

8.1 DA 2018/381 - Lot 2, DP 1065811, 404 Old Byron Bay Road, Newrybar.DOC

Summary of Submissions

Legend

- Submission in support
- Submission in objection

CM Doc.	Date Received	Author	Stats	Details	Relevant Sections of Report
18/51769	20/07/2018		Not for Publication	Non-compliance with 7(d1) zoning objectives Non-compliance with the Development Controls A Statement of Environmental Effects not being lodged Impacts on visual amenity Road access issues not addressed in the application Earthmoving impacts and noise during construction	5, 5.1.1, 5.1.2, 5.2
18/51853	20/07/2018	Matt Cupper – Support	Public	Proposal is sympathetic to the neighbourhood character of Old Byron Bay Road	5.1.1, 5.1.2
18/53762	23/07/2018	Bill Chappel	Public	Non-compliance with 7(d1) zoning	5.1.1, 5.1.2
18/71087	25/07/2018	J White	Public	Email advising letter of support from Roger and Virginia was hand delivered to Council	Not applicable
18/57553 & 18/71085	25/07/2018		Not for Publication	Design characteristics create a dwelling in keeping with the general amenity of the area	5.1.1, 5.1.2
18/53931	26/07/2018	Karen & Richard Hagley	Public	Impacts on the natural scenic vista and wildlife corridor	5.1.1, 5.1.2, 5.2.3, 5.3.1
18/54183	27/07/2018	Byron Bay Planning & Property Consultants (Chris Lonergan)	Public	Loss of scenic views, natural character of the area	5.1.1, 5.2.2, 5.2.3
18/54280	27/07/2018	Sue Taylor	Public	Non-compliance with 7(d1) zoning objectives	5.1.1, 5.1.2
18/54287 & 18/56035	28/07/2018		Not for Publication	Impacts on the scenic escarpment and ridgeline.	5.1.1, 5.2.2
18/54281	29/07/2018	Jennifer St George	Not for Publication	Interruption to scenic rural outlooks	5.1.1, 5.2.2

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18/54284 & 18/57276	30/07/2018	Suzanne Andreou	Public	Impact the visual amenity of neighbouring properties	5.1.1, 5.2.2
18/55072	30/07/2018		Not for Publication	Environmental damage from vegetation removal and environmental damage to watercourse. Tree removal without Council planning approval	5.2.3, 5.3.1
18/54547 & 18/55384	30/07/2018	Robert Duetz	Public	Impacts on recognised environmental protection area. Impact on the visual amenity for surrounding properties and from Old Byron Bay Road.	5.1.1, 5.2.2, 5.3.1
18/54707 & 18/56359	30/07/2018	Alan Logan	Public	Impact on privacy and the views of surrounding properties. Proposed driveway is unnecessary when a location for a dwelling on the site is available in the place of the existing dwelling	5.1.1, 5.2.2, 5.3.2
18/50876	30/07/2018	Leanne Cramp	Public	Alleged illegal road construction.	5.3.1
18/56034	30/07/2018	Leanne Cramp	Public	Access road has been constructed without approval Access road has caused erosion of the escarpment Non-compliance with 7(d1) zoning objectives Impacts on the visual amenity by dwelling and road Absence of SOEE	5.1.1, 5.2.2, 5.3.1,
18/56230	31/07/2018	Martin Kenny	Public	Modified submission for prior submitted version to enable publication online	5.1.1, 5.1.2, 5.2.2, 5.2.3, 5.3.1
18/55601 & 18/56361	1/08/2018	Madeleine Marty	Public	Non-compliance with 7(d1) zone objectives Alternative sites for proposed dwelling available Impact on wildlife corridors, and visual amenity. Access road has been constructed without approval Earthworks impacting on amenity of the area	5.1.1, 5.2.2, 5.3.1
18/56060	3/08/2018	Mark Ryan	Public	Non-compliance with 7(d1) zone objectives Alternative sites for proposed dwelling available Impact on wildlife corridors, and visual amenity. Earthworks undertaken impacting on amenity of the area	5.1.1, 5.2.2, 5.3.1
18/56274	3/08/2018	Soteris Andreou	Public	Dwelling impact on visual amenity of neighbouring properties	5.1.1, 5.2.2
1/57572 & 18/57811	5/08/2018		Not for Publication	Access way provide access to eastern parts of property for weed control and viable agriculture	5.1.1
18/56381	6/08/2018	SEPA - Scenic Escarpment Protection Alliance	Public	Objectives of the Scenic Escarpment Protection Alliance (SEPA) not met	5.1.1

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18/57573	6/08/2018	Greg Price	Public	Proposal will result in little or low impact on the escarpment	5.1.1
18/57327	7/08/2018	Elizabeth Johnstone	Public	Visual impact of access way and noise from its use	5.1.1, 5.2.2
18/57549	8/08/2018	Ian Peter	Public	Visual impact issues	5.1.1, 5.2.2
18/57545	8/08/2018	SEPA - Scenic Escarpment Protection Alliance	Public	Request Council to engage staff with expertise in ecology and broader development and planning issues in addition to construction matters.	5.1.2, 5.3.1
18/57542	8/08/2018		Not for Publication	Impacts of access way on wildlife corridor and environmental protection zone	5.3.1
Close of Notification Period					
18/58182	9/08/2018		Not for Publication	No objection to the proposal	Non specific
18/59098	14/08/2018	Sue Taylor	Public	Rebuttal of letter of support from Murray Deane	Not applicable
18/69605	17/09/2018	Ian Peter	Public	Requirement for a Biodiversity Assessment Report (BDAR) will not be enforced No approval for constructed access road	5.3.1
19/14638	23/02/2019	Ian Peter	Public	Rebuttal of applicants comments - SEPA	Not applicable
19/22820	21/03/2019	Leanne Cramp & Ian Peter (meeting at Council office)	Public	Location of access way and dwelling Access way has caused landslip Non-compliance with 7(d1) zoning objectives Non-compliance with the Development Controls Impacts on visual amenity Impacts on ecological values Planting of non-native species (bamboo) being carried out	5.1.1, 5.1.2, 5.2, 5.3.1
19/28363	11/04/2019	Leanne Cramp	Public	Impact to natural environment and watercourse	5.3.1
19/34636	9/05/2019	Ian Peter	Public	Noise, dust, light spill, sedimentation, pollution, invasive plants, vegetation removal	5.1.2, 5.2.3
19/41517	3/06/2019	Sue Taylor	Public	Follow up email from meeting 30/5/2019)	Not applicable
19/60795	3/07/2019	Leanne Cramp	Public	Irrigation from creek of the plantings that have been undertaken along the unauthorised road.	Not for consideration in this application

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Summary of Submissions

19/60796 & 19/71424 (duplicated entry)	12/07/2019	Leanne Cramp	Public	Planting of non-native species, without the submission of a landscaping plan.	5.1.1
18/51771	20/07/2019	Ian Peter	Public	Duplicated entry in CM	Not applicable
18/55070 & 18/55032 & 18/56230	31/07/2019		Not for Publication	Earthworks and vegetation works without Council approval In Environmental and visual effects of vehicular access way, siting of dwelling, landscaping,	5.1.1, 5.1.2, 5.2.2, 5.2.3, 5.3.1

Development Application Assessment Form*(Pursuant to s 4.14 and s.4.15 (1) of the EP & A Act 1979)***Application Details**

Development Application No.	2018/381
Property Description	Lot: 2 DP: 1065811, 404 Old Byron Bay Road NEWRYBAR
Proposed Development	Decommissioning of an existing dwelling and construction of a new dwelling and swimming pool and upgrade of an internal vehicular access way
Building Classification	1a, 10a & 10b
Site Inspection Date	5 April 2019

Assessment of the Application

The assessment officer responsible for the preparation of this report, (including recommendations/ determination or advice to any person) has delegated authority to deal with this application has no pecuniary interest or conflict of interest to disclose in respect to the application.

Only those sections applicable to the application need to be completed. Where an item is not applicable the field may be left blank.

Type of Development

The development is not Designated Development

The development is not Integrated Development and no referrals to any NSW State Government authority required

Land Ownership

The application is not for development on Crown Land

The application is not for development on land owned by Ballina Shire Council

Existing Development

The proposed development is located at 404 Old Byron Bay Road, Newrybar. The land parcel has an area of 36 hectares.

The lot is largely cleared grazing land other than for a vegetated area in the western part of the property. This vegetated area is on the western side of a ridgeline that extends into the property from the north. Within the vegetated area is a watercourse, with relatively steep embankments, that runs across the property from north to south adjacent to the narrow throat of the property.

To the east of the ridgeline, the property slopes moderately to steeply toward the low-lying areas of the property below the escarpment.

Surrounding properties consist of a number of rural residential lots ranging in size from approximately 0.6 ha to 3 ha in size fronting Old Byron Bay Road.

Other adjoining properties to the north, east and south are larger agricultural properties ranging in size from approximately 36 hectares to 62 hectares.

There is an existing dwelling on the property that is located approximately 18m from the frontage to Old Byron Bay Road.

This application is for the decommissioning of the existing dwelling and construction of a new two storey dwelling and swimming pool and the upgrade of an existing internal access way.

The proposed new dwelling is to be located on the eastern side of the ridgeline. Access to the location of the proposed dwelling is via a previously formed internal access way. The internal access way is approximately 450m in length and incorporates a culvert water crossing.

The battle-axe handle of the allotment that extends north to the frontage to Midgen Flat Road was created in the previous sub-division of the land. However, there is a Section 88B instrument restricting vehicular access to Lot 2 via this battle-axe handle. Therefore, access to the property and proposed building site is only available from the frontage to Old Byron Bay Road.

Section 4.14 Consultation and development consent—certain bush fire prone land
(cf previous s 79BA)

The property is mapped as bushfire prone land

A Bushfire Assessment Report has been provided by an Accredited Practitioner, Peter Thornton, and referred to the Rural Fire Service (RFS) for comment. The RFS response has provided recommended conditions of consent in relation to Asset Protection Zones, water and utilities, vehicular access, design and construction standards for the dwelling and landscaping. If consent is granted, these conditions would be included.

Section 4.15(1)(a)(i) - The provisions of any Environmental Planning Instrument State
Environmental Planning Policies (SEPP)

Compliance is achieved with the listed SEPPs:

SEPP 44—Koala Habitat Protection

Not in core or preferred koala habitat area

SEPP 55—Remediation of Land

There are no likely contamination issues

SEPP (BASIX) 2004

A BASIX Certificate has been provided and the building is consistent with the listed commitments.

SEPP (Mining, Petroleum Production and Extractive Industries) 2007

The proposed development is not in the vicinity of an existing mine, petroleum production facility or extractive industry

SEPP (Rural Lands) 2008

The proposal is compatible with the predominant existing and approved land uses in the vicinity of the development.

SEPP (Infrastructure) 2007

The proposed development:

- Does not involve 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,
- is not within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists)
- is not immediately adjacent to an electricity substation
- is not within 5m of an exposed overhead electricity power line
- The swimming pool is not within 30m of a structure supporting an overhead electricity transmission line or within 5m of an overhead power line (measured vertically upwards from the top of the pool)

Local Environmental Plans (LEP)

The land is partly zoned RU1 Primary Production under the Ballina Local Environmental Plan 2012 (BLEP 2012). The remainder, and majority of, the site is identified as a deferred matter under the BLEP 2012.

All of the proposed development is located in the DM area. The DM area is subject to the Ballina LEP 1987. This land is zoned 7(d1) Environmental Protection (Newrybar Scenic/Escarpment) under the 1987 LEP.

Part 4 Principal development standards

4.1- 4.1C

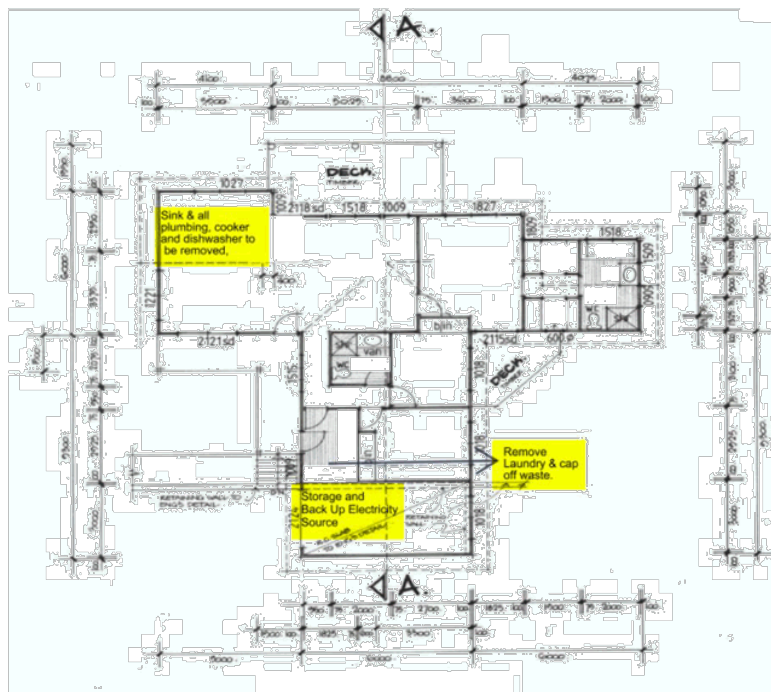
The lot meets the minimum lot size and is not for a rural workers dwelling

4.2 & 4.2A

The dwelling entitlement provisions are satisfied on decommissioning of the existing dwelling.

As part of the development application, it is proposed to retain the existing building on the property and de-commission it from a dwelling to be a non-habitable farm building. As previously mentioned it is the applicant intention to retain the building to use for solar battery and farm storage, as well as for backup amenities.

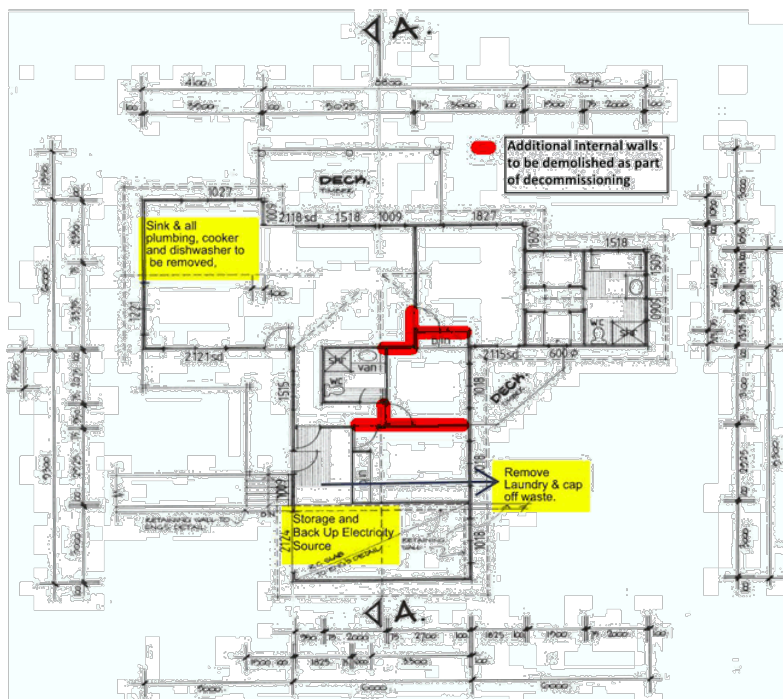
The external building structure of the existing dwelling is to remain unchanged. The extent of the proposed decommissioning includes the removal of the kitchen sink, cooking facilities, dishwasher, laundry facilities and plumbing fixtures. The capping-off of all disused plumbing and drainage service pipes will also be required.



Proposed Decommissioning Floor Plan

The current proposed work to decommission the existing dwelling house is insufficient to conclusively surrender the habitable status of the building. If approval is to be granted, further decommissioning works should be required to be carried out that will result in a building that cannot be easily re-configured or adapted for use as a dwelling without obtaining development consent. In order to achieve

this, it is recommended that the some internal walls be demolished to create a more open style floor plan that would be unlikely to be used as separate rooms for a residential use.



Additional internal walls recommended to be demolished

The applicant's desire not to fully demolish the building may also relate to the potential for detached dual occupancies to become permissible on this land in future should Council integrate the DM areas into the BLEP 2012.

