



Development Application
SP6852 - 9 Fingal Street
Brunswick Heads
Mixed Use Development

PLANNERS NORTH, July 2023

COMPLIANCE AND USAGE STATEMENT

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

Preparation

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

Application

Proponent: Vanfam Investments Pty Ltd
Address: C/ - PLANNERS NORTH
P.O. Box 538, Lennox Head NSW 2478
Land to be developed: Lots 1-3, and common property SP 68652
Proposed development: Mixed use development, commercial premises and shop top housing
Environmental Assessment: Statement of Environmental Effects

Certificate

I certify that I have prepared the content of this Statement of Environmental Effects and to the best of my knowledge:

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

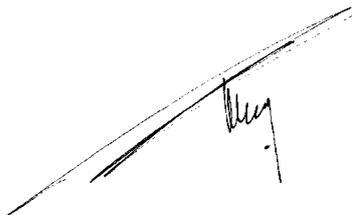
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Stephen Connelly RPIA (Fellow)

PARTNERSHIP PRINCIPAL



Ref: 1768.4375

Date: July 2023

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Planning
Institute
Australia

9 Fingal Street Brunswick Heads • Mixed Use Development

EXECUTIVE SUMMARY

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PLANNERS NORTH has been engaged by Vanfam Investments Pty Ltd, the owner of the subject land, to provide Town Planning advice concerning the preparation and lodgement of a Development Application with Byron Shire Council in regard to 9 Fingal Street Brunswick Heads. Mr Jack Dods, of Venu Design, has provided overarching architectural advice for this project and assisted in the preparation of this Statement of Environmental Effects.

The proposal by Vanfam Investments for a mixed use development on the 9 Fingal Street site is a product of many factors. Those factors include:

- policies of all levels of government to promote the orderly development and use of land which can be demonstrated to be suitable for mixed use;
- strong demand for both Commercial Premises and Shop Top Housing in Brunswick Heads; and
- the site planning opportunities presented by the property.



Architectural Plan photomontage

The proposed development application is permissible under the Byron LEP 2014 and is consistent with the relevant DCP and SEPP's.

The development will satisfy a legitimate need and the mixed use proposal is capable of construction and use in a manner that mitigates potential adverse impacts consistent with the zone objectives detailed in Council's LEP. We submit its approval would be in the public interest within the meaning of Section 4.15(1)(e) of the Environmental Planning and Assessment Act.

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TR4 Flood Certificate
TR5 QS Report
TR6 Stormwater Management Plan
TR7A Traffic Report
TR7B Further Traffic Advice Letter
TR8A Site Waste Minimisation and Management Plan - Construction
TR8B Site Waste Minimisation and Management Plan - Operational Aspects
TR9 Arborist Report
TR10 Access Assessment
TR11 Adaptable Housing Assessment
TR12 BASIX Certificate
TR13 BASIX Stamped Plans
TR14 NatHERS Certificate
TR15 BCA Assessment
TR16 Contamination Assessment
TR17 VPA for Public Art

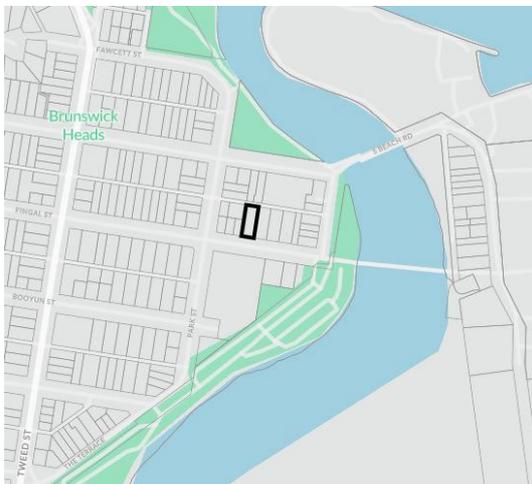
1. INTRODUCTION

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

1.1 BACKGROUND

PLANNERS NORTH has been engaged by Vanfam Investments Pty Ltd, the owner of the subject land, to provide Town Planning advice with respect to the preparation and lodgement of a Development Application with Byron Shire Council in regard to land described as Lots 1-3, SP 68652. Mr Jack Dods, of Venu Design, has provided overarching architectural advice for this project and assisted in the preparation of this Statement of Environmental Effects.

The below diagram illustrates a site locality plan identifying the subject land in the context of the commercial part of Brunswick Heads.



Locality diagram.

1.2 STRUCTURE OF REPORT AND ITS SCOPE

Section 2 of this report describes the physical characteristics of the subject land and its planning context. Section 3 describes in detail the development proposal. Having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979 ("the Act"), Section 4 sets out an examination of the statutory and policy planning status relating to the land, with particular regard to the development proposal described in Section 3. Section 5 looks at the environmental interactions of the proposal,

particularly as specified by Section 4.15(1)(b) and (c) of the Act. The final section of the report undertakes a general review of the project and summation as to the appropriateness of the project considering the planning controls applying to the land, land use needs in the locality and matters set out for consideration in Section 4.15(1)(e).

1.3 SPECIALIST TECHNICAL ADVICE

Expert plans and reports accompanying this application were prepared by:

- **Architectural Plan Set** by Bureau SRH;
- **BASIX reporting** by EPS;
- **Cost Estimation** by Crest Project Management;
- **Site Detail Survey** by Canty's Surveyors;
- **BCA Assessment** by PP Consultants;
- **Accessibility Assessment Report** by PP Consultants;
- **Adaptable Housing Assessment Report** by PP Consultants;
- **Stormwater Design** by Lucena Civil and Structural Engineers;
- **Contamination Assessment** by Contaminated Site Investigations Australia;
- **Vegetation Assessment** by Northern Tree Care;
- **Traffic Assessment** by Varga Traffic Planning; and
- **Waste Management** by Venu Design for the construction aspect and HMC for the operational aspects.
- **Voluntary Planning Agreement** by McCartney Young Lawyers

1.4 FURTHER INFORMATION

Should Council require any additional information, please consult with **Steve Connelly** or **Mr Jack Dods**.

2. THE SITE AND ITS CONTEXT

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

2.1 CADASTRAL DESCRIPTION

The subject site is described in Real Property terms as Lots 1-3, SP 68652, and known as 9 Fingal Street, Brunswick Heads. The site has an area of 1014m² and is rectangular in shape with a 20.115m frontage to Fingal Street.



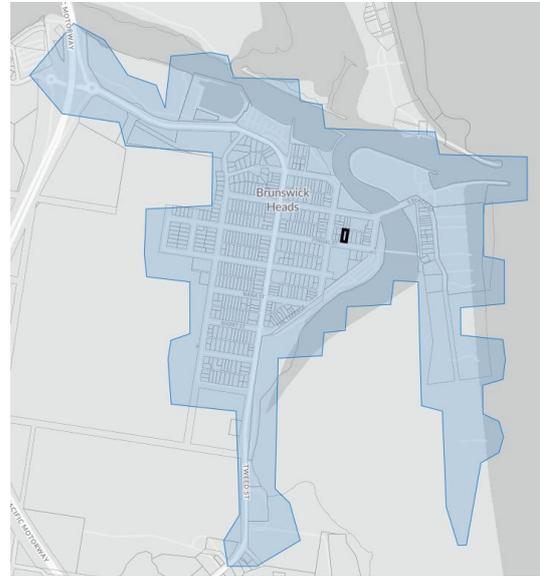
Site Diagram

No easements or covenants are applicable to the site.

Vanfam Investments has provided owner's consent to permit the lodgement of the subject application. See **Technical Reference #1 ("TR#1")**. A detailed survey of the site is provided at **TR#2**.

2.2 SITE CONTEXT

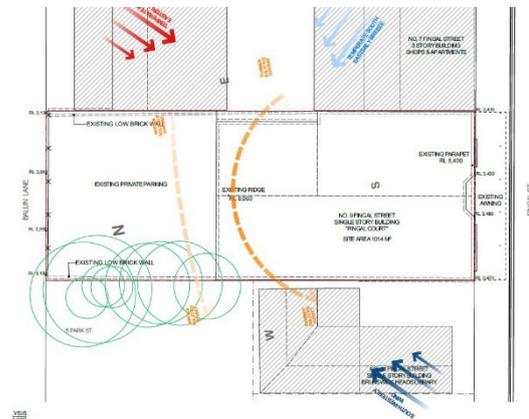
The subject site is located approximately 1 minute's walking distance from Brunswick Heads Post Office and is well located within an easy walking distance of all the amenities of the town. The Walking Distance diagram above right shows a 20-minute walking distance from the subject site.



20 minute walking distance diagram (Source: Landchecker).

2.3 SITE ANALYSIS

The diagram below, being an extract from the Architectural Plan Set, shows a composite map of the site illustrating important site planning constraints and opportunities.



Site Analysis Plan.

The site is located at approximately RL 3.5m AHD with the surrounding topography being reasonably flat. The nearest surface water body is Simpsons Creek, located approximately 200m east of the site.

The NSW Environment online mapping service database indicates that the site soils are considered to be low probability for potential acid sulphate soils.

The eSpade database shows that the site is underlain by the Tyagarah soil landscape which is comprised of mixed estuarine and aeolian sediments.

The site surface is completely capped with a large asphalt carpark at the rear of the lot and a three-tenant commercial premise fronting Fingal Street.



Photograph of the frontage of the subject site.



Photograph of the rear of the subject site.

Fingal Street and Balun Lane are local, unclassified roads which are primarily used to provide vehicular and pedestrian access to frontage properties. Restricted kerbside parking is permitted on both sides of Fingal Street.

The site is flood prone to a minor level with a 2050 Flood Planning Level ("FPL") of RL 3.44m AHD and 2100 FPL of RL 3.7m AHD. **TR#4** provides a flood certificate in relation to the land.

There are currently 3 bus routes operating within 110m walking distance of the site. Approximately 98 bus services per day are available in the vicinity of the site on weekdays, decreasing to approximately 45 bus services per day on Saturdays and there are no bus

services on Sundays and public holidays. The existing commercial uses on the site yield a traffic generation potential of approximately 4 vph during the AM peak hour and 3 vph during the PM peak hour.

The trees growing on Lot 1 DP 105062 are close to the property boundary. Ground Penetrating Radar survey showed 9 roots crossing the boundary. They were between 20 and 30mm in diameter and went from 800 to 1,200 mm into the carpark.



View of vegetation growing on Lot 1 DP105062.

2.4 THE DEVELOPMENT APPROVAL HISTORY

A search of Council's DA files was undertaken via GIPA request. A summary of the development approvals applicable to the land is set out below:

- 84/370 shopping centre and 16 space car parking approval
- 86/201 alterations to the front façade of the building
- 87/169 use of shops 5 and 6 as a coffee shop
- 90/411 change of use of shop to a bank
- 2000/241 3 lots strata subdivision
- 2011/402 signage approval
- 2014/391 Internal Alterations to Lot 2

3. THE DEVELOPMENT PROPOSAL

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

3.1 SITE PLANNING OBJECTIVES

The primary objective of this proposal is to redevelop the site by collapsing the existing strata title scheme applicable to the land and building a new mixed use development comprising ground floor level commercial premises of 251.05m² and 4 x 3 bedroom apartments at first floor level.



Graphic showing certain of the materiality proposed for this project.

It is envisaged that the two front tenancies will be used as shops or perhaps business premises. Development Consent is sought for a “commercial premises” use of those tenancies to allow the most comprehensive scope reasonably possible in land use over time.

At the rear lane frontage a very small “kiosk style” café is proposed.

The deep-set rendered masonry awning to Fingal Street is designed to protect and enhance the pedestrian experience while also providing complimentary amenity to the laid-back subtropical character of Brunswick Heads.

The form consists of two primary masses, which align with the two south-facing apartments above and the two main retail tenancies below. The pattern of columns within these two primary masses align with the window mullions

of the two retail tenancies, creating a patterned sense of enclosure and sense of space. The awning design also steps in plan, such that the two primary colonnaded portions align with the open gable roof forms above, delineating the primary and secondary facade elements.

The masonry and concrete structure allows for first floor planter beds to the awning, matching those found throughout the rest of the development by softening and greening the architecture. This creates a continuous covered awning, while also helping to articulate the primary facade, while maintaining shopfront design continuity, and achieving an improved urban design outcome.

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

- a. Carry out development in a manner which is consistent with the character narrative published by Council for Brunswick Heads and the streetscape in the vicinity of the subject site.
- b. To identify and protect flora of local environmental planning significance and enhance the biological diversity of the land through landscape plantings.
- c. Ensure that construction works are appropriately managed.
- d. To provide for public utilities.
- e. To ensure that the proposed use system conforms with the network hierarchy of Brunswick Heads and parking is satisfactory.
- f. Ensure that the quality and quantity of stormwater exiting the site is not adversely affected by the proposed premises and that existing drainage patterns are not materially altered.
- g. Review potential site planning hazards to ensure the development is not likely to present an unreasonable hazard.

- h. To carry out development without impacting the residential amenity of the surrounding land.
- i. Ensure that development does not impact items of early European or Aboriginal significance.

Architectural plans documenting the development proposal are provided with **TR#3**.

3.2 GENERAL DESCRIPTION OF PROPOSAL

Development consent is sought for demolition and to develop “commercial premises” and “shop top housing”.

The estimated cost of the development is \$4.6m (see **TR#5**).

Hours and days of operations

Opening hours for the commercial premises are proposed to be generally 7am – 8pm. Deliveries will be limited to 9am – 6pm.

The “Bolt Hole” style café facility at the rear of the site will generally have hours of operation between 7am – 6pm.

Parking

- 8 residence spaces
- 1 residence visitor space
- 2 accessible spaces
- 6 commercial premises spaces

Loading

- 1 loading space

3.3 STATISTICAL DESCRIPTION OF PROPOSAL

Key site planning data applicable to Council's assessment of the development application is tabulated below in **Table 3.1**. This information is, of course, subject to final survey, detailed engineering design and Council's conditions of consent.

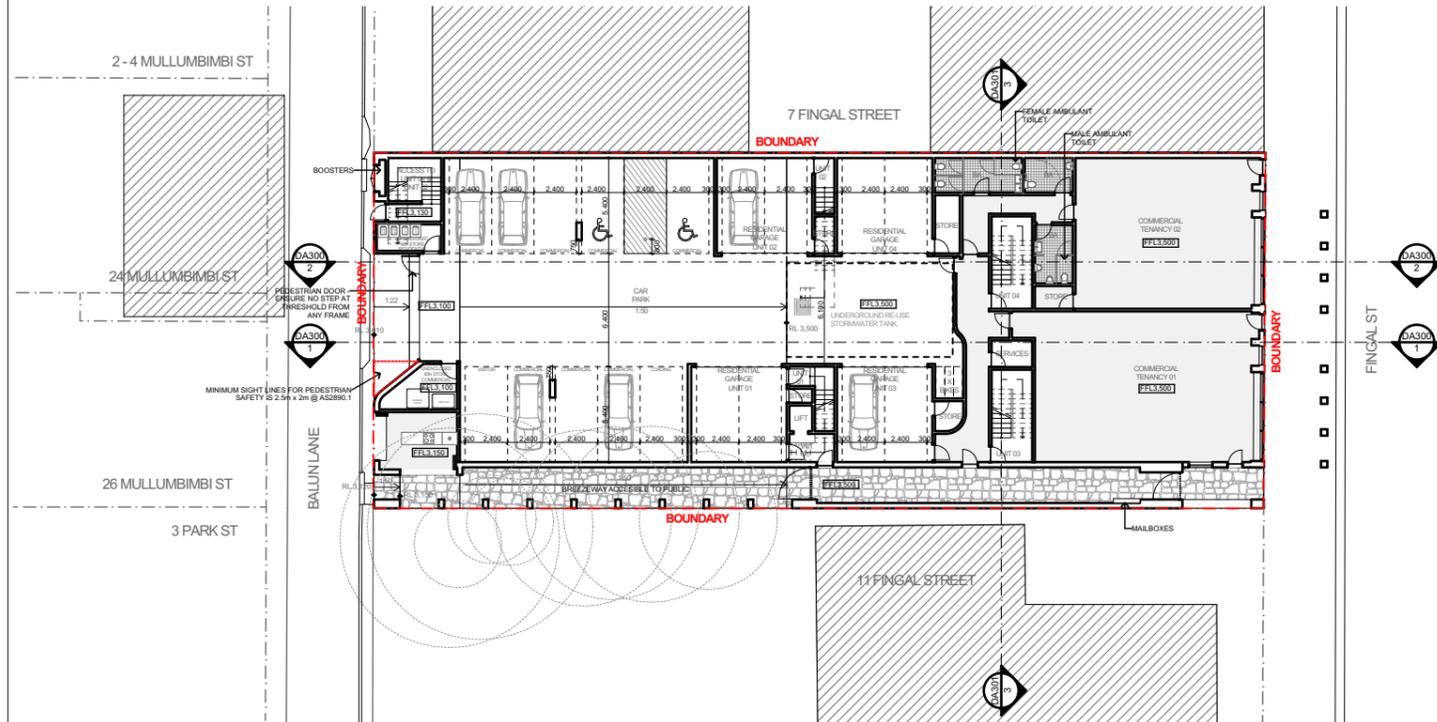
TABLE 3.1 LAND USE BUDGET

Land Use	Area (m ²)
Site Area	1014
Ground Floor - Amenities	34.78
Ground Floor - Cafe	14.32
G.F - Commercial Tenancy 1	110.09
G.F - Commercial Tenancy 2	91.86
Level 1 - Unit 1	137.81
Level 1 - Unit 2	140.04
Level 1 - Unit 3	126.85
Level 1 - Unit 4	126.85
Building Height	8.87m
Parking	18 total
Storeys	2
Floor Space Ratio	0.77:1

3.4 ANCILLARY APPROVALS

No ancillary approvals are also sought from Council at this time.

Plan 3.1 Development Proposal



1 GROUND FLOOR



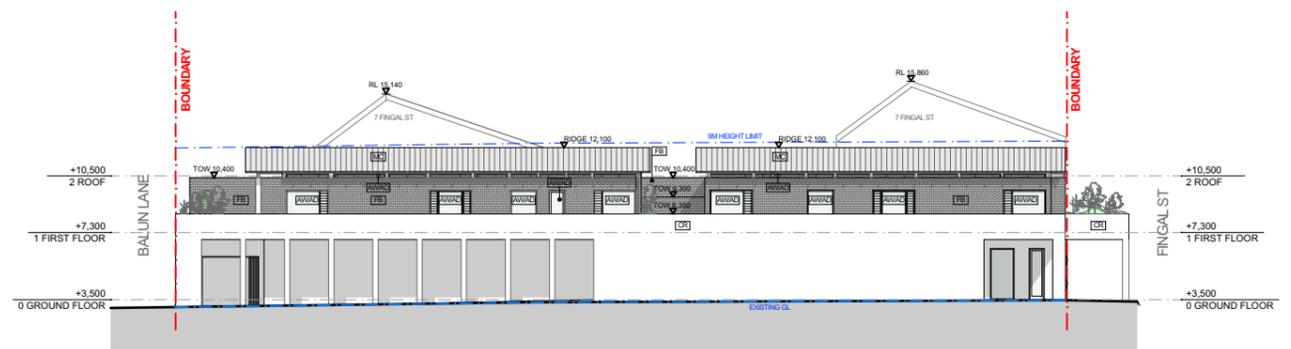
2 FIRST FLOOR



3 NORTH ELEVATION



4 SOUTH ELEVATION



5 WEST ELEVATION

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NOMINATED ARCHITECT: SIMON HANSON # 6739
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LEGEND:

MC	METAL CLADDING - COLOUR COLORBOND SURFMIST
FB	FACE BRICK - COLOUR WHITE
OFC	OFF-FORM CONCRETE
CR	CEMENT RENDER - COLOUR WHITE
AW/AD	ALUMINIUM FRAMED GLAZED DOOR AND WINDOWS

REV	DATE	NAME
01	18/05/2023	ISSUED FOR DEVELOPMENT APPLICATION
02	11/07/2023	ISSUED FOR DEVELOPMENT APPLICATION

SHOP-TOP HOUSING		9 Fingal St		PROJECT No: 23010
STAGE:	DEVELOPMENT APPLICATION	DRAWING TITLE:	NOTIFICATION PLAN	
SCALE @ A3:	1:400	CLIENT:	Bart Vaneray	CHECKED:
		DRAWN:	ZD	APPROVED:
			HHH	REVISION:
			SRH	02

NOT FOR CONSTRUCTION

1:10/2023 5:32 PM 1:0507 BIM5006 BASE OF ARCHICAD 2024 FINGAL ST, BUREAU SRH PTY LTD

4. STATUTORY AND POLICY PLANNING

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

4.1 STATUTORY CONSIDERATIONS

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

4.1.1 DEEMED ENVIRONMENTAL PLANNING INSTRUMENTS

No deemed environmental planning instruments apply to the subject land.

4.1.2 LOCAL ENVIRONMENTAL PLANS

Name: Byron Local Environmental Plan 2014, (BLEP14)

Application in Subject Case:

Zone: The land is zoned E1 Local Centre.

Permissibility: Commercial premises and shop top housing are both permissible uses with Council's consent.

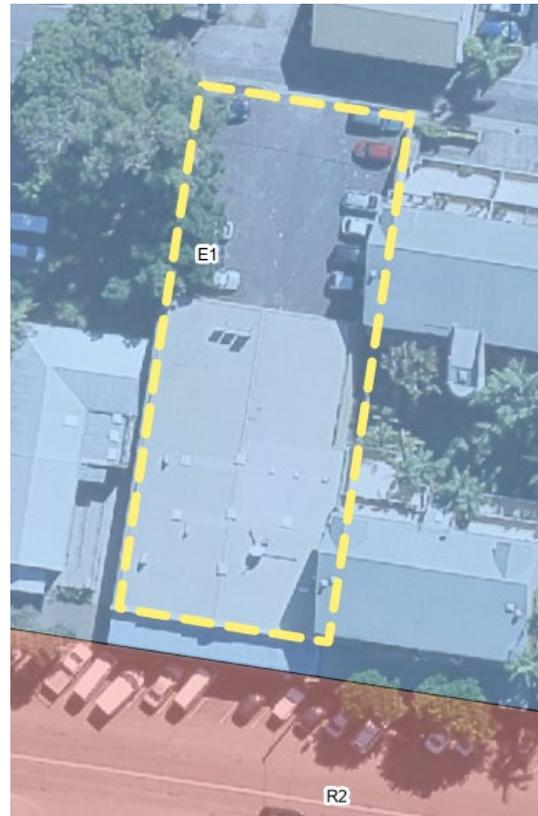
Concurrence: No concurrence is required from any Government Department or the like in relation to the approval of this project.

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

Arrangements: No special arrangements are required to be put in place before development consent can be issued in relation to the subject proposal.

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

Land Zoning Map



Legend E1 - Local Centre

Zone E1 Local Centre

1 Objectives of zone

- To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.
- To encourage investment in local commercial development that generates employment opportunities and economic growth.
- To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.

- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.

- To maximise public transport patronage and encourage walking and cycling.

2 Permitted without consent

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

3 Permitted with consent

Amusement centres; Boarding houses; Centre-based child care facilities; **Commercial premises**; Community facilities; Entertainment facilities; Function centres; Home industries; Hostels; Hotel or motel accommodation; Information and education facilities; Local distribution premises; Medical centres; Oyster aquaculture; Places of public worship; Public administration buildings; Recreation facilities (indoor); Respite day care centres; Service stations; **Shop top housing**; Tank-based aquaculture; Veterinary hospitals; Any other development not specified in item 2 or 4

4 Prohibited

Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Recreation facilities (major); Research stations; Residential accommodation; Rural industries; Sewerage systems; Sex services premises; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Warehouse or distribution centres; Waste or resource management facilities; Water recreation structures; Water supply systems; Wharf or boating facilities; Wholesale supplies

Comment:

“Commercial premises” and “shop top housing” are uses permissible with development consent in the E1 zone.

The proposal is consistent with objectives relating to the provision of a range of retail business uses. It is also consistent with the objective seeking to encourage investment in employment-generating type development. Further, the provision of residential shop top housing is consistent with the third objective, which seeks to contribute to the vibrant local centre through the introduction of residential uses.

The proposal is framed in a way that facilitates public transport patronage and encourages walking and cycling in accordance with the fifth zone objective.

2.5 Additional permitted uses for particular land

(1) Development on particular land that is described or referred to in Schedule 1 may be carried out—

(a) with development consent, or

(b) if the Schedule so provides—without development consent, in accordance with the conditions (if any) specified in that Schedule in relation to that development.

(2) This clause has effect despite anything to the contrary in the Land Use Table or other provision of this Plan.

Schedule 1 of BLEP14 specifies:

12 Use of certain land in Zone E1

(1) This clause applies to land in Zone E1 identified as “Area I” on the Additional Permitted Uses Map

2) Development for the purposes of tourist and visitor accommodation is permitted with development consent.

Additional Permitted Uses Map



Legend Area "I"

Comment:

No approval is sought for tourist and visitor accommodation pursuant to this application.

4.1 Minimum subdivision lot size

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

(a) to ensure that lot sizes are compatible with local environmental values and constraints,

(b) to facilitate efficient use of land resources for residential and other human purposes.

(2) This clause applies to a subdivision of any land shown on the [Lot Size Map](#) that requires development consent and that is carried out after the commencement of this Plan.

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

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

(a) by the registration of a strata plan or strata plan of subdivision under the [Strata Schemes](#)

Minimum Lot Size Map



Legend 200

[Development Act 2015](#), or

(b) by any kind of subdivision under the [Community Land Development Act 2021](#).

Comment:

Subdivision consent is not required in relation to this project. The “collapsing” of the existing strata scheme and reverting the parcel to a conventional Torrens Title lot is not a matter which requires development consent.

4.3 Height of buildings

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

(a) to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,

(b) to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,

(c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.

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

Comment:

The proposal has a height of 8.87m and complies with the 9m height limit specified in

Height of Buildings Map



Legend  9m

Council's LEP.

4.4 Floor space ratio

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

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

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

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

(d) to regulate density of development and generation of vehicular and pedestrian traffic,

(e) to set out maximum floor space ratios for dual occupancy in certain areas.

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

(2A) Despite subclause (2), the maximum floor space ratio for dual occupancies on land in Zone R2 Low Density Residential is 0.5:1.

Comment:

The Floor Space Ratio proposed is 0.77:1 which is about 2.7% in excess of the ratio specified in BLEP14. Accordingly, a request for a variation of this standard is submitted in association with the subject application.

Floor Space Ratio Map



Legend  0.75:1

4.6 Exceptions to development standards

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless—

(a) the consent authority is satisfied that—

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—

When this Plan was made it did not include all of these zones.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,

(c) clause 5.4,

(caa) clause 5.5,

(ca) clause 6.11.

Comment:

The floor space ratio proposed is 0.77:1 which is slightly in excess of the 0.75:1 ratio specified in BLEP14. Accordingly, a request for a variation of this standard is submitted at **Appendix A**.

5.21 Flood planning

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

(a) to minimise the flood risk to life and property associated with the use of land,

(b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,

(c) to avoid adverse or cumulative impacts on flood behaviour and the environment,

(d) to enable the safe occupation and efficient evacuation of people in the event of a flood.

(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—

(a) is compatible with the flood function and behaviour on the land, and

(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and

(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and

(d) incorporates appropriate measures to manage risk to life in the event of a flood, and

(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

Comment:

The proposal is compatible with the flood function and behaviour applicable to the land and will not adversely affect flood behaviour. The flooding impact at the site is quite minor and will not adversely affect the safe occupation. The proposal will not cause avoidable erosion, siltation, or impact riparian vegetation.

(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—

(a) the impact of the development on projected changes to flood behaviour as a result of climate change,

(b) the intended design and scale of buildings resulting from the development,

(c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,

(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.

(4) A word or expression used in this clause has the same meaning as it has in the Considering Flooding in Land Use Planning Guideline unless it is otherwise defined in this clause.



Extent of flood mapping (Source: Landchecker)

(5) In this clause—

Considering Flooding in Land Use Planning Guideline means the Considering Flooding in Land Use Planning Guideline published on the Department's website on 14 July 2021.

flood planning area has the same meaning as it has in the Floodplain Development Manual.

Floodplain Development Manual means the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005

Comment:

The development will have no impact on projected changes to flood behaviour as a result of climate change. The materials proposed will withstand flood effects.

6.1 Acid sulfate soils(1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

Acid Sulfate Soils Map



Legend Class 4

(2) Development consent is required for the carrying out of works described in the table to this subclause on land shown on the [Acid Sulfate Soils Map](#) as being of the class specified for those works.

Class of land	Works
1	Any works.
2	Works below the natural ground surface. Works by which the watertable is likely to be lowered.
3	Works more than 1 metre below the natural ground surface. Works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface.
4	Works more than 2 metres below the natural ground surface. Works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.
5	Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

(3) Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.

(4) Despite subclause (2), development consent is not required under this clause for the carrying out of works if—

(a) a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and

(b) the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.

(5) Despite subclause (2), development consent is not required under this clause for the carrying out of any of the following works by a public authority

(including ancillary work such as excavation, construction of access ways or the supply of power)—

(a) emergency work, being the repair or replacement of the works of the public authority, required to be carried out urgently because the works have been damaged, have ceased to function or pose a risk to the environment or to public health and safety,

(b) routine maintenance work, being the periodic inspection, cleaning, repair or replacement of the works of the public authority (other than work that involves the disturbance of more than 1 tonne of soil),

(c) minor work, being work that costs less than \$20,000 (other than drainage work).

(6) Despite subclause (2), development consent is not required under this clause to carry out any works if—

(a) the works involve the disturbance of less than 1 tonne of soil, and

(b) the works are not likely to lower the watertable.

(7) Despite subclause (2), development consent is not required under this clause for the carrying out of works for the purpose of agriculture if—

(a) a production area entitlement is in force in respect of the land when the works are carried out, and

(b) the works are carried out in accordance with a drainage management plan, and

(c) the works are not carried out in respect of a major drain identified on the [Acid Sulfate Soils Map](#), and

(d) the works are not carried out on land identified as “coastal wetlands” on the Coastal Wetlands and Littoral Rainforests Area Map, within the meaning of [State Environmental Planning Policy \(Resilience and Hazards\) 2021](#), Chapter 2.

(8) In this clause—

drainage management plan means an irrigation and drainage management plan that—

(a) is prepared in accordance with the NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils (2005), and

(b) is endorsed by the Sugar Milling Co-operative as being appropriate for the land.

NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils (2005) means the guidelines approved by the Director-General of the Department of Infrastructure, Planning and Natural Resources on 25 May 2005.

Comment:

No significant works are proposed more than 2 metres below the natural ground surface. Further, the works proposed are unlikely to lower the watertable. Accordingly, an acid sulfate soils management plan is not thought to be warranted.

6.6 Essential services

Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—

(a) the supply of water,

(b) the supply of electricity,

(c) the disposal and management of sewage,

(d) stormwater drainage or on-site conservation,

(e) suitable vehicular access.

Comment:

The site enjoys reticulated water, electricity, and sewage. Stormwater drainage infrastructure is immediately accessible and suitable vehicular access exists.

4.1.3 DEVELOPMENT CONTROL PLANS

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

Name: Byron Development Control Plan 2014] (“BDCP14”)

Application in Subject Case:

Set out below is a tabulation of Development Control Plan requirements that we understand to be relevant in the subject circumstances. The BDCP14 allows for dual pathway assessment. In our tabulation below we define which pathway we have adopted for the purposes of statutory compliance.

Chapter B1 Biodiversity		
	Provisions	Compliance
B1.1	Introduction	
B1.1.1	Aims of this Chapter	
	The aim of this chapter is to ensure that, subject to any relevant overarching state or commonwealth legislation, the planning and design of new development maintains or improves ecological values within Byron Shire thereby increasing the resilience of our natural areas and supporting both biodiversity and climate adaptation.	
	Objectives of this Chapter	
	<ol style="list-style-type: none"> 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 <i>Biodiversity Conservation Act 2016</i> 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. 	
B1.1.2	Application of this Chapter	
	This chapter applies to development on, or adjacent to, any land with natural features such as; High Environmental Value (HEV) vegetation, red flagged areas (areas of land with high biodiversity conservation value which should be excluded from the development envelope), koala use trees , watercourses, wetlands, threatened species and their habitat, threatened ecological communities , threatened populations , wildlife	The site has no vegetation cover whatsoever and accordingly does not trigger any of the considerations relevant in Chapter B1.

