noted the project footprint occurs within the 'proximity area' to Coastal Wetlands.*
- *Preliminary bushfire advice notes that the proposed carpark areas provide sufficient setback (APZs) to hazardous vegetation to the west and the concept plan meets relevant requirements in PBP. On this basis, no additional vegetation removal would be required beyond the project footprint.*
- *On the basis of the above, SEPP coastal wetlands are not directly impacted and so the project would not comprise 'designated development' on this basis.*
- *The Blackwood report states that the concept would require the removal of 1100m² of vegetation, therefore the clearing threshold of 0.25 ha is not exceeded. On this basis, and that mapped BV land (consistent with coastal wetlands) is not directly impacted, the concept would not trigger the Biodiversity Offsets Scheme (BOS) in the BC Act and a Biodiversity Development Assessment Report (BDAR) would not be required. However, a BDAR may still be required if a Test of Significance determines the project would result in significant impacts to threatened species or communities or their habitats.*
- *The Blackwood report does not nominate a plant community type (PCT) for the affected vegetation, nor note whether this vegetation might be a threatened ecological community (TEC) or provides potential habitat for threatened species. On the basis of the vegetation described ('...patchy growth of Broad-leaved paperbark and Swamp turpentine trees with occasional other native species such as Tuckeroo as well as exotic species including Camphor laurel, Cocos palm and Umbrella tree'), the affected vegetation appears representative of the TECs 'Subtropical Coastal Floodplain Forest of the New South Wales North Coast Bioregion' or 'Swamp Sclerophyll Forest on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions'.*
- *There is no discussion of potential threatened species habitat within the project footprint. Mitchell's Rainforest Snail (*Thersites mitchellae*) is well known from the area and has been recorded within nearby residential allotments. Targeted survey for this species would be an important component of future assessment of the project (in addition to survey for key threatened species, eg. Koala).*

- *While there appears to be opportunities to offset vegetation removal within the balance of Lot 14, this should be investigated further in terms of receiving compensatory plantings. Any native trees would need to be offset at a ratio of 1:10 (as TECs are affected). Vacant land along the north-eastern portion of the site appears to be suitable for compensation plantings – however the suitability of this action would need to be referred to the bushfire consultant for their advice.*
- *The concept is non-compliant with various matters in Chapter B1 of the DCP (Table 3) for 'red flags' – for example a 50m setback is allocated to SEPP coastal wetlands. The project appears to have virtually no setback to the SEPP coastal wetlands within Lot 14. Further justification of non-compliance with the various red flags in Table 3 is required.*

Based on these matters, the following additional assessment should be completed as a minimum before the project progresses further:

- *Confirmation that the project footprint (allowing for any batters, filling or services or maintenance requirements) does not impinge within adjacent coastal wetlands.*
- *Provide details on stormwater disposal or treatment with regard to minimising impacts on coastal wetlands/HEV vegetation/threatened species habitat.*
- *Targeted survey for Mitchell's Rainforest Snail within Lot 14 in general and the project footprint. Survey should comprise daytime searches for shell material in addition to nocturnal surveys when conditions are suitable. Survey effort must be in accordance with relevant guidelines and expert assistance should be sought for identification of any specimens.*
- *Preliminary response to Table 3 in Chapter B1 of the DCP.*

Following on from revised plans etc provided by the applicant on Thursday 13.4.23 Council's Ecologist provided the following additional comments

- *It's good that vegetation is being retained within the western veg, but the lack of setback to the coastal wetland is poor practice and doesn't meet the DCP setbacks - as per my previous comments.*
- *Stormwater into the wetland needs to demonstrate no change to existing regime in terms of volume, nutrients, hydrology and residence time. This is sensitive vegetation which is also likely Mitchell's rf snail habitat - so this is important. Obviously any structural elements or works needed within the coastal wetlands will trigger designated development.*

Development Engineer

- The development application must include plans and calculations demonstrating compliance with the requirements of Chapters B4 & B5 of DCP 2014 for car parking, bicycles and loading facilities. The plans should include dimensions, finished levels, grades and turning paths demonstrating compliance with AS 2890. Details to demonstrate access and parking compliance with AS 4299 and AS 1428 regarding adaptable housing must also be included. It should be noted that B4.2.12 requires at least 1 covered car space per dwelling and 1 visitor space per 4 dwellings. The proximity of the covered parking spaces to the dwellings must be addressed in the Statement of Environmental Effects. Suitable storage facilities must be provided for bicycle parking in accordance with section B5.2.4 of DCP 2014 noting that private garages are not proposed.
- The development application must include a concept stormwater management plan demonstrating compliance with section B3.2.3 of Chapter B3 of DCP 2014. The Stormwater Concept Plan (SCP) is to be prepared in accordance with section 3.4 of Council's Comprehensive Guidelines for Stormwater Management by a suitably qualified engineer. The SCP must demonstrate a lawful point of discharge and adequate capacity of the downstream drainage systems. Careful consideration must be given to the water table and infiltration rates if

proposing stormwater infiltration as a method of draining the land. Stormwater quality must also be addressed.

- The development application must include a flooding assessment demonstrating compliance with clause 5.21 of Byron LEP 2014 and section C2.3.3 & C2.3.4 of Chapter C2 of DCP 2014. The subject site is in the Flood Planning Area and is estimated to have a Projected 2050 Flood Planning Level of 2.96m AHD and is currently classified low/intermediate hazard. The PMF flood level for the site is currently 3.16m AHD, which is to be considered in addressing the safe occupation and efficient evacuation during a flood event (i.e., clause 5.21 (2)(c) of BLEP 2014).

Environmental Health

A preliminary acid sulfate soils site assessment should be provided with the application as well as an assessment of any potential or actual site contamination as per SEPP requirements etc.

Please be advised that failure to provide all of the required information upon lodgement of the Development Application will result in delays in the processing of your Application.

Should you require further clarification on any of the issues raised above please contact Council on (02) 6626 7025 or email dso@byron.nsw.gov.au

Yours sincerely



Steve Denize

Planner

Sustainable Environment & Economy