If the determination of the application is by way of approval, it would be necessary to impose conditions of consent in relation to the additional decommissioning works and on-going non-habitable use. This would assist in enabling Council's Compliance section to take the appropriate action should the redundant dwelling be utilised for future habitable purposes. The conditions would be to the effect that:

- *Prior to issue of a Construction Certificate, a plans depicting the decommissioning works to the existing dwelling are to be submitted to and approved by Council.*
- *Prior to carrying out any decommissioning works to the existing dwelling, a Construction Certificate is to be obtained for the decommissioning works along with approval under Section 68 of the Local Government Act 1979 for the carrying out of the associated plumbing and drainage works.*
- *Prior to issue of an Occupation Certificate for the new dwelling, the existing dwelling is to be fully decommissioned as a dwelling by the removal of the kitchen sink, cooking facilities, dishwasher, laundry facilities and plumbing fixtures and the capping-off of all disused plumbing and drainage service pipes and termination of disused electrical services.*
- *The use of the decommissioned dwelling is to be as a non-habitable building, the use of which is to be ancillary to the agricultural use of the land or ancillary non-habitable purposes associated with the new dwelling.*

4.3 & 4.3A

The height of the building does not exceed the maximum allowable height

4.4 & 4.5

The gross floor area does not exceed the maximum floor space ratio

4.6

There are no exceptions to Development Standards

Part 5 Miscellaneous provisions

5.10

The development is not in the vicinity of, nor does it does not involve altering a heritage item as listed in Schedule 5 of the LEP or disturbing an aboriginal place of heritage significance

Part 7 Additional local provisions

7.4

The development is not likely to impact on the drinking water storage in a drinking water catchment

7.5

The development will not penetrate the Limitation or Operations Surface for airspace operations

7.6

The development will not increase in the number of dwellings or people affected by aircraft noise

7.7

Water, sewage disposal, stormwater drainage and vehicular access are available.

The design for the new dwelling is to incorporate off-grid solar electricity, independent of the Essential Energy power supply and the proposal is to use the decommissioned building for the storage of solar batteries, farm equipment and additional toilet/shower facilities.

The proposal has been assessed in relation to the 7(d)1 zone objectives as below.

5.1.1 Primary Objectives

To protect and enhance areas of particular scenic value to the local government area of Ballina

The location of the dwelling and swimming pool does not require any vegetation removal. From the building pad, the land has a relative steep decent down the escarpment to the low-lying coastal land adjacent Midgen Flat Road and neighbouring allotments. The siting of the dwelling in the proposed location is predominately to take advantage of the panoramic vista of the low lying lands extending to the coast and is not an unreasonable location for a building to be situated.

Temporary height poles depicting the overall building height of the western elevation were installed by the applicant to aid in assessment of the scenic and visual impacts of the proposed dwelling. See Figure 4.



Figure 4: Height poles depicting western elevation overall height of dwelling (viewing from Old Byron Bay Road)

A number of properties along this section of Old Byron Bay Road will have some degree of outlook of the proposed development.

The site selection has avoided the need for vegetation removal on the ridgeline. Given that there is limited public land from which the site can be viewed, it does not unreasonably protrude into the skyline and is not visually prominent when viewed from the public land.

The proposed building materials and colours are complementary to the natural environment.

Some objections relate to the planting of non-native species that has been recently carried out. There are no controls within the BLEP 1987 of DCP that prevent such planting being carried out when it is unrelated to an active development consent.

A landscaping plan has been submitted for the areas immediately adjacent to the dwelling. This plan includes only native species. If approved, conditions would also be imposed in relation to the implementation of the landscape plan. This condition would be to the effect that:

- *Prior to issue of an Occupation Certificate, all landscaping is to be planted and established in accordance with the approved landscape plan.*

To encourage the productive use of land within the zone and enable development ancillary to agricultural land uses, particularly dwelling-houses, rural workers' dwelling and rural industries

The proposed development constitutes a double storey, three bedroom dwelling. The upper level contains the bedrooms, main living component and an eastern facing verandah to encompass the ocean and rural views to the east. The lower level comprises a double garage, family room (with attached bathroom) and a storage room. The swimming pool is located to the north of the dwelling.

Dwellings are permissible, and encouraged, in the zone and the scale and design of the proposed dwelling is not inconsistent with other modern rural dwellings in Newrybar and its surrounding localities.

Vehicular access, including any required access for the RFS, must be provided to any dwelling house that is to be established on the property.

Considering the restriction of use from Midgen Flat Road and the topography of the land, the current positioning of the internal access way is the only reasonable option for gaining vehicular access to the proposed dwelling site.

An engineering design has been submitted for the works to the internal access way. When completed in accordance with the design it will meet the requirements for a domestic driveway, RFS access and also serve as vehicular access for the carrying out any agricultural uses of the land.

Detached Dual Occupancies are not permissible in 7(d)1 zone. However, converting the existing dwelling into a non-habitable building, as proposed, will satisfy the criteria sufficiently to enable the construction of the proposed development as being the only dwelling on the allotment.

The proposed development does not prevent other parts of the property being used for primary production purposes.

To ensure development within the zone maintains the rural character of the locality and minimises any detrimental scenic impact

The siting of the dwelling is on the eastern side of the ridgeline on a gently sloping section of land. Cutting and filling of the site is proposed to create the level building pad. The proposed cut is to the north and western side of the dwelling, with rock retaining walls on the downslope side to retain the fill and accommodate the driveway.

The cutting of the site assists in reducing the out of ground height of the development and minimises the potential visual prominence of the dwelling when looking in an eastward direction from the residential properties to the west and Old Byron Bay Road.

The construction methodology for the dwelling incorporates composite construction principles utilising a mixture of pre-cast concrete tilt panels, stone feature walls, external timber paneling and aluminum framed glazed panels.

The dwelling has a minimal 2 degree pitched colorbond cliplok roof, which will be hidden behind parapet wall. The dwelling is to have 64 solar panels positioned on the eastern side of a central ridgeline. The design indicates these panels are to be mounted low to the roof and at a similar pitch as the roof. Mounting the panels in this manner does not increase the overall height of the building.

The proposed building materials and colour palette are non-reflective and of earthy tones, which will not be visually obtrusive or dominant in the skyline.

Some submissions from Scenic Escarpment Protection Alliance (SEPA) have suggested that the proposal does not meet the SEPA objectives which are:

- *To protect the unique and sensitive environment of the Scenic Escarpment area in accordance with the Objectives of the Environmental Protection Zone, and*
- *To support the best design development and development conditions to maintain the rural character, scenic beauty and wildlife protection of the natural habitat location.*

These objectives are consistent with the objectives of the BLEP 1987 and Natural Areas and Habitat provisions of the DCP which are addressed in the relevant sections of this report and the associated Environmental Scientist's report.

To address scenic amenity issues, a Visibility and Visual Assessment has been provided by the applicant. This is included as Attachment 4.

Having regard for the information contained within the visibility and visual assessment report, the design of the dwelling and associated development and the characteristics of the locality, the development does not result in significant adverse impact on the scenic amenity of the area or the rural character to the locality.

To ensure development within the zone is of a scale and nature that will not adversely impact on the existing amenity of the area.

Whilst some objectors feel that an alternative location exists for a dwelling in the location of the existing dwelling, it is not an unreasonable expectation of the applicant to be able to construct a dwelling of this scale and appearance in the proposed location. This is particularly so when a swimming pool is proposed in association with the dwelling. The limited size and slope of the land adjacent to Old Byron Bay Road is not conducive to construction of a dwelling and swimming pool such as that which has been proposed.

The access way is visible, in part, from some residential properties and Old Byron Bay Road. However, due to the location and scale of it, it will have minimal impact on the amenity of the area and, when completed, it will be consistent with the rural character of the area.

The dwelling is designed to be integrated into the terrain of the site and the locality is characterised by the presence of dwelling houses amongst open rural land and vegetated areas.

Overall, the provision of a dwelling of the type proposed does not adversely impact on the amenity of the area and is consistent with the character of the locality.

5.1.2 Secondary Objectives

To minimise soil erosion from escarpment areas and prevent development in geologically hazardous areas or excessive gradient

Access from Old Byron Bay Road is the only route of obtaining access to the eastern extents of the subject allotment. The provision of a driveway is permissible development within the property.

The location of an internal access way to service the property is somewhat restricted to the current route. Due to the topography of the land and the narrow width of the allotment near the gully, an alternative route is not readily available.

Due to the gradient of the unsealed access way being greater than permissible, work is proposed to seal it to meet the Rural Fire Service (RFS) standards.

Additional work is also required to be carried out to lower the culvert crossing to restore flow to the watercourse. If approved, conditions specific to this work would be applied (Refer to Section 5.3.1 for further details).

Part of the land is within the area that may be susceptible to slip as identified by a preliminary geotechnical analysis carried out previously by the Department of Mineral Resources. However, Council has not adopted a policy to restrict development on the subject land because of the likelihood of slip.

A minor landslide is evident on the lower side of the access way that has been constructed.

The applicant's consultant engineer, Peter Lucena, and engineering staff from Council's Civil Services Section have assessed the access way, the proposed building site and the site of the landslide. The conclusion reached is that should approval be granted, the recommendations in the report from Peter Lucena dated 28 May 2019, including those to stabilise the table drains along the access way, are acceptable to be implemented. This could be conditioned to the effect that:

- *The three recommendations contained in the Updated Road Drainage report by Peter Lucena dated 28 May 2019 are to be implemented as soon as practical and maintained as recommended in the report.*

Further, the proposed and required revegetation works to be carried out will likely minimise further erosion and landslide issues.

Issues relating to the proposed construction works on the access way, dwelling and swimming pool can be addressed by standard environmental protection conditions relating to hours of work, erosion and sediment control measures, blowable waste and dust suppression.

To ensure that development within the zone does not create unreasonable or uneconomic demands, or both, for the provisions or extension of public amenities or services.

The proposal will result in one dwelling house and an associated swimming pool, a separate non-habitable farm building and minor ancillary structures within a rural allotment zoned for agricultural use. This will not create any additional demand for public amenities or services that would be over and above those already envisaged in the creation of the previous subdivision to establish the lot and the zoning of the land.

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

There are no draft EPI's in relation to the development

Section 4.15(1)(a)(iii) – Ballina Shire's Development Control Plan (DCP) 2012

Only those matters of relevance to the application need to be addressed.

Chapter 1 - Administration

The development complies with Council's Building Over Assets Policy.

There are no private covenant issues (S.88B) other than for the restriction on access to Midgen Flat Road as noted previously.

1.5A

Where land is located within a BLEP 1987 zone, the DCP provides a list of equivalent Ballina LEP 2012 zones for the assessment of the DCP provisions.

In this instance, the equivalent zone is that of E3 Environmental Management and based on the type of development and the equivalent E3 zone. Key elements of the applicable DCP provisions are addressed below.

3.2.2

The application has been lodged following the withdrawal of a previous similar application.

3.2.3

A Statement of Environmental Effects by Planners North, dated June 2018, was lodged with the initial lodgement document set.

Additional information has been requested from the applicant to address a number of matters during the assessment. This included a requested to provide the following information:

1. An ecological assessment report addressing the following items:
 - a. compliance with the Biodiversity Conversation Act 2016;
 - b. compliance with Chapter 2, Section 3.3 of council's Development Control Plan (DCP) 2012;
 - c. clearly identify any proposed clearing works required to comply with the Access Road Engineering Report prepared by Lucena Engineers Pty Ltd;
 - d. any clearing works required to comply with the Bushfire Assessment Report prepared by Bushfire Certifiers;
 - e. inclusion of a suitable planting species list for any proposed and/or required restoration works; and
 - f. include guidelines for the erection of all temporary and permanent fencing on the development site located within the land zoned for environmental purposes;
2. Coloured elevations and perspective drawings, or an itemised schedule, showing the proposed colour scheme of the dwelling;
3. Amended drawings, depicting the location, elevation and configuration of the proposed solar panels;
4. A floor plan and elevations of the existing building in the proposed decommissioned configuration as a non-habitable farm building; and
5. Documentation to address NSW Rural Fire Services queries, as detailed in their enclosed correspondence, dated 10 August 2018, Ref. D18/6594.

Various amendments to the plans and associated documents have been made during the course of the prolonged assessment process including and amended Bushfire report dated 19 November 2019 and a revised landscaping plan "Plan 2" dated November 2019. These were provided to address revegetation, landscaping and Asset Protection Zone conflicts.

The last information was received from the applicant on 19 November 2019.

3.2.4 & 3.2.5 Public Notification, Exhibition & Submissions

The proposed development was notified in accordance with the Level 1 – Targeted Notification process as outlined in Chapter 1 of the Ballina Shire Development Control Plan 2012. The notification period ended on 8 August 2018.

Twenty two submissions in objection were received from 16 parties prior to the closing date.

Submissions were received from four parties in support of the development prior to the closing date.

Those submissions received in objection have been summarised as relating to the following matters:

- Non-compliance with 7(d1) zoning objectives
- Non-compliance with development controls
- A Statement of Environmental Effects (SOEE) not being lodged
- Road access issues not addressed in the application
- Earthmoving impacts and noise during construction
- Impacts on visual amenity
- Impacts on the natural scenic vista and wildlife corridor
- Loss of scenic views, natural character of the area
- Impacts on the scenic escarpment and ridgeline
- Interruption to scenic rural outlooks
- Visual impact of access way and noise from its use
- Impact on the visual amenity of neighbouring properties
- Environmental damage from vegetation removal and environmental damage to watercourse
- Tree removal without Council planning approval
- Impacts on recognised environmental protection area
- Impact on the visual amenity for surrounding properties and from Old Byron Bay Road
- Impact on privacy and the views of surrounding properties
- Proposed driveway is unnecessary
- Alternative site for proposed dwelling available
- Access road constructed without approval
- Access road has caused erosion of the escarpment
- Earthworks undertaken impacting on amenity of the area
- Objectives of the Scenic Escarpment Protection Alliance (SEPA) not met
- Request Council to engage staff with expertise in ecology and broader development and planning issues in addition to construction matters.
- Impacts of access way on wildlife corridor and environmental protection zone
- Requirement for a Biodiversity Assessment Report (BDAR) will not be enforced
- Location of access way and dwelling
- Access way has caused landslip
- Location of access way and dwelling
- Impacts on ecological values
- Planting of non-native species being carried out
- Impact on flow of the water course
- Noise, dust, light spill and sedimentation
- Irrigation from creek of plantings that have been undertaken.

A further single submission in support and 11 expanded submissions, from previous objectors, were received outside of the notification period.

Chapter 1 of the Ballina Shire Development Control Plan 2012 states that objections received after the specified close of the submission period relating to a development application may not be taken into consideration by Council in the assessment of the application. However, in this instance, the matters raised in the late submissions have also been considered in the assessment of the application.

3.2.6

All applicable DA related fees have been paid

Chapter 2- General and Environmental Considerations

The development will comply with the following applicable provisions of this Chapter:

3.1

Land Use Conflict

The location of the proposed dwelling meets the minimum buffer distances to other land uses in the locality.

3.2

Ridgelines and Scenic Areas

Part of land is included on the Ridgelines and Scenic Areas Map as indicated Figure 5.

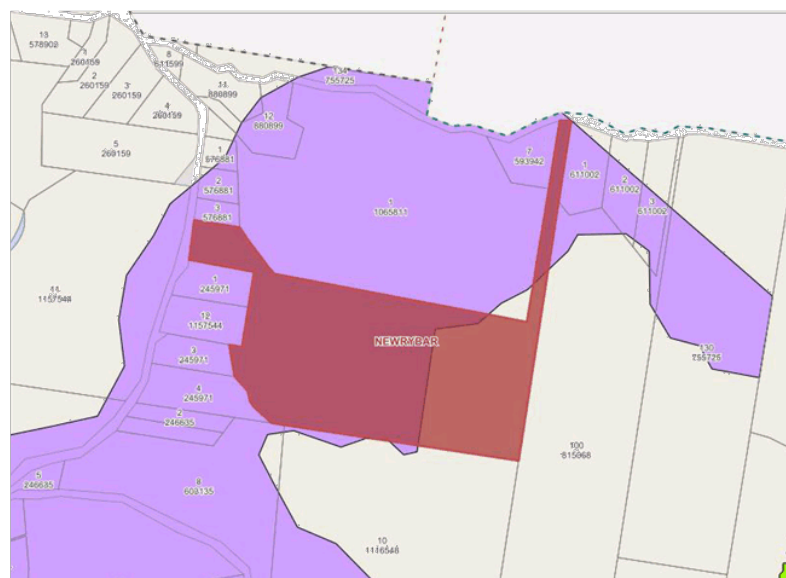


Figure 5: Ridgelines and Scenic Areas map

The proposal has been designed to protect the scenic values and minimise intrusion into the skyline by locating the dwelling on eastern side of the ridgeline and cutting it into the hillside. This will reduce not only the appearance of the dwelling from the public land as required by the objectives of the DCP provision, but also from the private properties in the locality.