Chapter B1 Biodiversity		
	Provisions	Compliance
	<p>corridors, areas identified under the Coastal Management SEPP 2018, Koala Habitat Protection SEPP 2019 and the Byron Coast Comprehensive Koala Plan of Management.</p> <p>It further applies to vegetation clearing requiring development consent where:</p> <ul style="list-style-type: none"> • The vegetation clearing is ancillary to development, or • It is a heritage item or located in a heritage conservation area, or • It is an Aboriginal object or in an Aboriginal place of significance or conservation area. 	

Chapter B3 Services		
	Provisions	Compliance
B3.1	Introduction	
B3.1.1	Purpose of this Chapter	
	The purpose of this Chapter is to identify the minimum requirements necessary to adequately service development for water, sewer, stormwater management, on-site effluent disposal and other necessary infrastructure.	
B3.1.2	Aims of this Chapter	
	<p>The Aims of this Chapter are:</p> <ol style="list-style-type: none"> 1. to protect the environment and public health 2. to ensure developments are adequately serviced with necessary infrastructure 3. to enable Council to plan and co-ordinate the installation of necessary services 	
B3.1.3	Application of this Chapter	
	This Chapter applies to all development where services are required to facilitate the construction and ongoing operation of the development.	
B3.1.4	Relevant Byron LEP 2014 Provisions	
	The provisions of Clause 6.2 Essential Services requires that development consent should not be granted unless adequate arrangements have been made in relation to the supply of water, supply of electricity, the disposal and management of sewage, stormwater management and suitable road access. This Chapter provides more detailed guidelines as to how satisfy the provisions of Clause 6.2.	Consistent - the provisions of Clause 6.2 have been addressed above.
B3.2	Development Controls	
B3.2.1	Provision of Services	
	Objectives	
	<ol style="list-style-type: none"> 1. Ensure adequate water, electricity, sewerage, drainage, road and telecommunication facilities are provided to development; 2. Provide flexibility for the provision of alternative water, electricity and telecommunications sources where appropriate; 3. To ensure provision of adequate engineering and safety standards for public road access, together with equitable apportionment of road upgrading requirements and associated costs for development served by existing public roads, un-constructed or partially constructed public roads and Crown Roads. 	The proposal seeks to be consistent with the provisions of services objective.

Chapter B3 Services		
	Provisions	Compliance
	Performance Criteria	
	There are no performance criteria.	
	Prescriptive Measures	
	<p>1. Water Supply</p> <p>a) Development shall be provided with an adequate water supply connection or have suitable arrangements in place for the provision of an adequate water supply service.</p> <p>b) Development requiring a water supply from off-site is to be connected to a reticulated water system where such a connection is practically available to the site. Alternate water sources may be provided in conjunction with reticulated services.</p> <p>c) For Reticulated Water, the following applies:</p> <p>i) The water supply system must be located and designed to optimise the effective building envelope of each parcel of land designed for occupation, having regard to site constraints.</p> <p>ii) All water mains within private property must be located within easements designed in accordance with Council's requirements.</p> <p>iii) Pump Stations, Hydrants, Metering and other ancillary works must be located with due consideration to the amenity of the subdivision, adjacent developments, and the environment; and provide for the access and maintenance requirements of the Council.</p> <p>iv) Subdivisions and residential development must demonstrate compliance with relevant NSW Fire and Rescue Guidelines for provision of hydrants.</p> <p>d) Businesses or facilities (e.g. caravan parks, camping grounds, farm stay accommodation, educational establishments, restaurants or cafes) that supply people with drinking water from an independent water supply shall comply with the <i>Private Water Supply Guidelines</i>, published by NSW Health. This includes water pumped from rivers, creeks, bores, dams and rainwater tanks. It does not include supplies provided by water utilities or individual household supplies.</p> <p>e) A business involved in the preparation or manufacture of food must use potable water for all activities associated with these activities. Non potable water may be used only where it can be demonstrated that it will not adversely affect the safety of the food handled by the business.</p> <p>f) Rural dwellings without reticulated water are to have a minimum domestic tank capacity of 40,000 litres. Secondary dwellings must have a minimum 20,000 litres in addition to the primary dwelling requirements. For applicants who seek to be better prepared for extended periods of little or no rain, please refer to Section 8.4 of the Byron Rural Settlement Strategy 1998. In bushfire prone areas additional</p>	<p>Consistent - municipal water supply is connected to the subject site and it is understood will be satisfactory to service the development proposed.</p> <p>Not applicable</p> <p>Consistent</p> <p>Not applicable</p> <p>Not applicable</p> <p>No businesses proposed will be utilised for the manufacture of food products.</p> <p>Not applicable</p>

Chapter B3 Services		
	Provisions	Compliance
	<p>water dedicated for fire fighting purposes is to be provided. For specific bushfire requirements please refer to the current version of the NSW Rural Fire Service (RFS) <i>Planning for Bushfire Protection</i> and any additional design information included in the Practice Notes or Fast Facts Sheets provided by the RFS.</p> <p>g) Substantial contributions and developer charges may be payable in relation to different types of development. Applicants should contact Council before preparing a development application to determine what costs are involved.</p>	Noted
	<p>2. Electricity Supply</p> <p>a) Development shall be provided with an adequate connection to grid supplied electricity services or its equivalent. Transformers and associated infrastructure is to be contained within the development.</p> <p>b) Alternative electricity sources for development other than urban and rural residential subdivision may be considered where the applicant can demonstrate the provision of reticulated services is prohibitive due to cost of connection or there is a clear environmental benefit in not connecting to mains infrastructure (e.g. enables supply from renewable sources, avoids the need to remove areas of high environmental value vegetation and habitats). Details are to be provided with the development application.</p>	<p>Consistent -the site is serviced by a reticulated electricity supply from the grid. It is understood that the current supply is adequate to service the needs of the development as proposed.</p> <p>Not applicable</p>
	<p>3. Telecommunications Infrastructure</p> <p>a) Development shall be provided with access to the telecommunications network for fixed line telephone services.</p> <p>b) Developers are required to install fibre ready facilities for all developments unless exempted by Planning Circular No. PS 17-005. Arrangements are to be made for the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier. Developers are to have regard to other new technologies to improve telecommunications speeds for the internet and other computer based communication devices, and to facilitate new and evolving industries.</p> <p>c) Alternative means of telecommunications access for rural subdivision may be considered where the applicant can demonstrate that an NBN Fixed Wireless service is available</p>	<p>Consistent - the subject site is serviced by telecommunications infrastructure. It is understood that the current level of infrastructure is able to service the needs of the subject development.</p> <p>Not applicable</p> <p>Not applicable</p>

Chapter B3 Services		
	Provisions	Compliance
	<p>and is supported by a letter from NBN Co Limited confirming that each allotment can be serviced by such a system. Approvals for rural subdivisions utilising alternative means of telecommunications access will require restrictions on the title of all new allotments consistent with the concept sought by the developer (e.g. fixed line telephone services not provided).</p> <p>4. Alternative means of telecommunications access for development other than subdivision may be considered where the applicant can demonstrate that the provision of fixed line services is prohibitive due to the cost of connection or that there is a clear environmental benefit in not connecting to fixed line infrastructure. Details are to be provided with the development application.</p>	Not applicable
	<p>5. Sewage Management</p> <p>a) Development shall be provided with an adequate reticulated sewer connection or have suitable arrangements in place for such a connection to be made where access to reticulated sewer is available.</p> <p>b) For reticulated sewer the following applies:</p> <ul style="list-style-type: none"> i) The system must be sized and designed in accordance with the Northern Rivers Development and Design Manual; ii) Sewer reticulation for the proposed development must be constructed at the proponent's cost by an approved contractor; iii) A sewer connection point must be provided to each parcel of land designed for separate occupation. The system must be designed to optimise the effective building envelope of each lot; iv) All sewer mains and rising mains must be located within easements designed in accordance with Council's requirements; v) Pump Stations, Wells, Access Chambers, Vents and other ancillary works must be located with due consideration to the amenity of the subdivision, of adjacent developments and the environment. Consideration must be given to noise, odours and the aesthetic impact of the system, and to access and maintenance requirements of the Council. <p>c) Where access to reticulated sewer is not available, arrangements must meet the requirements of Section B3.2.2 in relation to on-site sewage management.</p> <p>d) Substantial contributions and developer charges may be payable in relation to different types of development. Applicants should contact Council before preparing a development application to determine what costs are involved.</p>	<p>Consistent- the subject site is serviced by a reticulated sewage system. It is understood that the capacity of the system in the locality is sufficient to meet the needs of the subject development.</p> <p>Consistent</p> <p>Not applicable</p> <p>Noted</p>
	6. Stormwater and Drainage	

Chapter B3 Services		
	Provisions	Compliance
	Development must comply with the requirements set out in Sections B3.2.3 and B3.2.4 relating to stormwater management and erosion and sedimentation control.	
	<p>7. Road Access – General (Including Driveways)</p> <p>a) Development must comply with road access requirements contained in Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access, and the <i>Northern Rivers Development & Design Manual</i>.</p> <p>8. On bushfire prone land, road access may need to be improved to facilitate access by the NSW Rural Fire Service. For specific requirements please refer to the current version of the NSW RFS <i>Planning for Bushfire Protection</i> and any additional design information included in “Practice Notes or Fast Facts Sheets”.</p>	<p>Consistent - the application proposed driveways and the like which are consistent with the provisions of Council's DCP Chapter B4 and construction manual.</p> <p>Not applicable</p>
	<p>9. Road Access - Council controlled roads</p> <p>Where development is proposed with frontage to a Council controlled road, or where access to a development site relies on a Council controlled road, the following road construction and upgrading requirements will apply:</p> <p>a) Construction or upgrading of the adjoining road to Council's adopted engineering standards, currently the <i>Northern Rivers Development Design & Construction Manuals</i>, for the full frontage of the property. In cases where the development is staged or does not utilise the full property frontage a reduced length of frontage construction may be applied — applicants should discuss those cases with Council's development engineer before lodging a Development Application. Council may require upgrading for the full frontage or more, for safety, dust, noise, amenity, or environmental reasons. Laneway construction or upgrading should be in accordance with Chapter D6 Subdivision (D6.4.3).</p> <p>b) Where road(s) providing access to the immediate site frontage do not meet Council's construction standards to accommodate the additional traffic volume predicted to be generated by the proposed development, Council will require partial or full construction or upgrading of those road(s) to Council's adopted engineering standards, currently the <i>Northern Rivers Development Design & Construction Manuals</i>. The proportional quantum of the construction required will be based on the proportion of the volume of traffic predicted to be generated by the proposed development relative to the total traffic predicted on the access road. If in Council's opinion the proportional works or equivalent contribution will not be sufficient to provide a safe and practical standard of road access Council may refuse consent to the development application.</p> <p>c) In cases where the above requirements are not appropriate to the proposed development developers may seek to enter into a Voluntary Planning Agreement with Council pursuant</p>	<p>Consistent</p> <p>Consistent - the quantum of additional traffic generated by the development is estimated by the traffic engineer as reducing and accordingly, the proposal will not adversely impact the road system in the subject locality.</p> <p>Not applicable</p>

Chapter B3 Services		
	Provisions	Compliance
	<p>to Section 93F of the <i>Environmental Planning and Assessment Act 1979</i> to address access road requirements.</p> <p>d) Where the construction or upgrade works are specifically identified in an adopted contributions plan and the works are not required to provide a safe and practical standard of road access, the works can be provided for by payment of the relevant contributions. If the works are required, the Council may accept an offer by the applicant to provide the works as an “in-kind” contribution (i.e. the applicant completes part or all of the work identified in the Plan) in lieu of the payment of the monetary contribution. The applicant should make any request for an “in-kind” contribution at the time of lodging a Development application.</p>	Not applicable
	<p>10. Road Access – Crown Roads:</p> <p>a) Crown Roads are public roads administered by the NSW Land and Property Management Authority under the <i>Roads Act 1993</i>. Crown roads are generally available as ‘natural terrain roads’ to provide a means of public access for pedestrians, vehicles (where possible) and to drive stock. The entitlement to use a Crown Road for the purpose of access must not be interpreted as an automatic right to undertake construction or upgrading works to improve access along the Crown road.</p> <p>b) In most cases where development consent is sought that requires access from a Crown Road, the ownership will likely be given to Council or TfNSW and require upgrading in part or full to Council’s standards. The road standards applied will be the same as for Council controlled roads, discussed above. Applicants may wish to consider alternative access if they do not want to upgrade a Crown Road.</p> <p>d) Council may accept access construction to the “minor works” standard of the NSW Land and Property Management Authority, (subject to the Authority’s agreement) for developments that are not estimated to increase the traffic demand (e.g. where there is an existing dwelling entitlement). However, construction or upgrading works may be required to provide a safe and practical standard of road access or to satisfy bushfire requirements.</p>	<p>Not applicable</p> <p>Not applicable</p> <p>Not applicable</p>
B3.2.2	On-site Sewage Management	Not applicable
B3.2.3	Stormwater Management	
	Objectives	
	<ol style="list-style-type: none"> 1. To promote on-site stormwater management practices that support the ‘predevelopment’ hydrological regime (surface flow, streams and groundwater). 2. To ensure that new development does not reduce the effectiveness of existing drainage patterns (including built infrastructure). 3. To minimise the impacts of stormwater runoff from a site on adjoining properties. 	The proposal seeks to be consistent with the Stormwater Management objectives.

Chapter B3 Services		
	Provisions	Compliance
	<p>4. To provide an acceptable level of protection against personal injury and property damage due to localised stormwater runoff.</p> <p>5. To promote on-site retention, detention and infiltration of stormwater.</p> <p>6. To promote stormwater harvesting and other forms of innovative water conservation.</p> <p>7. To promote better integration of stormwater management into development proposals.</p> <p>8. To ensure that on-site stormwater management facilities can be economically maintained, and that adequate arrangements are made for on-going maintenance.</p> <p>9. To provide for the ongoing environmental health of receiving waters;</p> <p>10. To ensure that stormwater management systems protect ground and surface water and other ecological values;</p> <p>11. To achieve best practice stormwater treatment targets for stormwater quality.</p>	
	Performance Criteria	
	There are no performance criteria.	
	Prescriptive Measures	
	<p>1. Development Applications</p> <p>Development applications must contain sufficient information to assess whether the proposed stormwater system is effective and feasible, both within the site and in its connection to the public drainage system. An approval of the stormwater management system may be required under <i>Section 68 of the Local Government Act 1993</i> or <i>Section 138 of the Roads Act 1993</i>.</p> <p>An applicant may lodge detailed stormwater management plans with the development application for concurrent approval <i>under Section 68 of the Local Government Act 1993</i> and <i>Section 138 of the Roads Act 1993</i>, as necessary. Alternatively stormwater management concept plans must be lodged with the development application and a condition of consent will require the relevant approvals prior to issue of the Construction Certificate.</p> <p>Plans showing the method of draining the land are to be in accordance with the Northern Rivers Local Government Development Design and Construction Manuals, Byron Shire Council Comprehensive Guidelines for Stormwater Management and relevant Australian Standards. Sample drawings developed as part of the Northern Rivers Local Government Development Design and Construction Manuals provide guidance on the type of information that should be included in stormwater management plans for subdivision works. AS/NZS 3500.3:2003 Plumbing and drainage - Stormwater drainage is the relevant Australian Standard at the time of writing this document. Appendices C and K of AS/NZS 3500.3:2003 provide guidance on the type of information that should be included in stormwater management plans for building works. Council's manuals, and guidelines, including standard and sample drawings, are available on Council's website.</p>	<p>Consistent – TR#6 contains Development Application standard documentation in relation to the proposed stormwater management for the site.</p> <p>No Section 68 or 138 applications are lodged at this time.</p> <p>Consistent</p>

Chapter B3 Services		
	Provisions	Compliance
	<p>2. Properties adjacent to or containing waterways Lands identified as containing or directly adjoining waterways may be subject to inundation (during the 1 in 100 year ARI storm event). Development applications must demonstrate that the proposal complies with the requirements of the Northern Rivers Development and Design Manual. Development proposals in close proximity to waterways or other areas of possible inundation must be accompanied by a hydrologic study submitted by an appropriately qualified person to demonstrate that the proposal or any future development will not interfere with the natural flowpath or be subject to flooding (refer to Chapter C2 Areas Affected by Flood). Appropriate buffers to waterways must be provided.</p>	Not applicable
	<p>3. Site Drainage</p> <p>a) Site drainage shall be in accordance with the Northern Rivers Local Government Development Design and Construction Manuals, Byron Shire Council Comprehensive Guidelines for Stormwater Management and relevant Australian Standards.</p> <p>b) For building works, the piped property drainage system is to capture and convey to a lawful point of discharge all stormwater runoff from the following areas of the development site:</p> <ol style="list-style-type: none"> impervious areas including roofs, paved areas and driveways areas subject to changes to ground level (existing) including excavation or filled areas areas where the natural or pre-development overland flow regime is disrupted to the potential detriment of an adjoining property. <p>c) The development must not introduce, impede or divert stormwater runoff in such a manner as to increase stormwater flow across a boundary onto adjoining property. Concentrated, collected or diverted stormwater flow onto an adjoining property must be at a lawful point of discharge.</p>	<p>Consistent – see TR#6</p> <p>The site is a developed parcel that enjoys an existing lawful point of discharge. The Stormwater Management Plan (TR#6) discharges to that lawful point of discharge.</p> <p>Consistent</p>
	<p>4. Lawful Point of Discharge</p> <p>a) A lawful point of discharge exists at a particular location, if:</p> <ol style="list-style-type: none"> the location of the discharge is under the lawful control of the Council or other statutory authority from whom permission to discharge has been received; and in discharging in that location, the discharge will not cause an actionable nuisance. <p>b) Where a lawful point of discharge is not available in the vicinity drainage may need to be constructed and any easements may need to be acquired to direct collected stormwater to a lawful point of discharge. Negotiations with property owners must be undertaken along feasible easement routes to determine whether an easement can be obtained to provide stormwater system that will drain by gravity to a public drainage system. Where easements are proposed over downstream properties for drainage purposes, a letter of consent from the owner(s) of the</p>	<p>Consistent</p> <p>Not applicable</p>

Chapter B3 Services		
	Provisions	Compliance
	<p>downstream properties must be submitted with the development application.</p> <p>c) For properties involving building works generally at a higher level than the adjoining road, where the site drainage system can be piped under gravity to the road drainage system, then the discharge is to be connected to the street drainage system.</p> <p>d) For properties involving building works generally at a lower level than the adjoining road, where the site drainage system cannot be piped under gravity to the road drainage system, the discharge is to be carried out entirely in accordance with one of the following options:</p> <ul style="list-style-type: none"> i) Discharge to a public drainage system within the development site. ii) Private drainage easement across neighbouring properties. iii) Charged systems, but ONLY for residential developments up to and including a single dwelling where it can be demonstrated that an easement cannot be obtained and where the roof gutters are sufficiently above the road gutter to permit drainage via a (pressurised) sealed system. iv) Dispersion trenches, but ONLY for residential developments up to and including a single dwelling, where it can be demonstrated that an easement cannot be obtained and sufficient land is available. v) Infiltration trenches, but ONLY where it can be demonstrated that: an easement cannot be obtained; there is sufficient land available; the underlying soil is sandy enough to infiltrate all runoff up to the 20 year ARI storm; and infiltration will not lead to contamination of the groundwater. Other storm events may be considered having regard to the consequences of failure and impacts on downstream properties. vi) Pump-out systems, but ONLY for basement car park areas where: it can be demonstrated that, if gravity drainage is not possible, an easement cannot be obtained; the contributing catchment is the driveway ramp only, up to a maximum of 60 m²; and, pump failure will not cause overflow affecting neighbouring properties or habitable floor areas. 	<p>Noted</p> <p>Noted</p>
	<p>5. Easements</p> <ul style="list-style-type: none"> a) Easements are to be in accordance with the Northern Rivers Local Government Development Design and Construction Manuals. b) Where a site is traversed by a drain (under the control of Council) that is not within an easement, a suitable easement must be created in favour of the Council. c) Where an easement is benefiting private property(s) only, the easement is not to be to the benefit of Council. d) Where an easement is required to be created a written agreement must be made between all relevant parties 	<p>It is understood that no additional easements are required to service the needs of the subject project.</p>

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	agreeing to its creation. Evidence of the written agreement to the creation of the easement is to be submitted with a Development Application. Council may grant deferred commencement consent subject to easement creation.	
	<p>6. On-site Stormwater Detention (OSD)</p> <p>a) On-site Stormwater Detention (OSD) shall be provided in accordance with the Northern Rivers Local Government Development Design and Construction Manuals, Byron Shire Council Comprehensive Guidelines for Stormwater Management and relevant Australian Standards.</p> <p>b) OSD shall generally be incorporated into all development (except as provided by 'c') below), including the following:</p> <ul style="list-style-type: none"> i) residential, commercial and industrial development; ii) educational establishments, hospitals, community services and other institutions; iii) public buildings; iv) impervious car parks; and v) tennis and other impervious playing courts. <p>c) OSD is not required in the following circumstances:</p> <ul style="list-style-type: none"> i) where the total net increase in impervious area is less than 150 m²; ii) if the application is for or relates to a dwelling house unless a restriction on title specifies otherwise; iii) if the application is for development on land zoned RU1, RU2, or R5 unless needed to provide a lawful point of discharge; iv) where the site drains directly to a trunk drainage system within the tidal reach of a river or stream; v) where the site is located within a catchment within which a regional detention structure has been provided for the ultimate development of the catchment; vi) where dispersion or infiltration is used as the means of stormwater discharge from the site; or vii) where a Consulting Engineer has undertaken a detailed analysis of the entire catchment and demonstrated that the provision of detention on the subject property, including consideration of the cumulative affect of detention provision across the catchment, will provide no benefit to any downstream drainage system for storm frequencies between the 5 year and 100 year ARI. 	Consistent - as documented in the Stormwater Management Plan TR#6 , appropriate onsite detention is proposed to meet the needs of this development.
	<p>7. Stormwater Quality and Treatment</p> <p>a) Applications for development types listed in Table B3.1 (including redevelopment) must address the "key" pollutants identified in that table (see below).</p>	Consistent – the proposal provides for the installation of a "hume septon" to address water quality issues.

Table B3.1 – Key pollutants in stormwater flows to be addressed

Development Type	Litter	Coarse Sediment	Fine Particles	Total Phosphorous	Total Nitrogen	Hydrocarbons, motor fuels, oils & grease
Low Density Residential 1. bed and breakfast	Y	N	N	Y	Y	N

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accommodation & farm stay accommodation																				
Medium Density Residential 2. & tourist and visitor accommodation (excluding bed and breakfast accommodation & farm stay accommodation)	Y	Y	Y	Y	Y	N														
Development Type	Litter	Coarse Sediment	Fine Particles	Total Phosphorous	Total Nitrogen	Hydrocarbons, motor fuels, oils & grease														
Commercial, Shopping & Retail Outlets	Y	Y	Y	N	N	N														
Industrial	Y	Y	Y	?	?	Y														
Car Parks, Service Stations & Wash Bays	Y	Y	Y	N	? Y															
<p>Y - Key pollutant, needs to be addressed ? - Variable, requires site specific assessment. N - Not significant.</p> <p>(Source: Adapted from the <i>Byron Shire Urban Stormwater Management Plan</i>)</p> <p>1. - "Low Density Residential" development refers to dual occupancies, dwelling houses, rural workers' dwellings, secondary dwellings, shop top housing comprising 2 or less dwellings and semi-detached dwellings.</p> <p>2. - "Medium Density residential" development refers to attached dwellings, boarding houses, group homes, hostels, multi dwelling housing, residential flat buildings, seniors housing and shop top housing comprising 3 or more dwellings.</p>																				
<p>b) Applications for subdivisions and developments involving an area of land greater than 2,500m² must provide measures to address the "key" pollutants in accordance with Table B3.2 for all stormwater flows up to 25% of the 1 year ARI peak flow from the development site.</p> <p>Table B3.2 - Pollutants and Retention Criteria</p> <table border="1"> <thead> <tr> <th>Pollutant / Issue</th> <th>Retention Criteria</th> </tr> </thead> <tbody> <tr> <td>Litter</td> <td>70% of average annual load greater than 5mm.</td> </tr> <tr> <td>Coarse Sediment</td> <td>80% of average annual load for particles 0.5mm or less.</td> </tr> <tr> <td>Fine Particles</td> <td>50% of average annual load for particles 0.1mm or less.</td> </tr> <tr> <td>Total Phosphorous</td> <td>45% of average annual load.</td> </tr> <tr> <td>Total Nitrogen</td> <td>45% of average annual load.</td> </tr> <tr> <td>Hydrocarbons, motor fuels, oils & grease</td> <td>90% of average annual load.</td> </tr> </tbody> </table>					Pollutant / Issue	Retention Criteria	Litter	70% of average annual load greater than 5mm.	Coarse Sediment	80% of average annual load for particles 0.5mm or less.	Fine Particles	50% of average annual load for particles 0.1mm or less.	Total Phosphorous	45% of average annual load.	Total Nitrogen	45% of average annual load.	Hydrocarbons, motor fuels, oils & grease	90% of average annual load.	<p>The project is not of a scale that triggers the requirements of this clause.</p>	
Pollutant / Issue	Retention Criteria																			
Litter	70% of average annual load greater than 5mm.																			
Coarse Sediment	80% of average annual load for particles 0.5mm or less.																			
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Total Nitrogen	45% of average annual load.																			
Hydrocarbons, motor fuels, oils & grease	90% of average annual load.																			

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	<p>c) Runoff from all areas (including roofs and paved areas) needs to be treated. Significant water quality improvements can be achieved by configuring a sequence of treatment measures (a 'treatment train'). Such measures may include roofwater tanks, infiltration devices, filtration & bio-retention devices, porous paving, grassed swales, better landscape practices, ponds & wetlands and stormwater tanks. The suitability of treatment measures will depend largely on site conditions. For example, infiltration devices are not suitable in areas with heavy clay soils and subsoils.</p> <p>d) A soil and water management plan is required where the area of soil surface disturbance exceeds 2 500m². Sites of this scale typically require sediment retention basins to minimise sediment pollution.</p>	
B3.2.4	Sedimentation and Erosion Control Measures	
	Objectives	
	<ol style="list-style-type: none"> 1. Encourage implementation of contemporary best practice in erosion and sediment control; 2. Prevent land degradation by soil erosion through inappropriate land use practices; 3. Protect waterways and sensitive environments from being degraded by increased sediment load; 4. Promote and protect biodiversity by minimising cumulative impacts of sedimentation on the environment; and 5. Protect amenity and prevent discharge of sediment on to both public land and private land. 	The project seeks to be consistent with the Sediment and Erosion Control objects.
	Performance Criteria	
	There are no performance criteria.	
	Prescriptive Measures	
	<ol style="list-style-type: none"> 1. An erosion and sediment control plan is required where the area of soil surface disturbance is in the range 250m² – 2500m², or where the area of soil surface disturbance is less than 250m² but the site has either a slope exceeding 20% or immediately adjoins a waterway. 2. A soil and water management plan is required where the area of soil surface disturbance exceeds 2500m². Sites of this scale typically require sediment retention basins to minimise sediment pollution. 3. Plans must be prepared in accordance with Northern Rivers Local Government Development Design and Construction Manuals, Byron Shire Council Comprehensive Guidelines for Stormwater Management and 'Managing Urban Stormwater: Soils and Construction' (Landcom, Sydney, 2003). An approval must be obtained for the plan from Council, under <i>Section 68 of the Local Government Act, 1993</i>, prior to issue of a Construction Certificate. 	<p>Consistent – The plans forming part of TR#6 illustrate the erosion control measures proposed.</p> <p>Consistent - the amount of soil disturbance is less than the quantum specified by this provision.</p> <p>Not applicable</p>

Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access		
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B4.1	Introduction	

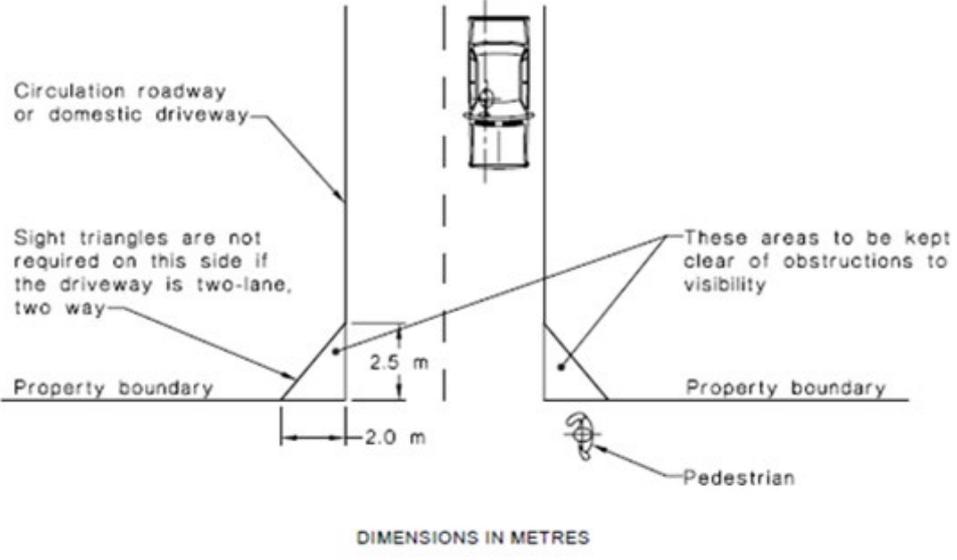
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B4.1.1	Purpose of this Chapter	
	The purpose of this Chapter is to provide guidelines, controls and standards for traffic planning, vehicle access, circulation and parking for developments.	
B4.1.2	Aims of this Chapter	
	<p>The Aims of this Chapter are to:</p> <ol style="list-style-type: none"> 1. To ensure that all relevant traffic impacts relating to development are identified, assessed and mitigated. 2. To ensure that parking supply and management in new developments supports Council policies and objectives for the development of Byron Shire; 3. To ensure that traffic generating developments make adequate provision for off-street car parking, such that the needs of occupants, users, visitors, employees, service and delivery vehicles are met; 4. To ensure the safe and efficient circulation of vehicles entering, leaving and within car parking and service/delivery areas; 5. To minimise the detrimental effects (particularly visual and radiated heat effects) associated with off-street car parking areas on the amenity of urban areas 6. To ensure that entry/exit points to car parking and service/delivery areas are situated in a way that sight distances are maximised, and disruption to the circulation of vehicles on the public road system is minimised. 7. To have regard to the objectives contained within the Byron Shire Strategic Transport Statement (Transport Policy) 	
B4.1.3	Application of this Chapter	
	This Chapter applies to all development types where vehicle access and/or parking is required.	
B4.1.4	Relevant Byron LEP 2014 Provisions	
	There are no specific LEP provisions relating to car parking and vehicle access other than Clause 6.6 which requires the provisions of suitable vehicular access for developments. A car park has the same meaning as defined under Byron LEP 2014. Land uses in Table B4.1 have the same meaning as defined under Byron LEP 2014.	Refer to the Traffic Report TR#7A in relation to access considerations.
B4.1.5	Road Access and Safety Principles	
	<p>The following principles are to be considered for applications that propose access to public roads or where an upgrade or alteration to a public road is required.</p> <ol style="list-style-type: none"> 1. All users and modes of transport have an equal right of safe access to and movement on the road network. 2. Road safety audits must consider the access and safety of all road users, modes of transport and services delivered within the road reserve such as bus stops and waste collection. 3. Road upgrades must demonstrate that works have considered all road users, modes of transport and services delivered in the road reserve. 	Consistent

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	4. New roads must include safe access infrastructure for cyclists, pedestrians and services delivered in the road reserve.	
B4.2	Development Controls	
B4.2.1	Traffic Impact	
	<p>2.The Need for Traffic Impact Assessment</p> <p>The traffic attracted to a new land use development or a major expansion of an existing development, such as an industrial project or a major shopping centre, can have significant impacts on the performance of the current or future road network. These need to be properly assessed and addressed so that a satisfactory level of road safety and transport efficiency is maintained.</p> <p>Judgment is required to decide whether a project requires a full traffic impact assessment or some lesser analysis of traffic issues. For example, small urban developments may only require alterations to driveways and off-street parking spaces, whereas a similar development on a rural road may require turn lanes because of the high speed environment, the level of traffic generated and/or site geometry that restricts visibility.</p> <p>The following is a guide for deciding on the level of traffic assessment required:</p> <ol style="list-style-type: none"> Low Impact (generally less than 10 peak hour trips) – submit a safety assessment demonstrating satisfactory access location, sight distances and sightlines to pedestrians. Moderate Impact (10 – 50 peak hour trips) – <i>Traffic Impact Statement</i> required. High Impact (more than 50 peak hour trips) – <i>Traffic Impact Study</i> required. <p>The need for a traffic impact assessment can be influenced by many factors apart from the volume of peak hour traffic to be generated by the development. Where other criteria are significant, the discretion of Council can be exercised. Where development is to be located in a particularly sensitive area (e.g. densely populated) a traffic impact study may be deemed necessary, even though fewer than 10 peak hour trips are generated. Conversely, there may be cases where the development is in an isolated and less sensitive area and a traffic impact statement is considered to be sufficient even though the development generates more than 50 peak hour trips. Similarly a lower threshold, in terms of additional traffic generated, may be appropriate in more densely populated areas.</p>	Consistent - a Traffic and Parking Assessment Report has been prepared for the purposes of this application. That report is published at TR#7A .
	<p>3.Traffic Impact Statement</p> <p>A <i>Traffic Impact Statement</i> serves the same purpose as a traffic impact study but is not as comprehensive. A <i>Traffic Impact Statement</i> should include:</p> <ol style="list-style-type: none"> a brief description of the development in terms of proposed land use and trips generated; a brief description of the existing operational conditions of the road network in the immediate vicinity of the development; 	Consistent - the scale of this development does not warrant the need for a Traffic Impact Statement.