The proposal does not include any removal of prominent vegetation along the ridgeline.

Overall, having regard for the nature of the proposed dwelling, the specific characteristics of the proposed site of the dwelling and the proposed retention (but decommissioning) of the existing dwelling on the site, the proposed development has been assessed as meeting the objectives of the ridgelines and scenic areas provision.

If approved, a condition could be included to minimise any impacts on adjoining properties and the sensitive environmental area from light spill. This condition would be to the effect that:

- Any external lighting to the dwelling and pool area is not to be directed towards the west and/or shielded to minimise glare nuisance to adjoining properties.

3.3 Natural Areas and Habitat

Part of the land is included on the Natural Areas & Habitat Map and Wildlife Corridors Map as indicated in Figures 6 and 7.



Figure 6: Natural Areas Habitat map

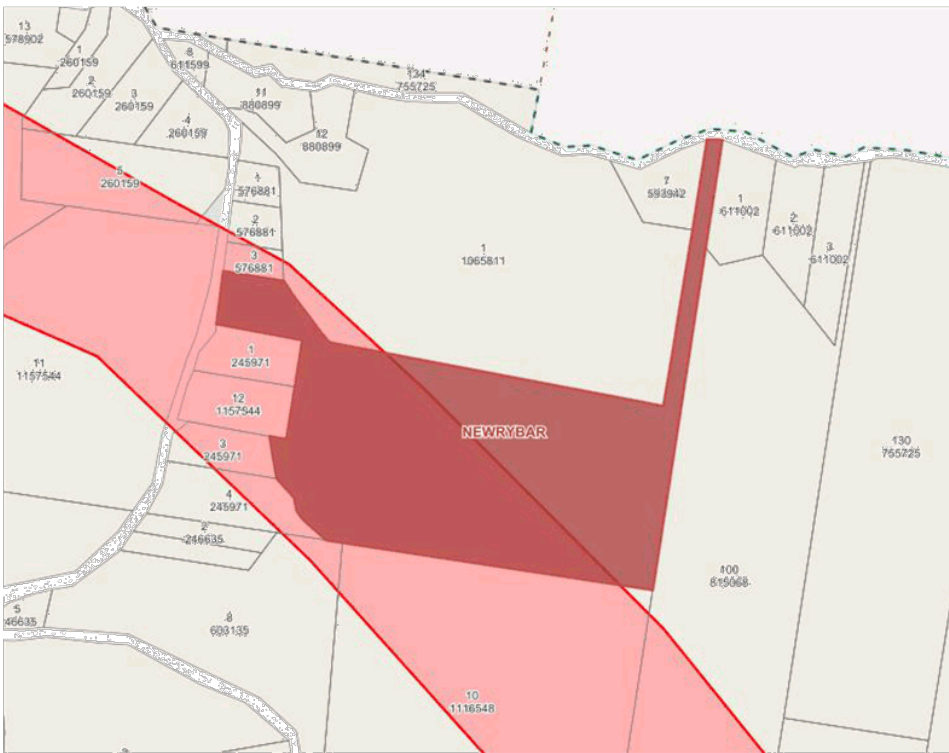


Figure 7: Wildlife Corridors map

Council's Environmental Scientist has assessed the proposal and lodged documents in relation to the impacts on these areas.

3.4

Potentially Contaminated Land

A preliminary site contamination assessment has been provided by a suitably qualified person in accordance with the requirements of the relevant Guidelines made by NSW EPA in accordance with the Contaminated Land Management Act.

3.5

Land Slip/Geotechnical Hazard

This section of the DCP has been addressed by the previous comments in relation to the zone objectives.

3.6

Mosquito Management – standard conditions to apply

3.7

Waste Management – standard conditions to apply

3.8

On-site Sewage Management Systems

A design report has been provided for assessment by Council's OSSM officer. The report confirms that the land will accommodate the on-site disposal and management of sewage for the dwelling. The assessment of the OSSM report will not be completed until an OSSM application form is lodged and payment is made of the applicable fees. It is normal for conditions of consent to be included for this to occur after development consent is obtained. The condition would be to the effect that:

- *Prior to issue of a Construction Certificate, an application under Section 68 of the Local Government Act 1979, along with payment of the applicable fees, is to be lodged with Council and approved for the installation of an On-Site Sewage Management (OSSM) System to service the proposed dwelling. The application is to include full details of the proposed system and the contracted licensed plumber's details.*

3.9

Stormwater Management –standard conditions to apply

3.10

Sediment and Erosion Control – standard conditions to apply

3.11

Provision of Services – off grid power solar power and mobile phone service to be provided.

3.12

Heritage – Not applicable

3.13

Drinking Water Catchments – Not applicable

3.14

Coastal Hazards - Not applicable

3.15

Crime Prevention through Environmental Design –Not applicable

3.16

Public Art – Not applicable

3.17

Road Widening –Not applicable

3.18
Protection of Foreshore and Public Open Space Areas –Not applicable

3.19
Car Parking and Access

The proposed parking vehicular access within the property has been designed by an engineer and will comply with the required design standards for residential driveways. If approved, a Section 138 application will be required for the existing driveway crossing within the road reserve to be upgraded to comply with Council’s residential driveway crossing standards. The condition would be to the effect that:

- *Prior to issue of a Construction Certificate, an application under Section 138 of the Roads Act 1979, along with payment of the applicable fees, is to be lodged with Council and approved for the construction of a footpath and gutter crossing in accordance with The Northern Rivers Local Government Design and Construction Manual drawings R-14 and R-15.*

The internal access way linking the development site to Old Byron Bay Road has been constructed without prior Council approval. This vehicular access way incorporates a concrete culvert water crossing and transverse through a portion of land with Bio-diversity values, which is mapped by the Department of Planning, Industry and Environment under the Biodiversity Conservation Act 2016 (BC Act). See Figures 8, 9 and 10.

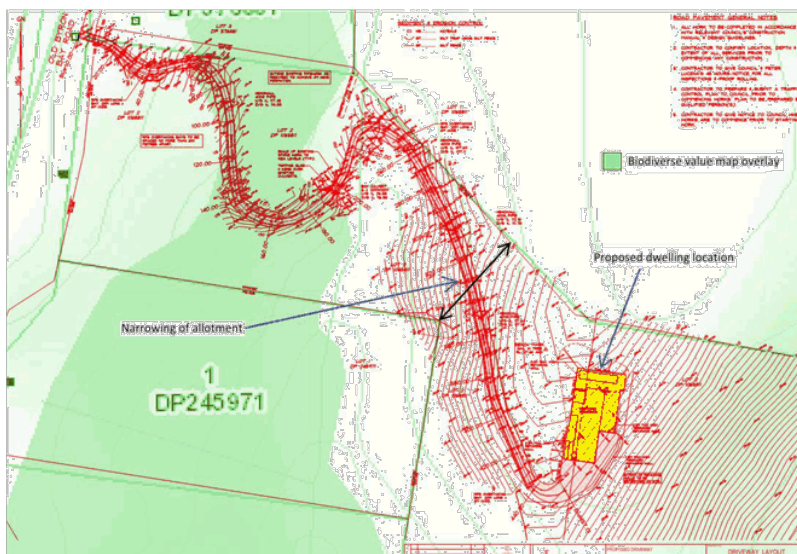


Figure 8: Internal Access Way with Biodiversity Value Map Overlay



Figure 9: Internal Vehicular Access Way - depicting steep gradient



Figure 10: Concrete Culvert Water Crossing

A 'Prevention Notice' under the Protection of the Environment Operation Act 1997 was served by Council in relation to the work that has been carried out to construct the vehicular access way. The matter has been the subject of Court proceedings that have now concluded.

As part of the access works, the landowner installed box culverts over an intermittently flowing creek. It would appear culverts were installed without having regard for the ecological flow requirements of the creek. The base level (invert level) of the culverts is too high and, as such, restricting the natural flow of the creek. To address this matter the landowner will be required to remove and reinstall the culverts to reinstate the natural hydrology. If approved, this could be enforced by a condition to the effect that:

- *Within three months of the issuing of this Consent the applicant is to submit to Council for approval a Culvert Replacement Plan (CRP). The purpose of the CRP is to ensure the natural flow regimes of the creek which, traverses the approved internal driveway are restored to their predevelopment state. The CRP is to be prepared by a suitably qualified professional to address the following matters:*
- *methods for removing the existing culverts without causing environmental harm to the creek and/or adjacent vegetation*
- *identify by survey the natural base level of the creek bed and other environmental constraints*
- *based on the results of the survey data include detailed design plans to ensure all low flow events from the creek can pass through the culverts unimpeded*
- *the culvert design is to ensure that velocity of natural creek flows are not altered and the installation of the new culverts will not cause erosion and/or upstream ponding*
- *environmental actions to be incorporated to ensure the new culverts will not cause environmental harm to the creek and/or adjacent vegetation*
- *a reporting and the implementation monitoring program for the installation and post operation of the approved*
- *the provision of monitoring reports to be submitted to Council' s Planning and Environmental Health Division.*

Environmental issues associated with the internal access way are addressed separately

3.20

Vibration – Not applicable

3.21

Bushfire Management – Refer to assessment under Section 4.14 of the Act above.

Conditions would be included as below.

- *The proposed dwelling and pool is to comply with the layout identified on the approved plans as endorsed with the Council stamp.*

- *At the commencement of building works and then in perpetuity the property around the proposed dwelling and pool, for the following specified distances, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones';
South and SW for 46m
East for 36m
North for 14m
West for 25m.*
- *Electricity and gas supply are to comply with the requirements of section 4.1.3 Services – Water, Electricity and Gas of 'Planning for Bush Fire Protection 2006'.*
- *In recognition that no reticulated water supply is available to the proposed dwelling, a total of 20,000 litres fire fighting water supply shall be provided for fire fighting purposes. The fire fighting water supply shall be installed and maintained in the following manner:*
 - a) *Fire fighting water supply tank(s) shall be located within the inner protection area and away from the dwelling.*
 - b) *New above ground fire fighting water supply storage's are to be manufactured using non combustible material (concrete, metal, etc). Where existing fire fighting water supply storage's are constructed of combustible (polycarbonate, plastic, fibreglass, etc) materials, they shall be shielded from the impact of radiant heat and direct flame contact.*
 - c) *Non combustible materials (concrete, metal, etc) will only be used to elevate or raise fire fighting water supply tank(s) above the natural ground level.*
 - d) *A 65mm metal Storz outlet with a gate or ball valve shall be fitted to any above ground fire fighting water supply tank(s) and be accessible for a fire fighting truck.*
 - e) *The gate or ball valve, pipes and tank penetration are adequate for the full 50mm inner diameter water flow through the Storz fitting and are constructed of a metal material.*
 - f) *All associated fittings to the fire fighting water supply tank(s) shall be non-combustible.*
 - g) *Any below ground fire fighting water supply tank(s) constructed of combustible (polycarbonate, plastic, fibreglass, etc) materials shall be shielded from the impact of radiant heat and direct flame contact.*
 - h) *A hardened ground surface for fire fighting truck access is to be constructed up to and within 4 metres of the fire fighting water supply (tank or Storz fitting).*
 - i) *Any fire fighting water supply tank(s) located below ground shall be clearly delineated to prevent vehicles being driven over the tank.*
 - j) *All water supplies for fire fighting purposes shall be clearly signposted as a fire fighting water supply.*
 - k) *Below ground fire fighting water supply tank(s) shall have an access hole measuring a minimum 200mm x 200mm to allow fire fighting trucks to access water direct from the tank.*
 - l) *Fire fighting water supply tank(s) and associated fittings, located within 60 metres of a bushfire hazard and on the hazard side of an approved building, shall be provided with radiant heat shielding to protect the tank from bush fire impacts and maintain safe access to the water supply for fire fighters.*
 - m) *A minimum 5hp or 3kW petrol or diesel powered pump(s) shall be made available to the water supply. A 19mm (internal diameter) fire hose(s) and/or reel(s) shall be connected to the pump. Fire hose(s) and/or reel(s) must be installed so that each elevation of the building can be reached by a fire hose(s). The fire hose(s) and/or reel(s) must be constructed in accordance with 'AS/NZS*

1221:1997, Fire hose reels' and shall be installed in accordance with 'AS 2441:2005 Installation of fire hose reels'.

n) Pumps are to be shielded from the direct impacts of bush fire.

o) A Static Water Supply (SWS) sign shall be obtained from the local NSW Rural Fire Service (RFS) and positioned for ease of identification by RFS personnel and other users of the SWS. In this regard:

i. Markers must be fixed in a suitable location so as to be highly visible; and

ii. Markers should be positioned adjacent to the most appropriate access for the water supply.

Note: The definition of below ground dedicated fire fighting water supply tank(s) is when the outlet valve is located below natural ground level.

- The single property access road shall be made to comply with the requirements of section 4.1.3 Access (2) Property Access Roads of 'Planning for Bush Fire Protection 2006', except for the following;
- The access road is able to exceed 200m in length without an alternative access road being provided,
- A reversing bay may be provided in lieu of a looped road, around the dwelling, or a turning circle. Where a reversing bay is provided it shall be not less than 6 metres wide and 8 metres deep with an inner minimum turning radius of 6 metres and outer minimum radius of 12 metres, and
- The culvert crossing, located between chainage 180.00 and 200.00, is permitted to be 3.5m wide (the overall trafficable width) as a short constriction to the 4m wide property access road required width.
- New construction shall comply with Section 3 and 7 (BAL 29) Australian Standard AS3959-2009 'Construction of buildings in bushfire-prone areas' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas – 2014' as appropriate and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection' 2006'.
- Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

Chapter 2a - Vegetation

3.1 Urban Zones – Not applicable

3.2 Requirements applying Zone E2 Environmental Conservation – Not applicable

3.3 Exemptions – Not applicable

Chapter 2b- Flood Plain Management – chapter is not applicable to this development

Chapter 4- Residential & Tourist Development – chapter is not applicable to this development

Chapter 5- Industrial Development - chapter is not applicable to this development

Chapter 6 – Commercial Development- chapter is not applicable to this development

Chapter 6a – Commercial Development Town Centre - chapter is not applicable to this development

Chapter 6b – Commercial Development Alstonville - chapter is not applicable to this development

Chapter 6c – Commercial Development Lennox Head - chapter is not applicable to this development

Chapter 6d- Commercial Development West Ballina - chapter is not applicable to this development

Chapter 7 – Rural Living and Activity

The development will comply with, or can be conditioned to comply with, the following applicable provisions of Section 3.1 of this Chapter:

Element A

Design Principles for Dwellings

The design of the building is architecturally suitable for a modern rural dwelling in this locality.

Element B

Resited Dwellings – Not applicable

Element C

Temporary Residential Occupation of Land - Not applicable

Element D

Rural Worker's Dwellings – Not applicable

Element E

Expanded Dwellings – Not applicable

Element F

Dual Occupancies – Not applicable

On decommissioning of the existing dwelling there will be only one dwelling on the property. Therefore, the dual occupancy provisions under the DCP are not applicable.

Element G

Water Supply

Rainwater tanks are proposed to be installed under the driveway adjacent to the new dwelling. The volume of the tanks exceeds the minimum required volume for a rural dwelling. The use underground tanks will also aid in reducing any visual impact of the development.

3.2

Rural Subdivision – Not applicable

3.3

Rural Tourist and Visitor Accommodation – Not applicable

3.4

Rural Industry – Not applicable

3.5

Roadside Stalls –Not applicable

3.6

Mining and Extractive Industry – Not applicable

3.7

Building Lines and Setbacks – proposed dwelling and pool complies with minimum setback distances

3.8

Roads, Vehicular Access and Parking - Space is provided for parking of two vehicles, one of which is covered.

Chapter 8 – Special Uses - chapter is not applicable to this development

Section 4.15(1)(a)(iia) – any Planning Agreement

There is no planning agreement that a developer has offered to enter into fro the property.

Section 4.15(1)(a)(iv) – the provisions of the Regulations

As the development will involve demolition in relation to the decommissioning works to the existing dwelling, conditions relating to asbestos removal and compliance with Australian Standard AS 2601 will be applied.

Section 4.15 (1)(a)(v) – any Coastal Zone Management Plan

The development is not within the Coastal Zone.

Sections 4.15(1)(b) & (c) -The Likely Impacts of the Development and the Suitability of the Site for the Development

As the development application was lodged on 28 June 2018 the ecological impacts of the development are assessed under the BC Act rather than the repealed Threatened Species Conservation Act (1995).

Under the BC Act the ecological impacts of a development area are assessed via a standardised assessment process referred to as the Biodiversity Assessment Method (BAM).

The BAM is supported by an online database, which allows accredited assessors (typically ecological consultants) to enter field data and determine the number and class of biodiversity credits.

An accredited assessor must apply the BAM following assessment of a Biodiversity Development Assessment Report (BDAR).

The applicant submitted a BDAR for Council's review and it was also referred to the Office of Environment and Heritage (OEH) for their comment. Unfortunately, the submitted BDAR was found to be non-compliant with the requirements of the BC Act. Consequently, the applicant resubmitted a revised BDAR. However, this revised report was also deficient.

From an ecological perspective the application can only be supported if the shortcomings of the applicant's BDAR can be nullified.

One of the key issues in the processing of the current application and the BDAR revolved around how the current development application would account for the loss of vegetation associated with unapproved construction activities in 2016.

It is evident vegetation was removed to facilitate the unapproved access road. This has been considered in the address of the BC Act requirements.

The BC Act allows Council to increase the number of biodiversity credits that would otherwise be required to be retired if Council determines the increase is justified having regard to the environmental, social and economic impacts of the proposed development.

In this case, it is considered appropriate that the ecological impact of the development should be assessed on the condition of the land prior to the construction of the internal access way.

To derive suitable offsetting values Council employed the services of an accredited ecological consultant calculate the required biodiversity credits. The results of that work confirmed the applicant will be required to retire 12 biodiversity credits which at the time of calculation having a market value of \$ 22,678.00 plus GST to offset their development.

If approved a Condition to the effect as shown below would be applied requiring the landowner to pay the required (biodiversity credits).

- *Prior to issue of issuing of the construction certificate the class and number of ecosystem credits and species credits in detailed in the BAM Credit Summary Report Table prepared by Ian Colvin, Biodiversity Accredited Assessor (BAAS 18055) and dated 18 November 2019 must be retired to offset the residual biodiversity impacts of the development.*

The requirement to retire credits may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator.

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of this Condition must be provided to the Ballina Shire Council prior to issue of construction certificate.

In relation to other ecological impacts of the development that the objectors have raised, the following comments are provided.

The mapped wildlife corridor occurs over a highly fragmented landscape which includes areas of native and exotic vegetation interspersed with rural farming land. Consequently, the wildlife corridor it is primarily a stepping stone corridor for a range of mobile species of fauna. As such, the internal driveway will have a limited impact on the functionality of the wildlife corridor.

The issues of erosion and inappropriate planting can be addressed by the required amendments to the submitted Ecological Restoration Action Plan. As previously discussed, a Condition of Consent will remedy the ecological impacts to the creek.

While, it is likely that some of the threatened species of fauna identified by the objectors may occur on the development site overtime the impact of the development on those species is expected to be negligible given the size of the development and the range of mitigation measures which are to be included as conditions if approval is granted.

The landowner has submitted an "Ecological Restoration Action Plan" to restore the more ecologically significant portions of their land. The landholder has also employed the services of a suitably qualified bush regenerator to undertake these works. To address some other environmental issues and to ensure the development complies with Chapter 2 of the DCP it is proposed to increase the geographic extent of the revegetation program. The landholder has been consulted and is accepting with the increase to the proposed restoration program. This could be conditioned to the effect that:

- *The landowner is to amend the 'Ecological Restoration Action Plan' so that;*
 - *The aims and objectives to include "Restore and provide resilience of environmental and scenic values surrounding development areas – dwelling and internal access"*
 - *Dates within the implementation schedule (Section 2.5) to reflect approval month of the application.*
 - *Clarify in Section 2.5 – Implementation Schedule*
 - *Responsibility of person to undertake restoration work and/ or under what sort of suitable guidance*
 - *responsibility and timing of monitoring and evaluation*
 - *performance criteria for each relevant stage*
 - *Extension of program to a minimum period of five years and include follow up, maintenance and adaptive management/ trigger points for activities like planting, management of any failed tubestock.*
 - *Adopt and implement monitoring and evaluation measures to measure the success of the rehabilitation plan. Council will require all restored restoration areas to achieve a 80% closed canopy after five years. The plan needs to state if the restoration objectives are not achieved the program will be extended until the goals are achieved. Annual monitoring reports to be provided to Council's Planning and Environmental Health Division.*
 - *Extension of the rainforest restoration program to include the area of land depicted by the orange polygon in Attachment 2 (as below). The edge of the extended rainforest planting program is commence 5 meters from the edge of the internal driveway access.*
 - *Shrubs and native groundcovers only – planted within the first 5 m of internal access to filter weeds, capture sediment run-off and minimize maintenance burden for emergency and daily access.*
 - *Inclusion of weed control works within the eucalypt forest (PCT 693) to the south of the internal driveway access.*
 - *Confirmation that all restoration work shall be undertaken by or overseen by a qualified bush regenerator. The bush regenerator must hold the Bushland Regeneration Certificate II or equivalent and have a minimum of two years experience regenerating rainforest communities*

Attachment 2

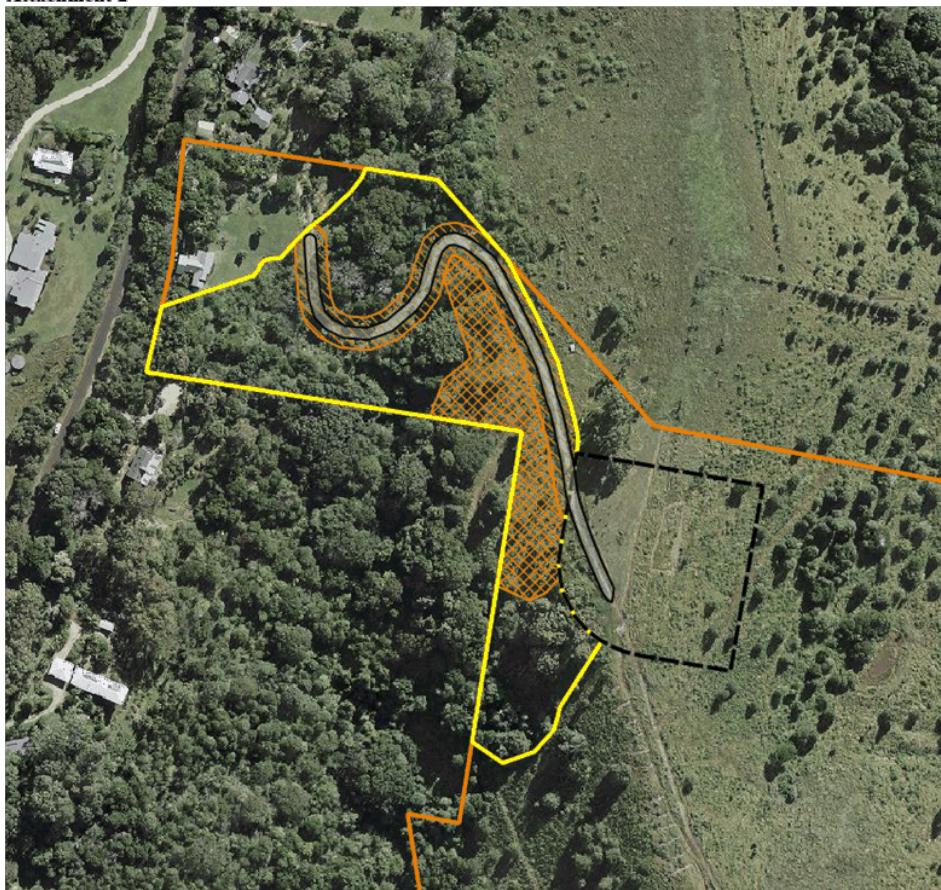


Plate 1: Extended restoration program. Orange hatched polygon depicts planting area while the yellow line represents the boundary of required restoration works.

Section 4.15 (1)(d) – Consideration of submissions

Twenty two submissions in objection were received from 16 parties prior to the closing date.

Submissions were received from four parties in support of the development prior to the closing date.

Those submissions received in objection have been summarised as relating to the following matters:

- Non-compliance with 7(d1) zoning objectives
- Non-compliance with development controls
- A Statement of Environmental Effects (SOEE) not being lodged
- Road access issues not addressed in the application
- Earthmoving impacts and noise during construction
- Impacts on visual amenity
- Impacts on the natural scenic vista and wildlife corridor
- Loss of scenic views, natural character of the area
- Impacts on the scenic escarpment and ridgeline
- Interruption to scenic rural outlooks
- Visual impact of access way and noise from its use
- Impact on the visual amenity of neighbouring properties
- Environmental damage from vegetation removal and environmental damage to watercourse
- Tree removal without Council planning approval
- Impacts on recognised environmental protection area
- Impact on the visual amenity for surrounding properties and from Old Byron Bay Road

- Impact on privacy and the views of surrounding properties
- Proposed driveway is unnecessary
- Alternative site for proposed dwelling available
- Access road constructed without approval
- Access road has caused erosion of the escarpment
- Earthworks undertaken impacting on amenity of the area
- Objectives of the Scenic Escarpment Protection Alliance (SEPA) not met
- Request Council to engage staff with expertise in ecology and broader development and planning issues in addition to construction matters.
- Impacts of access way on wildlife corridor and environmental protection zone
- Requirement for a Biodiversity Assessment Report (BDAR) will not be enforced
- Location of access way and dwelling
- Access way has caused landslip
- Location of access way and dwelling
- Impacts on ecological values
- Planting of non-native species being carried out
- Impact on flow of the water course
- Noise, dust, light spill and sedimentation
- Irrigation from creek of plantings that have been undertaken.

A further single submission in support and 11 expanded submissions, from previous objectors, were received outside of the notification period.

Chapter 1 of the Ballina Shire Development Control Plan 2012 states that objections received after the specified close of the submission period relating to a development application may not be taken into consideration by Council in the assessment of the application. However, in this instance, the matters raised in the late submissions have also been considered in the assessment of the application.

The table below identifies the relevant sections of the Council report that addresses the individual submissions.

8.1 **DA 2018/381 - Lot 2, DP 1065811, 404 Old Byron Bay Road, Newrybar.DOC**

CM Doc.	Date Received	Author	Stats	Details	Relevant Sections of Report
18/51769	20/07/2018		Not for Publication	Non-compliance with 7(d1) zoning objectives Non-compliance with the Development Controls A Statement of Environmental Effects not being lodged Impacts on visual amenity Road access issues not addressed in the application Earthmoving impacts and noise during construction	5, 5.1.1, 5.1.2, 5.2
18/51853	20/07/2018	Matt Cupper – Support	Public	Proposal is sympathetic to the neighbourhood character of Old Byron Bay Road	5.1.1, 5.1.2
18/53762	23/07/2018	Bill Chappel	Public	Non-compliance with 7(d1) zoning	5.1.1, 5.1.2
18/71087	25/07/2018	J White	Public	Email advising letter of support from Roger and Virginia was hand delivered to Council	Not applicable
18/57553 & 18/71085	25/07/2018		Not for Publication	Design characteristics create a dwelling in keeping with the general amenity of the area	5.1.1, 5.1.2
18/53931	26/07/2018	Karen & Richard Hagley	Public	Impacts on the natural scenic vista and wildlife corridor	5.1.1, 5.1.2, 5.2.3, 5.3.1
18/54183	27/07/2018	Byron Bay Planning & Property Consultants (Chris Lonergan)	Public	Loss of scenic views, natural character of the area	5.1.1, 5.2.2, 5.2.3
18/54280	27/07/2018	Sue Taylor	Public	Non-compliance with 7(d1) zoning objectives	5.1.1, 5.1.2
18/54287 & 18/56035	28/07/2018		Not for Publication	Impacts on the scenic escarpment and ridgeline.	5.1.1, 5.2.2
18/54281	29/07/2018		Not for Publication	Interruption to scenic rural outlooks	5.1.1, 5.2.2
18/54284	30/07/2018	Suzanne Andreou	Public	Impact the visual amenity of neighbouring properties	5.1.1, 5.2.2
18/55072	30/07/2018		Not for Publication	Environmental damage from vegetation removal and environmental damage to watercourse. Tree removal without Council planning approval	5.2.3, 5.3.1
18/54547 & 18/55384	30/07/2018	Robert Duetz	Public	Impacts on recognised environmental protection area. Impact on the visual amenity for surrounding properties and from Old Byron Bay Road.	5.1.1, 5.2.2, 5.3.1

8.1 DA 2018/381 - Lot 2, DP 1065811, 404 Old Byron Bay Road, Newrybar.DOC

18/54707 & 18/56359	30/07/2018	Alan Logan	Public	Impact on privacy and the views of surrounding properties. Proposed driveway is unnecessary when a location for a dwelling on the site is available in the place of the existing dwelling	5.1.1, 5.2.2, 5.3.2
18/50876	30/07/2018	Leanne Cramp	Public	Alleged illegal road construction.	5.3.1
18/56034	30/07/2018	Leanne Cramp	Public	Access road has been constructed without approval Access road has caused erosion of the escarpment Non-compliance with 7(d1) zoning objectives Impacts on the visual amenity by dwelling and road Absence of SOEE	5.1.1, 5.2.2, 5.3.1,
18/56230	31/07/2018	Martin Kenny	Public	Modified submission for prior submitted version to enable publication online	5.1.1, 5.1.2, 5.2.2, 5.2.3, 5.3.1
18/55601 & 18/56361	1/08/2018	Madeleine Marty	Public	Non-compliance with 7(d1) zone objectives Alternative sites for proposed dwelling available Impact on wildlife corridors, and visual amenity. Access road has been constructed without approval Earthworks impacting on amenity of the area	5.1.1, 5.2.2, 5.3.1
18/56060	3/08/2018	Mark Ryan	Public	Non-compliance with 7(d1) zone objectives Alternative sites for proposed dwelling available Impact on wildlife corridors, and visual amenity. Earthworks undertaken impacting on amenity of the area	5.1.1, 5.2.2, 5.3.1
18/56274 & 18/57276	3/08/2018	Soteris Andreou	Public	Dwelling impact on visual amenity of neighbouring properties	5.1.1, 5.2.2
1/57572 & 18/57811	5/08/2018		Not for Publication	Access way provide access to eastern parts of property for weed control and viable agriculture	5.1.1
18/56381	6/08/2018	SEPA - Scenic Escarpment Protection Alliance	Public	Objectives of the Scenic Escarpment Protection Alliance (SEPA) not met	5.1.1
18/57573	6/08/2018	Greg Price	Public	Proposal will result in little or low impact on the escarpment	5.1.1
18/57327	7/08/2018	Elizabeth Johnstone	Public	Visual impact of access way and noise from its use	5.1.1, 5.2.2
18/57549	8/08/2018	Ian Peter	Public	Visual impact issues	5.1.1, 5.2.2
18/57545	8/08/2018	SEPA - Scenic Escarpment Protection Alliance	Public	Request Council to engage staff with expertise in ecology and broader development and planning issues in addition to construction matters.	5.1.2, 5.3.1
18/57542	8/08/2018		Not for Publication	Impacts of access way on wildlife corridor and environmental protection zone	5.3.1
Close of Notification Period					

8.1 DA 2018/381 - Lot 2, DP 1065811, 404 Old Byron Bay Road, Newrybar.DOC

18/58182	9/08/2018		Not for Publication	No objection to the proposal	Non specific
18/59098	14/08/2018	Sue Taylor	Public	Rebuttal of letter of support from Murray Deane	Not applicable
18/69605	17/09/2018	Ian Peter	Public	Requirement for a Biodiversity Assessment Report (BDAR) will not be enforced No approval for constructed access road	5.3.1
19/14638	23/02/2019	Ian Peter	Public	Rebuttal of applicants comments - SEPA	Not applicable
19/22820	21/03/2019	Leanne Cramp & Ian Peter (meeting at Council office)	Public	Location of access way and dwelling Access way has caused landslip Non-compliance with 7(d1) zoning objectives Non-compliance with the Development Controls Impacts on visual amenity Impacts on ecological values Planting of non-native species (bamboo) being carried out	5.1.1, 5.1.2, 5.2, 5.3.1
19/28363	11/04/2019	Leanne Cramp	Public	Impact to natural environment and watercourse	5.3.1
19/34636	9/05/2019	Ian Peter	Public	Noise, dust, light spill, sedimentation, pollution, invasive plants, vegetation removal	5.1.2, 5.2.3
19/41517	3/06/2019	Sue Taylor	Public	Follow up email from meeting 30/5/2019)	Not applicable
19/60795	3/07/2019	Leanne Cramp	Public	Irrigation from creek of the plantings that have been undertaken along the unauthorised road.	Not for consideration in this application
19/60796 & 19/71424 (duplicated entry)	12/07/2019	Leanne Cramp	Public	Planting of non-native species, without the submission of a landscaping plan.	5.1.1
18/51771	20/07/2019	Ian Peter	Public	Duplicated entry in CM	Not applicable
18/55070 & 18/55032 & 18/56230	31/07/2019		Not for Publication	Earthworks and vegetation works without Council approval In Environmental and visual effects of vehicular access way, siting of dwelling, landscaping,	5.1.1, 5.1.2, 5.2.2, 5.2.3, 5.3.1

4.15(1)(e) – The Public Interest

There are no Public Interest matters sufficient to warrant refusal of the application.