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	<ul style="list-style-type: none"> c) analysis of the operation of the accesses and parking arrangements for the development; d) analysis of the parking demand and supply of the development; e) analysis for the mobility impaired; f) analysis of the operation of the first intersection, as a minimum, on either side of the accesses; g) a conceptual geometric layout of the access arrangements, including any nearby driveways and intersections; and h) professional opinion on the expected traffic impact based on a site observation during the expected critical peak hour and the analysis conducted. 	
	<p>4. Traffic Impact Study</p> <p>A <i>Traffic Impact Study</i> should follow the standard format and structure described in the Roads and Maritime Authority's (RMS) '<i>Guide to Traffic Generating Developments</i>' (as amended from time to time by a superseding document prepared by RMS). All proposed developments listed in Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007 require referral to either a Regional Traffic Development Committee or a Local Traffic Development Committee. In most situations, a <i>Traffic Impact Study</i> will be required for developments listed under column 2 in that schedule.</p>	Consistent - the documentation published in the Traffic and Parking Assessment Report (TR#7A) is consistent with the requirements specified by this clause.
	<p>5. Road Safety Audit</p> <p>The person carrying out the traffic impact assessment will need to determine whether a Road Safety Audit, prepared in accordance with RMS requirements, needs to be included as part of the traffic impact assessment. This would be particularly relevant when road safety is identified as a major concern, for example, activities that generate large numbers of heavy vehicles or new schools.</p> <p>Road safety audits must consider the access and safety of all road users, modes of transport and services delivered within the road reserve such as bus stops and waste collection.</p>	Not applicable
B4.2.2	Parking Layout Standards	
	<ol style="list-style-type: none"> 1. Car parking requirements, parking layout, driveway widths and vehicle manoeuvring areas are to be in accordance with the relevant sections of the current editions of Australian Standard 2890. 	Consistent – the addendum to the traffic report dated 11 th July 2023 (TR#7B) notes that the parking dimensions have been designed to comply with AS 2890 for Class 1 employee and residential uses. The traffic expert opines that the commercial car spaces are primarily expected to be used by staff and that most casual users will use on street carparking, particularly the seven parking spaces located on the street directly in front of the subject premises.

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	2. All parking spaces in commercial and industrial developments must be available for unrestricted public access and employee use. There shall be no restriction on public parking in the required car park, other than car spaces set aside for any residential units approved on the site.	Noted
	3. Access for the disabled and parking facilities are to be provided in accordance with the current editions of AS 2890 and the Building Code of Australia and the requirements of the <i>Disability Discrimination Act, 1992</i> (Commonwealth).	Consistent -refer to Technical References TR#10 and TR#15 .
	4. Tandem or stacked parking is not generally favoured. However, in certain cases, the provision of a limited number of employee parking spaces may be provided in this way in circumstances where no inconvenience arises from its use and subject to the following guidelines: <ul style="list-style-type: none"> a) The applicant must be able to demonstrate that there is a real need for stacked parking and that the provision of stacked parking will not adversely affect the use of the site. b) No more than two (2) cars are parked in a stacked arrangement, so that no more than one (1) vehicle has to move to allow egress of another. c) Stacked parking is only to be used to provide parking for people employed on the premises and likely to park all day or a major part of the day. d) Stacked parking spaces are to be used by the occupants of the site in one tenancy. e) Stacked parking for customer/public and for separate dwellings on the same property will not be supported. 	Not applicable
B4.2.3	Vehicle Access and Maneuvering Areas	
	1. Driveways and manoeuvring areas are to be designed and constructed in accordance with the requirements of the current editions of Australian Standard 2890, Austroads and the Northern Rivers Local Government Development & Design Manual.	Consistent
	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 may seek a variation this requirement on roads with low traffic volumes by demonstrating there are no traffic safety issues on the frontage roadway or within the site.	Consistent
	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.	Consistent - the addendum to the traffic report (TR#7B) illustrates the parking arrangements for the proposed loading zone.
	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	Consistent

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	provided, 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).	
	5. Internal driveways for more than three dwelling s 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: <ul style="list-style-type: none"> a) a minimum driveway width of 5.5m is provided for at least the first 6 m from the property boundary; b) adequate passing opportunities are provided; c) good sight distance is available; d) slope of driveway is not excessive; e) frontage roadway has less than 3000 vehicle trips per day; and f) traffic and pedestrian volumes on the driveway. 	Consistent
	6. Where driveways are to be negotiated by a waste collection vehicle, they must have a maximum gradient of 16% at any one point.	Consistent
	7. Internal driveways for three dwellings or less are to have a minimum width of 3m with a 4m wide X 2.7m high access corridor to facilitate landscaping, services, retaining walls etc.	Consistent
	8. Driveways for hatchet shaped lots should be fenced and landscaped on either side in order to minimise any potential noise or light pollution for adjoining lots with different ownership.	Consistent
	9. The design of access to a development from a high speed (> 50km/hr) or high volume road (> 3000 vehicles per day), should not allow hazardous diverging or merging manoeuvres to occur on the through traffic lanes. The construction of turn lanes for vehicle movement for proposed developments are to be provided on major roads where the conflict between the turning traffic and any opposing major road traffic, may cause a substantial traffic delay or risk. Development applications must be supported with turn warrant assessments and preliminary engineering plans of the necessary treatment/s - refer to Austroads publications.	Consistent
B4.2.4	Structures Adjacent to Driveways	
	Boundary fencing, garages, carports, landscaping, vegetation, signs, letterboxes or any other structures adjacent to a driveway that exceed 1.15 metres in height are to demonstrate compliance with the current editions of Australian Standard 2890 in relation to the provision of sight lines for vehicles and pedestrians. No permanent sight obstruction exceeding 1.15 metre in height shall be located within the identified clearance area for sight	Consistent

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	<p>distances. The following diagram is provided from Australian Standard 2890.1:2004 for guidance:</p>  <p style="text-align: center;">DIMENSIONS IN METRES</p>	
Figure B4.1 • Minimum Sight Lines for Pedestrian Safety (Source: Australian Standard 2890.1: 2004)		
B4.2.5	Car Parking Requirements	
	<ol style="list-style-type: none"> Unless otherwise specified elsewhere in this DCP, car parking is to be provided in accordance with the schedule contained in Table B4.1 Where a proposed use is not represented in Table B4.1 or elsewhere in this DCP, the rates under the RMS Guide to Traffic Generating Developments (as amended from time to time by a superseding document prepared by RMS) will apply. If a rate is not provided by the RMS Guide to Traffic Generating Developments (as amended from time to time by a superseding document prepared by RMS) a merit based assessment will apply. In such circumstances applicants are encouraged to review car parking rates for adjoining or surrounding Councils and to contact Council's Development Engineers as to what an appropriate rate may be. 	The proposal adopts the parking rates specified in Council's DCP Table B4.1
B4.2.6	Underground/ Basement Car Parks	
	<ol style="list-style-type: none"> Where excavation is proposed for basement car parks development applications should demonstrate that: <ol style="list-style-type: none"> The proposed access to and appearance of the car park will be visually compatible with the existing and desired future character of the locality, streetscape and immediate surrounds. The proposed access to the car park is consistent with the Council's pedestrian and traffic management strategies for the commercial area and will not detract from pedestrian safety or the safety and amenity of community spaces or any public road. In this regard rear lane or secondary street access to the basement car park is preferred to minimise amenity impacts to streetscape and remove pedestrian conflicts. 	Not applicable

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	<p>c) All earthworks are located on the subject property and do not require any underpinning into neighbouring properties or adjoining road reserves.</p> <p>d) Access to the basement complies with the Flood Planning Level to prevent the ingress of flood waters. Where grading cannot achieve compliance with the Flood Planning Level and provided no other feasible option (i.e. driveway design) is available, then the design may incorporate elements (e.g. ramps etc) or automatic mechanisms (e.g. hydraulic barriers etc) to prevent the ingress of flood waters to the basement, subject to the elements or mechanisms complying with the relevant Flood Planning Level. The basement to also include facilities for the pumping of water in the event of failure, or larger flood events.</p> <p>e) Access to the basement is designed to prevent the entry of stormwater. Driveway ramps that allow for the ingress of rainwater are to be predominantly covered, with a maximum area of 60m² only that is exposed to direct rainfall.</p> <p>f) The proposal will not adversely affect groundwater levels, flows, characteristics or quality.</p>	
B4.2.7	Car Parking Credits and Street Parking	
	<ol style="list-style-type: none"> 1. Council may acknowledge car parking credits for a site based on the current approved use/s. 2. Any car parking credit shall be based on the rates in Table B4.1 in this DCP Chapter. 3. Car parking credit is equivalent to the parking requirement for current approved use/s calculated in accordance with (1) and (2) above, less the number of parking spaces specified by current approvals. 4. Where a developer contribution for car parking has previously been paid for a current approved use/s on a development site, new development may be entitled to car parking credits equivalent to the number of spaces for which developer contributions were received by Council if the above calculation does not acknowledge the credit. 5. Where a car parking credit has previously been granted for land dedications in conjunction with development, a new development on the same site will be entitled to take that into consideration in calculating the number of car parking credits. 6. Car parking credits are not transferable to other development sites. 7. Council will consider proposals to increase on street parking capacity for the provision of some or all customer car parking spaces by increasing on street parking capacity where there is a material public benefit, and where: <ol style="list-style-type: none"> a) The net increase in formalised (ie paved &/or linemarked) on street parking is 25% greater than the number otherwise required on site; 	<p>The proposal makes provision for 17 off street car parking spaces plus a B99 vehicle loading bay for the commercial component. This results in a notional shortfall of car parking spaces by reference to the rates specified in Table B4.1. However, the site is the subject of a number of historical development consents, which have a "credit" of 9 car parking spaces (see TR#7A). Adjusting for the credit, the proposal has excess car parking.</p>

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	<p>b) The resulting streetscape conforms with the principles of good urban design;</p> <p>c) The level of pedestrian, cycle and traffic amenity on the street is maintained; and</p> <p>d) The proposal is not detrimental to utility services.</p> <p>Note: Council is more likely to give favourable consideration to such proposals if they provide an offsetting benefit to the public - such as property boundary setback dedication to allow conversion of existing parallel parking to angle parking. Other proposals that promote ESD policies will also be entertained. In B4.2.7, 'current approved use' means a current use for which there is an effective development consent in place or an existing lawful use.</p>	
B4.2.8	Bicycle, Motorcycles and Coach Parking	
	<p>1. <u>Bicycle Parking</u> Development Proposals must make provision for bicycle parking in accordance with Table B4.1. The Bicycle parking is also to be designed in accordance with the current editions of AS 2890 Parking Facilities, Austroads and the NSW RTA Bicycle Guideline 2005 as appropriate and as nominated under Chapter B5 Providing for Cycling.</p>	Consistent with the requirements of Council's DCP. Three bicycle spaces have been provided with the development.
	<p>2. <u>Coach Parking</u> Large developments, such as shopping centres, sporting facilities and hotels require on-site parking for regular passenger buses (and taxis), shopper-coaches, tourist coaches, etc. Parking for sufficient numbers of vehicles at convenient places (usually at main entrance points) should be provided on-site. Adequate provision must be made for access, safe manoeuvring and parking of coaches in proposals for tourist, commercial and recreational developments. Where applicants submit alternate proposals for a lesser number of car parking spaces based on bus/ coach transport, then bus parking will be required on the site. A reduction in car parking may be approved if adequate demonstrated arrangements are made for bus/coach or other transport to the development. Any reduction shall be validated by a Traffic Impact Study & Survey.</p>	Not applicable
	<p>3. <u>Motorcycles</u> To encourage alternative forms of motor transport and to enable applicants to utilise areas within a car park that are undersized for the standard vehicle space, the following motorcycle parking provisions are to apply:</p> <p>a) Large commercial developments with a gross floor area exceeding 1000m² shall make provision for the parking of motorcycles. Two percent of car parking spaces shall be converted to Motorcycle spaces at a general rate of 4 motor cycle spaces for every space converted. (e.g. a development generating 50 car parking spaces will have 49 car parking spaces and 4 motorcycle spaces).</p> <p>b) For smaller developments where motorcycle spaces are proposed in lieu of car parking, these will be considered on merit, provided a minimum of 90% of parking is for</p>	<p>Not applicable</p> <p>No motorcycle parking is proposed in lieu of the</p>

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	cars, and 4 bike spaces are provided for every vehicle space not provided (eg a development generating 10 car parking spaces, could propose 9 spaces and 4 motorcycle spaces).	provision of onsite car parking.
B4.2.9	Loading Bays	
	<ol style="list-style-type: none"> 1. All developments have a need for a safe loading and unloading area (service area) which does not obstruct the passage of vehicles or pedestrians. Unless designed specifically for a nominated vehicle type or types appropriate to the use of the proposed development, loading bays should be provided in accordance with the schedule contained in Table B4.2. 2. Where a proposed use is not represented in Table B4.2, the rates under the RMS Guide to Traffic Generating Developments (as amended from time to time by a superseding document prepared by RMS) will apply 3. Access, loading bays and manoeuvring for a service area must be designed in accordance with the current editions of AS 2890 Parking Facilities. 4. In general, service areas should satisfy the following requirements: <ol style="list-style-type: none"> a) The service area must be a physically defined location, screened from public view, and not used for purposes other than servicing, loading and unloading. b) Service area layout must facilitate its efficient use and must effectively discourage on-street loading and unloading. c) Requirements for storage and collection of waste must be taken into account in service area design. d) All service vehicles must be able to enter and leave the site in a forward direction, i.e. adequate manoeuvring space is required on site. e) Internal roadways must be of a size adequate for the largest vehicle anticipated to use the site. f) Service vehicle movements should be separated from car movements. 	Consistent - the proposal requires the provision of a space for a SRV truck. The traffic consultant (TR#7A) has recommended a B99 sized vehicle having regard to the scale of the development.
B4.2.10	Monetary Contributions Council may consider accepting a monetary contribution in lieu of on-site car parking on land predominantly zoned B2 where there is a nexus between the development and the area in which public parking is or will be provided. Such cases will be considered on merit, with reference to: <ol style="list-style-type: none"> a) the size of the development; b) the site's proximity to, and the accessibility of, existing or proposed public car parking areas; c) the demand for car parking generally in the locality; and d) the general traffic flow in the area; e) the cost to Council of providing the parking off site; f) the likelihood of the parking being occupied and not being available for parking associated with the proposed development. 	Not applicable

Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access																	
	Provisions	Compliance															
	<p>Should a monetary contribution be proposed, applicants will need to discuss this option with Council prior to lodgement of the Development Application, and propose either a voluntary planning agreement (VPA) or submit a VPA with the development application. (Note: There is no Section 94 Plan for car parking). In locations away from the main commercial areas, or where no public car parks are planned, on-site car parking is to be provided with the development.</p> <p>For works in kind, Council may consider car parking on public land or in the road reserve for all or part of the car parking required for an adjacent development proposal.</p> <p>Such work if permitted, is at the applicants expense, and such arrangements will only be allowed when a positive outcome results and the streetscape is improved.</p>																
B4.2.11	Landscaping																
	<p>As an integral and important component of outdoor parking area design, suitable landscaping must be provided in accordance with the requirements of Chapter B9 Landscaping. In particular shade trees can assist with cooling the car parking area and the vehicles parked therein, and assist with managing the microclimate of urban areas.</p> <p>Specifically outdoor car parks comprising 10 or more vehicle spaces are to incorporate a landscape bay of a suitable dimension to support the healthy growth of shade trees with a minimum height of 8 metres (at maturity) to shade every 2-5 parking spaces. The bay can also incorporate water sensitive urban design principles to facilitate stormwater disposal and also irrigation of the trees. Figure B4.1 below illustrates various car park landscaping configurations.</p>	Consistent															
B4.2.12	Parking Schedules																
	Table B4.1 – Parking Rates																
	<table border="1"> <thead> <tr> <th>Land Use</th> <th>Car Parking</th> <th>Bicycle Spaces</th> </tr> </thead> <tbody> <tr> <td>Business premises</td> <td>1 space per 20m² GFA</td> <td>2 per 100m² (or part thereof) up to a floor area of 200 m² and 1 per 200 m² thereafter</td> </tr> <tr> <td>Commercial premises</td> <td>See business premises</td> <td></td> </tr> <tr> <td>Food and Drink Premises</td> <td>1 per 20 m² of GFA in Business and Industrial Zones. 1 per 7.5 m² in all other zones.</td> <td>1 per 25m² of GFA</td> </tr> <tr> <td>Medium density housing including multi dwelling housing, residential flat buildings and</td> <td>1 space per 1 or 2 bed unit, 2 spaces per 3 or more bed unit, 1 visitor space per 4 dwellings or part thereof. Each dwelling to have at least one covered</td> <td></td> </tr> </tbody> </table>	Land Use	Car Parking	Bicycle Spaces	Business premises	1 space per 20m ² GFA	2 per 100m ² (or part thereof) up to a floor area of 200 m ² and 1 per 200 m ² thereafter	Commercial premises	See business premises		Food and Drink Premises	1 per 20 m ² of GFA in Business and Industrial Zones. 1 per 7.5 m ² in all other zones.	1 per 25m ² of GFA	Medium density housing including multi dwelling housing, residential flat buildings and	1 space per 1 or 2 bed unit, 2 spaces per 3 or more bed unit, 1 visitor space per 4 dwellings or part thereof. Each dwelling to have at least one covered		Refer to the traffic engineer's report (TR#7A) for information in relation to the rates adopted for the purposes of this application.
Land Use	Car Parking	Bicycle Spaces															
Business premises	1 space per 20m ² GFA	2 per 100m ² (or part thereof) up to a floor area of 200 m ² and 1 per 200 m ² thereafter															
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Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access						
Provisions						Compliance
	shop top housing	car space. Where dwelling s are designed with studies/ offices and other areas capable of being utilised as separate sleeping quarters these will be counted as bedrooms.				
	Shop	See business premises		See business premises		
Table B4.2 – Loading Bays						
Development type	Gross floor area (GFA), m ²	Number of Loading Bays Required by Vehicle Class				Consistent - one SRV space has been provided, in line with the requirements of this table.
		Small rigid vehicle	Medium rigid vehicle	Heavy rigid vehicle	Articulated vehicle	
Business premises/office premises (For premises less than 200 m ² , loading bays can be shared with staff parking provided the parking bay meets the minimum dimension requirements under AS2890 for a small rigid vehicle, there is adequate manoeuvring area and the space is suitably located for loading and unloading on-site)	0-999	1	-	-	-	
	1,000-2,499	-	1	-	-	
	2,500-7,999	1	1	-	-	
	8,000-19,999	2	1	-	-	
	20,000-34,999	2	2	-	-	
	35,000-64,999	2	2	1	-	
	>65,000	2	3	1	-	
Retail premises, tourist and visitor accommodation (except bed and breakfast accommodation and farmstay accommodation) (For premises less than 200 m ² , loading bays can be shared with staff parking provided)	0-199	1	-	-	-	
	200-599	-	1	-	-	
	600-1,499	1	1	-	-	
	1,500-1,999	2	1	-	-	
	2,000-2,799	2	2	-	-	
	2,800-4,399	2	2	1	-	
	4,400-8,499	2	2	1	1	

Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access						
	Provisions					Compliance
the parking bay meets the minimum dimension requirements under AS2890 for a small rigid vehicle, there is adequate manoeuvring area and the space is suitably located for loading and unloading on-site)	8,500-11,499	3	2	1	1	
	11,500-20,999	3	3	1	1	
	21,000-23,999	3	3	2	1	
	24,000-32,999	3	3	2	2	
	>33,000	3	4	3	2	

Chapter B5 Providing for Cycling		
	Provisions	Compliance
B5.1	Introduction	
B5.1.1	Aims of this Chapter	
	The Aims of this Chapter are:	
	1. To implement those provisions of the Byron Shire Bike Strategy and Action Plan that can be achieved through the development process.	
	2. To reduce car dependency and to promote alternative transport such as cycling as a sustainable means of transport by ensuring the appropriate provision of cycling facilities and by accommodating the needs of cyclists through the development process.	
	3. To improve equity and accessibility for people who do not have access to motor vehicles or other conventional modes of transport.	
	4. To increase opportunities for community and social interaction and for the pursuit of healthier and more active living by ensuring the provision of cycling facilities through the development process.	
	5. To provide minimum standards for facilities for cycling and cyclists within Byron Shire.	
B5.1.2	Application of this Chapter	
	This Chapter applies to development applications that are subject to the provisions of Byron LEP 2014 and are intended for:	This Chapter is applicable to the subject development.
	1. Residential accommodation for 3 or more dwelling s in any zone; or	Not applicable
	2. Subdivision to create 3 or more residential, large lot residential, industrial or commercial lots in any zone; or	Not applicable
	3. Tourist and visitor accommodation (more than 5 beds) in any zone; or	Not applicable
	4. Commercial premises (more than 100 m ² of GFA) in any zone; or	Applicable
	5. Any other traffic generating land use in any zone where there is a nexus with cycling or cycling facilities.	Not applicable

Chapter B5 Providing for Cycling		
	Provisions	Compliance
B5.1.3	The Byron Shire Bike Strategy and Action Plan	
B5.2	Development Controls	
B5.2.1	Transport Management and Access Assessment	
	Objectives	
	<ol style="list-style-type: none"> 1. To further the Aims set out in the Byron LEP 2014 by promoting the use of cycling in Byron Shire as a means of transport that is consistent with the Principles of Sustainability. 2. To ensure that development proposals take into account the full range of transport implications, impacts, modes and opportunities related to the proposed development. 3. To encourage an increase in the use of cycling as an alternative transport mode in order to reduce the dependence on use of motor vehicles within Byron Shire. 4. To provide a consistent basis for assessing the need for provision of facilities for cycling and cyclists in the development process. 	The proposal seeks to be consistent with the cycling objectives.
	Performance Criteria	
	<ol style="list-style-type: none"> 1. Development applications must demonstrate that all potential modes of transport have been addressed in assessing the requirements for transport and access to and from the proposed development. The assessment must address the potential for cycling as a means of transport to and from the site and the resultant need for the provision of facilities for cycling and cyclists at the site. The assessment must also address the need for providing and/or upgrading cycleways and other cycle related facilities to serve the proposed development, including those defined in the 'Action Plans' contained in the Byron Shire Bike Strategy and Action Plan. 	Consistent - the traffic engineer's report reviews all the relevant modes of transport applicable to the needs of the subject development – see TR#7A .
	<ol style="list-style-type: none"> 2. Larger scale developments, including projects where completion of the approved, pending and intended future stages of development would result in a total parking demand of more than 100 car spaces calculated in accordance with the requirements of Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access must be accompanied by a Transport Management and Access Plan that addresses: <ol style="list-style-type: none"> a) the strategic environment of the site and its access, including relevant Council roads and transport strategies, the Byron Shire Bike Strategy and Action Plan and Council's <u>Section 94 Plans and Contributions Plans</u>; b) a description of the proposed development and the existing transport infrastructure that provides access to and within the site; c) an assessment of the transport, freight and access demands and travel patterns projected to be generated by the proposed development across all potential transport modes in accordance with Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access with the addition of cycling; d) analysis of the capability of the existing external transport system and internal facilities on site, including cycling facilities, to accommodate the development's transport and access demands; 	Not applicable – not larger-scale development.

Chapter B5 Providing for Cycling		
	Provisions	Compliance
	e) proposed transport action plan, including the measures proposed to address external shortfalls, to provide facilities on site and to accommodate the needs of cycling and cyclists.	
	Prescriptive Measures	
	There are no Prescriptive Measures.	
B5.2.2	Design to Promote and Facilitate Cycling	
	Objectives	
	<ol style="list-style-type: none"> To further the Aims set out in the Byron LEP 2014 by promoting the use of cycling in Byron Shire as a means of transport that is consistent with the <i>Principles of Sustainability</i>. To promote and foster alternative means of transport that reduce the dependency on use of motor vehicles in Byron Shire. To ensure that development proposals encourage and promote cycling as a mode of transport by incorporating provision for well-designed, safe and convenient cycling access and end of trip facilities. 	The proposal seeks to be consistent with the objectives concerning promoting and facilitating cycling.
	Performance Criteria	
	1. Development proposals must be designed in a manner that encourages and facilitates safe and convenient cycle access to and from the site.	Consistent
	2. Cycle access to and from the site must be designed to afford cyclists protection from threat of collision or unsafe interaction with motor vehicles accessing the site.	Consistent
	3. Cycle access within the site must be designed to provide convenient, direct and safe access to and from cycle parking and end of trip facilities located on the site, and must afford cyclists protection from collision or unsafe interaction with motor vehicles. Cycle parking and end of trip facilities must be located to facilitate easy access between those facilities and the development, consistent with Section B5.2.4.Prescriptive Measures	
	Prescriptive Measures	
	There are no Prescriptive Measures.	
B5.2.3	Provision of Cycleways	
	Objectives	
	<ol style="list-style-type: none"> To augment and implement the existing and proposed cycleways identified by the <i>Byron Shire Bike Strategy and Action Plan</i> where they relate to development proposals. To ensure that development applications accommodate, and where required provide cycleways and related facilities identified by the <i>Byron Shire Bike Strategy and Action Plan</i>. 	The project is consistent with the objectives relating to the provision of cycleways.
	Performance Criteria	
	Where development applications include or adjoin the site of an existing or proposed Cycleway or facilities identified in Table 6: Infrastructure Based Action Plan of the <i>Byron Shire Bike Strategy and Action Plan</i> , the proposed development must be designed to accommodate the cycleway and/or related facilities so identified.	Consistent
	Prescriptive Measures	
	There are no Prescriptive Measures.	

Chapter B5 Providing for Cycling		
	Provisions	Compliance
B5.2.4	Provision of Bicycle Storage, Parking and End of Trip Facilities	
	Objectives	
	<ol style="list-style-type: none"> To facilitate and encourage the use of cycling as an alternative, sustainable mode of transport in Byron Shire. To ensure that development proposals include provision for well-located and well-designed bike parking, storage and end of trip facilities for cyclists, consistent with current sustainable transport practise and provision standards. 	The proposal seeks to be consistent with the objectives relating to bicycle storage, parking and end of trip facilities.
	Performance Criteria	
	<ol style="list-style-type: none"> Development applications that include site construction works other than internal building alterations must include provision for well-located and well-designed bicycle storage, parking and end of trip facilities within the development. They must be located to maximise their accessibility and ease-of-use for persons using the site. They must provide convenient, direct and safe access to and from the adjoining road and cycleway network. 	
	<ol style="list-style-type: none"> The number and extent of bicycle storage, parking and end of trip facilities provided must be capable of accommodating the anticipated demand for cycling and cyclist numbers demonstrated by the Transport Management and Access Assessment prepared for the development in accordance with Section B5.2.1. Bicycle parking, storage and associated facilities must be designed and constructed in accordance with AS 2890.3. If a Transport Management and Access Assessment is not required, Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access still applies. 	
	Prescriptive Measures	
	<ol style="list-style-type: none"> Development applications that include site construction works other than internal building alterations must include Bicycle parking spaces as per the requirements of Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access. Details to be submitted identifying if the parking is for short term purposes (e.g. for customers) or for the longer term (e.g. storage for staff). 	Consistent
	<ol style="list-style-type: none"> Bicycle parking facilities must be designed and constructed in accordance with Figure B3 in AS AS2890.3. The provision of all-weather protection for bicycle parking is encouraged. 	Consistent
	<ol style="list-style-type: none"> Bicycle parking facilities must be located and designed to provide 600mm minimum clearance between parked bicycles and the edge of a motor vehicle traffic lane; and 1m minimum clearance where the average speed of traffic exceeds 60 km per hour. Bicycle parking facilities must provide a minimum 1200mm clearance between a parked bicycle and any other obstruction where pedestrians may need to pass. 	Consistent
	<ol style="list-style-type: none"> Bicycle storage spaces may be provided as fully enclosed individual lockers (referred to in AS 2890.3 as Class 1 facilities), or as locked compounds (referred to in AS 2890.3 as Class 2 facilities), depending on the type of development and practicality of access to the facility. Compounds must be fitted with a sufficient number of devices for securing bicycles 	The need for special storage spaces is not considered appropriate in the subject circumstances.

Chapter B5 Providing for Cycling		
	Provisions	Compliance
	(referred to in AS 2890.3 as Class 3 facilities). Bicycle storage facilities must be covered to provide weather protection.	
	5. A private garage is deemed to incorporate the equivalent of an individual locker space.	Noted
	6. Access paths to bicycle storage or parking facilities must ensure that the clearances shown in Figure 3.1 in AS 2890.3 will be provided. Where an access path to a bicycle storage or parking facility includes stairs, the stairs must include a bicycle wheeling ramp in accordance with figure 7.12 in the Austroads Guide to Traffic Engineering Practice - Part 14, Bicycles .	Consistent
	7. Bicycle parking and storage facilities must be located and designed to ensure that: <ul style="list-style-type: none"> a) the bicycle frame can be secured, not just a wheel or wheels; b) the device must provide stability for the bicycle; c) the device must not create potential for damage to the bicycle; d) the device must not include a slot in the ground that may fill with dirt and become difficult to maintain or use over time; e) the facilities are in view of staff, customers and passers by or covered by surveillance cameras; f) the facilities are located outside pedestrian movement paths; g) the facilities are easily accessible from the road including provision of a convenient cut-down crossing (pram/kerb ramp) near the bicycle parking facilities; h) the facilities are arranged so that parking entries and exits will not damage adjacent vehicles; i) the facilities are protected from manoeuvring motor vehicles and opening car doors; j) the facilities are be as close as possible to the cyclist's ultimate destination; k) the facilities are well lit by appropriate new or existing lighting and protected from the weather; and l) the facilities are attractive and designed to blend in with the development. 	Consistent
	7. Where bicycle parking and storage facilities are not immediately obvious from the street or a building, directional signs must be provided to facilitate and promote use of the facilities.	Consistent
	8. Showers and lockers (where required by a Transport Management and Access Assessment) must be provided close to bicycle storage and parking facilities.	Given the scale of the development, showers and lockers are not thought to be appropriate for this development.