Other Comments and Determination

Clause 4.15(3A) of the Environmental Planning and Assessment Act specifies that councils are to be flexible in applying standards contained within a DCP.

In particular, the EPA Act states that if the DCP set standards with respect to an aspect of the development and the development application does not comply with those standards, Council is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objectives of those standards for dealing with that aspect of the development. The proposed development, subject to the recommended conditions of consent, has been assessed as meeting the DCP objectives.

Subject to the decommissioning of the existing dwelling, the construction of the proposed dwelling and ancillary swimming pool and access way is permissible with consent in the 7(d)1 zone.

The development of a residential dwelling and associated swimming pool is generally suitable development on this site and in this locality

The completion of the internal vehicular access way and its ongoing use is unlikely to have any unreasonable adverse impact on the amenity of the adjoining properties or the rural character of the locality.

Although neighbouring residents have enjoyed unencumbered views across the subject site for many years, the design of the dwelling has considered, and is sympathetic to, the applicable planning controls and character of the area, in that:

- the building will have the appearance of a single storey dwelling when viewed from the west;
- the siting of the dwelling is on the eastern side of the ridgeline;
- the external building materials are considerate to reducing the visual prominence;
- vegetation removal is not required in relation to the actual siting of the dwelling and swimming pool;
- Although the building will be within the view of properties to the west, it will not be visually prominent or result in any view loss

Environmental issues associated with the construction of the internal access way have been assessed in accordance with the BC Act and can be conditioned to suitably address environmental considerations. The address of ecological matters includes imposition of offsets and required rehabilitation works.

It is recognised that there have been a number of concerns raised in the submissions received about works undertaken to date to construct the internal access way. However, Council is required to consider the application before it on its particular merit. In this instance this includes the consideration of compensatory measures associated with the construction of the internal access way as outlined in the ecological assessment.

However, the circumstances associated with the creation of the access way, as it presently exists, is not a sufficient ground for refusal of the application. The access way as proposed is permissible and the technical assessment is that it can be constructed to a suitable standard and that it does not cause significant adverse impacts.

If the following mitigation measures are incorporated in conditions of approval the proposed development can be approved from an environmental perspective.

- The payment of will be required to retire 12 biodiversity credits to offset their development.
- The landowner will be required to remove and reinstall the culverts to reinstate the natural hydrology of the creek.

8.1 DA 2018/381 - Lot 2, DP 1065811, 404 Old Byron Bay Road, Newrybar.DOC

- The applicant is required to amend their draft "Ecological Restoration Action Plan" to include the additional restoration areas.
- The applicant is required to employ a suitably qualified bush regenerator to undertake an audit of all planting works undertaken to date with the aim of the audit to remove all inappropriate species of plants.

Refusal of the application based on the issues associated with the construction of the internal access way is not recommended as those issues can be offset and managed by the above conditions of consent.

Based on the outcomes of the assessment, it is the staff assessment that the development application is suitable for approval with conditions. In particular, key issues such as access provision, ecological impacts and visual amenity have been assessed as having been suitably addressed by the applicant or can be suitably addressed through conditions of consent.

The development has been assessed against the relevant considerations under Section 4.15 of the EPA Act, the objectives of 7(d)1 Environmental Protection (Newrybar Scenic/Escarpment) Zone and the relevant sections of the DCP.

The issues raised in the submissions have been considered in the assessment of the development and can be addressed in the formulation of appropriate conditions of consent.

There are no likely impacts on adjoining Council owned reserves (including access onto reserves during or after construction).

Having inspected the site and assessed the application in terms of relevant matters for consideration within Section 4.15(1) of the EP & A Act 1979 and other pertinent concerns as detailed in the above sections of this report, it is recommended that:

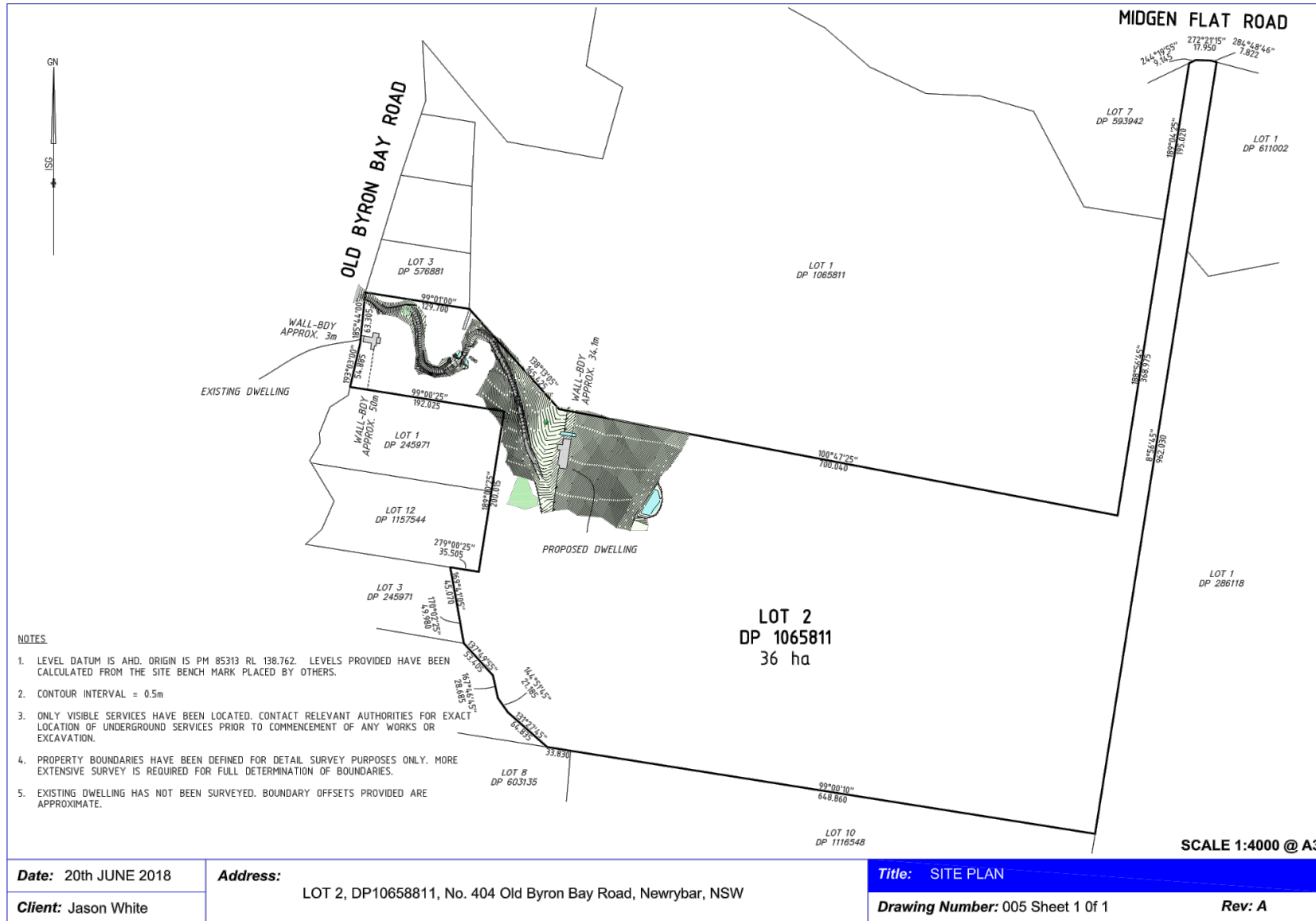
That DA 2018/381 for the decommissioning of an existing dwelling and construction of a new two storey dwelling and swimming pool and the upgrading of an existing internal access way be APPROVED subject to the application of standard planning, engineering and environmental health conditions of consent for this type of development and other conditions as outlined in this report.

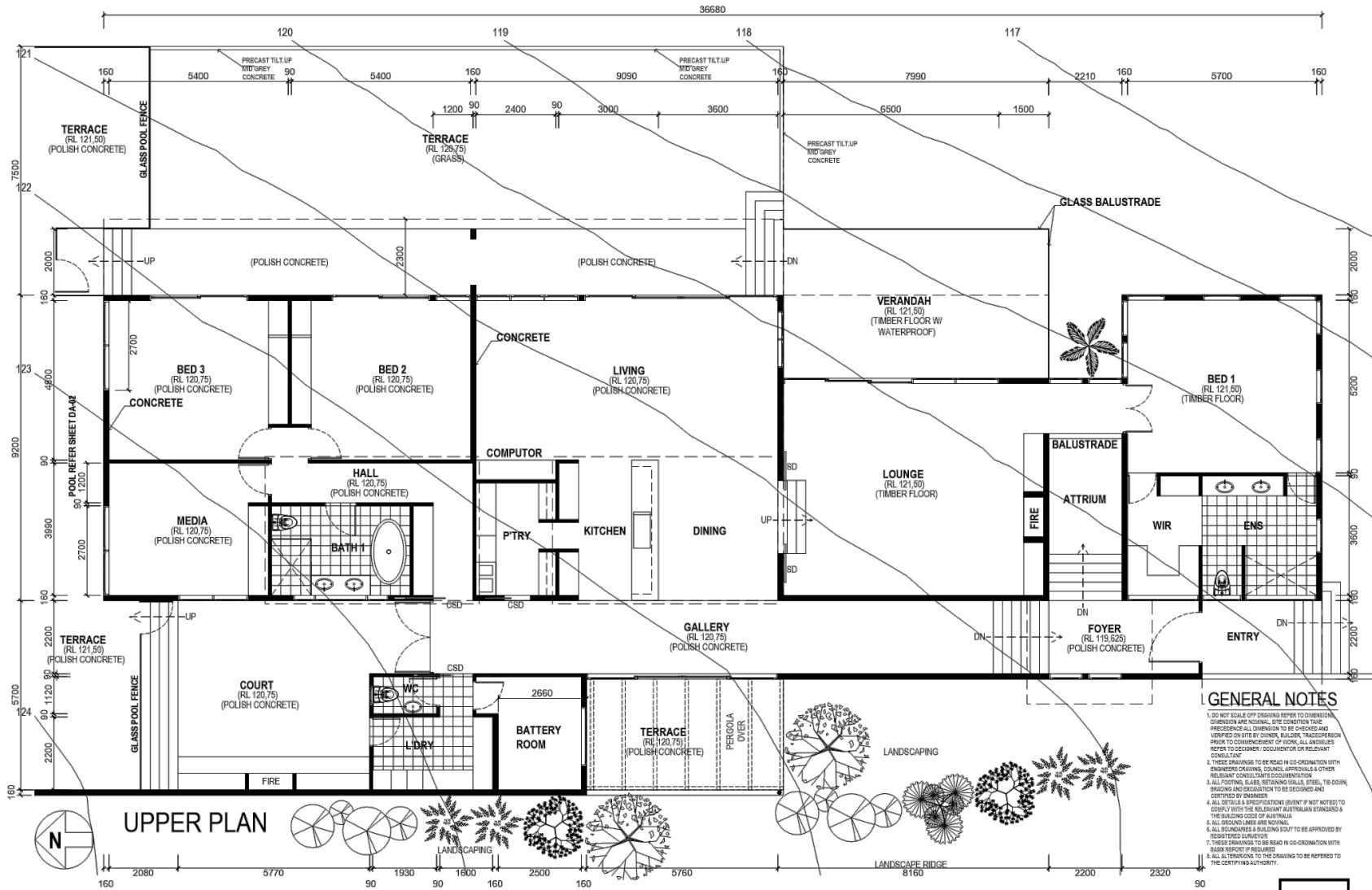
The application has been referred to the Ordinary Council Meeting on 28 November 2019 for determination.

Assessment Officers: Martin Scott and David Tyler

Date: 21 November 2019

8.1 DA 2018/381 - Lot 2, DP 1065811, 404 Old Byron Bay Road, Newrybar.DOC

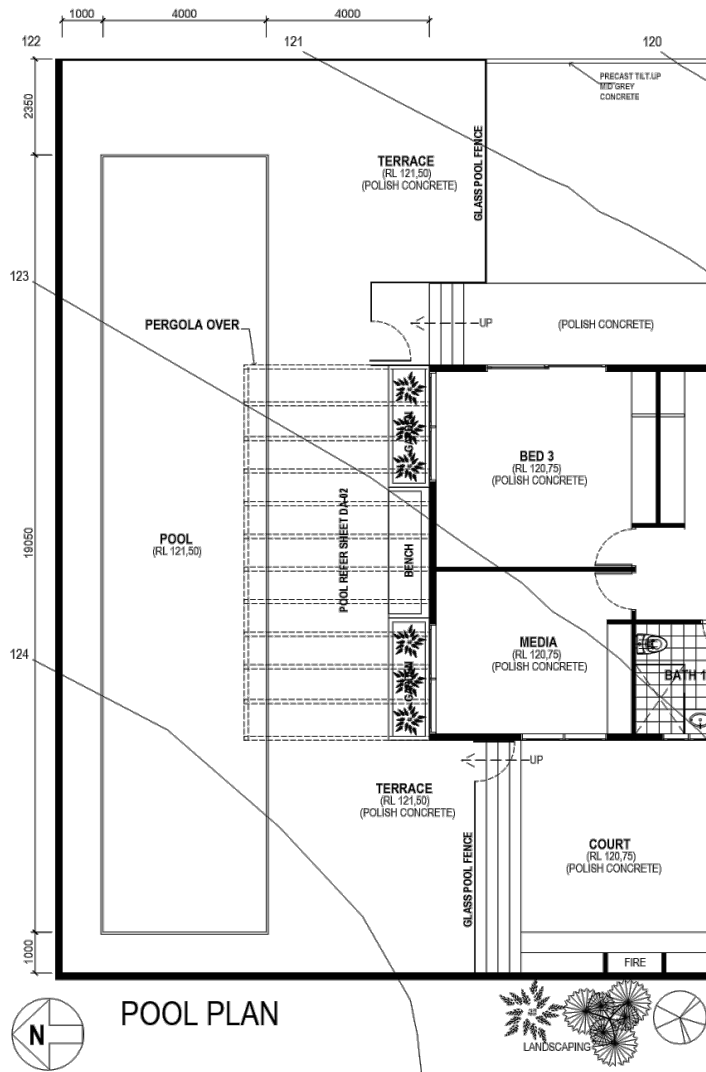




- GENERAL NOTES**
1. DO NOT SCALE OFF DRAWINGS REFER TO DIMENSIONS, DIMENSIONS ARE NOMINAL, SITE CONDITIONS AND PRECEDENCE ALL DIMENSIONS TO BE CHECKED AND VERIFIED ON SITE BY OWNER, BUILDER, TRANSPORTER PRIOR TO COMMENCEMENT OF WORK, ALL DIMENSIONS REFER TO OCCUPYER/ OCCUPANT OR RELEVANT CONSULTANT.
 2. THESE DRAWINGS TO BE READ IN CO-ORDINATION WITH ENGINEERING DRAWING, COUNCIL APPROVALS & OTHER RELEVANT CONSULTANTS DOCUMENTATION.
 3. ALL FOOTING, SLABS, RETAINING WALLS, STEPS, TIE-DOWNS, BRACING AND CONNECTIONS TO BE RECORDED AND CERTIFIED BY ENGINEER.
 4. ALL DETAILS & SPECIFICATIONS (EVENT IF NOT NOTED) TO COMPLY WITH THE RELEVANT AUSTRALIAN STANDARDS & THE BUILDING CODES OF AUSTRALIA.
 5. ALL GROUND LINES ARE NOMINAL.
 6. ALL FOUNDATIONS & BUILDING FOOTING TO BE APPROVED BY REGISTERED SURVEYOR.
 7. THESE DRAWINGS TO BE READ IN CO-ORDINATION WITH BAKER REPORT IF REQUIRED.
 8. ALL LANDSCAPING TO BE READ IN CO-ORDINATION WITH THE CERTIFYING AUTHORITY.