Chapter B8 Waste Minimisation and Management		
	Provisions	Compliance
B8.1	Introduction	
B8.1.1	Purpose of this Chapter	

Chapter B8 Waste Minimisation and Management		
	Provisions	Compliance
	This Chapter aims to facilitate sustainable waste management within Byron Shire in a manner consistent with the principles of ESD.	
B8.1.2	Aims of this Chapter	
	The Aims of this Chapter in pursuit of sustainable waste management include:	
	<p>Waste minimisation</p> <ol style="list-style-type: none"> 1. To minimise resource requirements and construction waste through reuse and recycling and the efficient selection and use of resources. 2. To minimise demolition waste by promoting adaptability in building design and focussing upon end of life deconstruction. 3. To encourage building designs, construction and demolition techniques in general which minimise waste generation. 4. To maximise reuse and recycling of household waste and industrial/commercial waste. 	
	Waste management	
	<ol style="list-style-type: none"> 1. To assist applicants in planning for sustainable waste management, through the preparation of a Site Waste Minimisation and Management Plan. 2. To assist applicants to develop systems for waste management that ensure waste is transported and disposed of in a lawful manner. 3. To provide guidance in regards to space, storage, amenity and management of waste management facilities. 4. To ensure waste management systems are compatible with collection services. 5. To minimise risks associated with waste management at all stages of development. 	
B8.1.3	Application of this Chapter	
	<p>This Chapter applies to the following types of development, where that development may be carried out only with development consent:</p> <ol style="list-style-type: none"> 1. demolition; 2. development involving construction, erection of a building or carrying out works; 3. change of use. <p>Storage and disposal of liquid waste such as oils, chemicals, grease, interceptor waste and other liquid trade wastes are not covered by this Chapter. Developments that generate these types of waste will require a separate Liquid Trade Waste approval pursuant to Section 68 of the <i>Local Government Act, 1993</i>.</p> <p><u>Development that Requires Consent</u></p> <p>When determining a Development Application under Section 79C of the <i>Environmental Planning and Assessment Act, 1979</i> (as amended) (The Act), Council must consider the contents of this Chapter. Compliance with the minimum provisions herein does not, however, necessarily mean that an application will</p>	

Chapter B8 Waste Minimisation and Management		
	Provisions	Compliance
	<p>be approved, as each application will be considered on its merits.</p> <p><u>Exempt and Complying Development</u></p> <p>Even though a Site Waste Minimisation and Management Plan is not required for exempt and complying development persons carrying out exempt and complying development are encouraged to minimise the generation of waste in the construction and operation of any such use or activity and deal with any waste generated in accordance with the objectives herein.</p>	
B8.2	Submission Requirements for DAs	
B8.2.1	Documentation required for all DAs	
	<p>The Statement of Environmental Effects submitted for all Development Applications must include a Site Waste Minimisation and Management Plan (SWMMP) that addresses the requirements of this Chapter.</p> <p>In addition to submission of a SWMMP, the waste management facilities proposed as part of the development must be clearly illustrated on the plans and drawings accompanying the Development Application.</p>	Technical ReferenceS TR#8 provides a Site Waste Minimisation Plans relevant to the subject site.
B8.2.2	Site Waste Minimisation and Management Plans	
	<p>The level of detail required for the Site Waste Minimisation and Management Plan (SWMMP) will vary with the size and complexity of the proposed development. For example, a DA seeking consent for a single dwelling house would normally require a very simple SWMMP, while a DA seeking consent for a large commercial or industrial complex is likely to require an extensive SWMMP that documents full details of proposed waste generation, management, recycling, storage and disposal measures.</p> <p>The SWMMP must outlines measures to minimise and manage waste generated during:</p> <ol style="list-style-type: none"> 1. demolition; 2. construction; and 3. ongoing operation and use of the development. <p>In doing so, the SWMMP must nominate:</p> <ol style="list-style-type: none"> 1. the volume and type of waste and recyclables to be generated; 2. proposed measures for storage and treatment of waste and recyclables on site; 3. proposed measures for disposal of residual waste and recyclables; 4. proposed operational procedures for ongoing waste management once the development is complete; 5. proposed means of access and manoeuvring for recycling/ waste management bins and vehicles. <p>The SWMMP must specify the proposed method of recycling or disposal and the waste management service provider.</p> <p>Appendix B8.1 provides a template for the compilation of a SWMMP.</p>	Noted

Chapter B8 Waste Minimisation and Management		
	Provisions	Compliance
	Note: The following two documents that include useful information relating to managing and minimising waste in the development context and may be useful when preparing a Site Waste Minimisation and Management Plan: Better Practice Guide for Waste Management in Multi-unit Dwellings, NSW Department of Environment & Climate Change, 2008 Better Practice Guidelines for Waste Management and Recycling in Commercial and Industrial Facilities', NSW Environment Protection Authority, 2012	
B8.2.3	Waste/Recycling Generation Rates	
	In the absence of project specific calculations, the rates specified in Appendix B8.2 - Waste/Recycling Generation Rates and Council's current rate of provision of services to residential properties can be used to inform the compilation of a SWMMP .	Consistent
B8.3	General Development Criteria	
B8.3.1	Demolition of Buildings or Structures	
	Objectives	
	<ol style="list-style-type: none"> 1. To maximise resource recovery and minimise residual waste from demolition activities. 2. To optimise adaptive reuse opportunities of existing building/structures. 3. To maximise reuse and recycling of materials. 4. To minimise waste generation. 5. To ensure appropriate storage and collection of waste. 6. To minimise the environmental impacts associated with waste management. 7. To avoid illegal dumping. 8. To promote improved project management. 	
	Performance Criteria	
	There are no Performance Criteria.	
	Prescriptive Measures	
	<ol style="list-style-type: none"> 1. A Site Waste Minimisation and Management Plan (SWMMP) must be submitted with Development Applications seeking consent for demolition. The SWMMP must demonstrate that the proposed development will: <ol style="list-style-type: none"> a) pursue adaptive reuse opportunities of buildings/structures; b) identify all waste likely to result from the demolition, and opportunities for reuse of materials. Refer to Table B8.1; c) facilitate reuse/recycling by using the process of 'deconstruction', where various materials are carefully dismantled and sorted; d) reuse or recycle salvaged materials on-site where possible; e) allocate an area for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation, and access and handling requirements); 	Consistent – see TR#8A .

Chapter B8 Waste Minimisation and Management		
	Provisions	Compliance
	<ul style="list-style-type: none"> f) provide separate collection bins or areas for the storage of residual waste; g) clearly 'signpost' the purpose and content of the bins and storage areas; h) implement measures to prevent damage by the elements, odour and health risks, and windborne litter; i) minimise site disturbance, limiting unnecessary excavation. <p>2. When implementing the SWMMP the applicant must ensure that:</p> <ul style="list-style-type: none"> a) footpaths, public reserves, street gutters are not used as places to store demolition waste or materials of any kind without Council approval; b) any material moved offsite is transported in accordance with the requirements of the <i>Protection of the Environment Operations Act (1997)</i>; c) waste is only transported to a place that can lawfully be used as a waste facility; d) generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the EPA and relevant Occupational Health and Safety legislation administered by WorkCover NSW; e) documentary evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained. 	
	Note: Materials that have an existing reuse or recycling market should not be disposed of in a landfill. Table B8.1 provides a list of some potential reuse/recycling options. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.	
B8.3.2	Construction of Buildings or Structures	
	Objectives	
	<ul style="list-style-type: none"> 1. <i>To maximise resource recovery and minimise residual waste from construction activities.</i> 2. <i>To maximise reuse and recycling of materials.</i> 3. <i>To minimise waste generation.</i> 4. <i>To ensure appropriate collection and storage of waste.</i> 5. <i>To minimise the environmental impacts associated with waste management.</i> 6. <i>To avoid illegal dumping.</i> 7. <i>To promote improved project management.</i> 8. <i>To optimise adaptive reuse opportunities of existing building/structures.</i> 	The proposal seeks to be consistent with the construction of buildings and structures objectives.
	Performance Criteria	
	There are no Performance Criteria.	
	Prescriptive Measures	
	A Site Waste Minimisation and Management Plan (SWMMP) must be submitted with Development Applications seeking consent for construction of buildings or structures. The SWMMP must:	Consistent – see TR#8A .

Chapter B8 Waste Minimisation and Management		
	Provisions	Compliance
	<ul style="list-style-type: none"> a) estimate volumes of materials to be used and incorporate these volumes into a purchasing policy so that the correct quantities are purchased. For small-scale building projects see the rates in Appendix B8.2 for a guide; b) identify potential reuse/recycling opportunities of excess construction materials; c) incorporate the use of prefabricated components and recycled materials where possible; d) specify arrangements for the delivery of materials so that materials are delivered 'as needed' to prevent the degradation of materials through weathering and moisture damage; e) consider organising to return excess materials to the supplier or manufacturer; f) allocate an area for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation); g) nominate proposed arrangements to ensure appropriate transport, processing and disposal of waste and recycling; and to ensure that all contractors are aware of the legal requirements for disposing of waste; h) promote separate collection bins or areas for the storage of residual waste; i) clearly 'signpost' the purpose and content of the bins and storage areas; j) specify intended implementation measures to prevent damage by the elements, odour and health risks, and windborne litter; k) minimise site disturbance and limit unnecessary excavation; l) ensure that all waste is transported to a place that can lawfully be used as a waste facility; m) require retention of all records demonstrating lawful disposal of waste and keep them readily accessible for inspection by regulatory authorities such as council, DECC or WorkCover NSW. 	
B8.3.3	Bin Sizes and Collection Measures	
	Objectives	
	<ol style="list-style-type: none"> 1. To ensure that adequate provision is made for collection, storage and transport of waste for all development, commensurate with the development's scale, nature and potential for waste generation. 2. To ensure that the design and provision of waste collection, storage and transport facilities does not create significant adverse impacts on the amenity of the surrounding locality. 3. To ensure that the design and provision of waste collection, storage and transport facilities does not create significant adverse parking, cycle or traffic impacts on adjoining roads. 	The proposal seeks to be consistent with the Bin Sizes and Collection Measures objectives.
	Performance Criteria	
	Recycling and waste collection services in Byron Shire provide for two primary levels of onsite waste storage and collection facilities. Council provides a kerbside pickup service utilising 80	

Chapter B8 Waste Minimisation and Management		
	Provisions	Compliance
	Litre, 140 Litre and 240 Litre 'wheelie bins'. For larger developments where waste generation is predicted to exceed the aforementioned capacities a bulk bin service is required, for which the land owner and/ or occupier must enter into a contractual arrangement with a service provider.	
	Prescriptive Measures	
	<ol style="list-style-type: none"> 1. The SWMMP provided with the Development Application must specify the proposed bin sizes and collection arrangements for the development. 2. Where collection is proposed by Council's kerbside pickup service for development other than a dwelling house, the SWMMP and Development Application must specify and illustrate in a site plan drawn to a readily legible scale: <ol style="list-style-type: none"> a) the site's boundary dimensions and available kerbside/ road frontage space, after deducting existing or proposed access driveways; b) the kerbside/ road frontage space intended to be occupied by 'wheelie bins' on pickup days, based on the dimensions of the bins proposed. Bin dimensions are available on request from Council. 3. If the kerbside/road frontage space intended to be occupied by 'wheelie bins', to service development other than a dwelling house, exceeds 75% of the site's available kerbside/road frontage space (after deducting existing or proposed access driveways), the SWMMP must include justification of reasons why a bulk bin service should not be provided. That justification must include an analysis of the likely amenity, pedestrian, cycle and traffic impacts of the proposed kerbside/ road frontage bin storage and collection arrangements on pickup day. The analysis must address visual impacts, amenity impacts, pedestrian and cycle impacts and impacts on parking and traffic movement on adjoining roads. In those circumstances Council is unlikely to approve a kerbside pickup service for the development unless it considers that those impacts are likely to be not significant. 4. Where collection is proposed other than by Council's kerbside pickup service, the SWMMP and Development Application must specify and illustrate in a site plan drawn to a readily legible scale: <ol style="list-style-type: none"> a) the proposed bin storage location, dimensions, pickup vehicle access and manoeuvring arrangements; b) the proposed means of ensuring that the pickup vehicle can enter and exit the site in a forward direction and can manoeuvre safely on site, consistent with the requirements of Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access. 	Consistent – see TR#8B .
B8.4	Specific Development Criteria	
B8.4.2	Multi Dwelling Housing, Residential Flat Buildings and Attached Dwellings	
	Objectives	

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	Provisions	Compliance
	<ol style="list-style-type: none"> 1. To encourage source separation of waste, reuse, and recycling by ensuring appropriate storage and collection facilities for waste, and quality design of waste facilities. 2. To ensure appropriate waste storage and collection facilities. 3. To maximise source separation and recovery of recyclables. 4. To ensure waste management systems are as intuitive for occupants as possible and are readily accessible. 5. To ensure appropriate resourcing of waste management systems, including servicing. 6. To minimise risk to health and safety associated with handling and disposal of waste and recycled material, and ensure optimum hygiene. 7. To minimise adverse environmental impacts associated with waste management. 8. To discourage illegal dumping by providing on-site storage, and removal services. 	The proposal seeks to be consistent with the attached dwellings waste objectives.
	Performance Criteria	
	There are no Performance Criteria.	
	Prescriptive Measures	
	<ol style="list-style-type: none"> 1. A Site Waste Minimisation and Management Plan (SWMMP) is to be submitted with a Development Application and must show: <ol style="list-style-type: none"> a) the location of an indoor waste/recycling cupboard (or other appropriate storage space) for each dwelling; b) the location of individual waste/recycling storage areas (such as for townhouses and villas) or a communal waste/recycling storage room(s) able to accommodate Council's waste and recycling bins; c) the location of any interim storage facilities for recyclable materials; d) the location of any waste compaction equipment; e) an identified location for individual compost containers or communal compost container; f) an identified collection point for the collection and emptying of Council's waste and recycling bins; g) the path of travel for moving bins from the storage area to the identified collection point (if collection is to occur away from the storage area); h) the on-site path of travel for collection vehicles (if collection is to occur on-site), taking into account accessibility, width, height and grade. 	Consistent – see TR#8B .
	<ol style="list-style-type: none"> 2. The SWWMP must address and demonstrate that the following criteria and outcomes will be achieved: <ol style="list-style-type: none"> a) systems must be designed to maximise source separation and recovery of recyclables; b) waste management systems must be designed and operated to prevent the potential risk or injury or illness associated with the collection, storage and disposal of wates. 	
	<ol style="list-style-type: none"> 3. The following minimum collection and storage facilities must be provided: 	

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	Provisions	Compliance
	<p>a) each dwelling must be provided with an indoor waste/recycling cupboard (or other appropriate storage space) for the interim storage of a minimum one day's garbage and recycling generation;</p> <p>b) residential flat buildings must include communal waste/recycling storage facilities 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.</p> <p>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;</p> <p>d) the waste/recycling storage area(s) or room(s) must be of a size that can comfortably accommodate separate garbage, recycling and garden waste containers at the rate of Council provision;</p> <p>e) for multi-storey developments that include ten or more dwellings, a dedicated room or caged area must be provided for the temporary storage of discarded bulky items which are awaiting removal. The storage area must be readily accessible to all residents and must be located close to the main waste storage room or area;</p> <p>f) Residential development where Council determines that there is inadequate space for kerbside collection, is to be designed with onsite garbage collection and pickup. (Applicants should consult with Council prior to lodgement of the DA where there is there is limited space for kerbside collection).</p>	
	<p>4. The following location and design criteria apply to collection and storage facilities:</p> <p>a) in townhouse and villa developments with individual waste/recycling storage areas, such areas must be located and designed in a manner which minimises adverse impacts upon neighbouring properties and upon the appearance of the premises;</p> <p>b) there must be an unobstructed and continuous accessible path of travel (as per Australian Standard 1428 Design for Access and Mobility - 2001) from the waste/recycling storage area(s) or room(s) to:</p> <p>i) the entry to any adaptable housing (as per Australian Standard 4299 Adaptable Housing - 1995),</p> <p>ii) the principal entrance to each residential flat building</p> <p>iii) the point at which bins are collected/emptied;</p> <p>c) in instances where a proposal does not comply with these requirements, Council will consider alternative proposals that seek to achieve a reasonable level of access to waste/recycling storage area(s) or room(s);</p>	

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	Provisions	Compliance
	<p>d) communal waste storage areas must have adequate space to accommodate and manoeuvre Council's required number of waste and recycling containers;</p> <p>e) each service room and storage area must be located for convenient access by users and must be well ventilated and well lit;</p> <p>f) where site characteristics, number of bins and length of street frontage allow, bins may be collected from a kerbside location. In instances where kerbside bin collection is not appropriate, bins must be collected on-site. Bins that are collected on-site must be collected either from their usual storage point or from an on-site temporary holding area located inside the property boundary and close to a property entrance;</p> <p>g) where bins cannot be collected from a kerbside location or from a temporary holding area located immediately inside the property boundary, the development must be designed to allow for on-site access by garbage collection vehicles (of dimensions detailed at Appendix B8.5). In these instances, the site must be configured so as to allow collection vehicles to enter and exit the site in a forward direction and so that collection vehicles do not impede general access to, from or within the site. Access driveways to be used by collection vehicles must be of sufficient strength to support such vehicles. All access design must be consistent with the requirements of Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access;</p> <p>h) if Council waste collectors and/or waste collection vehicles are required to enter a site for the purpose of emptying bins, then site specific arrangements must be in place;</p> <p>i) if bins need to be moved from normal storage areas to a different location for collection purposes, it is the responsibility of agents of the owners' corporation to move the bins to the collection point no earlier than the evening before collection day and to then return the bins to their storage areas no later than the evening of collection day. Bins must remain in their on-site storage areas at all other times;</p> <p>j) residents must have access to a cold water supply for the cleaning of bins and the waste storage areas. Storage areas must be constructed and designed to be weather proof and easy to clean, with wastewater discharged to sewer;</p> <p>k) the design and location of waste storage areas/facilities must be such that they complement the design of both the development and the surrounding streetscape.</p>	
	<p>5. The SWMMP must include measures to ensure that agents of the owners' corporation will take responsibility for the management of waste and recyclable materials generated upon the site. Arrangements must be in place in regards to</p>	

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	Provisions	Compliance
	the management, maintenance and cleaning of all waste /recycling management facilities.	
	Note: Food and garden waste may be recycled either via on-site processes such as composting, worm farms or mulching, or via kerbside collections for garden waste or food and garden waste . This can be difficult to manage in a multi dwelling complex, particularly where communal bin storage areas are used and bins are shared. Consideration should be given to provision of an individual compost container for each dwelling (such as in townhouse and villa developments) or for a communal compost container; the siting of which will have regard to potential amenity impacts. Service options available to multi dwelling housing, residential flat buildings and attached dwellings are described on the Byron Shire Council web site.	
B8.4.3	Tourist Accommodation and Commercial and Retail Development	
	This Section applies to development to which Chapters D4 Commercial and Retail Development and D3 Tourist Accommodation apply.	
	Objectives	
	<ol style="list-style-type: none"> 1. To specify recycling and waste management criteria that apply to development. 2. To ensure that new developments and changes to existing developments are designed to maximise resource recovery (through waste avoidance, source separation and recycling); and to ensure that appropriate well-designed storage and collection facilities are accessible to occupants and service providers. 3. To ensure provision of appropriate waste storage and collection facilities. 4. To maximise source separation and recovery of recyclables. 5. To ensure that waste management systems are as intuitive for occupants as possible and readily accessible to occupants and service providers. 6. To ensure appropriate resourcing of waste management systems, including servicing. 7. To minimise risk to health and safety associated with handling and disposal of waste and recycled material and ensure optimum hygiene. 8. To minimise adverse environmental impacts associated with waste management. 9. To discourage illegal dumping by providing on-site storage, and removal services. 	The proposal seeks to be consistent with the commercial development waste objectives.
	Performance Criteria	
	There are no Performance Criteria.	
	Prescriptive Measures	
	1. A Site Waste Minimisation and Management Plan (SWMMP) is to be submitted with a development application and must show:	Given the scale of the development, documentation illustrated in the Architectural Plan Set (TR#3) and SWMMP

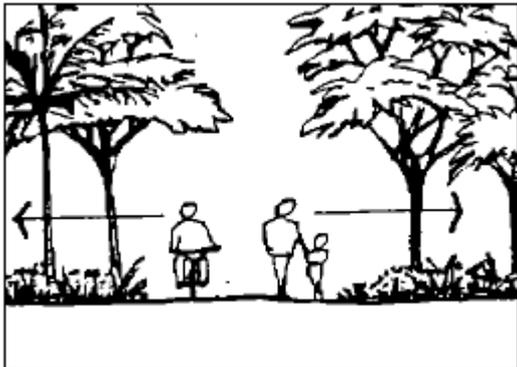
Chapter B8 Waste Minimisation and Management		
	Provisions	Compliance
	<ul style="list-style-type: none"> a) the location of the designated waste and recycling storage room(s) or areas, sized to meet the waste and recycling needs of all tenants; b) the location of temporary waste and recycling storage areas within each tenancy. These are to be of sufficient size to store a minimum of one day's worth of waste; c) an identified collection point for the collection and emptying of waste, recycling and garden waste bins; d) the path of travel for moving bins from the storage area to the identified collection point (if collection is to occur away from the storage area); e) the on-site path of travel for collection vehicles (if collection is to occur on-site). 	(TR#8B) are thought to be appropriate in the circumstances.
	<p>2. The SWWMP must address and demonstrate that the following criteria and outcomes will be achieved:</p> <ul style="list-style-type: none"> a) there must be convenient access from each tenancy to the waste/recycling storage room(s) or area(s). There must be step-free access between the point at which bins are collected/emptied and the waste/recycling storage room(s) or area(s); b) every development must include a designated waste/recycling storage area or room(s) (designed in accordance with Appendix B8.6); c) depending upon the size and type of the development, it may be necessary to include a separate waste/recycling storage room/area for each tenancy; d) all commercial tenants must keep written evidence on-site of a valid contract with a licensed waste contractor for the regular collection and disposal of the waste and recyclables that are generated on site; e) between collection periods, all waste/recyclable materials generated on site must be kept in enclosed bins with securely fitting lids so the contents are not able to leak or overflow. Bins must be stored in the designated waste/recycling storage room(s) or area(s); f) arrangements must be in all parts of the development for the separation of recyclable materials from general waste and for the movement of recyclable materials and general waste to the main waste/recycling storage room/area. For multiple storey buildings, this might involve the use of a goods lift; g) the waste/recycling storage room/area must be able to accommodate bins that are of sufficient volume to contain the quantity of waste generated (at the rate described in Appendix B8.2) between collections; h) the waste/recycling storage room/area must provide separate containers for the separation of recyclable materials from general waste. Standard and consistent signage on how to use the waste management facilities should be clearly displayed; 	

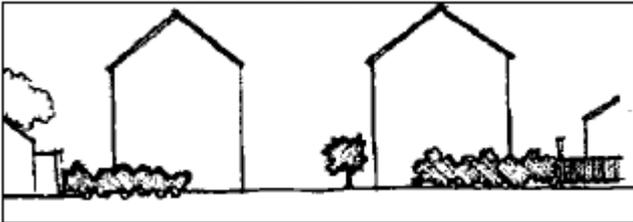
Chapter B8 Waste Minimisation and Management		
	Provisions	Compliance
	<ul style="list-style-type: none"> i) the type and volume of containers used to hold waste and recyclable materials must be compatible with the collection practices of the nominated waste contractor; j) waste management facilities must be suitably enclosed, covered and maintained so as to prevent polluted wastewater runoff from entering the stormwater system; k) where possible, waste/recycling containers should be collected from a rear lane access point. The servicing location and methodology shall minimise adverse impacts upon residential amenity, pedestrian movements and vehicle movements; l) the size and layout of the waste/recycling storage room/area must be capable of accommodating reasonable future changes in use of the development; m) a waste/recycling cupboard must be provided for each and every kitchen area in a development, including kitchen areas in hotel rooms, motel rooms and staff food preparation areas. Each waste/recycling cupboard must be of sufficient size to hold a minimum of a single day's waste and to hold separate containers for general waste and recyclable materials; n) premises which generate at least 240 litres per week of meat, seafood, poultry or food waste must have that waste collected in mobile garbage bins (wheelie bins) at least twice weekly or must store that waste in a dedicated and refrigerated waste storage area until collection; o) arrangements must be in place regarding the regular maintenance and cleaning of waste management facilities. Tenants and cleaners must be aware of their obligations in regards to these matters 	
B8.4.4	Mixed Use Development	
	Objectives	
	<ol style="list-style-type: none"> 1. <i>To ensure that new developments and changes to existing development are designed to maximise resource recovery (through waste avoidance, source separation and recycling) and to ensure appropriate, well-designed storage and collection facilities are accessible to occupants and service providers.</i> 2. <i>To ensure appropriate waste storage and collection facilities.</i> 3. <i>To maximise source separation and recovery of recyclables.</i> 4. <i>To ensure waste management facilities are safely and easily accessible to occupants and service providers.</i> 5. <i>To ensure appropriate resourcing of waste management systems, including servicing.</i> 6. <i>To minimise risk to health and safety associated with handling and disposal of waste and recycled material and ensure optimum hygiene.</i> 7. <i>To minimise adverse environmental impacts associated with waste management.</i> 	The proposal seeks to be consistent with the mixed use development objectives.

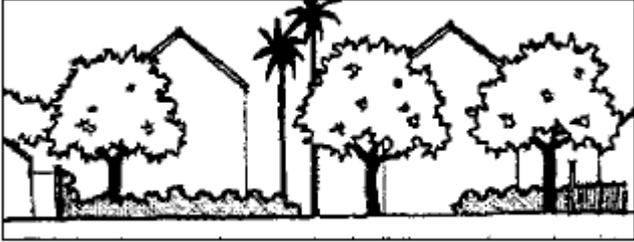
Chapter B8 Waste Minimisation and Management		
	Provisions	Compliance
	8. To discourage illegal dumping by providing on-site storage, and removal services.	
	Performance Criteria	
	There are no Performance Criteria.	
	Prescriptive Measures	
	<p>A Site Waste Minimisation and Management Plan (SWMMP) must be submitted with a development application for mixed use development. The SWWMP must address and demonstrate that the following criteria and outcomes will be achieved:</p> <ol style="list-style-type: none"> the provisions of Section B8.4.2 apply to the residential component of mixed use development; the provisions of Section B8.4.3 apply to the non-residential component of mixed use development; mixed use development must incorporate separate and self-contained waste management systems for the residential component and the non-residential component. In particular, the development must incorporate separate waste/recycling storage rooms/areas for the residential and non-residential components. Commercial tenants must be prevented (via signage and other means), from using the residential waste/recycling bins and vice versa; the residential waste management system and the non-residential waste management system must be designed so that they can efficiently operate without conflict. Conflict may potentially occur between residential and non-residential storage, collection and removal systems, and between these systems and the surrounding land uses. For example, collection vehicles disrupting peak residential and commercial traffic flows or causing noise issues when residents are sleeping. 	Consistent
	Service options available to mixed use development are described on the Byron Shire Council web site.	
B8.4.5	Industrial Development	Not applicable

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	Provisions	Compliance
B9.2	Landscape Plan Requirements	
B9.2.1	When is a Landscape Plan required?	
	<p>A Landscape Plan must be submitted with all Development Applications, other than applications for:</p> <ol style="list-style-type: none"> minor development with minimal environmental impact (e.g. shed, fence, garage); dwelling houses (unless on sites which are steeply sloping, in an area that Council considers to be environmentally sensitive, or on bushfire prone land); secondary dwellings; rural workers dwellings and dual occupancies (attached) in a Rural zone. farmstay accommodation and bed and breakfast accommodation in a Rural zone; 	Consistent

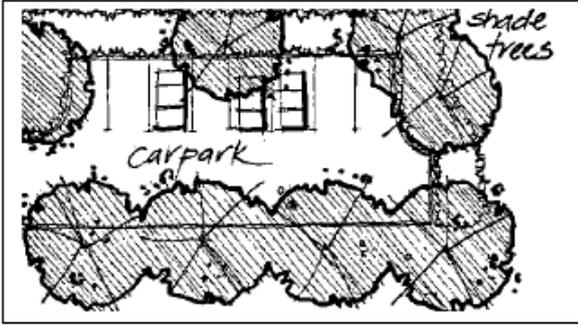
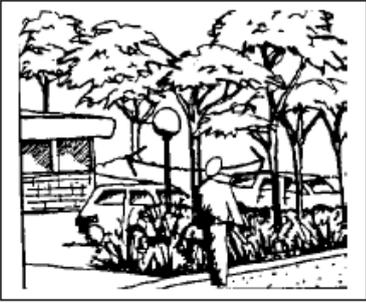
Chapter B9 Landscaping		
	Provisions	Compliance
	<p>6. change of use where no building works are proposed;</p> <p>7. minor alterations and additions to existing residential, commercial and industrial buildings.</p>	
B9.2.2	Landscape Plans for Development Applications	
	Landscape plans preferably should be prepared by a landscape architect or qualified landscape designer. Where a Landscape Plan is required for approval as part of a development application, the following documentation must be submitted:	
	<p>1. A <u>Site Plan</u> that accurately shows existing site conditions including: contours, property boundaries, easements and any other restrictions or encumbrances affecting the property, existing vegetation, buildings and structures (e.g. sheds, roads, retaining walls, fences, water tanks, dams), natural landscape features (e.g. waterways, drainage lines, existing vegetation, wetlands, escarpments), location of driveways and pedestrian access points, location of overhead and underground services (electricity, water, sewer, gas, telecommunications), inspection pits, manhole covers, sewer vents, grease traps and stormwater drainage infrastructure. The location and extent of significant views to and from the site must also be indicated on the Site Plan.</p>	Consistent – see TR#1 .
	<p>2. A <u>Landscape Concept Plan</u> (drawn at an appropriate scale, e.g. 1:100 or 1:200) that includes the following information:</p> <ol style="list-style-type: none"> name, qualifications and contact details of the person who prepared the plan; north point; scale bar; legend; site boundaries; all proposed buildings, including eave overhang; demonstration that the proposal complies with any “minimum landscaped area” requirements according to type of development (e.g. dual occupancy and multi-dwelling residential developments); location, spread and botanical name of existing trees to be removed/ retained; location and botanical name of existing native vegetation to be removed/ retained; all proposed surface finishes e.g. areas of concrete, paving, bitumen, gravel, garden beds, proposed edge treatment to garden beds, mown turf; all proposed structures e.g. retaining walls, pergolas, awnings, fences, swimming pools, decks, driveways, kerb crossovers; the existing soil characteristics; details and depth of proposed imported soil and mulch to areas to be planted; indicative planting (indicated as trees, shrubs, groundcovers); 	Consistent – see Architect’s Drawing DA800 at TR#3 .

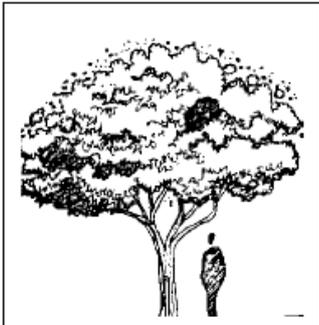
Chapter B9 Landscaping		
	Provisions	Compliance
	o) indicative plant species, planting densities and container sizes.	
B9.2.3	Further requirements for more complex developments	Not applicable
B9.2.4	Landscape Plan prior to issue of a Construction Certificate	Noted
B9.3	General Landscaping Principles	
B9.3.1	General Landscape Design Principles	
	Objectives	
	1. <i>To specify the general principles that apply to landscape design associated with development in Byron Shire.</i>	
	Performance Criteria	
	Landscape Plans and supporting information must demonstrate that the proposed landscaping will be consistent with the following general principles:	
	<p>1. <u>Landscape design for crime prevention and safety</u> Landscape design must comply with the requirements of Chapter B11 Planning for Crime Prevention, and must minimise the potential for crime and vandalism.</p>  <p>Figure B9.1 – Planting maintains sightlines into public areas for safety.</p>	Consistent
	<p>2. <u>Landscaping not to interfere with utilities and services</u> Landscaping and planting must not interfere with the function and accessibility of underground or overhead services and facilities, including inspections pits/ meters.</p>	Consistent
	<p>3. <u>Landscaping not to interfere with the structural integrity of buildings and structures.</u> a) Trees must not be planted within 3 metres of any building. b) When placing trees in the landscape, consideration must be given to the size and spread of the tree when it is mature. Ensure that trees have adequate space for their branches and roots to grow without interfering with building eaves, walls, concrete slabs, foundations, driveways, paths, retaining walls or other built structures.</p>	Consistent

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	Provisions	Compliance
	<p>4. <u>Landscaping conserves and improves natural resources and biodiversity</u> Site and landscape design must:</p> <ul style="list-style-type: none"> a) retain and protect existing significant native vegetation on the site wherever possible; b) retain any trees or other vegetation of cultural or heritage significance; c) incorporate the retention of existing mature trees (with the exception of weed species) into the landscape design wherever possible; d) utilise plant species locally indigenous to the area (and preferably) sourced from the local area, in preference to exotic plant material, wherever practicable; e) ensure that weed species are removed from the site and are not used in the landscape design; f) incorporate compensatory plantings whenever significant native vegetation is removed or damaged; g) on larger land parcels, incorporate bushland restoration/ regeneration works in strategic areas to consolidate naturally occurring plant communities and assist in the remediation of damaged lands. 	<p>Consistent, in so much as is reasonably possible in the circumstances of a mixed use project of the subject type.</p>
	<p>5. <u>Landscaping reinforces local character, identity and sense of place</u> Where a street or a locality has a specific character derived from existing vegetation, similar or compatible species are planted on the site (except where the existing species are undesirable weed species).</p>	<p>Consistent</p>
	<p>6. <u>Landscaping contributes positively to streetscape amenity and helps to integrate the development into the existing landscape setting</u> Landscaping must endeavour to soften the harsh visual effect of extensive areas of hard-surfacing, such as the cumulative effect of building walls, car parking areas and pavements. The height of plants selected must relate to the scale of the building(s), helping to visually break up hard surfaces and providing a balance between built and natural forms when the development is viewed from adjoining public streets or neighbouring properties.</p>  <p><i>Note: This landscaping does not relate well to the building scale.</i></p>	<p>In this commercial setting, the streetscape amenity of the subject project is mainly attributable to its architectural form, not so much its landscape form. The photomontage at Drawing 600 in the Architectural Set (TR#3) illustrates the landscaping contribution of the proposal to the streetscape.</p>

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	Provisions	Compliance
	 <p>Note: This landscape relates to the building scale and assists integration of the building into the street.</p> <p>Figure B9.2 – Landscaping relative to building scale</p>	
	<p>7. <u>Plant species are selected for long-term survival, minimal maintenance and visual interest</u> Plant species used in landscaping must:</p> <ul style="list-style-type: none"> a) be suited to prevailing site conditions (such as soil characteristics, sun, shade, wind, rainfall and drainage regimes) and require minimal maintenance; b) be hardy and long-lived; c) be predominantly locally indigenous species (sourced from the local area wherever practicable), in preference to exotic plant species; d) provide on-going visual interest through form, colour, texture, floral display and the like. 	Consistent
	<p>8. <u>Landscaping improves the microclimate in and around buildings and enhances the function of outdoor living spaces</u> Landscaping must provide year-round shade, shelter and amenity to outdoor living areas and help to define the function of different outdoor spaces.</p>	Consistent
	<p>9. <u>Landscaping of public and semi-public areas provides clearly defined pedestrian pathways and assists with way-finding</u> The landscape design of public areas and semi-public spaces such as car parking areas and the frontages of commercial and industrial buildings must incorporate:</p> <ul style="list-style-type: none"> a) pedestrian pathways that have a different surface finish to, and are clearly differentiated from, driveways and vehicular movement areas; b) planting or other design elements that help drivers and pedestrians locate the main entry/ exit points into the site; c) planting or other design elements that assist pedestrians find their way around the development safely and locate the main entry/exit points into the building(s). 	Consistent
	<p>10. <u>Adequate landscape buffers are provided between incompatible landuses.</u> Where the proposed development has the potential to impact upon the amenity of adjoining development, vegetative buffers are required to provide dense screening along the boundary of the proposed development.</p>	Consistent – unlikely to have impact on the amenity of adjoining development.
	<p>11. <u>Landscaping complies with bushfire protection requirements</u> Where the proposed development is located on land mapped as Bushfire Prone Land, landscaping around proposed buildings must comply with the current legislative</p>	Not applicable

Chapter B9 Landscaping		
	Provisions	Compliance
	requirements of the <i>Rural Fires Act, 1997</i> in regards to measures required to protect the proposed development from bushfires. Further standards for landscape design specific to different types of development (e.g. multi-dwelling housing , business or industrial development) are included in the relevant Sections below.	
	Prescriptive Measures	
	There are no Prescriptive Measures.	
B9.4	Multi Dwelling Housing, Attached Dwellings and Residential Flat Buildings	Not applicable to shop top housing.
B9.7	Commercial and Retail Development	
	Objectives	
	1. <i>To enhance the built form of commercial and retail areas.</i>	The proposal seeks to be consistent with the commercial and retail development objectives.
	Performance Criteria	
	1. Retain existing vegetation where appropriate; 2. Where possible, provide street trees and/or plantings; 3. For stand-alone large scale retail or commercial development, provide suitable landscaping to visually soften the hard stand features of the built environment.	No site vegetation or street planting exists at the frontages of the subject site presently.
	Prescriptive Measures	
	For stand-alone large scale retail or commercial development, a minimum 10% of the site area must be dedicated to landscaping.	Consistent – not a large scale project.
B9.8	Industrial Development	Not applicable
B9.9	Car Parking and Open Storage Areas	
B9.9.1	Landscaping Of Car Parking and Open Storage Areas	
	Objectives	
	1. <i>To enhance the built form, provide shade and assist in screening car parking and open storage areas.</i>	
	Performance Criteria	
	1. Planting in car parks reduces the harsh visual effect created by open concrete and asphalt areas and provides shade and wind protection. The landscape design should be an integral part of car park design and layout. The design can incorporate shade tree planting throughout the car park and dense planting, mounding, walling and fencing on boundaries to provide screening.	The car parking is modest in scale and largely shielded from view of the public from Balun Lane by virtue of the structure as illustrated in Architectural Drawing DA200, which forms part of the Architectural Plan Set TR#3 .

Chapter B9 Landscaping		
	Provisions	Compliance
	 <p>Figure B9.3 - Landscaping breaks up the hard stand/car park area</p>  <p>Figure B9.4 - Planting in car parks</p>	
	<p>Prescriptive Measures</p> <ol style="list-style-type: none"> In commercial and industrial parking areas and in open storage areas, shade trees shall: <ol style="list-style-type: none"> be provided at the rate of 1 tree to shade every 2-5 parking spaces and aim to provide adequate shade cover after five (5) years or less; have high spreading branches; have a low attraction to bird species; be provided in garden beds of minimum width 2m.  <p>Figure B9.5 - Planting of commercial and industrial car parks</p>	<p>The proposal does not comply with this standard but that non compliance is considered appropriate in the circumstances of a largely enclosed car parking area.</p>
	<ol style="list-style-type: none"> Use smooth-barked trees, shrubs to 1m and ground covers for maximum visibility and surveillance. 	<p>Not applicable</p>

Chapter B9 Landscaping		
	Provisions	Compliance
	<p>3. The following design guidelines apply to car parks:</p> <ul style="list-style-type: none"> a) retention of suitable existing vegetation; b) screen planting to street frontages and around the boundaries of the site; c) buffer planting to adjacent land uses; d) planting of shade trees throughout the car park (landscape works in the car park should aim to provide adequate shade cover after 5 years); e) Shade trees are to be selected on the basis of those species which are not prone to limb drop or other risks that may cause damage to cars; f) separation and definition of pedestrian and vehicular circulation routes; g) for effective landscaping, a minimum garden bed width of 2 metres is required for the front boundary; h) use of porous paving for parking bays and driveways where appropriate. 	
B9.10	Cycleways, Pedestrian Routes, Drainage and Watercourses	Not applicable
B9.11	Street Trees in Subdivision and Developments	Not applicable
B9.11.1	Design and Selection of Street Trees	
	Objectives	
	<p>1. <i>To promote ecological diversity and landscape character in the Shire's streets.</i></p>	
	Performance Criteria	
	<p>1. Native species, (preferably locally indigenous species), must be used as street trees in association with subdivision and development to preserve and enhance the natural character of the Shire. In addition, the retention and featuring of existing vegetation within the road reserve may provide a suitable established landscaped streetscape. Careful consideration is required in the location and choice of street trees, with particular attention to:</p>	Consistent
	<ul style="list-style-type: none"> a) services and infrastructure (both underground and overhead), 	Consistent
	<ul style="list-style-type: none"> b) sight lines at intersections, and 	Not applicable
	<ul style="list-style-type: none"> c) pedestrian and cycleway movements. 	Not applicable
	 <p>Figure B9.9 – Street trees that allow pedestrian movement</p>	
	<p>2. For multi dwelling housing, attached dwellings, residential flat buildings and commercial development the embellishment of the road reserve with street trees will be considered on merit and dependant upon existing street trees, width of the road frontage and size of the</p>	Not applicable

Chapter B9 Landscaping		
	Provisions	Compliance
	development. The Landscape Concept Plan prepared for the development needs to consider street trees and other landscaping of the road reserve as an integral part of the development.	
	3. The design of the planted area for street trees should encourage passive watering from the road and footpath surface and incorporate the principles of water sensitive urban design .	Not applicable
	For design and technical guidelines refer to the Landcom Street Tree Design Guidelines available on the internet.	
	Prescriptive Measures	
	1. Street trees should be chosen for their: <ul style="list-style-type: none"> a) non-invasive root systems; b) good canopy spread and shade provision; c) mature height growth nature (under 10m in height); d) colour and appeal; e) low maintenance requirements; f) suitability for soil type and drainage conditions. 	No street trees are proposed.
	2. Street trees provided as part of a new development must be a minimum of 45 litres in size to provide an early established character to the development. In some circumstances the use of root barriers will be required when planting trees close to kerbs, buildings and other structures under the possible threat of root damage	Not applicable
	3. A minimum of one street tree per 15 metres of residential lot street frontage with a minimum canopy diameter of 8 metres at maturity to be provided for new subdivisions.	No street trees are proposed.
B9.12	Landscape Design Considerations	
B9.121	Underground Car Parks	Not applicable
B9.122	Roof Decks and Balconies	
	Objectives	
	1. <i>To enhance the visual amenity and appearance of rooftops and balconies.</i>	The proposal seeks to be consistent with the roof decks and balconies objectives.
	Performance Criteria	
	1. Rooftop and balcony planting (or vertical landscaping) is to be used on the upper levels of higher buildings to: <ul style="list-style-type: none"> a) promote a more attractive facade for multi-level buildings; b) soften the bulk of the building; c) graduate the height of the building with planting; d) increase privacy between upper level balconies and dwelling houses; e) provide a subtropical ambience for buildings. 	The proposal provides for balcony spaces that are attractive and soften the building. Refer to the photo montage sheet DA600 which forms part of the Architectural Plan Set TR#3 .
	2. Where planter bays or landscape beds are proposed applicants are directed to the minimum landscaping provisions under the Residential Design Flat Code (Planning NSW) – Planting on Structures for depth and dimensions of planter bays and volume of soil required.	Consistent
	3. Roof decks must be so designed and constructed as to be structurally capable of carrying a sufficient volume of topsoil	Consistent

Chapter B9 Landscaping		
	Provisions	Compliance
	to allow development of a planting program integrated with landscape development on other parts of the site .	
	Prescriptive Measures	
	There are no Prescriptive Measures.	
B9.123	Climate and Microclimate	
	Objectives	
	1. <i>To ensure that the design of developments and landscaped areas addresses the climatic characteristics of the area and the microclimate of the site.</i>	
	Performance Criteria	
	1. Landscaping should be designed to enhance and reinforce positive climatic influences and minimise the impact of adverse climatic features.	
	2. A site's microclimate is directly affected by a combination of the prevailing climatic conditions, the site's aspect (i.e. the direction it faces), the topography, the vegetation and the structures. With due consideration to the prevailing weather conditions, landscaping can effectively control climatic impacts on buildings and outdoor spaces. Microclimate control aspects of landscaping must be designed to maximise the opportunity to create a comfortable environment. Landscape design must take into account the placement of evergreen and deciduous species to ensure winter sun penetration and summer shade to buildings and outdoor open space/ recreation areas. In particular: <ul style="list-style-type: none"> a) consider shade and canopy spread of trees when locating planting in design; b) deciduous vegetation to the north of the block provides summer shade and allows winter sun; c) vegetation on the western side of the block assists in control of afternoon sun; d) evergreen vegetation should be planted on the eastern, western and southern sides of the block to provide summer shade and to deflect cold winter winds 	
	Prescriptive Measures	
	In summer the western elevations of buildings should be protected from the afternoon sun with trees of suitable mature height.	Not applicable given the commercial context of the subject site.
B9.124	Existing Vegetation	
	Objectives	
	1. <i>To promote ecological sustainability and to optimise aesthetic character by maximising retention of existing vegetation.</i>	The proposal seeks to be consistent with the existing vegetation objectives.
	Performance Criteria	
	1. Landscaping should retain, protect and enhance existing natural vegetation.	Not applicable – no existing landscape trees are on the site.
	2. Vegetation retention must be considered at the initial stages of development design. Buildings, roads, parkland, or other components of a development must be located to retain	Not applicable

Chapter B9 Landscaping		
	Provisions	Compliance
	maximum vegetation on a site . Design intent is important in the protection of significant vegetation.	
	3. Maximum advantage should be taken of existing mature trees and shrubs on the site and these should be incorporated into the overall landscape strategy. The retention of vegetation on a development site adds an “established” effect and an immediate vertical dimension to the design. Existing vegetation also assists in the retention of the natural character of the Shire and has ecological benefits. In addition, existing vegetation on a site may be significant for historical, aesthetic or environmental reasons and may be required to be retained by Council provisions.	Not applicable
	4. Provision must be made in the design for the protection of existing vegetation during construction works – for example, fencing barriers and appropriate signage should be provided. Particular effort must be made to protect the root zone of those trees to be retained, by avoiding compaction of this area by construction vehicles, and by ensuring that any stockpiling of materials occurs well away from the drip line of the tree.	Consideration has been given in relation to the trees which are located on the site immediately westward of the subject site. The arborist report (TR#9) opines that development in the manner proposed will not adversely impact on the adjacent trees.
	5. The effective use of vegetation on a site can also substantially reduce the landscaping costs of a development and should be considered in the design process.	Noted
		
	Figure B9.10 – Retention of suitable vegetation is encouraged	
	Prescriptive Measures	
	There are no Prescriptive Measures.	
B9.125	Planting Size, Density and Species	
	Objectives	
	<ol style="list-style-type: none"> 1. To ensure that landscape and planting design is compatible with the scale and character of the proposed development. 2. To ensure that the density of landscaping and planting is compatible with the long term and short term character of the proposed development. 3. To promote a landscape character in the Shire which is based on locally indigenous plant species and the natural, subtropical environment of the area. 4. To promote sustainability through the provision of edible species in appropriate locations. 	

Chapter B9 Landscaping		
	Provisions	Compliance
	Performance Criteria	
	1. The selected planting size, density and species is dependent upon a number of factors, including the scale and nature of the project, availability of planting stock and particular requirements specified in conditions in a development consent. In many cases follow up planting is advantageous once initial planting is established.	
	2. The landscape plan needs to address size, density and species composition consistent with best practice landscape architecture or landscape design principles.	
	Prescriptive Measures	
	1. The following planting sizes are the minimum required to achieve an initial impact in the landscape design: a) street and feature trees: 45 litre minimum b) trees: 300mm minimum pot size c) large shrubs: 200mm minimum pot size d) groundcovers: 140mm minimum pot size.	Generally consistent
	2. A minimum of 90% of all plants used shall be locally indigenous . These species are listed in the Native Species Planting Guide to Byron Shire which can be found on Council's website.	Consistent
	3. No species listed as undesirable in Chapter B2 Preservation of Trees and Other Vegetation shall be used in landscaping on any site.	Consistent
	4. Species listed as threatened species under the Threatened Species Conservation Act 1995 should not be used for landscaping purposes unless the genetic provenance can be demonstrated in terms of locally sourced seed stock.	Consistent
	5. In new developments, consideration will be given to the provision of dedicated areas for the growing of vegetables, fruit trees and other edible species as part of the landscaped areas.	Fruit trees and edible species were not thought to be appropriate as part of the species list for the subject site.
B9.13	Landscape Works and Maintenance	
B9.13.1	Landscape Construction Works	
	Objectives	
	1. <i>To ensure the viability and survival of landscape and planting works.</i> 2. <i>To ensure survival and ongoing functioning of landscaping and planting.</i>	
	Performance Criteria	
	Landscape areas shall be constructed and maintained in accordance with best practice landscape architecture or landscape design principles.	Consistent
	Prescriptive Measures	
	There are no Prescriptive Measures.	

Chapter B11 - Planning for Crime Prevention

	Provisions	Compliance
B11.2.1	Development that Requires a Formal Crime Risk Assessment	Not applicable as the scale of the development does not trigger the formal

Chapter B11 – Planning for Crime Prevention		
	Provisions	Compliance
		consideration of CPTED principles.

Chapter B13 Access and Mobility		
	Provisions	Compliance
B13.1	Introduction	
B13.1.1	Statutory Requirements and Obligations	
	<p>The Commonwealth Disability Discrimination Act 1992 (DDA) is the primary Australian statute that aims to eliminate discrimination on the grounds of disability. Section 23 of the DDA makes it unlawful to discriminate against people with a disability or their associates in relation to access to and use of premises that the public enter or use. Exemptions may be made for 'unjustifiable hardship'.</p> <p>While this DCP provides guidelines to help with design and construction of appropriate access to both new and refurbished buildings, the final responsibility for ensuring compliance with the DDA rests with the owner or other person responsible for a building.</p> <p>Various other Acts and statutory instruments and Australian Standards deal with equity of access and mobility, including (but not limited to):</p> <ol style="list-style-type: none"> 1. Anti-Discrimination Act 1977 (ADA). This New South Wales Act is similar in its intent to the Disability Discrimination Act; 2. Local Government Act 1993: Section 8 of the Local Government Act sets out a charter which commits Councils to consultation and to providing adequate, equitable and appropriate services and facilities to the community; 3. Building Code of Australia (BCA). The BCA sets out technical requirements for design and construction of buildings. It specifies minimum requirements for access to new buildings and buildings undergoing refurbishment. It requires the provision of access for people with mobility disabilities to all classes of buildings except residential buildings; 4. Australian Standards. The Australian standards work in conjunction with the BCA to provide detailed technical requirements for individual building elements, e.g. in size and shapes of ramps, doors, rooms and lifts. 	
B13.1.2	Byron Disability Access and Inclusion Plan 2008-2013	
	In 2008 Council adopted the Disability Access and Inclusion Plan 2008-2013 (DAIP). The DAIP reflects Council's commitment to ensuring that the community environment is accessible for, and inclusive of people with disabilities, their families and carers. Its strategic actions are reflected in this DCP.	
B13.1.3	Aims of this Chapter	
	The Aims of this Chapter are:	
	<ol style="list-style-type: none"> 1. To implement Council's obligations under the Disability Discrimination Act 1992 in the development process. 	

Chapter B13 Access and Mobility		
	Provisions	Compliance
	2. To ensure that the development process provides for equitable access to community facilities and services, places of work, leisure and community activity.	
	3. To establish standards for Council's assessment of provision of access to all new and upgraded buildings, services and places.	
	4. To ensure that the range of housing opportunities available for people with disabilities or other special mobility needs is representative of the local market in terms of access , size, location, orientation and general amenity of accommodation.	
	5. To inform the community, including building owners and developers, of their obligations under the Disability Discrimination Act 1992 and the Anti-Discrimination Act 1997 in the development process.	
	6. To provide guidance on the type of work required to provide non-discriminatory access to premises.	
B13.1.4	Application of this Chapter	
	<p>This Chapter applies to all residential accommodation in addition to development that is intended to be used by the public or entered by the public on land subject to Byron LEP 2014.</p> <p>For all such development, access must be provided to and within the facilities in accordance with the provisions of the BCA and AS1428.1 – Design for Access and Mobility –General Requirements for Access – New Buildings.</p> <p>For all such development, parking must be provided in accordance with Australian Standard AS/NZS 2890.6:2009 Parking Facilities – Part 6: Off-street parking for people with disabilities.</p>	
B13.1.5	Unjustifiable Hardship	
	<p>Council is bound by the requirements of the Environmental Planning and Assessment Act 1979 and the Local Government Act 1993 to ensure that adequate access is provided for people with disabilities. However, the DDA makes provision for discrimination against a person with a disability where to do otherwise would cause unjustifiable hardship. Such cases of hardship must be proven to the Human Rights and Equal Opportunity Commission (HREOC).</p> <p>The matters to be considered when deciding if the provision of access will cause unjustifiable hardship include:</p> <ol style="list-style-type: none"> 1. <i>the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned; and</i> 2. <i>the effect of the disability of a person concerned; and</i> 3. <i>the financial circumstances and the estimated expenditure required to be made by the person claiming unjustifiable hardship; and</i> 4. <i>in the case of the provision of services, or the making available of facilities – an action plan given to the Commission under Section 64 of the DDA.</i> <p>The DDA does not provide any specific exemptions for buildings or places of heritage significance.</p>	

Chapter B13 Access and Mobility		
	Provisions	Compliance
B13.1.6	Special Requirements for Development Applications	
	Development Applications must include evidence to demonstrate that the requirements of the Disability Discrimination Act have been considered and addressed in the design of the development. If the case for unjustifiable hardship is made, a copy of the decision of the Australian Human Rights Commission must be provided to Council with a Development Application.	
B13.2	Development Controls	
B13.2.1	Dwellings, Dwelling Houses, Semi – Detached Dwellings and Dual Occupancies	Not applicable as Shop Top Housing.
B13.2.2	Multi Dwelling Housing, Attached Dwellings, Residential Flat Buildings, Shop Top Housing and Serviced Apartments	
	Objectives	
	<ol style="list-style-type: none"> To implement the requirements and objectives of the Disability Discrimination Act, 1992, relevant equitable access legislation and the Byron Disability Access and Inclusion Plan 2008 - 2013. To nominate adaptable housing standards for multi unit residential development in Byron Shire. 	The proposal seeks to be consistent with the access and mobility objectives relevant to shop top housing.
	Performance Criteria	
	There are no Performance Criteria.	
	Prescriptive Measures	
	1. Design and Access in accordance with AS1428.1 – Design for Access and Mobility – General Requirements for Access – New Buildings (for class 3, 5, 6, 7, 8 and 9 buildings) and AS 4299 -Adaptable Housing must be provided to and within new developments and major alterations for residential development to which this Section applies as follows:	Consistent - the specialist report TR#8 addresses disabled access considerations.
	<p>a) Dwelling Units: A minimum of 10% of units, rounded up to the nearest whole number should be adaptable housing. Where a development is undertaken in stages after commencement of this DCP (including where earlier stages have been subdivided subsequently from the subject land) the calculation of the ‘minimum 10% of units’ shall include the units provided in those earlier stages.</p> <p>The adaptable housing units must be located throughout the development with a variety of outlooks. Access to the upper level of townhouses can be by lift, stair lift, chair lift, inclinor or platform lift or ramp in accordance with the relevant Australian Standards. Any lift must comply with the relevant Australian Standards.</p>	Consistent - the specialist report TR#11 addresses adaptable housing considerations. Further, sheet DA104 from the Architectural Plan Set TR#3 illustrates the adaptable housing capacity of unit 1.
	b) Access: A continuous accessible path of travel in accordance with AS1428 or an inclinor/ lift/ hoist (in accordance with AS1735) as appropriate must be provided between the main street entrance to the residential complex, adaptable housing units, access or car parking spaces, letterboxes, garbage storage area, recreation areas and clothes drying areas.	Consistent

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	Provisions	Compliance
	c) Car Parking: At least one accessible car parking space for the disabled must be provided for each adaptable housing unit, if a parking space is provided or if it is required pursuant to Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access or any other Chapter of this DCP. These spaces must be located close to and accessible from the entrance to the adaptable housing units and from the main entrance to the building. The spaces must be attached to the title of the adaptable housing unit in any Strata Plan or Community Title plan. Car parking must be in accordance with the requirements of BCA Section D Part D3.5 and Australian Standard AS/NZS 2890.6:2009 Parking Facilities – Part 6: Off-street parking for people with disabilities.	Consistent - two accessible car parking spaces have been provided.
	2. In the interest of promoting the objectives, principles and goals of the Byron Disability Access and Inclusion Plan 2008 – 2013, the above standards are also encouraged in the case of refurbishment of existing buildings and developments that do not include major alterations.	Not applicable
B13.2.3	Boarding Houses, Group Homes, and Hostels	Not applicable
B13.2.4	Commercial Premises and Industrial Premises – BCA Classes 5, 6, 7 & 8.	
	Objectives	
	<ol style="list-style-type: none"> <i>To implement the requirements and objectives of the Disability Discrimination Act, 1992, relevant equitable access legislation and the Byron Disability Access and Inclusion Plan 2008 - 2013.</i> <i>To nominate access standards for BCA Class 5, 6, 7, 8 and 9 development including Office/ Commercial, Retail and Service and Industrial Development in Byron Shire.</i> 	The proposal seeks to be consistent with the objectives for commercial premises accessibility.
	Performance Criteria	
	There are no Performance Criteria.	
	Prescriptive Measures	
	<ol style="list-style-type: none"> <u>For new developments and development involving major alterations and / or extensions:</u> Design and access in accordance with AS1428.1 – Design for Access and Mobility –General Requirements for Access – New Buildings must be provided to and within all the areas or facilities of the development where there is a reasonable expectation of access by any owner, occupier, employee or visitor. This must at least consist of the entrance floor and any other floor to which vertical access is provided in accordance with AS 1428.1 by way of a ramp, step ramp, kerb ramp or passenger lift. It does not include service/ plant areas. 	Consistent
	<ol style="list-style-type: none"> <u>For work that involves changes to an existing entrance/exit but not any major alterations to other parts of the property:</u> Access must be provided to areas used by the public and if possible to all staff areas. If car parking is provided, spaces must be accessible and must be connected to the premises by a continuous accessible path of travel. The owner 	Not applicable

Chapter B13 Access and Mobility		
	Provisions	Compliance
	must also be advised of the obligations imposed by the DDA.	
	<p>3. <u>For minor works that do not affect access to the property:</u></p> <p>a) The applicant is encouraged to provide access at the same time as carrying out minor works to the premises.</p> <p>b) No work will be permitted which may result in a decrease in the existing level of access.</p> <p>c) The owner should be advised of the obligations imposed by the DDA.</p>	
	<p>4. <u>For change of use that includes building work:</u> A change in the use of the building may also change its classification under the BCA. If this is the case, Council can require the premises to be made fully accessible. As a minimum:</p> <p>a) if major new work, alterations and or additions are proposed, the above measures required for new developments and development involving major alterations and or extensions shall apply;</p> <p>b) if minor works are proposed that include a change of entrance/exit, the above measures applying to work that involves changes to existing entrance/exit but not any major alterations shall apply;</p> <p>c) if no change of classification applies and only minor building work is proposed, the above measures required for minor works that do not affect access to the property shall apply.</p>	Not applicable
	<p>5. For change of use that does not involve building work: The owner should implement obligations imposed by the DDA, where applicable.</p>	
B13.2.5	Development Affecting Heritage Conservation Areas and Heritage Items	Not applicable

Chapter D8 Public Art		
	Provisions	Compliance
B15.1.1	Aims of this Chapter	
	<p>The Aims of this Chapter are:</p> <ol style="list-style-type: none"> 1. To implement relevant Strategic Actions and provisions of the Byron Public Art Strategy and Public Art Policy where they apply to the development process. 2. To recognise the importance of artistic expression to community well-being. 3. To cultivate a climate in which innovative and creative design, and well-integrated ecologically sustainable public art contribute to the cultural life, liveability and amenity of Byron Shire. 4. To encourage public art that is: <ol style="list-style-type: none"> a. Integral to social and cultural development as outlined in the Byron Shire Community Strategic Plan. b. Developed and managed by appropriate procedures and processes 	

Chapter D8 Public Art		
	Provisions	Compliance
	<ul style="list-style-type: none"> c. Created considering standards of excellence, in a professional manner d. Adequately planned with relevant stakeholders throughout the project duration, with partnerships and collaboration encouraged e. Meaningful, aesthetically stimulating and site specific f. Consistent with current planning, heritage and environmental policies and Plans of Management g. Aimed to provide a cultural outcome h. Supportive of local creative industries <ul style="list-style-type: none"> 5. To facilitate the provision of public art through the development process that: <ul style="list-style-type: none"> a. Encourages innovation, and demonstrates artistic excellence b. Is reflective and responsive to local culture, including the local Aboriginal context, if relevant c. Encourages the use of innovative materials including environmentally sustainable and eco-friendly material d. Is durable, robust, and of quality, low-maintenance materials, and if applicable, be treated with anti-graffiti coating e. Comply with all relevant Australian Standards and Building Codes and Regulations with regard to public safety f. Enhance existing public art assets of the Shire. 6. To specify considerations for the assessment of murals. 7. To enable equivalent financial contributions in lieu of providing public art. 8. To specify documents to be provided with a development application for the provision of public art. 	
B15.1.2	Application of this Chapter	
	<ul style="list-style-type: none"> 1. This Chapter applies to Development Applications for projects that: <ul style="list-style-type: none"> a) have an estimated cost greater than \$1,000,000 (calculated in accordance with the Environmental Planning & Assessment Regulation); and b) are located on land (partly or wholly) within zones RU2, RU5, B1, B2, B3, B4, B7, SP3 or W2; and c) include development for one or more of the following purposes: <ul style="list-style-type: none"> i) business premises ii) entertainment facility iii) function centres iv) marina v) office premises vi) recreation area vii) recreation facility (indoor, major and/ or outdoor) viii) registered club ix) retail premises x) tourist and visitor accommodation. 2. This chapter applies to residential subdivision of land within zones R1, R2 and R3 resulting in 20 lots or greater, 	<p>The Public Art provisions are applicable to the subject application having regard to the estimated cost of the development and the land uses involved.</p> <p>Not applicable</p>

Chapter D8 Public Art		
	Provisions	Compliance
	<p>with an estimated project cost greater than \$1,000,000 (calculated in accordance with the Environmental Planning & Assessment Regulation)</p> <p>3. This chapter applies to the provision of murals requiring development consent under Byron LEP 2014, Part 5.10 – Heritage Conservation.</p> <p>4. This chapter does not apply to alterations and additions to existing buildings where the overall use is not changing.</p>	
B15.2	General Provisions	
B15.2.1	Provision of Public Art	
	This section enables two assessment pathways for the provision of public art. A flow chart is provided in Appendix B15.1 that provides an overview of the assessment pathway options	
	Objectives	
	1. <i>To facilitate the provision of public art through the development process.</i>	
	Performance Criteria	
	<p>1. In lieu of providing public art, the applicant could enter into a Voluntary Planning Agreement with Council to provide an equivalent financial contribution for the installation of public art in a suitable location.</p> <p>2. Public art may be located on public land in any of the towns and villages in Byron Shire at the discretion of Council and the Arts and Creative Industries Advisory Committee. Council is to be consulted prior to lodgement of a development application for installations on public land.</p>	The proponent seeks to enter into a Voluntary Planning Agreement with the Council to make a contribution to the installation of Public Art in a suitable location. The draft VPA is attached as TR#17 .
	Prescriptive Measures	
	<p>1. Development to which this Section applies must include the provision of public art to the value of at least 2.5% of development costs (calculated in accordance with the Environmental Planning & Assessment Regulation) up to \$2 million, and 1% of further development costs exceeding \$2 million.</p> <p>2. A Public Art Plan is to be prepared that provides sufficient details of the proposed public art and must be submitted as part of the Development Application documentation. Council is to be consulted prior to lodgement of a development application. The Public Art Plan must include the following details to the satisfaction of Council:</p> <p>a) A statement that explains the rationale behind the artwork and demonstrates how it will relate to the proposed development and site. A concept design is strongly encouraged.</p> <p>b) Details of the nature, materials and form of the proposed public art.</p> <p>c) Define and illustrate the intended location and approximate size of the artwork</p> <p>d) Provide a program with timelines for documentation, fabrication and installation, and integration with the construction program for the development.</p>	The proposal seeks to comply with the performance criteria relevant to public art.