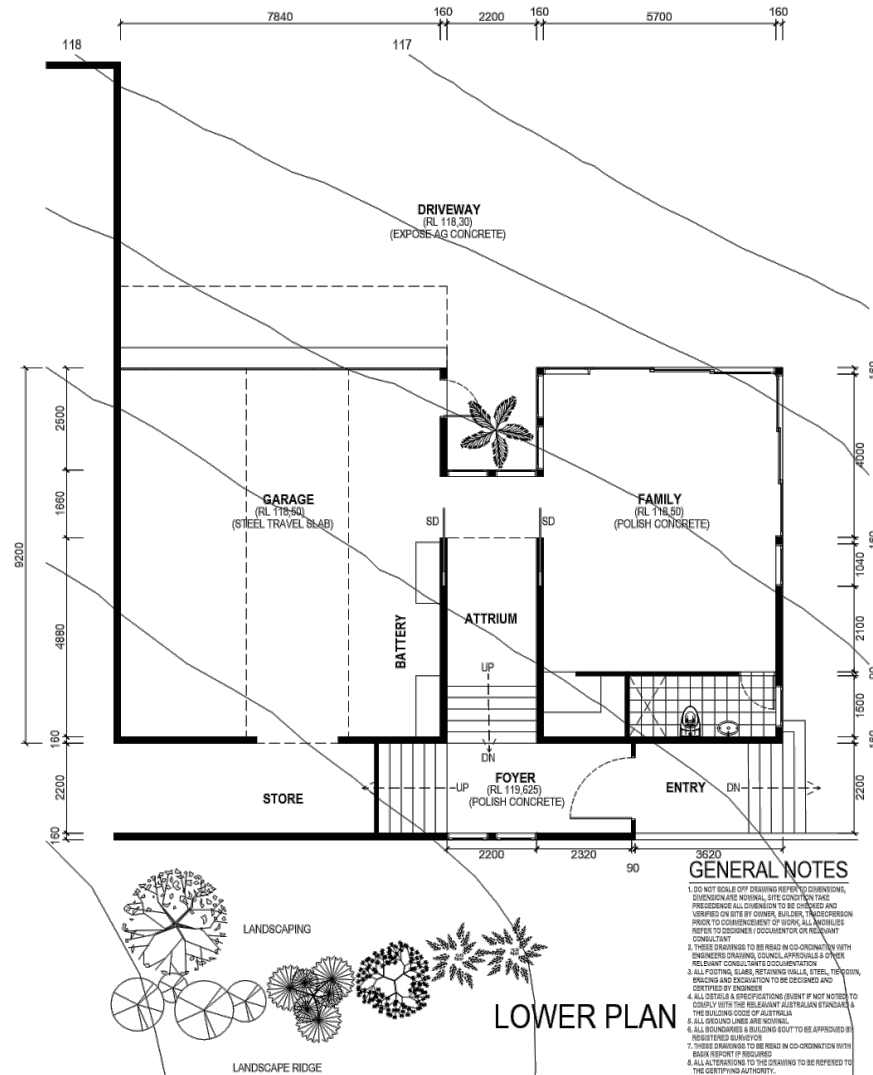
WHITE HOUSE DEVELOPMENT APPLICATION **PROPOSED NEW RESIDENCE** **404 OLD BYRON BAY RD NEWRYBAR**
 SCALE 1:100(A3) DATE: DEC 2017 ISSUE: B / APPROVALS DWG NO DA-01





WHITE HOUSE
DEVELOPMENT APPLICATION

PROPOSED NEW RESIDENCE

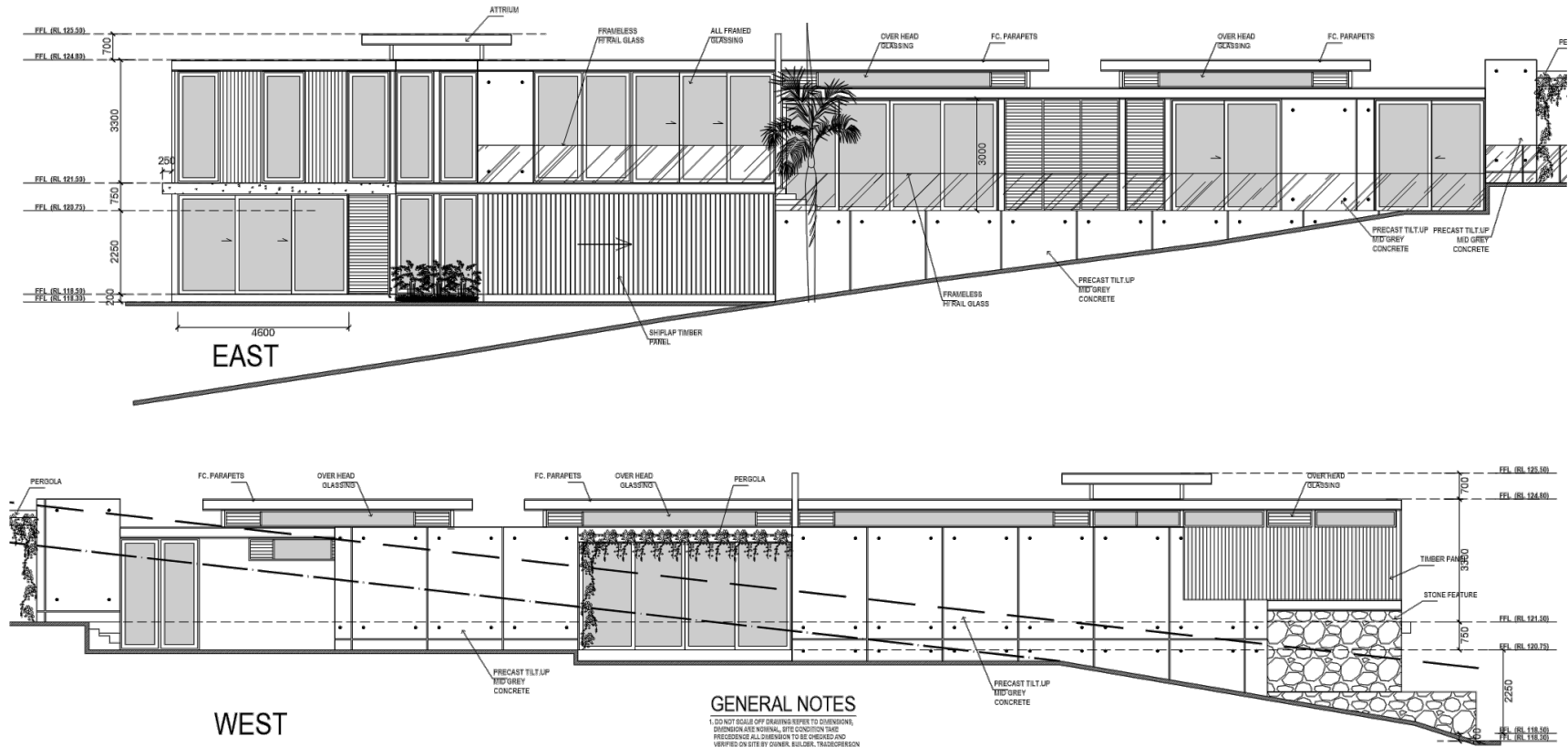


404 OLD BYRON BAY RD NEWRYBAR
SCALE 1:100(A3) DATE: DEC 2017 ISSUE: B / APPROVALS DWG NO DA-02

GENERAL NOTES

1. DO NOT SCALE OFF DRAWING REFER TO DIMENSIONS; DIMENSIONS ARE NOMINAL, SITE CONDITIONS MAY PREVENT SOME DIMENSIONS TO BE OBSERVED AND REFERRED TO BY CONCRETE BUILDER, PRIOR TO COMMENCEMENT OF WORK, ALL DIMENSIONS REFER TO CONCRETE OCCUPANT OR RESIDENT CONSULTANT
2. THESE DRAWINGS TO BE READ IN CO-ORDINATION WITH ENGINEERS DRAWING, COUNCIL APPROVALS & OTHER RELEVANT CONSULTANTS COORDINATION
3. ALL FOOTING, SLAB, RETAINING WALLS, STEEL, TIE BARS, BRICKS AND BRICKWORK TO BE SPECIFIED AND CERTIFIED BY ENGINEER
4. ALL SETBACK & SPECIFICATIONS SHOWN IF NOT NOTED TO COMPLY WITH THE RELEVANT AUSTRALIAN STANDARDS & THE BUILDING CODE OF AUSTRALIA
5. ALL DIMENSION LINES ARE IN MILLIMETERS
6. ALL SOUNDINGS & BUILDING GOVT TO BE APPROVED BY REGISTERED SURVEYOR
7. THESE DRAWINGS TO BE READ IN CO-ORDINATION WITH BULK REPORT IF REQUIRED
8. ALL ALTERATIONS TO THE DRAWING TO BE REFERRED TO THE CARRYING AUTHORITY.





GENERAL NOTES

1. DO NOT SCALE OFF DRAWING REFER TO DIMENSIONS, DIMENSION LINE NOMINAL. AFTER CONSTRUCTION PRECEDENCE ALL DIMENSION TO BE CHECKED AND VERIFIED ON SITE BY OWNER, SURVEYOR, TRANSDUCER PRIOR TO COMMENCEMENT OF WORK, ALL ANCHORS REFER TO DESIGNER'S CALCULATIONS OR RELEVANT CONSULTANT
2. THESE DRAWINGS TO BE READ IN CO-ORDINATION WITH ENGINEER'S DRAWINGS, COUNCIL APPROVALS & OTHER RELEVANT CONSULTANTS DOCUMENTATION
3. ALL FOOTING, SLABS, RETAINING WALLS, STEEL, TIE-DOWNS, BRACINGS AND ENCLAVATION TO BE DESIGNING AND CERTIFIED BY ENGINEER
4. ALL DETAILS & SPECIFICATION SUBJECT TO FACT NOTED TO COMPLY WITH THE RELEVANT AUSTRALIAN STANDARDS & THE BUILDING CODE OF AUSTRALIA
5. ALL GROUND LEVELS ARE NOMINAL
6. ALL FOUNDATIONS & BUILDING SOFT TO BE APPROVED BY RELEVANT SURVEYOR
7. THESE DRAWINGS TO BE READ IN CO-ORDINATION WITH BANK REPORT IF REQUIRED
8. ALL ALTERATIONS TO THE DRAWINGS TO BE REFERRED TO THE CERTIFYING AUTHORITY.

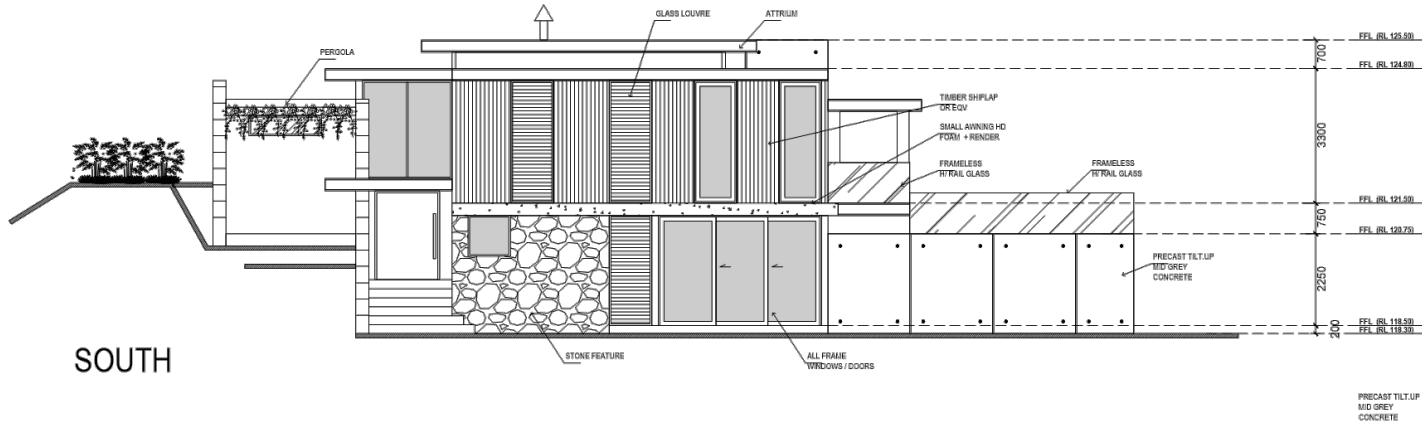
WHITE HOUSE
DEVELOPMENT APPLICATION

PROPOSED NEW RESIDENCE

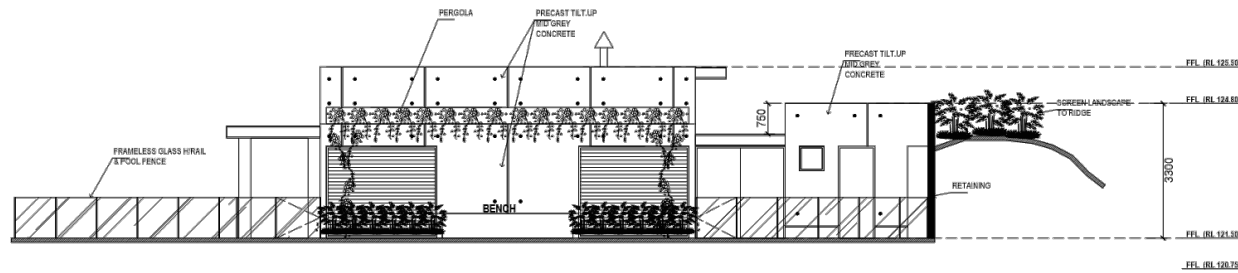
404 OLD BYRON BAY RD NEWRYBAR

SCALE 1:100(A3) DATE: DEC 2017 ISSUE: B / APPROVALS DWG NO DA-03





SOUTH



NORTH

GENERAL NOTES

1. DO NOT SCALE OFF DRAWING REFER TO DIMENSIONS; DIMENSIONS ARE NOMINAL, SITE CONDITIONS MAY PRECEDE AND ALL DIMENSION TO BE CHECKED AND VERIFIED ON SITE BY OWNER, BUILDER, TRANSCRIPTION PRIOR TO COMMENCEMENT OF WORK, ALL DIMENSIONS REFER TO DIMENSIONS OCCUPANT OR RESIDENT CONSULTANT
2. THESE DRAWINGS TO BE READ IN CO-ORDINATION WITH ENGINEERS DRAWING, COUNCIL APPROVALS & OTHER RELEVANT CONSULTANTS COORDINATION
3. ALL FOOTING, GLASS, RETAINING WALLS, STEEL, TIE-RODS, BRICKS AND BRICKWORK TO BE SPECIFIED AND CERTIFIED BY ENGINEER
4. ALL SETBACK & SPECIFICATIONS (BUILT IF NOT NOTED) TO COMPLY WITH THE RELEVANT AUSTRALIAN STANDARDS & THE BUILDING CODES OF AUSTRALIA
5. ALL DIMENSION LINES ARE IN MILLIMETERS
6. ALL FOUNDATIONS & BUILDING ECU TO BE APPROVED BY REGISTERED SURVEYORS
7. THESE DRAWINGS TO BE READ IN CO-ORDINATION WITH BULK REPORT IF REQUIRED
8. ALL ALTERATIONS TO THE DRAWING TO BE REFERRED TO THE CATCHING AUTHORITY.