Chapter D8 Public Art		
	Provisions	Compliance
	<ul style="list-style-type: none"> e) Deaccessioning considerations and agreements as required in accordance with Council's Public Art Guidelines & Criteria. f) Evidence of partnerships and/or collaboration and funding sources for the public art project where applicable. Written evidence of support and consultation with traditional owners is to be provided if the applicant proposes to engage an Aboriginal Artist or use artworks or designs including Aboriginal Cultural Content. g) Evidence of Public Liability Insurance to cover construction and installation of the work. h) Itemised expenditure for the public art including artist fees and fabrication costs and a budget for ongoing maintenance. <p>3. The Public Art Plan must also demonstrate how the proposed public art meets the following Design Selection Criteria:</p> <ul style="list-style-type: none"> a) The artwork demonstrates artistic excellence and local and cultural appropriateness. b) The public art must be permanent and durable, with consideration given to maintenance requirements and potential for vandalism. c) The design is consistent with the themes outlined in the Public Art Policy and Strategy. d) Public art must be provided in a location that allows users of the public domain an unobstructed view of the artwork and the ability to freely access and interact with the artwork. Public art will not be considered inside buildings, except for public buildings. e) Meets relevant building and safety standards. 	
B15.2.2	Requirements for a development application for the provision of public art	Not applicable

Chapter C2 Areas Affected by Flood		
	Provisions	Compliance
C2.1	Introduction	
C2.1.1	Purpose of this Chapter	
	The purpose of this Section is to identify requirements relating to development on flood liable land that is appropriate to the degree of flood hazard on that land.	
C2.1.2	Objectives of this Chapter	
	<p>The Objectives of this Chapter are to:</p> <ol style="list-style-type: none"> 1. Support and implement the objectives and provisions of Byron LEP 2014 relating to development on land at or below the relevant flood planning level. 2. Provide a holistic approach to managing development on flood liable lands; 3. Ensure development maintains the existing flood regime and flow conveyance capacity; 	

Chapter C2 Areas Affected by Flood		
	Provisions	Compliance
	<p>4. Consider the future projected impacts of climate change on the floodplain in accordance with Council's adopted Climate Change Strategic Planning Policy;</p> <p>5. Reduce the impact of flooding and flood liability on individual owners and occupiers;</p> <p>6. Reduce public and private losses resulting from flooding;</p> <p>7. Encourage the development of and use of land in a manner compatible with the flood hazard.</p>	
	<i>An underlying principle of this Chapter is that any new development or modifications to existing development should always, as far as practical, result in an improvement to the existing flood risk and in no circumstances should the flood risk be made worse.</i>	
C2.1.3	Application of this Chapter	
	The planning provisions of this Chapter apply to all land at or below the future flood planning level. The flood planning matrix (Table C2.1) contains more specific information about the nature and types of development controlled by this DCP Chapter.	
C2.1.4	Planning Objectives and Development Controls	
	The provisions of this Chapter are based on a range of control measures in relation to particular development/building types. Development proposals must be consistent with the planning objectives for the Chapter. Such consistency is typically demonstrated by compliance with the identified development controls, although there may be circumstances where an alternative to the application of a development control is consistent with the planning objectives. Such alternatives will be considered with regard for risk management.	
C2.1.5	Relationship to Byron LEP 2014	
	<p>This Chapter provides more detailed development controls to enable the effective implementation of the following clauses in Byron LEP 2014:</p> <p style="padding-left: 40px;">Clause 6.3 Flood planning</p> <p style="padding-left: 40px;">Clause 6.4 Floodplain risk management</p>	Nowadays, Clause 6.3 has been repealed and a new Clause 5.21 has been published. We have addressed that clause elsewhere. Clause 6.4 is not applicable in the subject circumstances because the use proposed is not of a kind referred to in Clause 6.4 (3).
C2.1.6	Climate Change and Flood Planning	
	The Byron Shire Council Climate Change Strategic Planning Policy ('Policy') sets out Council's accepted climate change parameters to inform the decision making process for strategic, infrastructure and operational planning. The flood planning provisions in this Chapter have been developed having regard to the overall framework of that Policy.	Noted
C2.1.7	Relationship to other Chapters in this DCP	
	This Chapter needs to be read in conjunction with Chapters D1 Residential Development in Urban and Special Purpose Zones, D2 Residential Accommodation and Ancillary Development in Rural Zones, D3 Tourist Accommodation, D4 Commercial and Retail Development, D5 Industrial Development and D6 Subdivision, for development on land at or below the future flood planning level.	Noted

Chapter C2 Areas Affected by Flood		
	Provisions	Compliance
	The provisions in this Chapter prevail over the provisions of other Chapters, unless otherwise specified, where there is an inconsistency.	
C2.1.8	Background Information	
	<p>Council has carried out a number of Flood Studies, the latest of which are set out in section 2.3.1.</p> <p>The studies for Belongil Creek, Marshalls Creek and Tallow Creek have all acknowledged climate change and Council's Climate Change Strategic Planning Policy, but have been based on different climate change parameters.</p> <p>The above studies along with Council's Climate Change Strategic Planning Policy are the principal reference documents for implementing the provisions of this Chapter.</p>	Noted
C2.2	General Assessment Criteria	
	<ol style="list-style-type: none"> 1. Council will not consent to any development on land at or below the flood planning level if there is sufficient suitable area on that land above the flood planning level on which to carry out the development. 2. Where the development is on land below the flood planning level, floor levels of any buildings must be constructed at or the above the flood planning level. Council will not support filling beneath the building footprint of the proposed development unless it building footprint generally will not be permitted, other than for driveways and/or pedestrian pathways immediately adjoining the walls of the building. 3. Where extensive additions are proposed to lightweight buildings (e.g. timber, fibro) the applicant should consider redesigning the whole building to comply with current flood planning controls. 4. The adaptability of the development in the face of climate change will be considered as part of the development process. Adaptable developments have the ability to be designed to the Projected 2050 Flood Planning Level instead of the Projected 2100 Flood Planning Level in most instances. 	The subject development relies upon Clause C2.3.5 in relation to flood proofing considerations.
C2.3	Development Controls	
	<p>The following steps should be taken to ascertain the flood planning controls relating to development on land at or below the future flood planning level:</p> <p>Step 1 Consider the applicable Flood Study for the catchment in which the land is situated, in relation to flood hazard and floor level requirements (Section C2.3.1).</p> <p>Step 2 Consider the specific Flood Planning provisions for the type of development and flood hazard as set out in the flood planning matrix (Table C2.1 below).</p> <p>Step 3 Consider any special requirements or standard designs for particular localities (Section C2.3.5).</p>	
C2.3.1	Applicable Flood Study	
	<p>2. Brunswick River Catchment</p> <p>a) <i>Brunswick River Flood Study (1986)</i></p> <p>i) includes Mullumbimby and Brunswick Heads. The extent of the Brunswick River catchment is shown in Map C2.2.</p>	
	b) <i>North Byron Coastal Creeks Flood Study (in preparation)</i>	

Chapter C2 Areas Affected by Flood		
	Provisions	Compliance
	<ul style="list-style-type: none"> i) includes Mullumbimby, Brunswick Heads, Ocean Shores, New Brighton, South Golden Beach and Billinudgel. ii) the study area for the North Byron Coastal Creeks Flood Study combines the Brunswick River, Marshalls Creek and Simpsons Creek catchments. The extent of the North Byron Coastal Creeks catchment is shown in Map C2.3. c) <i>North Byron Coastal Creeks Floodplain Risk Management Study & Plan (planned to commence in future)</i> 	
C2.3.2	Minimum Floor Levels	
	1. The finished floor level of habitable rooms must be above the relevant level defined by the flood planning matrix. Analysis and certification by a suitably qualified structural engineer will be required where the finished floor level of enclosed 'nonhabitable' rooms is more than 1.0 metre below the 1:100 year flood level.	The subject development relies upon Clause C2.3.5 in relation to flood proofing considerations.
	2. Developments in new release areas, certain rezoning proposals, critical facilities and special purpose facilities requiring a longer flood planning horizon are generally required to achieve the Projected 2100 Flood Planning Level.	Not applicable
	3. New dwellings in existing residential areas are generally required to achieve the Projected 2050 Flood Planning Level. Adaptable building design is encouraged so that dwellings on piers, posts, columns or piles can be raised in future to accommodate climate change. Where concrete slab on ground is necessary the slab level shall be finished at least 300mm above the surrounding ground, as well as achieve the Projected 2050 Flood Planning Level.	Not applicable
	4. Commercial and Industrial floor levels are generally required to achieve the Projected 2050 Flood Planning Level. Where this cannot occur, Council will consider flood proofing and emergency storage above the Projected 2050 Flood Planning Level to minimise damage that may occur during flooding (refer to sections C2.3.4 Flood Proofing and C2.3.5 Special Provisions).	The 2050 Flood Planning level for the site is RL 3.44m AHD (see TR#4). The finished floor level of the commercial tenancies is set at RL 3.5m AHD. This level is consistent with the requirements of this clause.
C2.3.3	Flood Planning Matrix	
	<p>The flood planning matrix below sets out general planning requirements for "low /intermediate" and "high" hazard flood categories. The flood affectation or hazard of a property or part of a property may change when considering climate change.</p> <p>To satisfy the provisions of the LEP, developments must not only demonstrate compliance with the <i>Primary Constraints</i> in the flood planning matrix but must also demonstrate compliance with the <i>Additional Constraints</i>. The primary constraints relate to land to which LEP clause 6.3(3) applies (i.e. land at or below the flood planning level), while additional constraints relate to land to which LEP clause 6.3(4) applies (i.e. land at or below the future flood planning level).</p> <p>The flood planning matrix will not prevail over any special provisions set out in Section C2.3.5.</p>	Noted
C2.3.4	Flood Proofing	

Chapter C2 Areas Affected by Flood		
	Provisions	Compliance
	<p>1. <u>Flood Compatible Material</u> Materials located below the relevant level defined by the flood planning matrix must be capable of resisting damage, deterioration, corrosion or decay taking into account the likely time the material would be in contact with flood water and the likely time it would take for the material to subsequently dry out.</p>	Consistent - the materials located below the 2050 FPL are flood compatible.
	<p>2. <u>Services</u> Services and related equipment, other than electricity meters, must not be located below the relevant flood planning level defined by the flood planning matrix unless they have been designed specifically to cope with flood water inundation. The location of electricity meters is regulated by the electricity supply authority. Unless the electricity supply authority determines otherwise, electrical switches must be placed above the relevant level defined by the flood planning matrix. Electrical conduits and cables installed below the relevant level defined by the flood planning matrix must be waterproofed or placed in waterproof enclosures.</p>	Consistent
	<p>3. <u>Enclosures</u> Any enclosure located below the relevant level defined by the flood planning matrix must have openings to allow for automatic entry and exit of floodwater for all floods up to the relevant level defined by the flood planning matrix.</p>	Consistent
C2.3.5	Special Provisions	
	<p>1. <u>CBD infill development</u> For infill development in a commercial centre, change of use and additions to existing commercial premises, the current floor level (compatible with the footpath level) can be retained. However buildings must comply with section C2.3.4 Flood Proofing.</p>	Consistent - the proposal adopts a floor level slightly higher than the existing current floor level, being RL 3.5m AHD. This finished floor level is above the projected 2050 FPL for the subject locality.

Chapter D1 - Residential Accommodation in Urban, Village and Special Purpose Zones		
	Provisions	Compliance
D1.2	General Provisions	
D1.2.1	Building Height Plane	Not applicable to Shop Top Housing projects
D1.2.3	Privacy	
	Objectives	
	<ol style="list-style-type: none"> 1. <i>To ensure buildings do not unduly affect existing or future development on adjoining properties by impinging on privacy or obstructing views.</i> 2. <i>To ensure buildings are designed to optimise privacy for internal and external spaces while allowing for casual surveillance of the street and other public spaces.</i> 3. <i>To ensure that building design is cognisant of site constraints (slope, orientation, configuration/shape) and addresses privacy accordingly.</i> 	The proposal seeks to be compliant with the objectives around building height.

Chapter D1 - Residential Accommodation in Urban, Village and Special Purpose Zones		
	Provisions	Compliance
	Performance Criteria	
	<ol style="list-style-type: none"> 1. Developments must be set back progressively from the site boundaries in accordance with the Building Height Plane to establish spatial separation between buildings and property boundaries to not adversely affect existing or future development on adjoining properties by impinging on privacy. 2. Windows of developments must include design elements (screening, landscaping, opaque glazing) to protect the privacy of adjacent properties where: <ol style="list-style-type: none"> a) encroachments into the Building Height Plane are proposed; and/or b) site constraints (slope, orientation, configuration/shape) necessitate, to ensure the continued protection of adjacent privacy. 3. All parts of any decks, terraces and balconies located in the Building Height Plane are designed to have generous building separation and screens to avoid loss of amenity and visual privacy. 	The proposal seeks to comply with the relevant prescriptive measures.
	Prescriptive Measures	
	<ol style="list-style-type: none"> 1. Where a direct view exists into the private open space of an adjoining dwelling, the outlook from windows, landing stairs, terraces, decks and balconies must be screened by privacy screens which achieve at maximum 50% transparency, or obscured by landscaping. 2. Decks, terraces, balconies and other external living areas within 4 metres from a side or rear boundary and with a floor level greater than 1.0m above ground level (existing) will require a privacy screen unless it can be demonstrated that there will be negligible overlooking and/or privacy impacts. 	<p>No direct views are applicable.</p> <p>Consistent</p>
D1.2.4	Solar Access	
	Objectives	
	<ol style="list-style-type: none"> 1. <i>To ensure that residential development is designed to optimise solar access and thereby not significantly overshadow living areas (decks, living rooms, bedrooms, kitchens etc.), private open spaces and existing solar power installations of both the development site and adjoining properties.</i> 	The proposal seeks to be consistent with the solar access objectives.
	Performance Criteria	
	<ol style="list-style-type: none"> 1. Development must be designed cognisant of microclimate to promote energy efficiency and ensure that residents of the development site enjoy optimum use of winter sunlight and summer shade in living areas (decks, living rooms, bedrooms, kitchens etc.) and private open space. 2. Development must respond to the constraints of the site (eg. slope, orientation, configuration) and be appropriately located to ensure residential development does not significantly overshadow the living areas (decks, living rooms, bedrooms, kitchen, bedroom etc.) and private open spaces of adjoining properties. 3. Development must ensure that living areas (decks, living rooms, bedrooms, kitchens, etc.), private open spaces and 	The proposal seeks to comply with the DCP by following the prescriptive measures.

Chapter D1 - Residential Accommodation in Urban, Village and Special Purpose Zones		
	Provisions	Compliance
	existing solar power installations of development on the site and adjoining properties will have solar access between the hours of 9.00am to 3.00pm on any day.	
	Prescriptive Measures	
	<ol style="list-style-type: none"> 1. Except where there is no possibility of overshadowing, proposed development comprising two storeys or greater must be accompanied by shadow diagrams over the subject and adjoining sites for the summer solstice (21st December) and winter solstice (21 June) at the times of 9am, 12pm and 3pm. Shadow cast by fences, roof overhangs and changes in level are to be considered and should be indicated on shadow diagrams submitted. Plans must clearly differentiate the existing situation with the proposed situation to fully demonstrate the extent of the proposed overshadowing. 2. Shadow diagrams must demonstrate that proposed dwellings are to achieve a minimum of: <ol style="list-style-type: none"> a) two hours sunlight between 9am and 3pm on June 21 for private open spaces; and b) three hours of sunlight between 9am and 3pm on June 21 over a portion of their north-facing living areas (decks, living rooms, bedrooms, kitchens etc.). 3. Shadow diagrams must demonstrate that neighbouring dwellings are to achieve a minimum of: <ol style="list-style-type: none"> a) two hours of sunlight to at least 50% of private open spaces between 9am and 3pm on June 21; and b) three hours of sunlight between 9am and 3pm on June 21 over a portion of north-facing living areas (decks, living rooms, bedrooms, kitchens etc.). c) where overshadowing by existing buildings is greater than the abovementioned, sunlight is not to be further restricted. 4. New dwelling design should minimise overshadowing on existing adjacent solar panels where other reasonable design alternatives are possible. 	<p>Overshadowing is in the sheets DA400 and DA401 from the Architectural Plan Set – TR#3.</p> <p>All dwellings receive a minimum of 2 hours of sunlight between 9am and 3pm on June 21. The two north facing dwellings receive extensive sunlight in excess of 3 hours to the primary outdoor areas, and the primary living/kitchen/dining rooms. The two south facing dwellings receive at least 3 hours of partial sunlight to the north facing bedrooms, and living areas due to the use of courtyards and clerestory windows.</p> <p>Consistent</p> <p>Consistent</p>
D1.2.5	Screening the Underfloor Space of Buildings	Not applicable
D1.2.6	Character & Visual Impact	
	Objectives	

Chapter D1 - Residential Accommodation in Urban, Village and Special Purpose Zones		
	Provisions	Compliance
	1. <i>To retain and enhance the unique character of Byron Shire and its distinctive landscapes, ecology, towns, villages, rural and natural areas.</i>	
	2. <i>To ensure that new development respects and complements those aspects of an area's natural and built environment that are important to its existing character.</i>	
	Performance Criteria	
	<ol style="list-style-type: none"> 1. Development should demonstrate how siting, design and character are consistent with the relevant Residential Character Narrative, as contained in the corresponding locality chapter in Part E of this DCP. 2. Site, building and landscaping design must address the climate; 3. The street face of a building, together with any open space between it and the street, must contribute to the general attractiveness of the streetscape by means of good design, appropriate materials and effective landscaping; 4. Development should be designed to minimise loss of privacy; 5. There must be a reasonable degree of integration with the existing built and natural environment, balanced with the desirability of providing for variety in streetscapes; 6. Long, straight wall areas will be discouraged and must be broken up visually by a combination of building materials and/or changes in the wall plane; 7. The provision of verandahs, balconies, pergolas and other protective outdoor elements will be encouraged for visual, climatic and energy efficiency reasons; 8. Well-designed overhanging eaves should be provided where feasible to protect against heavy rainfall and summer sun, while allowing winter sun penetration; 9. All building materials must be compatible in character with their surrounding environment. Any metal roof must have a colorbond or equivalent finish and no roof may be highly reflective. White or light-coloured roofing may be approved where it is demonstrated that it is not likely to be visually intrusive. Details of building materials and surface colours must be submitted for assessment with a development application. 	The proposal is consistent with the character narrative specified in Part E of Council's DCP.
	Prescriptive Measures There are no Prescriptive Measures.	
D1.2.7	Fences	Not applicable
D1.2.8	Balconies	
	Objectives	
	1. <i>To ensure that the visual character of balconies is consistent with and does not dominate the design of residential buildings.</i>	The proposal seeks to be consistent with the balconies objectives.
	Performance Criteria	
	Balconies must not dominate the visual character of buildings or development. The design of balconies must be consistent in character with the building and development in terms of materials, colours, dimensions, bulk, scale and proportion.	The balconies proposed are consistent with the character of buildings in the locality in terms of materials, dimensions, bulk and scale.

Chapter D1 - Residential Accommodation in Urban, Village and Special Purpose Zones		
	Provisions	Compliance
		Refer to the sheet DA600 from the Architectural Plan Set TR#3 to gain an appreciation of the character proposed.
	Prescriptive measures	
	There are no Prescriptive Measures.	
D1.2.9	Pedestrian and Cycle Access	
	Objectives	
	<ol style="list-style-type: none"> To reduce car dependence through the promotion of alternative forms of transport. To assist in the delivery of Council's adopted bike plan where possible. To provide an expansion of the existing pedestrian/ cycleways to improve connectivity throughout the Shire. 	The proposal seeks to be consistent with the pedestrian and cycle access objectives.
	Performance Criteria	
	<ol style="list-style-type: none"> Development applications for residential accommodation of more than 3 dwellings must demonstrate that the pedestrian/cycleway network detailed in Council's adopted Byron Shire Bike Strategy and Action Plan will be incorporated into new development. Refer to Chapter B5 Providing for Cycling and Chapter B13 Access and Mobility. 	The proposal complies with the prescriptive measures.
	Prescriptive Measures	
	Refer to Chapter B5 Providing for Cycling and Chapter B13 Access and Mobility.	Consistent
D1.2.10	Garage to Habitable Space Conversions	Not applicable
D1.2.11	Energy Efficiency	
	Objectives	
	<ol style="list-style-type: none"> To reduce greenhouse gas emissions created from residential development To increase thermal comfort and efficiency for residential development 	The proposal seeks to be consistent with the energy efficiency objectives.
	Performance Criteria	
	<ol style="list-style-type: none"> Buildings for habitable purposes should seek to incorporate measures to reduce energy consumption, reduce reticulated water consumptions and improve thermal comfort. Where possible, development should seek to fit or retrofit energy efficient fixtures and fittings to reduce greenhouse gas emissions. 	The proposal seeks to comply with the DCP via the prescriptive measures.
	Prescriptive Measures	
	<ol style="list-style-type: none"> Long term residential accommodation exempt from BASIX must incorporate measures to reduce energy consumption, reduce reticulated water consumption and improve thermal comfort. Details are to be provided on development application plans. Measures are to include but are not limited to: <ol style="list-style-type: none"> Minimum R2.5 ceiling insulation when access is available. Hot water system must not be an electric storage tank that is connected to mains power. Minimum 3 stars taps and fixtures to be installed in all kitchen, laundry And bathrooms. 	Consistent – refer to TR#12 for the BASIX Certificate relevant to the site; TR#13 for the BASIX stamped plans; and TR#14 for the NatHERS Certificate.

Chapter D1 - Residential Accommodation in Urban, Village and Special Purpose Zones		
	Provisions	Compliance
	<ul style="list-style-type: none"> d) Minimum 4 star air conditioning (if proposed) e) Minimum 5000 litre rainwater tank collecting at least 30% of the development's roof water. 1 garden tap connected to rainwater tank. 	
D1.2.12	Internal access between storeys in residential development	Not applicable
	Objectives	
D1.3.1	On-Site Car Parking	
	Objectives	
	1. <i>To provide adequate and visually compatible accommodation for vehicles.</i>	The proposal seeks to comply with the on-site car parking objectives.
	Performance Criteria	
	<ol style="list-style-type: none"> 1. Car parking must be provided on the site in a manner which is convenient in terms of access for residents of the dwelling; safe and accessible in terms of visibility, turning and manoeuvring capabilities; and visually compatible with the site and its locality. 2. Car parking structures, including garages and carports, which are visible from the street must be compatible with the dwelling in terms of design and materials, and may form part of the dwelling structure. 	The proposal complies with the DCP via consistency with the prescriptive measures for this aspect.
	Prescriptive Measures	
	<ol style="list-style-type: none"> 1. Refer to Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access for detailed provisions regarding car parking and vehicle access. 2. Council may consent to the location of a carport such that it does not comply with the building height plane in relation to a boundary, having regard to the matters contained in Section D1.2.1 and to the adequacy and safety of vehicular access. 	Consistent
D1.3.2	Landscaping	Not applicable to Shop Top Housing.
D1.3.3	Private open space	Not applicable to Shop Top Housing.
D1.3.4	Expanded House	Not applicable
D1.4	Secondary Dwellings	Not applicable
D1.5	Dual Occupancy and Semi-Detached Dwellings	Not applicable
D1.5.3	Adjoining and Adjacent Development	Not applicable to Shop Top Housing.
D1.6	Multi Dwelling Housing (INCLUDING Manor Houses and Terraces), Residential Flat Buildings and Attached Dwellings	Not applicable to Shop Top Housing.
D1.6.8	Pipes and Vents	Not applicable to Shop Top Housing.
D1.6.9	TV Antennae	Not applicable to Shop Top Housing.
D1.6.10	Character	Not applicable to Shop Top Housing.
D1.7	Affordable Housing	Not applicable
D1.9	Hostels	Not applicable
D1.10	Shop Top Housing	

Chapter D1 - Residential Accommodation in Urban, Village and Special Purpose Zones		
	Provisions	Compliance
	This Section applies to shop top housing , which includes dwelling s located above ground floor retail premises or business premises .	
D1.10.1	Density Control	
	Objectives 1. <i>To provide affordable shop top housing accommodation close to transport, employment and services.</i>	The proposal seeks to comply with the density objectives.
	Performance Criteria	
	The siting, design and density of the dwelling component of the development must be consistent with the character of the surrounding area and must provide a mix of dwelling sizes to accommodate different family profiles.	The proposal complies with the DCP via adherence to the prescriptive measures.
	Prescriptive Measures	
	1. The density of the dwelling component of the development must not be greater than one (1) dwelling per 150 square metres of site area where no floor space ratio restriction applies under Byron LEP 2014. 2. A minimum of 25% of the floor space of the entire development, not including car parking, must be set aside for commercial/ retail purposes. All ground floor space fronting the street must be devoted to retail premises and/or business premises .	Consistent - the subject site has a floor space ratio control, accordingly, this density standard is not applicable to the subject application. Consistent - 31% of the total floor space has been allocated to commercial/ retail floor space.
D1.10.2	Accessibility	
	Objectives 1. <i>To ensure accessible and direct entrance to and exit from the residential component of a development.</i>	
	Performance Criteria	
	Development must be designed to ensure that adequate direct resident access is provided to the residential component of the development.	Each dwelling has access from a ground floor pedestrian corridor that gives units direct access to both the street frontage and lane frontage.
	Prescriptive Measures	
	Each dwelling must have direct access from the main street frontage of the premises (or side street where located on a corner). This may be by means of a separate, isolated passage or stairway connecting to the street frontage, which would allow unrestricted access to the dwelling without the need to pass through any associated retail premises or business premises . Alternatively, such an access arrangement may be shared with development on adjoining land with a similar residential component, provided suitable arrangements are made to ensure that legal access is available and guaranteed in perpetuity.	
D1.10.3	Private Open Space	
	Objectives	

Chapter D1 - Residential Accommodation in Urban, Village and Special Purpose Zones		
	Provisions	Compliance
	1. <i>To ensure that the residential component of a development contains adequate, accessible and well designed private open space to meet the needs of occupants.</i>	
	Performance Criteria	
	Each dwelling must be provided with an adequate area of private open space for sole use by the occupants of that dwelling . The private open space must be located to provide solar access and a sense of territory, privacy and safety for residents.	
	Prescriptive Measures	
	<ol style="list-style-type: none"> Each dwelling must be provided with private open space for sole use by the occupants of that dwelling. Where the private open space cannot be provided at ground level the dwelling must be provided with a balcony or roof terrace. The private open space, whether at ground level or not, must have a minimum area of 15m² and a minimum width of 2.5 metres. Part of the private open space must be a minimum of 10 square metres and directly accessible from a living area. The private open space must have solar access to 50% of its area for at least 3 hours per day. Enclosure of balconies that provide private open space to a dwelling will not be permitted. The private open space area must be located to maximise privacy for residents. If necessary the area must be screened by vegetation, a wall or fence, to ensure that the area is private. The private open space must be located to ensure that residents are provided with an outlook to public areas rather than overlooking directly onto adjoining buildings, and must not diminish the commercial/retail character of the street frontage at ground level. 	<p>Consistent</p> <p>The two south facing apartments have private outdoor open space in excess of 30m², with a minimum dimension of 3.35m. The POS is directly accessible from the living area.</p> <p>The north facing apartments have in excess of 30m² of POS, accessed directly from the living areas. The minimum dimension being 3.2m.</p> <p>The POS of the north-facing apartments receive ample solar access in excess of 3 hours per day.</p> <p>The POS of the south-facing apartments receive direct sunlight to 20-40% of the POS, between 1pm and 4pm into the late afternoon, depending on the time of year.</p> <p>Consistent</p> <p>Consistent</p>
D1.10.4	Sound Proofing	
	Objectives	

Chapter D1 - Residential Accommodation in Urban, Village and Special Purpose Zones		
	Provisions	Compliance
	1. <i>To ensure that an adequate acoustic environment is provided for residents.</i>	
	Performance Criteria	
	Development must be designed to minimise the potential for noise impact upon the occupants of the dwelling s, both from within the development and from adjoining developments, public areas and streets.	
	Prescriptive Measures	
	<ol style="list-style-type: none"> Development must be designed to minimise external noise impacts on residents and to ensure that noise sensitive areas are screened from noise sources. This can be facilitated through the design process, eg by locating noise tolerable areas towards noise sources (e.g. kitchens, laundries etc located toward major frontages with sleeping areas screened from road frontages, garbage collection areas, accessways and parking areas). Noise transmission between dwellings can be minimised by not locating living areas or garages adjacent to bedrooms of other dwellings. Walls or ceilings of dwellings that are attached must have a sound transmission class (STC) of not less than that required by the Building Code of Australia. Applicants must demonstrate to Council's satisfaction that the design of dwellings in shop top housing adequately addresses the issue of sound proofing. A specialist acoustic report may be required to demonstrate that the development adequately achieves acceptable sound proofing for residential amenity. 	<p>Consistent</p> <p>Consistent</p> <p>The design sets back the L1 dwellings on all boundaries to enable acoustic breaks between the GF commercial tenancies and the L1 residential tenancies. Deep balconies and extensive use of landscaped planter beds also soften and mitigate acoustic travel to the residences. Further, due to BCA fire separation requirements, all glazing will be of a high quality specification, which will also aid in alleviating any noise pollution.</p>
D1.10.5	Clothes Drying Area	
	Objectives	
	1. <i>To ensure that adequate, effective space is provided for clothes drying.</i>	
	Performance Criteria	
	<ol style="list-style-type: none"> Where feasible, outdoor clothes drying facilities must be provided to meet projected needs and located to facilitate privacy and sunlight access. The clothes drying area must be screened from view from the street. Dwellings without private open space at ground level must provide internal laundry facilities in each unit and must provide either a clothes drying area on site, or a space for a clothes dryer in each unit. 	<p>Outdoor clothes drying facilities are not feasible in the subject circumstances.</p> <p>Internal laundry facilities are provided with clothes dryers.</p>
	Prescriptive Measures	

Chapter D1 - Residential Accommodation in Urban, Village and Special Purpose Zones		
	Provisions	Compliance
	There are no Prescriptive Measures.	
D1.10.6	Site Facilities	
	Objectives	
	1. <i>To ensure that adequate site facilities are provided for the development and its residents.</i>	
	2. <i>To ensure that sediment and nutrient laden car wash runoff does not impact on the water quality of the Shire's waterways.</i>	
	Performance Criteria	
	There are no Performance Criteria.	
	Prescriptive Measures	
	<p>1. Mailboxes must be provided for each dwelling, located to ensure convenient access for residents and Australia Post. The street number must be clearly displayed and all mailboxes must be clearly identified with the unit number. Where an Owners' Corporation or equivalent has been created an additional mailbox must be provided for Corporation correspondence.</p> <p>2. All dwellings must be wholly independent of the commercial portion of the building in respect of such amenities and facilities as toilets, laundries, kitchens, bathrooms and the like.</p> <p>3. Common television antennae and/or dishes must be provided to meet the expected needs of residents.</p> <p>4. A separate water meter must be provided for each dwelling.</p> <p>5. A lockable storage facility of 8 cubic metres for each dwelling must be provided. This may form part of a carport or garage.</p> <p>6. A car washing area must be provided at a general rate of 1 per every 10 dwelling units, with a minimum of one wash area being provided for each multi-unit housing development containing more than 10 residential units. The car wash area must have minimum dimensions of 7.6m x 3m. This may be part of a visitor car space, driveway or turning area where it can be shown that it will not cause undue conflict of use. This area must have water and electricity available and must be drained by on site disposal. Where there are separate internal driveway systems within a site, each must have a car washing area.</p>	<p>Mailboxes are provided at ground level near to the Fingal Street frontage.</p> <p>Consistent</p> <p>Consistent</p> <p>Consistent</p> <p>Units 2, 3, & 4 all provide storage rooms in excess of 8m³, accessed directly from their respective garages. Unit 1 has a small 4m³ store room accessed directly from the garage, and a secondary 6m³ storage area under the stairs that lead from the garage to L1, accessed from the private lift foyer.</p> <p>We submit that a car wash is not warranted for a development of the subject scale.</p>
D1.11	Ancillary Dwellings in Business Park and Industrial Zones	Not applicable
D1.11.1	Ancillary Dwellings in Zones IN1, IN2 and B7	Not applicable
D1.12	Studios	Not applicable

Chapter D4 Commercial and Retail Development		
	Provisions	Compliance
D4.2.1	Design and Character of Retail and Business Areas	
	Objectives	
	<ol style="list-style-type: none"> 1. To promote pedestrian and cycle usage, together with reduced vehicle dependency in the Shire's business, commercial and retail areas. 2. To encourage safety, accessibility and human scale in the Shire's business, commercial and retail areas. 3. To encourage diverse, multi-functional business, commercial and retail centres that provide a compatible range of commercial, recreational and community activities appropriate to the Shire's climate, environment, social fabric and scenic character. 4. To ensure that development reinforces the role of centres within the Shire's commercial centres hierarchy. 5. To ensure that establishment and operation of new development contributes to and does not detract from the social and economic robustness, diversity and vitality of retail, business and community areas and precincts. 	
	Performance Criteria	
	Business, commercial and retail development must be designed to promote and encourage safe, convenient pedestrian and cycle access to and from the development itself and the surrounding precinct. Development must be designed to integrate well with the locality's pedestrian and cycle network and to contribute to the aesthetics, landscape design and usage of adjoining streets.	Consistent - the development provides excellent permeability from both street and lane frontage to the apartments.
	The design of development must be compatible with the diversity and multi-functional character of its locality. In retail areas development must be designed to promote visual interest, to maximise shopfront window access, and to minimise blank walls along street frontages.	Consistent - the shops are compatible with the multi-function characteristics of the locality.
	Design of development must respect the Shire's subtropical climatic conditions and must make provision for winter sunlight, summer shade and weather protection in adjoining streets and pedestrian areas.	Consistent
	Development must be compatible with and reinforce the role of the centre in the commercial centres hierarchy. Development within coastal centres must reflect a low- scale, tourist-beach image. Development in rural centres or localities must be compatible with the atmosphere and character of the centre or locality.	Consistent
	Pedestrian areas, community spaces, vehicle parking and manoeuvring areas must be paved, furnished and landscaped in accordance with the provisions of Chapter B9 Landscaping, and with any landscape and streetscape themes adopted by Council for the locality.	Consistent
	Development applications must demonstrate that the establishment and operation of the proposed development will not adversely affect:	
	a) The social and economic robustness, diversity and vitality of retail, business and community areas and precincts.	The proposal will enhance the economic robustness, diversity and vitality of retail,

Chapter D4 Commercial and Retail Development		
	Provisions	Compliance
		business and community areas by creating a dynamic and permeable site, that engages the small council reserve to the west. It will allow for and promote new pedestrian routes and help to active Balun lane and the reserve - opening them up as parts of Brunswick Heads' commercial core. The design will enhance the precinct, by adding more permanent residents to the core of Brunswick Heads, who can interact directly with the community through passive surveillance, and fostering strong interaction between residents and community.
	b) The social amenity of the precinct in which it is located.	The addition of a "bolt hole" shop directly fronting Balun Lane will provide social amenity to this precinct.
	Development applications must demonstrate that the proposed development will be consistent with the requirements of this DCP, including (but not limited to) Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access, B8 Waste Minimisation and Management, B10 Signage and B11 Planning for Crime Prevention.	Consistent
	Prescriptive Measures	
	There are no Prescriptive Measures.	
D4.2.2	Design Detail and Appearance	
	Objectives	
	1. <i>To ensure that development is compatible with the design and amenity of development in the locality.</i>	The proposal seeks to comply with the detailed design and appearance objective.
	Performance Criteria	
	1. The design of new buildings must reflect and enhance the existing character of the precinct. The design, scale, bulk, design and operation of business, commercial and retail development must be compatible with the streetscape and with the aesthetics, function and amenity of development in the locality.	Consistent - the new development proposed has been designed to reflect the character of Brunswick Heads and adopts the sentiment set out in Council's Character Statement for the locality.
	2. Building design, roof profile, detailing, colours, materials and the like that are visible from the street and from adjoining properties must be compatible with any dominant design themes in the surrounding	The proposal aims to integrate and enhance the surrounding context with a design that is sympathetic

Chapter D4 Commercial and Retail Development		
	Provisions	Compliance
	locality.	and compatible with the locality. The commercial GF component reads as a plinth, with the public breezeway cut through that gradually opens up via a loggia to the Council receive to the west. The shopfronts have high ceilings and feature windows that present to the street. The two primary retail spaces are articulated and framed by the balconies of the respective residences above. The two primary gable roof forms align with these articulated elements, to reflect a relaxed coastal, 2 storey vernacular that is consistent with the character of Brunswick Heads' commercial core. More contemporary features such as L1 planter beds, and metal rod balustrades, help to soften the primary elevation, while also including some contemporary design approaches.
	3. The pattern of windows in retail areas must provide visual interest and variation and must relate to those of adjacent buildings. Building materials must relate to the context of buildings within the area to achieve continuity and harmony. Contrasting materials may be used to provide diversity, however materials and colour must not be used so that they dominate the streetscape.	Retail windows are patterned consistently with the surrounding buildings. There is a hierarchy of window sizes, with a primary display window for each retail tenancy. The materiality of acrylic render and light brickwork is intended to be sympathetic to surrounding commercial development in Brunswick Heads, which mostly consists of textured, lightly coloured brick. Metal trims and balconies, as well as extensive L1 planting helps to break up the overall design gestures without detracting from their overall design intent.
	4. Special emphasis must be given to the design of corner buildings, including consideration of:	

Chapter D4 Commercial and Retail Development		
	Provisions	Compliance
	a) How the building addresses neighbouring buildings, its dual frontage and its turning of the corner.	While not technically a corner building, the proposal has been designed to address and respond to the public reserve to the north-west, and the public library building to the south west. The proposal includes a publicly accessible breezeway and loggia that will enable and encourage pedestrian movement and activate in the precinct. The protected loggia has a series of columns that open up to the vegetated reserve, addressing this area as a principle design feature. The L1 planter box above will further enhance this frontage by adding more vegetation to this elevation, and softening Unit 1 above, which is set back to further soften the western elevation. The south west corner opens up to allow access from the small front courtyard of the library building, allowing entry to the breezeway and the retail area, and enhancing the sense of public space on the primary footpath. An L1 planter box also helps distinguish and reinforce the public nature of this corner.
	b) Stepping up at the corner and creating a perceived height greater than neighbouring buildings.	Consistent
	c) Incorporation of distinctive features to enhance the streetscape, e.g. stepped parapet, turrets, towers, clocks or the like.	See 4a) above
	d) Creating a splayed or recessed treatment of the corner in a way that gives form to the intersection and provides more circulation space for pedestrians.	Not applicable
	Prescriptive Measures	
	There are no Prescriptive Measures.	
D4.2.3	Vehicle Access and Parking	
	Objectives	
	1. <i>To provide for safe and effective vehicle access, manoeuvring and parking in association with business, commercial and retail development.</i>	The proposal seeks to comply with the vehicle access and parking objective.

Chapter D4 Commercial and Retail Development		
	Provisions	Compliance
	Performance Criteria	
	1. Vehicular driveways, parking and loading areas must be designed to minimise disturbances to the free flow of pedestrians on or adjoining the site, while providing convenience and safety to customers, staff and service vehicles.	The proposal complies with the DCP prescriptive measures associated with this element.
	2. Where vehicular access is proposed across pedestrian areas or footpaths, the design must give priority to pedestrian amenity, accessibility and safety whilst ensuring that contemporary vehicle and traffic safety criteria are achieved.	
	3. Underground car parks must be designed to exclude the entry of stormwater and/or groundwater to the basement in accordance with Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access.	
	Prescriptive Measures	
	Vehicle access and parking arrangements must be consistent with Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access.	Consistent
D4.2.4	Loading Docks	
	Objectives	
	1. <i>To ensure that loading docks are designed and located so that they will not adversely affect the streetscape or visual character of the area when viewed from roads, public places or nearby properties.</i>	The proposal seeks to comply with the loading dock objective.
	Performance Criteria	
	Loading docks, bays and service areas (e.g. garbage and bin storage areas) must not be visible from any public place and must be screened from adjacent properties. Screening may be achieved by locating such areas behind the buildings, by fencing, landscaping, mounding or a combination of these, or by other means that demonstrate compliance with the Objective.	The proposal achieves DCP consistency via the prescriptive measure pathway.
	Prescriptive Measures	
	Loading docks to comply with the relevant provisions of Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access and Chapter B8 Waste Minimisation and Management.	Consistent - loading facilities have been provided in accordance with the DCP provisions – refer to TR#7 .
D4.2.5	Street Setbacks	
	Objectives	
	1. <i>To provide for setbacks that complement and enhance the streetscape and the character of the centre.</i>	The proposal seeks to comply with the setback objectives.
	Performance Criteria	
	1. Street setbacks are not usually appropriate in retail shopping areas unless they maintain visual and physical continuity of interest and diversity along the street, and provide public facilities such as seating, recreation areas or outdoor dining areas.	The proposal complies with the DCP concerning this aspect via compliance with the prescriptive measures.
	2. Street setbacks are encouraged for other commercial development in circumstances where the provision of	

Chapter D4 Commercial and Retail Development		
	Provisions	Compliance
	setbacks would improve the amenity, interest and visual appeal of the precinct by:	
	a) Providing a softer, more open feeling to the streetscape of town areas;	
	b) Encouraging interest, diversity and a relaxed atmosphere;	
	c) Enabling street furniture and landscaping to become an integral part of the town's commercial precinct;	
	d) Ensuring that development is conducive to effective pedestrian movement and access;	
	e) Providing for alfresco dining in the front setback rather than on the public footpath to minimise pedestrian conflicts.	
	3. Commercial/ retail type premises in the RU5 and R2, R3 and R5 Zones to have regards to the setbacks of adjoining and surrounding development.	
	Prescriptive Measures	
	While no general setback applies to the erection of commercial buildings in the traditional central business districts of Byron Bay, Mullumbimby, Bangalow or Brunswick Heads, the following specific requirements apply:	Noted
	a) Where car parking or goods loading areas are adjacent to a street frontage other than a service lane, a minimum setback of 3 metres must be provided to allow for effective landscaping.	Consistent
	b) A setback up to 5 metres may be required for reasons of traffic safety, amenity or streetscape improvements. In such cases, development will not be permitted within a setback area, other than the use of the land for landscaping, public access, outdoor seating and alfresco dining, utility installations, roadways for access, or the erection of signage identifying the occupants of the site.	There are no safety aspects that we perceive relevant to applying a setback of 5m.
	c) Upper storey levels to be set back from the street frontage to achieve a degree of vertical articulation. Any upper storey setback can be utilised for balcony/ open space purposes.	At the upper level, variable setbacks have been provided to the street to give variety to the street character.
	d) Underground/ basement car parking spaces need to have regard to the provisions relating to landscaping under Chapter B9 Landscaping, and may need to be set back from boundaries to achieve suitable soil depth for planting purposes,	Not applicable
	e) Variable setbacks are prescribed for the South Jonson Street Precinct as delineated by the thick black line on Map D4.1. For details see Section D4.2.11 below.	Not applicable
	f) Bulky goods premises, warehouses or distribution centres and other commercial/retail type uses proposed for the B7 Business Park Zone and the Industrial Zones (IN1, IN2) to comply with the setback provisions contained in Chapter D5 Industrial Development.	Not applicable
D4.2.6	Plumbing	
	Objectives	

Chapter D4 Commercial and Retail Development		
	Provisions	Compliance
	1. To ensure that adequate provision is made for plumbing for water supply and sewer services to commercial development.	The proposal is consistent with the plumbing objectives.
	Performance Criteria	
	There are no Performance Criteria.	
	Prescriptive Measures	
	1. Development to comply with Chapter B3 Services in relation to necessary services. Certain developments (normally businesses such as restaurants, cafes and other operators that generate liquid waste) will require the installation of a liquid trade waste pre treatment system. Such systems will require an approval under section 68 of the <i>Local Government Act 1993</i> . Applicants are encouraged to contact Council prior to lodging the development application to ascertain specific requirements.	No businesses are proposed of the type that will require liquid trade waste agreements.
	2. All plumbing works and liquid trade waste pre-treatment systems must be installed in accordance the relevant Local Government Regulations, AS3500, current Codes of Practice for Plumbing and drainage and any other best practice guidelines.	Noted
D4.2.7	Arcades	Not applicable
D4.2.8	Development within the Road Reserve	
	Objectives	
	<ol style="list-style-type: none"> 1. To ensure that the public domain remains available primarily for the public benefit and public purposes. 2. To facilitate certain development on or over a road reserve only where this would promote the public interest. 3. To ensure that any development undertaken on public land provides a commercial return to the community. 4. To minimise conflict with pedestrian traffic, commercial use of the footpath is not to dominate the streetscape. 	The proposal seeks to be consistent with the road reserve development objectives.
	Performance Criteria	
	There are no Performance Criteria.	
	Prescriptive Measures	
	1. Footpath Dining must be adjacent to and used in conjunction with an existing premise for which consent has been granted.	Not applicable
	2. The footpath dining area to comply with Councils Footpath Dining Policy 5.54. Occupation on both sides of the footpath not permitted, however Council will consider variations in areas determined to have low pedestrian activity levels (existing and future) provided the minimum 2m wide pedestrian thoroughfare can be maintained.	Not applicable
	3. Other business or retail uses of the public footpath to comply with the Exempt and Complying Development provisions of Byron LEP 2014 or another applicable Environmental Planning Instrument.	Not applicable
	4. Awnings over footpaths adjoining development to which this Section applies require prior development consent unless otherwise permissible in accordance with the	Awnings are proposed over the footpath. This approach is consistent with the

Chapter D4 Commercial and Retail Development		
	Provisions	Compliance
	Exempt and Complying Development provisions of Byron LEP 2014 or another applicable Environmental Planning Instrument. Where consent is required development applications must demonstrate that the proposed awning will provide direct public benefit, including but not necessarily limited to providing weather protection for pedestrians, maintaining shopfront design continuity and/ or achieving improved urban design outcomes.	character and pattern of development in the vicinity. The provision of awning treatment to Fingal Street, as proposed, will provide direct public benefit by protecting pedestrians from the weather and maintaining shop front continuity. The development provides for a “green roof” solution in relation to the provision of awnings.
	5. Upper storey balconies and decks extending over a public road or public footpath will be permitted, where it can be demonstrated that the balcony or deck will enhance the streetscape, will not detract from the public use of the road or footpath, and will not adversely affect parking or traffic movement in the road reserve. Applicants to discuss such proposals with Council prior to lodging the development application and to obtain owners consent to enable the development application to be lawfully submitted.	No upper floor balconies are proposed to extend over the public pathway.
	6. Where the property benefiting from development in the road reserve is a heritage item or within a Heritage Conservation Area , the development application shall also include a heritage impact statement consistent with Chapter C1 Non-Indigenous Heritage that demonstrates as a minimum that the proposed balcony or deck will be an integral component of a heritage Item or a building located in a Heritage Conservation Area , and will be consistent with and enhance the heritage character of the heritage item or Heritage Conservation Area and its surrounds;	The proposal is not within a heritage area.
	7. Any proposal for commercial use of a public road will require approval under the <i>Roads Act, 1993</i> and will be subject to contractual requirements relating to the payment of commercial rent to Council.	Noted. It is intended to lodge an application under the Roads Act post consideration of the subject Development Application.
D4.2.9	Restaurants/ Cafes in Rural Areas	Not applicable
	Objectives	
D4210	Restaurants, Cafes, Small bars, Pubs Registered Clubs, Function Centres and other Licensed Premises in the Urban Areas of Byron Shire	Not applicable
D4211	Building forms (south eastern end of Jonson Street only, refer to Map 04.1)	Not applicable
D4212	Street Trees (south eastern end of Jonson Street only, refer to Map 04.1)	Not applicable
D4.2.13	Footpath Construction (Byron CBD)	Not applicable

Chapter E4 Brunswick Heads		
	Provisions	Compliance
E4.3	General Provisions	
E4.3.1	Character, Bulk and Scale of Development	
	<p>Objectives</p> <ol style="list-style-type: none"> 1. To ensure that all development is consistent with, and will maintain and enhance the low-key, family-friendly, coastal village character, streetscape and scale of Brunswick Heads. 2. To ensure that business, office and retail development in the B2 and B4 zone contributes to a unified and recognisable town centre character and applies sustainable development principles that further enhance the centre's role as a dynamic local business sector. 3. To ensure that residential development in Brunswick Heads will complement, support and strengthen the town's unique character, living amenity and tourist potential. 	<p>The proposal seeks to be consistent with the bulk and scale objectives.</p>
	<p>Performance Criteria</p> <p>The existing and desired future character of Brunswick Heads is defined by the following characteristics:</p> <p><u>3. Business and Mixed Use Areas</u></p> <ol style="list-style-type: none"> a) Land zoned B2 and B4 (along Tweed Street between Mullumbimbi and Booyun Streets) provides a safe, low traffic speed, pedestrian/cycle friendly environment that encourages outdoor dining and community activity in the street. Land zoned B4 along Tweed Street north of Mullumbimbi Street and south of Booyun Street provides a transition area between town centre business zones and residential areas. Development in this area uses setbacks, planting and design elements to contribute positively to village amenity and create a pedestrian/cycle friendly streetscape. b) New commercial and retail development is consistent with the requirements of Chapter D4 Commercial and Retail Development. Development is designed to enhance the low key, family-friendly, coastal village character, streetscape and scale of Brunswick Heads. Shop-top housing is encouraged. c) New development respects the north coast climatic conditions and adopts sustainable design principles. It incorporates footpath awnings and sun and rain protection for pedestrians. Landscaping is provided in accordance with the requirements of Chapter B9 Landscaping. Development respects heritage items and where relevant is consistent with Chapter C1 Non-Indigenous Heritage. It is compatible in design and character with its neighbours. d) Development should minimise excavation and provide vehicle access and parking at ground level. e) Development applications must demonstrate that: <ol style="list-style-type: none"> i) the character, bulk, scale, density, streetscape and landscape treatment of proposed development will be compatible with and will enhance the low-key, family-friendly, coastal village character, scale and streetscape of Brunswick Heads, its built environment and its surrounds; ii) the proposed development will be consistent and compatible with the relevant characteristics and criteria 	<p>Not applicable</p> <p>With the implementation of Shop Top Housing</p> <p>Consistent</p> <p>Consistent</p> <p>The proposal adheres to the recently updated DCP chapters for Brunswick Heads, being designed as a 2 storey, mixed use, low-key development. The design and materiality is reflective of traditional coastal villages,</p>

Chapter E4 Brunswick Heads		
	Provisions	Compliance
	<p>described above in: 1. Natural Environment, 2. Residential Areas and 3. Business and Mixed Use areas inclusive.</p> <p>iii) building materials, textures, finishes and colours will be compatible with and enhance the coastal village character and scale of Brunswick Heads, its built environment and its surrounds;</p> <p>iv) where applicable the proposed development is consistent with the requirements of other provisions of this DCP, including but not limited to Chapters B9 Landscaping, C1 Non-Indigenous Heritage, D1 Residential Development in Urban and Special Purpose Zones and D4 Commercial and Retail Development.</p>	<p>while also being fresh and contemporary in its detailing and amenities. The open gable rooflines, deep set balconies, full-height windows, and ample landscaping, are designed to create a relaxed yet engaged character, that both reflects and responds to the surrounding streetscape.</p>
	<p>Prescriptive Measures</p> <ol style="list-style-type: none"> 1. Excavated parking basements are not permitted within Brunswick Heads. 2. Additional vehicle footpath crossings are to be minimised in the business and mixed use zones. 3. The built form is to be limited to two storeys within the 9 metre height limit to reflect the low rise character of Brunswick Heads. 4. To maintain residential privacy, roof top decks are not permitted. 5. Front setbacks are to be maintained in accordance with Chapter D1 Residential Accommodation in Urban, Village and Special Purpose Zones, with front yards landscaped with lawn, and garden vegetation. 	<p>The proposal meets DCP requirements via compliance with the performance criteria pathway.</p>
E4.3.2	Development in Tweed Street	Not applicable
E4.3.3	Development Adjoining and Near the Brunswick River	Not applicable
E4.3.4	Pedestrian and Cycle Access	Not applicable
E4.3.5	Biodiversity Conservation	Not applicable

4.1.4 STATE ENVIRONMENTAL PLANNING POLICIES

A search undertaken on the NSW Planning Portal on 24th May 2023 indicated that the following SEPPs as being applicable to the land.

- SEPP (Biodiversity and Conservation) 2021
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (Exempt and Complying Development Codes) 2008
- SEPP (Housing) 2021
- SEPP (Industry and Employment) 2021
- SEPP (Planning Systems) 2021
- SEPP (Primary Production) 2021
- SEPP (Resilience and Hazards) 2021
- SEPP (Resources and Energy) 2021
- SEPP (Transport and Infrastructure) 2021
- SEPP No 65—Design Quality of Residential Apartment Development

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

Title: SEPP (Building Sustainability Index: BASIX) 2004

Gazetted: 25.06.04

Abstract:

The aim of this Policy is to ensure consistency in the implementation of the BASIX scheme throughout the State.

Comment:

BASIX Certificates accompany the Development Application documentation. See **TR#12** for the BASIX Certificate; **TR#13** BASIX Certificate Stamped Plans and **TR#14** for the NatHERS Certificates.

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

Published: 1 March 2022

Abstract:

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) *coastal environmental values and natural coastal processes,*
- (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*

Coastal Environment Area Map



Legend Coastal Environment Area

- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
 - (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (f) Aboriginal cultural heritage, practices and places,
 - (g) the use of the surf zone.
- (2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—
- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.
- (3) This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

Comment:

Development in the manner proposed will have no impact in terms of the integrity or the resilience of the hydrogeology of the locality. Further, no impact is anticipated in relation to coastal values or natural coastal process. The site is well away from marine vegetation, public open space associated with the foreshore and the surf zone.

Division 4 Coastal use area

Coastal Use Area Map

2.11 Development on land within the coastal use area

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

- (a) has considered whether the proposed development is likely to cause an adverse impact on the following—
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
- (b) is satisfied that—
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or

Coastal Use Area Map



Legend Coastal Use Area

- (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.
- (2) This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

Comment:

The proposal is designed to avoid adverse impacts identified in Clause 2.11 and has properly taken into account the built environment of the surrounding area.

Chapter 4 Remediation of land

4.6 Contamination and remediation to be considered in determining development application

- (1) A consent authority must not consent to the carrying out of any development on land unless—
 - (a) it has considered whether the land is contaminated, and
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.
- (2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

- (3) The applicant for development consent must carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.
- (4) The land concerned is—
 - (a) land that is within an investigation area,
 - (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,
 - (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land—
 - (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and
 - (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

Comment:

A contamination assessment has been completed for the site - refer to **TR#16**. No further remediation requirements are raised as a consequence of the assessment that has been completed.

2.48 Determination of development applications—other development

- (1) This section applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following—
 - (a) the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,

(b) development carried out—

(i) within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or

(ii) immediately adjacent to an electricity substation, or

(iii) within 5m of an exposed overhead electricity power line,

(c) installation of a swimming pool any part of which is—

(i) within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or

(ii) within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool,

(d) development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.

(2) Before determining a development application (or an application for modification of a consent) for development to which this section applies, the consent authority must—

(a) give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and

(b) take into consideration any response to the notice that is received within 21 days after the notice is given.

Comment:

It is proposed that when work is completed that:

- there will be no penetration of the ground within 2m of an underground power line or within 10m of an electricity distribution pole;
- the development will not be within 5m of an exposed overhead electricity power line; and
- no pool is proposed.

4.1.5 CERTIFIED DRAFT PLANS

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

4.1.6 SPECIFIC ENVIRONMENTAL PLANNING & ASSESSMENT ACT REQUIREMENTS

The subject proposal is not a Designated Development and nor does it rely upon Existing Use Rights, Exempt Development or Complying Development provisions.

The proposal is not a State Significant Development.

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

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

The land is not listed as critical habitat. The development site is devoid of vegetation and accordingly it is unlikely that it will significantly adversely affect threatened species, populations or ecological communities, or their habitats.

4.1.8 INTEGRATED DEVELOPMENT CONSIDERATIONS

No integrated approvals within the meaning of Section 4.46 apply to this project.

4.2 CONTRIBUTION PLANS

The Byron Shire Council Contribution Plan applies to development of this land. Under this plan Council may condition a consent for subdivision with respect to the following matters:

- Public open space acquisition
- Public open space embellishment
- Bike ways
- Street trees
- Road upgrading
- Community facilities
- Water

- Bulk water
- Sewer

Council is requested to have regard to the existing use of the premises in order to appropriately discount its standard contribution rates to make them appropriate for this application.

4.3 LOCAL POLICY CONTROLS

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

4.4 ANCILLARY LEGISLATION

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

Building Professionals Act 2005 No 115

Local Government Act 1993 No 30

Roads Act 1993 No 33

5. ENVIRONMENTAL INTERACTIONS

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

The environmental impacts of the development have been identified by site inspection, liaison with the expert project team and the commissioning of expert reports, as well as researching the background history of the development of the site to date.

5.1 CONTEXT AND SETTING

Objective A

Carry out development in a manner which is consistent with the character narrative published by Council for Brunswick Heads and the streetscape in the vicinity of the subject site.

The proposed built form provides an appropriate transition from 3 storey building to single storey building in the Fingal Street streetscape.



Extract from the Architectural Plan showing street elevation.

The proposal provides for a building which sits well in the streetscape and provides amenity to pedestrians in an articulated street character.



Architectural Plan photomontage.

5.2 FLORA

Objective B

To identify and protect flora of local environmental planning significance and enhance the biological diversity of the land through landscape plantings.

The proposal may impact on some trees growing on the Council reserve in Balun Lane. This will involve a relatively small number and size of roots given the close proximity to the trunks of the trees. Because the existing carpark is covered with asphalt, the tree roots do not favour the area, and so few roots occur there.

Northern Tree Care opine (see **TR#9**) that there will be no significant damage done to the roots from the construction of the development as planned. The proposed design has some of the building close to the trees. There are 2 trees that may require removal and a further 2 trees will require removal of the lower branches. Other trees may require minor pruning.

5.3 CONSTRUCTION MANAGEMENT

Objective C

Ensure that construction works are appropriately managed.

Demolition and construction will be undertaken in accordance with the DECC Construction Noise Guideline. The construction hours of operation will be 7am – 6pm Monday to Friday and 8am - 1pm on Saturday with no external work being carried out on Sundays or public holidays.

5.4 SERVICES

Objective D

To provide for public utilities.

Utility services are currently available to the site including water, sewerage, electricity and NBN. It is anticipated that no augmentation to the connection to those services will be required to facilitate development in the manner proposed.

5.5 ACCESS AND PARKING

Objective E

To ensure that the proposed use system conforms with the network hierarchy of Brunswick Heads and parking is satisfactory.

The Traffic Engineers Report (**TR#7**) opines that it is likely that the proposed development will result in a *nett decrease* in the traffic generation potential of the site of approximately 4 vph during the AM peak hour, and 4 vph during the PM peak hour

The land benefits from a “carparking” credit relating to the existing approved use of the premises. When this credit is taken into account, the surplus parking is provided for the project.

5.6 STORMWATER DRAINAGE

Objective F

Ensure that the quality and quantity of stormwater exiting the site is not adversely affected by the proposed premises and that existing drainage patterns are not materially altered.

Lucena Civil and Structural Engineers prepared a Stormwater Management Plan for the site. That plan is published as **TR#6**. It provides for the collection of surface water via an existing surface inlet and roof water discharged to a reuse tank under the garage floor. The Stormwater Management Plan by Lucena notes that detention is not required as there is no increase in the impervious area of the site.

5.7 HAZARDS

Objective G

Review potential site planning hazards to ensure the development is not likely to present an unreasonable hazard.

5.7.1 LAND STABILITY

A search of historical records and government databases indicates no issues in relation to land stability in the subject locality.

5.7.2 SITE CONTAMINATION

CSI Australia has undertaken a Preliminary Site Investigation (see **TR#16**) to assess the contamination status of the site. A desktop review of available information and a site visit did not identify previous ‘high risk’ activities on the site that are likely to have contaminated surface soils or groundwater. A review of council documents including building applications and development applications did not provide evidence of building occupation that is considered high risk of site contamination.

Additional investigation of the site for contamination is not considered to be warranted and the land is considered suitable for commercial and residential use.

5.7.3 FIRE HAZARD

The land is not mapped as being bushfire prone.

5.7.4 FLOODING

The subject site is marginally flood prone. Development in the manner proposed is consistent with Council’s policies relevant to flooding in the subject circumstances.

5.8 AMENITY OF THE AREA

Objective H

To carry out development without impacting on the residential amenity of the surrounding land.

The largely commercial character of the locality and the controls on construction mandated pursuant to BLEP14.

The only surrounding residential accommodation is the neighbouring 4 storey brick apartment building at 7 Fingal Street. Currently some of the apartments in this complex overlook the subject site and the existing car park. The proposal will enclose the new car park, thus minimising noise and disturbance from traffic movements.

The proposal contains 4 residential units to the first floor, which are of a similar and compatible nature to the neighbouring apartments at 7 Fingal Street. The living spaces of all proposed apartments look onto either the Fingal Street frontage or the Balun Lane frontage, and as such disturbance to 7 Fingal Street will be minimal. The proposal has a central courtyard on L1 that separates the 4 apartments. This courtyard has been designed to align with the central shared courtyard of 7 Fingal Street to break up the bulk of the proposal and create a sense of continuity in the ‘mid-block’ vegetation, helping to retain and enhance the amenity of the surrounding apartments.

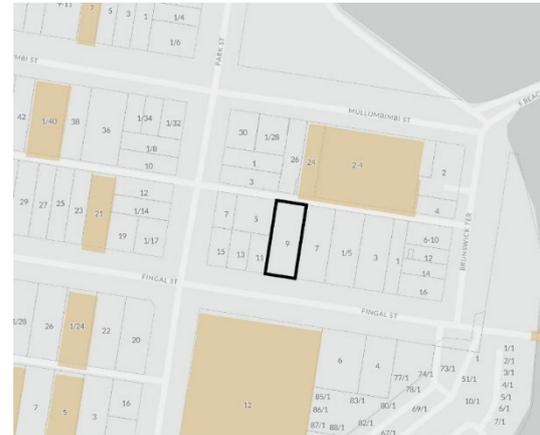
The proposal has also been designed as such that there should be no overlooking or privacy issues between the proposal and the existing apartments at 7 Fingal Street.

5.9 CULTURAL CONSIDERATIONS

Objective I

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

The site is not specified as a local or State Heritage area. Below is a graphic that illustrates heritage sites mapped pursuant to BLEP14.



Heritage Mapping for the area (source: Landchecker).

The structure currently erected on the site was built in about 1985 and does not illustrate any particular heritage characteristics.

A search of the AHIMIS database on 8th June 2023 in relation to 9 Fingal Street, Brunswick Heads and a 50m buffer disclosed no known Aboriginal sites or places. The landscape where the redevelopment is proposed is not a landscape of the type referred to in Step 2b of the DECCW Due Diligence Code (DECCW 2010). Accordingly, in accordance with the code, it is concluded that there is a low probability of Aboriginal objects occurring at this site.

6. CONCLUSION

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

The proposal by Vanfam Investments Pty Ltd for a mixed use development on the 9 Fingal Street site is a product of many factors. Those factors include:

- policies of all levels of government to promote the orderly development and use of land which can be demonstrated to be suitable for mixed use;
- strong demand for both commercial premises and Shop Top Housing in Brunswick Heads; and
- the site planning opportunities presented by the property.

The proposed development application is permissible under the BLEP14 and is consistent with the relevant DCP and SEPP's.