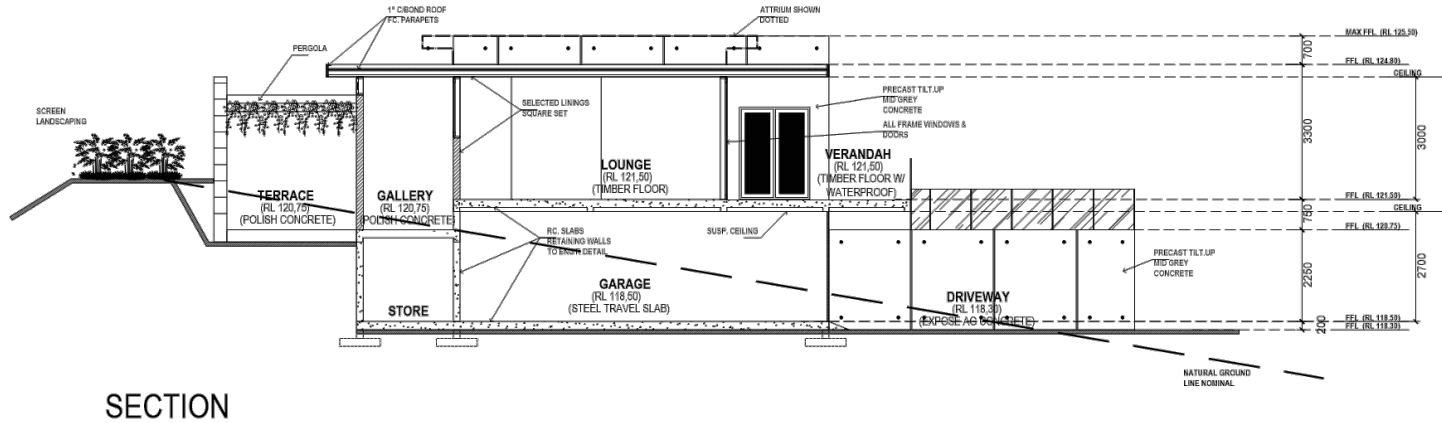
WHITE HOUSE
DEVELOPMENT APPLICATION

PROPOSED NEW RESIDENCE

404 OLD BYRON BAY RD NEWRYBAR

SCALE 1:100(A3) DATE: DEC 2017 ISSUE: B / APPROVALS DWG NO DA-04





SECTION

GENERAL NOTES

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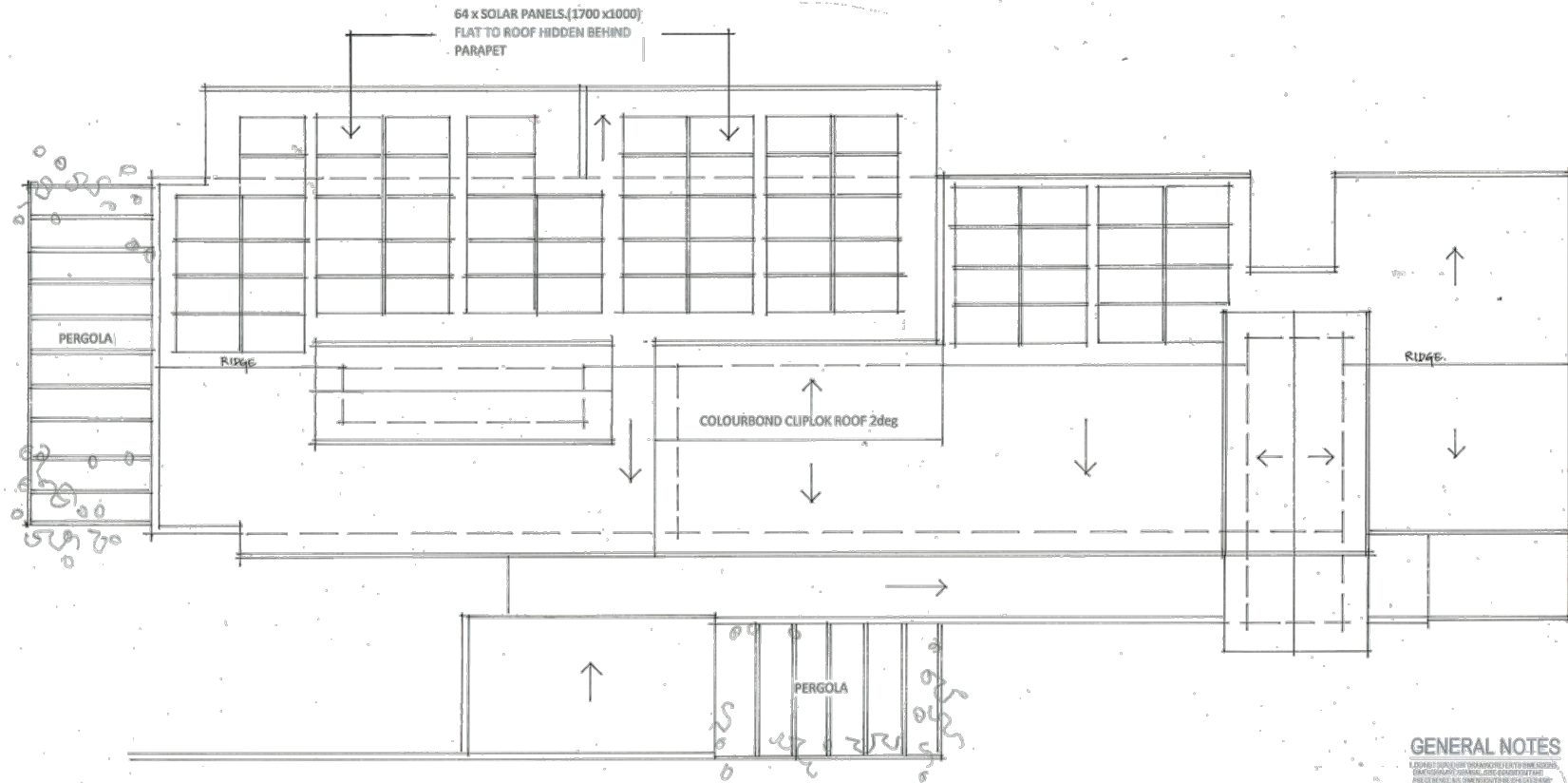
WHITE HOUSE
DEVELOPMENT APPLICATION

PROPOSED NEW RESIDENCE

404 OLD BYRON BAY RD NEWRYBAR

SCALE 1:100(A3) DATE: DEC 2017 ISSUE: B / APPROVALS DWG NO DA-05





ROOF PLAN

GENERAL NOTES

1. ALL WORK TO BE DONE IN ACCORDANCE WITH THE CURRENT BUILDING REGULATIONS AND ALL APPLICABLE STANDARDS.
 2. THE DESIGNER HAS CONSIDERED THE STRUCTURAL INTEGRITY OF THE EXISTING BUILDING AND HAS ADVISED THE CLIENT OF ANY DEFICIENCIES.
 3. THE CLIENT IS ADVISED THAT THE DESIGNER HAS NOT CONDUCTED A VISUAL INSPECTION OF THE EXISTING BUILDING AND HAS NOT VERIFIED THE EXISTING STRUCTURE.
 4. THE CLIENT IS ADVISED THAT THE DESIGNER HAS NOT CONDUCTED A VISUAL INSPECTION OF THE EXISTING BUILDING AND HAS NOT VERIFIED THE EXISTING STRUCTURE.
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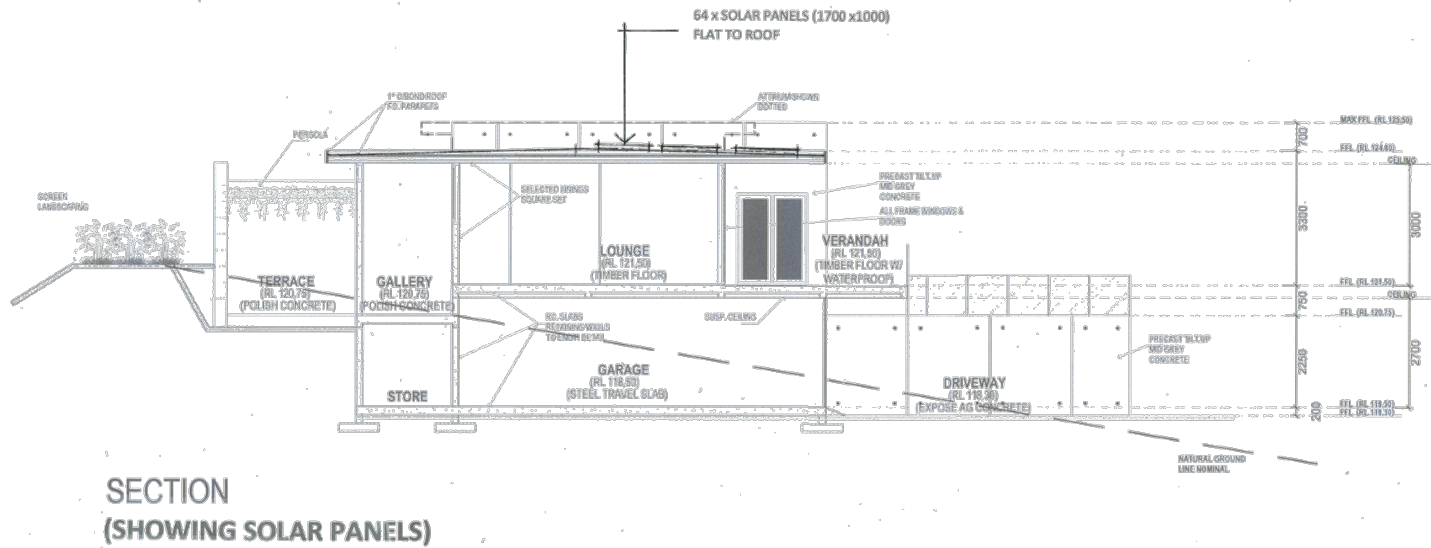
WHITE HOUSE
DEVELOPMENT APPLICATION

PROPOSED NEW RESIDENCE

404 OLD BYRON BAY RD NEWRYBAR

SCALE 1:100(A3) DATE: DEC 2017 ISSUE: B / APPROVALS DWG NO DA-0 54





**SECTION
(SHOWING SOLAR PANELS)**

GENERAL NOTES

1. EXISTING CONDITIONS SHOWN FOR REFERENCE ONLY.
2. ALL DIMENSIONS UNLESS OTHERWISE SPECIFIED ARE IN METERS.
3. ALL DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED.
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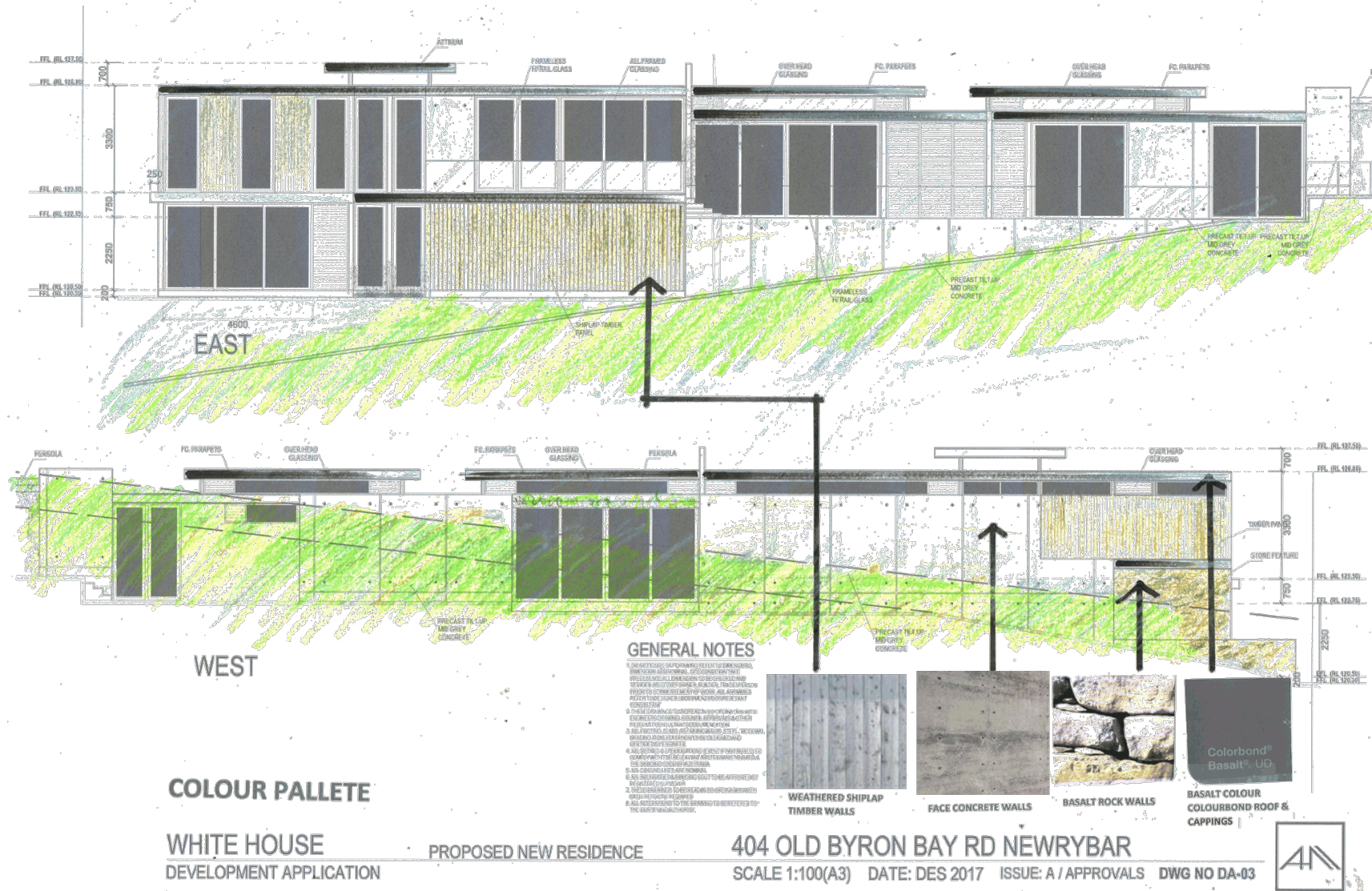
WHITE HOUSE
DEVELOPMENT APPLICATION

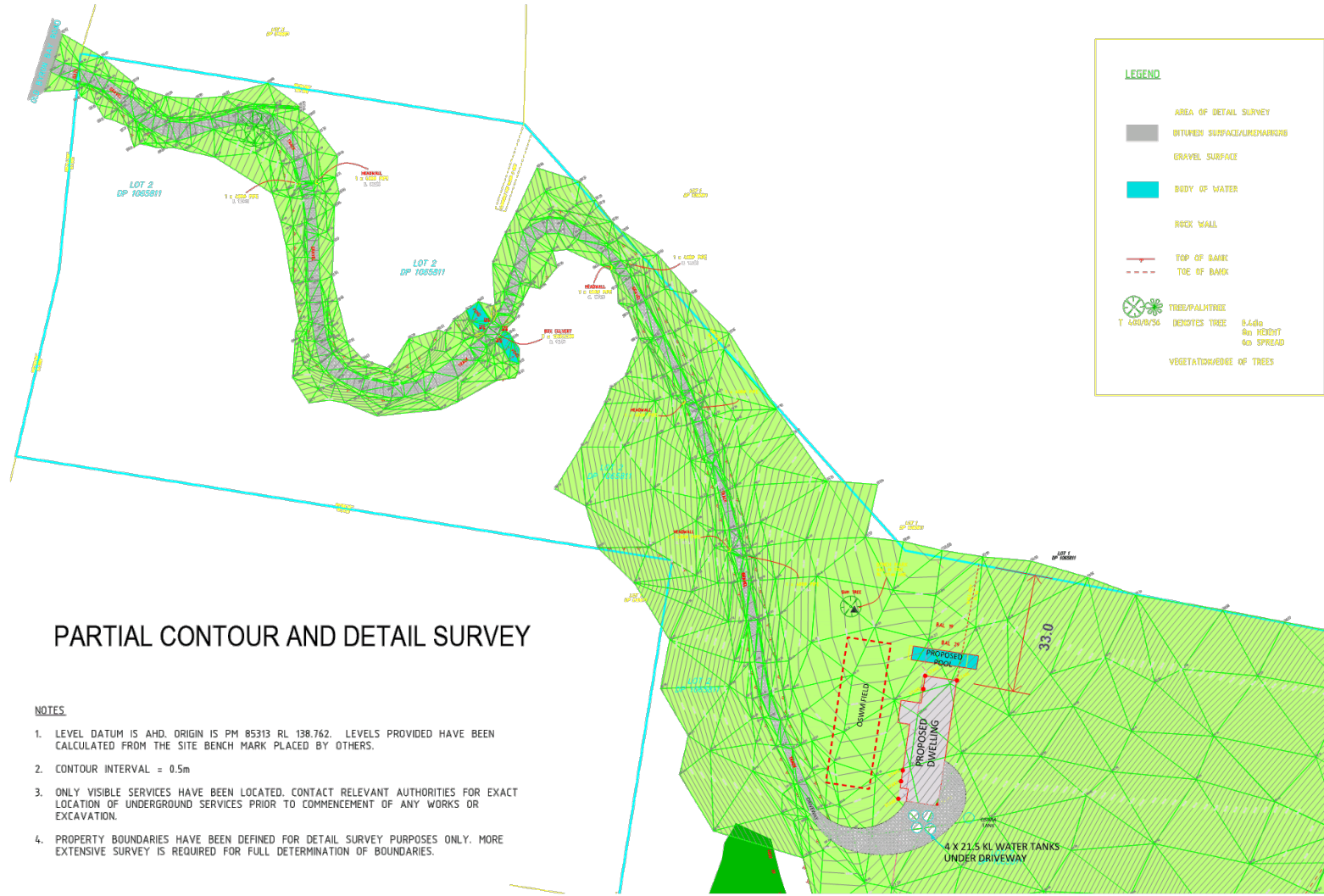
PROPOSED NEW RESIDENCE

404 OLD BYRON BAY RD NEWRYBAR

SCALE 1:100(A3) DATE: DEC 2017 ISSUE: B / APPROVALS DWG NO DA-055







PARTIAL CONTOUR AND DETAIL SURVEY

- NOTES**
1. LEVEL DATUM IS AHD. ORIGIN IS PM 85313 RL 138.762. LEVELS PROVIDED HAVE BEEN CALCULATED FROM THE SITE BENCH MARK PLACED BY OTHERS.
 2. CONTOUR INTERVAL = 0.5m
 3. ONLY VISIBLE SERVICES HAVE BEEN LOCATED. CONTACT RELEVANT AUTHORITIES FOR EXACT LOCATION OF UNDERGROUND SERVICES PRIOR TO COMMENCEMENT OF ANY WORKS OR EXCAVATION.
 4. PROPERTY BOUNDARIES HAVE BEEN DEFINED FOR DETAIL SURVEY PURPOSES ONLY. MORE EXTENSIVE SURVEY IS REQUIRED FOR FULL DETERMINATION OF BOUNDARIES.