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



Stephen Connelly RPIA (Fellow)
PLANNERS NORTH

REFERENCES

- ANZECC. (1992). *Australian and New Zealand Guidelines for the Assessment and Management of Contaminated Sites*. Australian and New Zealand Environment and Conservation Council.
- BSC. (2014). *Byron Local Environmental Plan 2014*. Byron Shire Council
- BSC. (2014). *Byron Development Control Plan 2014*. Byron Shire Council
- DoPE. (2017). *The North Coast Regional Plan 2041*. Department of Planning & Environment.
- DUAP. EPA. (1998). *Managing Land Contamination Planning Guidelines SEPP55 - Remediation of Land*. Prepared by the Department of Urban Affairs and Planning and the NSW Environment Protection Authority.
- Morse et al. (1993). *Soil and Water Management for Urban Development*. Morse & McVey & Associates for NSW Department of Housing.
- RTA. (1993). *Guide to Traffic Generating Development*. Roads and Traffic Authority.

Variation to Floor Space Ratio

Clause 4.6 Objection to Clause 4.4 – Floor Space Ratio under Byron Local Environmental Plan 2014 concerning a Mixed use development – commercial premises and shop top housing at 9 Fingal Street Brunswick Heads

Introduction

I, Stephen Connelly, of PLANNERS NORTH, 6 Porter Street, Byron Bay, on behalf of Vanfam Investments Pty Ltd, object under Clause 4.6 Byron Local Environmental Plan 2014 ("BLEP14") to the Development Standard relating to the Floor Space Ratio at Clause 4.4 of BLEP14.

The numeric value of the standard being varied is 0.75:1. The numeric value of the development is 0.77:1, being a percentage value of the proposed variation of 2.7%.

I contend for the reasons set out following that the Development Standard prescribed at Clause 4.4 of BLEP14 is unreasonable and unnecessary in the circumstances of the subject case. Further, I am of the view that the proposed development raises no matters of adverse significance in Local, Regional or State terms and no public benefit will result from the maintenance of the subject standard in this case.

Structure of Objection

This objection:

- defines the relevant development standard;
- describes the variation proposed;
- provides justification for the exemption;
- reviews the proposal with respect to the guidance provided by *Wehbe v Pittwater Council*;
- reviews the proposal in light of the guidance provided by *Winten Developments v North Sydney Council*;
- examines considerations relevant to the public Interest and State and regional planning significance; and
- provides a summary justification of the objection.

1. Development Standard

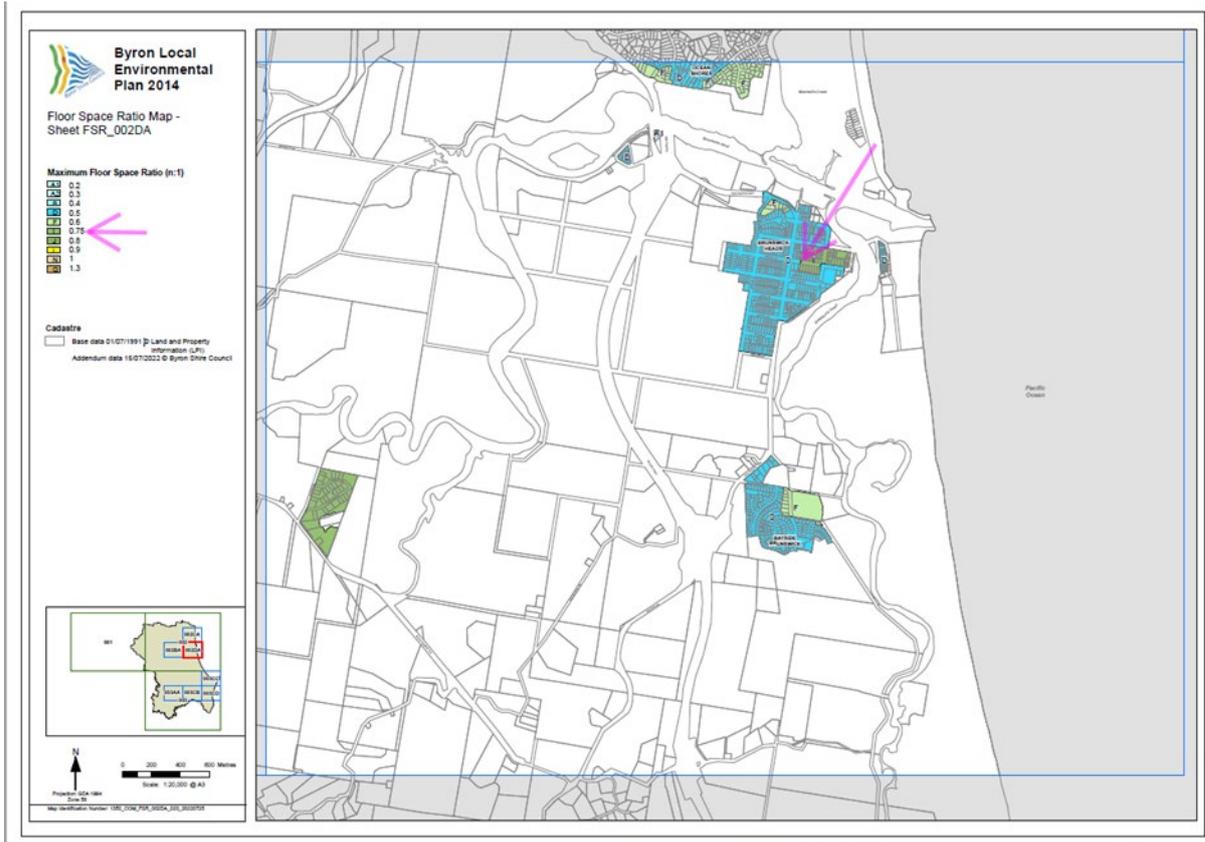
Pursuant to Clause 4.6 of the BLEP14, this objection seeks to vary the Floor Space Ratio standard stipulated in BLEP14 Clause 4.4. That clause states:

"4.4(1) The objectives of this clause are as follows—

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

The relevant Floor Space Ratio Map (FSR_002DA) of the BLEP14 is shown below. It specifies a 0.75:1 Floor Space Ratio for the site.

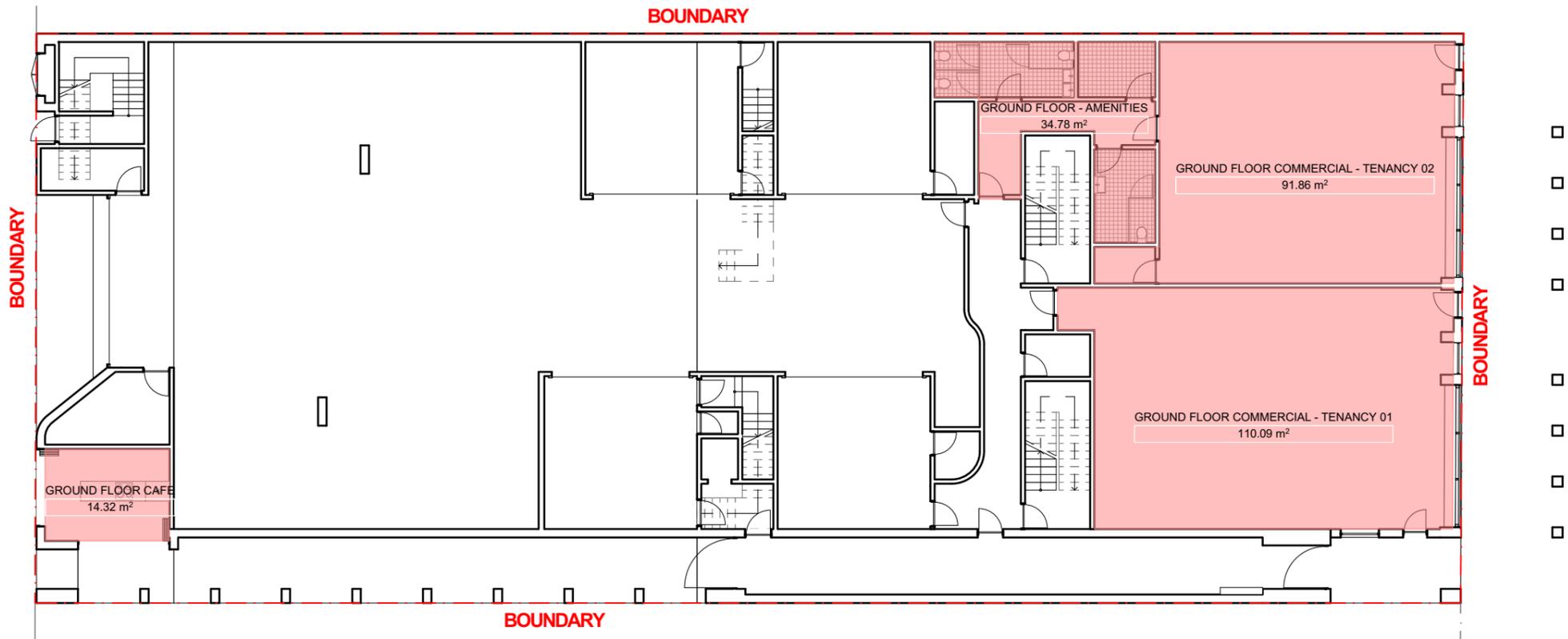
APPENDICES



2. Variation Proposed

The plans on the following pages show how the Gross Floor Space in the building has been calculated strictly in accordance with the definition in BLEP14. The dispensation sought involves about a 2.7% variation to the development standard, being about 22.1m² of Gross Floor Space.

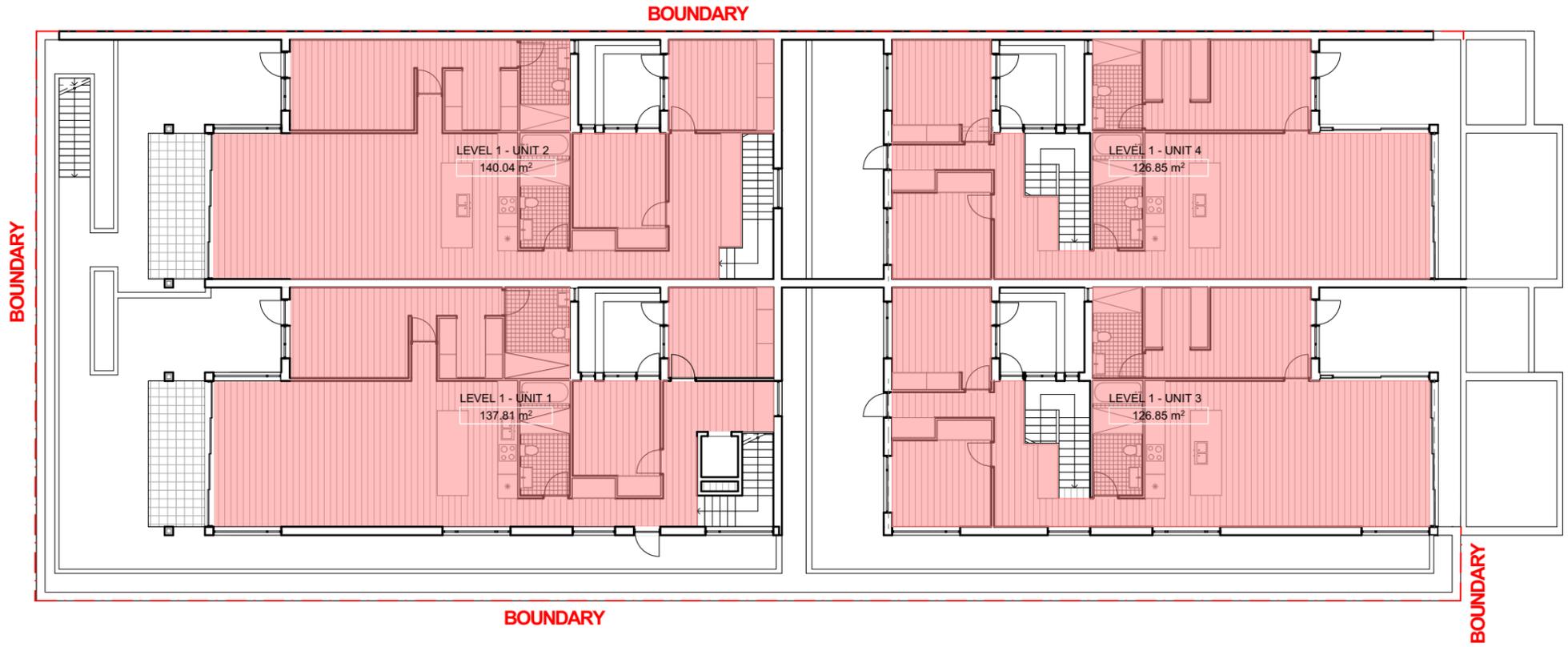
The planning purpose of a Floor Space Ratio is to control the bulk of buildings. Because of the nature of the site with commercial buildings with zero side boundary setbacks on either side, the "bulk" is not perceptible by any viewer of the building from the street system or in the locality.



1 AREA CALCULATION - GROUND FLOOR
1:200

GFA	Area
GROUND FLOOR - AMENITIES	34.78
GROUND FLOOR CAFE	14.32
GROUND FLOOR COMMERCIAL - TENANCY 01	110.09
GROUND FLOOR COMMERCIAL - TENANCY 02	91.86
LEVEL 1 - UNIT 1	137.81
LEVEL 1 - UNIT 2	140.04
LEVEL 1 - UNIT 3	126.85
LEVEL 1 - UNIT 4	126.85
	782.60 m ²

SITE AREA	1014 m ²
FSR	0.772:1



2 AREA CALCULATION - FIRST FLOOR
1:200

BUREAU SRH | architecture
 NOMINATED ARCHITECT: SIMON HANSON # 6739
 GENERAL: THIS DRAWING SHALL BE READ IN CONJUNCTION WITH ALL OTHER ARCHITECTURAL & CONSULTANT DRAWINGS & SPECIFICATIONS & WITH SUCH OTHER WRITTEN INSTRUCTIONS ISSUED DURING THE COURSE OF THE CONTRACT. NOTIFY ARCHITECT OF ANY DISCREPANCIES BEFORE PROCEEDING WITH WORK. MATERIALS & WORKMANSHIP SHALL BE IN ACCORDANCE WITH THE SPECIFICATION, CURRENT SRA CODES, BUILDING REGULATIONS & OTHER STATUTORY AUTHORITIES. VERIFY ALL DIMENSIONS ON SITE AND NOTIFY ARCHITECT OF ANY DISCREPANCIES (USE FIGURED DIMENSIONS ONLY). COPYRIGHT, ALL RIGHTS RESERVED. THIS DRAWING IS COPYRIGHT AND CONFIDENTIAL & MAY NOT BE REPRODUCED BY ANY PERSON WITHOUT WRITTEN PERMISSION OF THE ABOVE COMPANY & IS NOT TO BE USED IN ANY MANNER PREJUDICIAL TO THE INTERESTS OF THAT COMPANY. THIS DRAWING AND ATTACHED SHEET REMAIN THE PROPERTY OF BUREAU SRH PTY LTD.
 CAD FILES: INFORMATION IN ELECTRONIC FILES TRANSMITTED REMAINS THE INTELLECTUAL PROPERTY OF BUREAU SRH. BUREAU SRH DOES NOT GUARANTEE CAD DOCUMENTS CONTAIN COMPLETE AND ACCURATE INFORMATION. CAD DOCUMENTS MUST BE COMPARED TO, AND READ IN CONJUNCTION WITH CURRENT HARD COPY DOCUMENTS. BUREAU SRH ARE NOT LIABLE FOR ALTERNATIONS TO CAD FILES BY THIRD PARTIES.
 NB: THIS BUILDING HAS NOT BEEN DOCUMENTED AS A BIM MODEL. THE DOCUMENTS ARE STRICTLY REPRESENTATIONAL AND THEY HAVE BEEN PRODUCED SOLELY TO BE PRINTED OUT (OR CONVEYED AS PDF FORMAT) WITH THE INFORMATION CONTAINED THEREON TO BE READ OFF THE PRINTED 2D DRAWINGS (OR PDF). THEY ARE NOT TO BE USED AS THE BASIS OF BIM STYLE COORDINATION OR CONSTRUCTION SET-OUTS.
 BUREAU SRH ARE NOT LIABLE FOR THE DOCUMENTS BEING USED IN ANY MANNER EXCEPT THE MANNER DESCRIBED ABOVE, AND BUREAU SRH WILL NOT BE RESPONSIBLE FOR ANY INACCURACIES OR DISCREPANCIES WHICH RESULT FROM USING THE DOCUMENTS IN ANY OTHER WAY.
 IF, BY PRIOR AGREEMENT, YOU HAVE RECEIVED ELECTRONIC DRAWING FILES, THESE DOCUMENTS MUST BE COMPARED TO, AND READ IN CONJUNCTION WITH, THE LATEST ISSUE OF THE ORIGINAL HARD COPY, IN ORDER TO ENSURE THE ACCURACY OF THE INFORMATION CONTAINED AND TO FURTHER ENSURE THAT NO MODIFICATIONS HAVE BEEN MADE TO THE DOCUMENTS.
 THE INFORMATION CONTAINED IN THE ELECTRONIC FILES FOR THE ABOVE PROJECT HAS BEEN CREATED BY BUREAU SRH AND REMAINS THE INTELLECTUAL PROPERTY OF BUREAU SRH. WHILE BUREAU SRH HAS MADE EVERY APPROPRIATE EFFORT TO ENSURE THE ACCURACY OF THESE DOCUMENTS, IT CANNOT GUARANTEE THAT THESE DOCUMENTS CONTAIN COMPLETE AND ACCURATE INFORMATION.

LEGEND:

REV	DATE	NAME
01	18/05/2023	ISSUED FOR DEVELOPMENT APPLICATION
02	11/07/2023	ISSUED FOR DEVELOPMENT APPLICATION

SHOP-TOP HOUSING

REV	DATE	NAME
01	18/05/2023	ISSUED FOR DEVELOPMENT APPLICATION
02	11/07/2023	ISSUED FOR DEVELOPMENT APPLICATION

9 Fingal St
 STAGE: **DEVELOPMENT APPLICATION**
 DRAWING TITLE: **AREA CALCULATIONS**
 CLIENT: **Bart Vaneray** CHECKED: **HHH**
 DRAWN: **ZD** APPROVED: **SRH**
 PROJECT No: **23010**
 DRAWING No: **DA110**
 REVISION: **02**

NOT FOR CONSTRUCTION

1:100/200/300/400/500/600/700/800/900/1000/1500/2000/3000/4000/5000/6000/7000/8000/9000/10000/15000/20000/30000/40000/50000/60000/70000/80000/90000/100000/150000/200000/300000/400000/500000/600000/700000/800000/900000/1000000/1500000/2000000/3000000/4000000/5000000/6000000/7000000/8000000/9000000/10000000/15000000/20000000/30000000/40000000/50000000/60000000/70000000/80000000/90000000/100000000/150000000/200000000/300000000/400000000/500000000/600000000/700000000/800000000/900000000/1000000000/1500000000/2000000000/3000000000/4000000000/5000000000/6000000000/7000000000/8000000000/9000000000/10000000000/15000000000/20000000000/30000000000/40000000000/50000000000/60000000000/70000000000/80000000000/90000000000/100000000000/150000000000/200000000000/300000000000/400000000000/500000000000/600000000000/700000000000/800000000000/900000000000/1000000000000/1500000000000/2000000000000/3000000000000/4000000000000/5000000000000/6000000000000/7000000000000/8000000000000/9000000000000/10000000000000/15000000000000/20000000000000/30000000000000/40000000000000/50000000000000/60000000000000/70000000000000/80000000000000/90000000000000/100000000000000/150000000000000/200000000000000/300000000000000/400000000000000/500000000000000/600000000000000/700000000000000/800000000000000/900000000000000/1000000000000000/1500000000000000/2000000000000000/3000000000000000/4000000000000000/5000000000000000/6000000000000000/7000000000000000/8000000000000000/9000000000000000/10000000000000000/15000000000000000/20000000000000000/30000000000000000/40000000000000000/50000000000000000/60000000000000000/70000000000000000/80000000000000000/90000000000000000/100000000000000000/150000000000000000/200000000000000000/300000000000000000/400000000000000000/500000000000000000/600000000000000000/700000000000000000/800000000000000000/900000000000000000/1000000000000000000/1500000000000000000/2000000000000000000/3000000000000000000/4000000000000000000/5000000000000000000/6000000000000000000/7000000000000000000/8000000000000000000/9000000000000000000/10000000000000000000/15000000000000000000/20000000000000000000/30000000000000000000/40000000000000000000/50000000000000000000/60000000000000000000/70000000000000000000/80000000000000000000/90000000000000000000/100000000000000000000/150000000000000000000/200000000000000000000/300000000000000000000/400000000000000000000/500000000000000000000/600000000000000000000/700000000000000000000/800000000000000000000/900000000000000000000/1000000000000000000000/1500000000000000000000/2000000000000000000000/3000000000000000000000/4000000000000000000000/5000000000000000000000/6000000000000000000000/7000000000000000000000/8000000000000000000000/9000000000000000000000/10000000000000000000000/15000000000000000000000/20000000000000000000000/30000000000000000000000/40000000000000000000000/50000000000000000000000/60000000000000000000000/70000000000000000000000/80000000000000000000000/90000000000000000000000/100000000000000000000000/150000000000000000000000/200000000000000000000000/300000000000000000000000/400000000000000000000000/500000000000000000000000/600000000000000000000000/700000000000000000000000/800000000000000000000000/900000000000000000000000/1000000000000000000000000/1500000000000000000000000/2000000000000000000000000/3000000000000000000000000/4000000000000000000000000/5000000000000000000000000/6000000000000000000000000/7000000000000000000000000/8000000000000000000000000/9000000000000000000000000/10000000000000000000000000/15000000000000000000000000/20000000000000000000000000/30000000000000000000000000/40000000000000000000000000/50000000000000000000000000/60000000000000000000000000/70000000000000000000000000/80000000000000000000000000/90000000000000000000000000/100000000000000000000000000/150000000000000000000000000/200000000000000000000000000/300000000000000000000000000/400000000000000000000000000/500000000000000000000000000/600000000000000000000000000/700000000000000000000000000/800000000000000000000000000/900000000000000000000000000/1000000000000000000000000000/1500000000000000000000000000/2000000000000000000000000000/3000000000000000000000000000/4000000000000000000000000000/5000000000000000000000000000/6000000000000000000000000000/7000000000000000000000000000/8000000000000000000000000000/9000000000000000000000000000/10000000000000000000000000000/15000000000000000000000000000/20000000000000000000000000000/30000000000000000000000000000/40000000000000000000000000000/50000000000000000000000000000/60000000000000000000000000000/70000000000000000000000000000/80000000000000000000000000000/90000000000000000000000000000/100000000000000000000000000000/150000000000000000000000000000/200000000000000000000000000000/300000000000000000000000000000/400000000000000000000000000000/500000000000000000000000000000/600000000000000000000000000000/700000000000000000000000000000/800000000000000000000000000000/900000000000000000000000000000/1000000000000000000000000000000/1500000000000000000000000000000/2000000000000000000000000000000/300000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3. Justification for The Exception

The following provides the justification with regards to the objectives of Clause 4.4 of BLEP14:

"4.4(1) The objectives of this clause are as follows—

- (a) to ensure that new buildings are appropriate in relation to the character, amenity and environment of the locality,
 - (b) to enable a diversity of housing types by encouraging low scale medium density housing in suitable locations,
 - (c) to provide floor space in the business and industrial zones adequate for the foreseeable future,
 - (d) to regulate density of development and generation of vehicular and pedestrian traffic,
 - (e) to set out maximum floor space ratios for dual occupancy in certain areas.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map."

Comment:

The building has been designed to appropriately relate to existing development on the surrounding land and the height complements the streetscape and character of the area. As illustrated in the elevation below, the site sits comfortably as a transition between a 3 storey building and a single level building.



Extract from the Architectural Plan showing street elevation.

Compliance with Clause 4.6 BLEP14

With respect to Clause 4.6 of BLEP14 we have below recited the provisions and provided Development Application specific comments in relation to each of those provisions.

- (1) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

The building height standards are not excluded from the operation of this clause.

- (2) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

APPENDICES

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case for the following reasons:-

1. The degree of variation is minor;
2. Strict compliance will have little impact on the perceived built form as viewed from the streetscape and surrounding area; and
3. The proposed variation will have no impact on the apparent bulk or intensity of the development.

Given the above-described aspects, I submit that strict compliance with the Floor Space Ratio control in BLEP14 is unreasonable and unnecessary and strict compliance with those standards would, in any particular case, tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Environmental Planning and Assessment Act 1979 (the Act).

Clause 4.6 of the BLEP14 allows a proponent to seek approval from the Council for consent to be granted to an application that contravenes a development standard. The proposed development generally complies with all other provisions of BLEP14 and will create a minimal impact on the locality and its surroundings.

The consistency with the objectives of Cl. 4.4 Floor Space Ratio as described above satisfies the "Wehbe test" and the absence of any environmental impacts, demonstrates that strict compliance with the building height standard is both unreasonable and unnecessary in this instance.

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered that the positive social impacts delivered by the proposal, particularly the "bolt hole" café, provide strong environmental planning grounds to justify contravening the development standard especially having regard to the increase in Floor Space Ratio is so very minor, and it has no implications whatsoever in terms of apparent bulk and scale of the development.

(4) Development consent must not be granted unless:

(a) the consent authority is satisfied that:

(i) the written request has addressed sub clause (3)

Comment

This document is our formal written request.

(ii) the proposed development is in the public Interest (consistent with the objectives of the standard and the zone)

Comment

In terms of the public Interest and the proposal being consistent with the objectives of clause 4.4 as well as the objective of the zone.

The objectives of the Zone E1 Local Centre Zone are:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To encourage vibrant centres by allowing residential and tourist and visitor accommodation above commercial premises.

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The proposal provides for retail and business uses at a low density by vibrant format. Further, it provides employment opportunities in an accessible location and is well within the height for the site. In my view, it is consistent with the Zone E1 Local Centre Zone Objectives for this land.

(b) the concurrence of the Secretary has been obtained.

Comment

We understand that the Council enjoys assumed concurrence from the Planning Secretary in relation to this matter.

(5) The Secretary must consider:

(a) whether contravention raises any matter of significance for State or regional environmental planning.

Comment

An examination of the project against relevant strategies raises no issues of State or Regional planning significance. The development is consistent with the objectives and aspirations set out in the North Coast Regional Plan 2041, particularly provisions:

- Objective 1: to provide well located homes to meet demand;
- Objective 11: to support centres and coordinate the supply of well-located employment land; and
- Objective 20: celebrate local character.

4. Wehbe v Pittwater Council

In his decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827, Preston CJ expressed the view that there are five different ways in which an objection may be well-founded and that approval of the objection may be consistent with the aims of the policy.

Those five tests are considered in the table below.

<p><i>(i) The objectives of the standard are achieved notwithstanding non-compliance with the standard</i></p>	<p>The BLEP14 Clause 4.4 Floor Space Ratio provisions are as follows:</p> <p><i>"4.4(1) The objectives of this clause are as follows—</i></p> <p><i>(a) to ensure that new buildings are appropriate in relation to the character, amenity and environment of the locality,</i></p> <p><i>(b) to enable a diversity of housing types by encouraging low scale medium density housing in suitable locations,</i></p> <p><i>(c) to provide floor space in the business and industrial zones adequate for the foreseeable future,</i></p> <p><i>(d) to regulate density of development and generation of vehicular and pedestrian traffic,</i></p> <p><i>(e) to set out maximum floor space ratios for dual occupancy in certain areas.</i></p> <p><i>(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map."</i></p>
<p><i>(ii) the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary</i></p>	<p>Not applicable. The underlying objective or purpose of the standard is relevant to the development and is achieved as outlined in (i) above.</p>

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<i>(iii) the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable</i>	Not applicable. The underlying object or purpose of the standard would not be defeated or thwarted if compliance was required.
<i>(iv) the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and</i>	This objection to development standards request does not rely on this reason
<i>(v) the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.</i>	This objection to development standards request does not rely on this reason.

5. Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46

The exception to development standards request is assessed below against the accepted test for the assessment of development standard variation established by Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46.

<i>A Is the planning control in question a development standard?</i>	Yes, Clause 4.4 of BLEP14 is a development standard.
<i>B What is the underlying object or purpose of the standard?</i>	<p>The objectives of this clause are as follows:</p> <ul style="list-style-type: none"> <i>(a) to ensure that new buildings are appropriate in relation to the character, amenity and environment of the locality,</i> <i>(b) to enable a diversity of housing types by encouraging low scale medium density housing in suitable locations,</i> <i>(c) to provide floor space in the business and industrial zones adequate for the foreseeable future,</i> <i>(d) to regulate density of development and generation of vehicular and pedestrian traffic,</i> <i>(e) to set out maximum floor space ratios for dual occupancy in certain areas.</i>
<i>C Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?</i>	<p>Compliance with the development standard is unnecessary or unreasonable in the circumstances of the case because:</p> <ul style="list-style-type: none"> • The proposed noncompliance is of such a minor nature as to not raise any issues in relation to impacts on the streetscape or surrounding development. • The proposal sits comfortably within the existing streetscape and surrounding area and is consistent with the existing built form.

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<p><i>D. Is compliance with the development standard consistent with the aims of the Policy (to provide flexibility in the application of development standards); and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979?</i></p>	<p>The arguments contained in this Clause 4.6 variation support the case to allow flexibility in the application of the standard.</p> <p>The non compliance with the development standard allows for an orderly use of the land and has been designed with consideration to the desired future character of the area. Additionally, the Objects of the Act are satisfied as:</p> <ul style="list-style-type: none"> • The departure from the Floor Space Ratio control in BLEP14 will have no negative consequences in terms of the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment; and • The departure from the Floor Space Ratio control in BLEP14 allows for the orderly and economic use of the site in a manner which otherwise achieves the outcomes and objectives of the relevant planning controls.
<p><i>E. Is the objection well founded?</i></p>	<p>Having regard to the considerations of <i>Wehbe v Pittwater Council [2007] NSW LEC 827</i>, I submit that the proposed variation is well founded.</p>

6. Public Interest and matters of State or Regional significance

Clause 4.6 exception to development standards request and the accompanying plans and technical reports contained within the SEE demonstrate the public advantages of developing the site. In summary, the proposal is in the public interest because:

- Strict compliance to the Floor Space Ratio control will not materially impact on the bulk or scale of the proposed development nor its relationship to the existing streetscape.
- Optimum utilisation of the site, which is consistent with the Council plans and strategies for Brunswick Heads.
- No unreasonable public disadvantages have been identified as it has been demonstrated that any environmental or other impacts associated with the development are minimal and/or can be adequately managed.

Matters of State or Regional Significance

The non-compliance with Cl 4.4 Floor Space Ratio standard does not raise matters of significance for State or regional planning. The proposed development is consistent with the aspirations of the North Coast Regional Plan 2041.

The public benefit of maintaining the standard

There is no public benefit in maintaining strict compliance with the development standard in this instance. On the contrary, the general public will benefit in the increase of the supply of affordable housing in the area.

7. Summary Justification

A summary of the matters set out in Clause 4.6 exceptions to development standards request to vary the height control of the proposal is provided as follows:

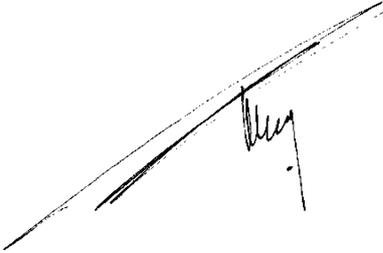
- The proposed degree of non-compliance is minor;

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- The project is consistent with the general bulk, height and scale of development in the locality; and
- The proposed variations satisfy the tests and considerations established in *Wehbe v Pittwater Council [2007] NSW LEC 82* and *Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46*;

In summary, compliance with the development standard restricting the FSR is unreasonable and unnecessary. This is because the objectives of the development standard can still be achieved, notwithstanding non-compliance. The development standard is not an end in itself but rather a means of achieving desired outcomes.

The consent authority is therefore urged to support this Clause 4.6 objection.



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