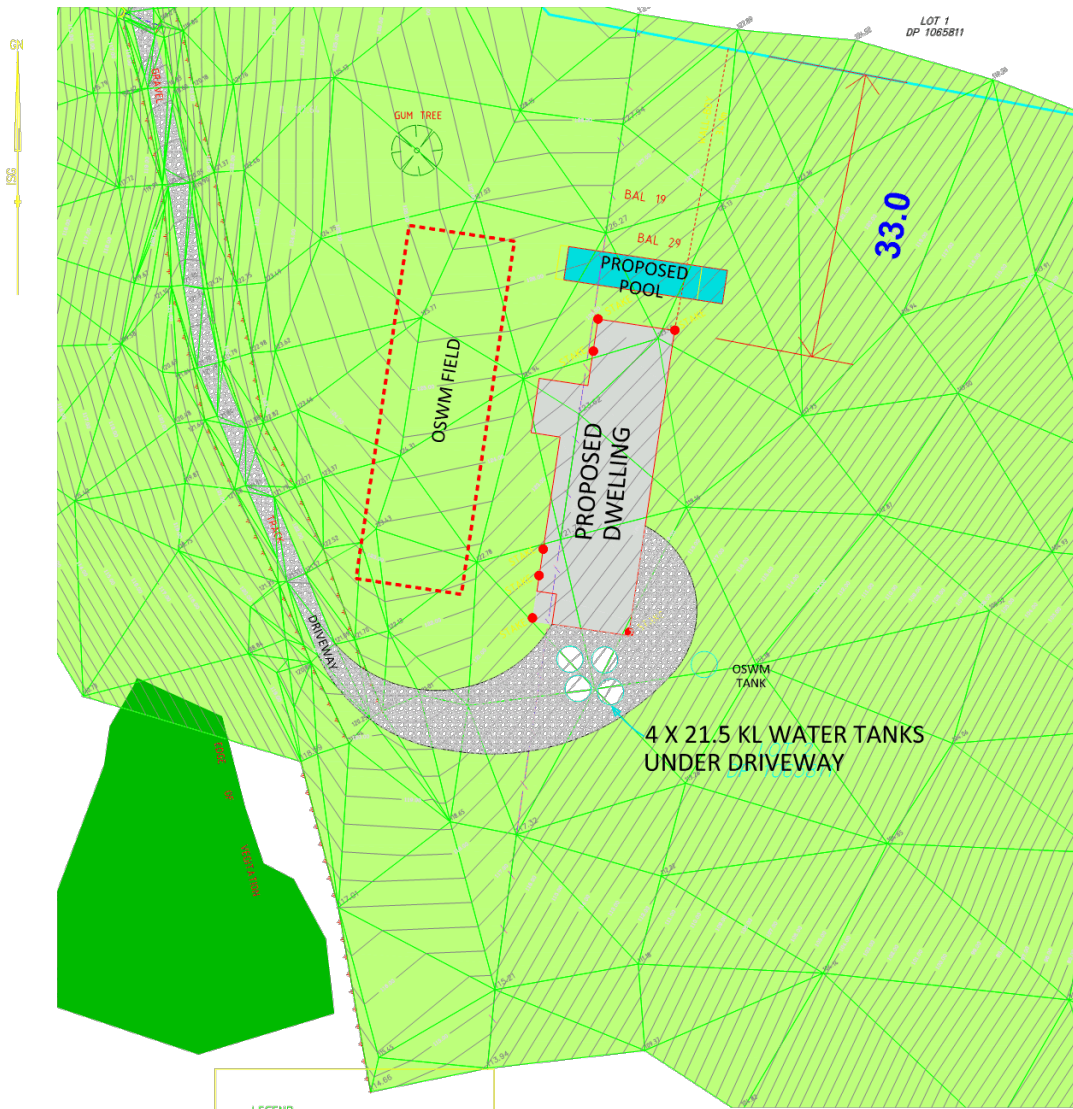
WHITE HOUSE
DEVELOPMENT APPLICATION

PROPOSED NEW RESIDENCE

404 OLD BYRON BAY RD NEWRYBAR

SCALE 1:1000(A3) DATE: DEC 2017 ISSUE: B / APPROVALS DWG NO DA-06





SITE PLAN

LEGEND

- AREA OF DETAIL SURVEY
- BUTYHSH SURFACE/LINEHARKING
- GRAVEL SURFACE
- BODY OF WATER
- ROCK WALL
- TOP OF BANK
- TOE OF BANK
- TREE/PALMTREE
- T 4.66/10.56 DENOTES TREE Ht. 4.66m Sp. 10.56m
- VEGETATION/DENOTE OF TREES

- NOTES**
1. LEVEL DATUM IS AHD. ORIGIN IS PM 85313 RL 138.762. LEVELS PROVIDED HAVE BEEN CALCULATED FROM THE SITE BENCH MARK PLACED BY OTHERS.
 2. CONTOUR INTERVAL = 0.5m
 3. ONLY VISIBLE SERVICES HAVE BEEN LOCATED. CONTACT RELEVANT AUTHORITIES FOR EXACT LOCATION OF UNDERGROUND SERVICES PRIOR TO COMMENCEMENT OF ANY WORKS OR EXCAVATION.
 4. PROPERTY BOUNDARIES HAVE BEEN DEFINED FOR DETAIL SURVEY PURPOSES ONLY. MORE EXTENSIVE SURVEY IS REQUIRED FOR FULL DETERMINATION OF BOUNDARIES.
 5. BUSH FIRE ATTACK LEVEL ZONES HAVE BEEN DRAFTED FROM SUPPLIED DIMENSIONS.

WHITE HOUSE PROPOSED NEW RESIDENCE
DEVELOPMENT APPLICATION

404 OLD BYRON BAY RD NEWRYBAR

SCALE 1:500(A3)
DATE: DEC 2017

ISSUE: B / APPROVALS
DWG NO DA-07





RECOMMENDED SPECIES LIST

BOTANICAL NAME	COMMON NAME
TREES (to be planted outside BAL zones)	
<i>Cupaniopsis anacardioides</i>	Tuckeroo
<i>Elaeocarpus reticulatus</i>	Blueberry Ash
<i>Flindersia australis</i>	Crow's Ash
<i>Flindersia schottiana</i>	Bumpy Ash
INTERNAL SCREENING (along access road)	
<i>Syzygium</i> sp.	Lilly Pilly
GROUNDCOVERS/TUFTING	
<i>Austromyrtus dulcis</i>	Midgen Berry
<i>Dianella caerulea</i>	Blue Flax-Lily
<i>Eriostemon myoporoides</i>	Wax Flower
<i>Hibbertia scandens</i>	Twining Guinea Flower
<i>Lomandra hystrix</i>	Small Mat Rush
<i>Lomandra longifolia</i>	Longleaf Mat Rush
<i>Viola hederacea</i>	Native Violet

WHITE HOUSE PROPOSED NEW RESIDENCE
DEVELOPMENT APPLICATION PLAN 2

404 OLD BYRON BAY RD NEWRYBAR
SCALE 1:500(A3) DATE: NOVEMBER 2019 LANDSCAPE CONCEPT



**Proposed New Dwelling and Associated Works
at 404 Old Byron Bay Road**

Visibility and Visual Matters

**Proposed New Dwelling and Associated Works
at 404 Old Byron Bay Road**

Visibility and Visual Matters

Date

22 May 2018

Prepared for

Ms Joanne and Mr Jason White

Further Information

Sheryn Da-Re
Registered Landscape Architect AILA 0001016
design team ink

PO Box 1473 Ballina NSW 2478 | M 0428 259 286 | [E sheryn@designteamink.com](mailto:esheryn@designteamink.com) | ABN 47405963844

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1 Introduction

This section of the report identifies the nature of design team ink's engagement, relevant background information, the project aims and objectives and the limitations and assumptions made in this report.

1.1 Background and Purpose of this Report

This report was commissioned by Ms Joanne White and Mr Jason White of 404 Old Byron Bay Road, Newrybar.

The report has been prepared to accompany a development application for a new dwelling, swimming pool, driveway and ancillary works on Lot 2 DP 1065811 at 404 Old Byron Bay Road, Newrybar. The part of the site where the work is proposed is zoned 7(d1) Environmental Protection (Newrybar Scenic / Escarpment) Zone and therefore the potential visual impacts are a significant consideration of the design and the application. This report provides an assessment of the potential visibility and visual impacts of the proposal on the site's immediate and broader context.

A site plan and architectural sections and elevations prepared by Alan Mitchell Architect form the basis upon which the extent of proposed changes to the visual environment and their potential impacts are determined.

1.2 Methodology, Limitations and Assumptions

This report is an assessment of the potential visibility of the proposed dwelling and works. It includes a commentary on the existing character of the area and Site, the potential visibility and a description of changes that are likely to occur to the visual environment of the locality as a result of the proposed work. The assessment process included:

- background research on the planning and community context;
- visiting the site and broader area to gain an appreciation of the localities visual elements and factors which contribute to its present character;
- desktop analysis and onsite verification to understand the extent of the work and likely changes to the visual landscape;
- desktop analysis to determine the zone of potential visual influence using NSW Globe 10m contours (without any vegetation or other items that might impede a line of sight);
- driving around the locality to verify the potential visual catchment, key viewing locations and public areas likely to be most affected by visual changes to the landscape as a result of the work.

The recommendations are based upon this level of analysis.

To assist with the assessment the land owners have had a surveyor install height poles on the land at the corners of the building. This enabled the exact position and height of the building to be accurately interpreted.

The assessment was undertaken from public lands and roadways. Access to private properties other than those shown herein was not obtained. An assumption about the likelihood of the location seeing the proposed work was made based upon the desktop analysis, in-field visual observations and in some cases digital modelling. The owners of the subject site requested access to key properties on Old Byron Bay Road in order to see and photograph the view towards the site from eastern facing balconies. Access to these properties was denied by the property owners. In these instances, Roman Boneza was engaged by the land owners to prepare a 3 dimensional terrain and vegetation model utilizing drone technology. This model was used to generate digital montages which are representative of the view a person would experience from the eastern facing balcony of these properties.

This report considers matters affecting the visual environment only and does not consider individual values which may influence a person's perception of visual quality or scenic amenity.

2 The Existing Visual Environment

This section of the report "sets the scene" by describing the existing character of the broader area, the Site and its immediate context.

2.1 Location of the Site

The location of the Site is shown in Figure 2.1 within the broader contextual landscape. The Site is situated on the eastern side of Old Byron Bay Road approximately 0.5km south of the intersection with Midgen Flat Road. The surrounding landscape is predominantly rural residential with some pockets of forested lands and rural industries (e.g. cropping, dairy farms, piggery, nursery etc).

The site is a medium sized lot with a land area of 36 Hectares. The lot is accessed from Old Byron Bay Road and has a restricted access to Midgen Flat Road. There is no formal vehicle access to Midgen Flat Road.

The site has an orientation which is predominantly towards the east with parts of the site benefiting from extensive views over the coastal plain, the ocean approximately 5km away and towards Lennox Headland approximately 11km away.

Figure 2.2 shows some of the key features of the site and immediate context. The topography of the site varies with some areas being as steep as 1:2.5. At Old Byron Bay Road, the existing farm track (future driveway) enters the site at an RL of approximately 137.0. The land then falls away to the east to a vegetated gully and unnamed creekline at approximately RL 96. The landform then rises again to a grassy scenic ridge which at its highest point on the site is RL 129. The land then falls away steeply to the east at grades of approximately 1:4 – 1:6 meeting the coastal plain at about RL 10. The lot has a narrow frontage to Midgen Flat Road.

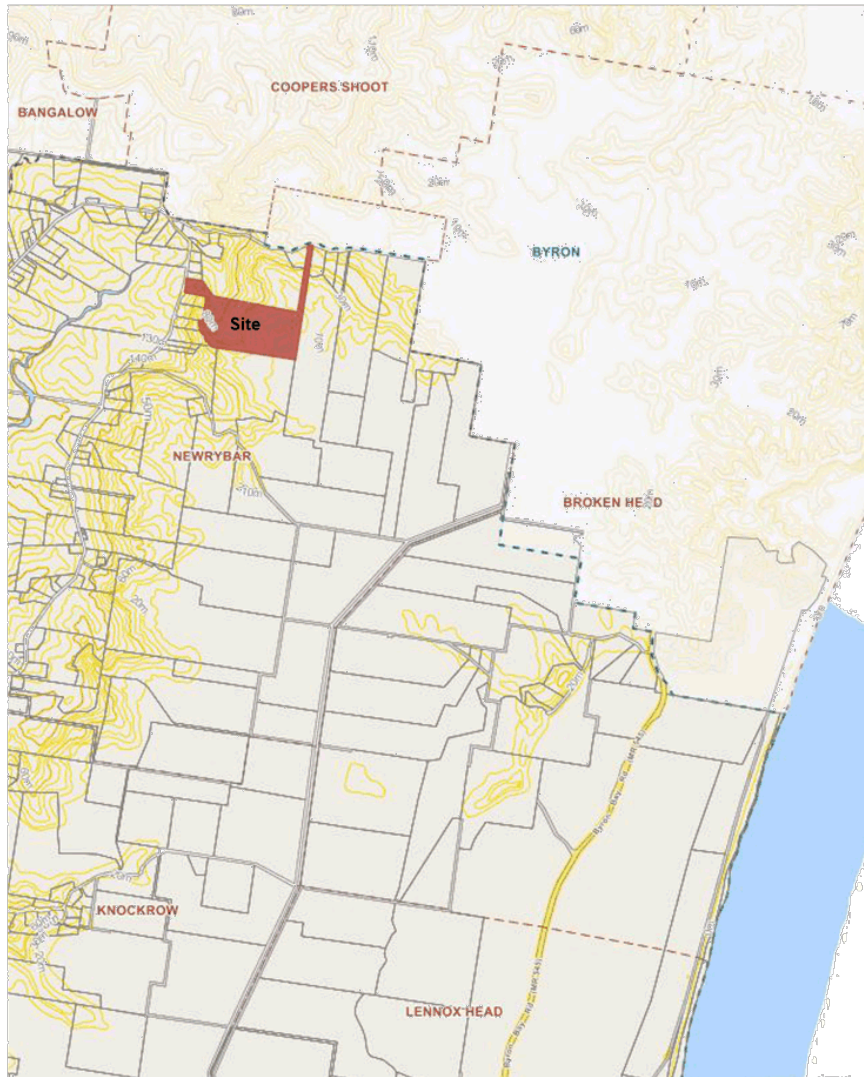
Outside the site to the west, the primary ridgeline and top of the scenic escarpment contains Old Byron Bay Road and consists of a series of crests between RL 130 and 155.

The site contains an existing dwelling which is in close proximity to the Old Byron Bay Road lot boundary. The existing dwelling is located at a setback of 3m from the road boundary and within Ballina Shire Council's standard dwelling setback for a rural area. The land in proximity to the existing dwelling is steep with slopes varying from 1:2.5 to 1:4.

Existing residential buildings in the locality occur on mainly small rural lots on a scenic ridgeline to the west, south-west and north of the site. The closest residential dwelling to the proposed building site is more than 260m to the west. The creekline and hillsides in this vicinity are generally heavily vegetated with rainforest style vegetation.

The general location of the proposed building is shown in Figure 2.2. The grade of the land in this vicinity is flatter than the present dwelling location with grades of typically 1:4 to 1:6. A copse of Eucalyptus species are present near the proposed building location.

Figure 2.1 Location of the Site

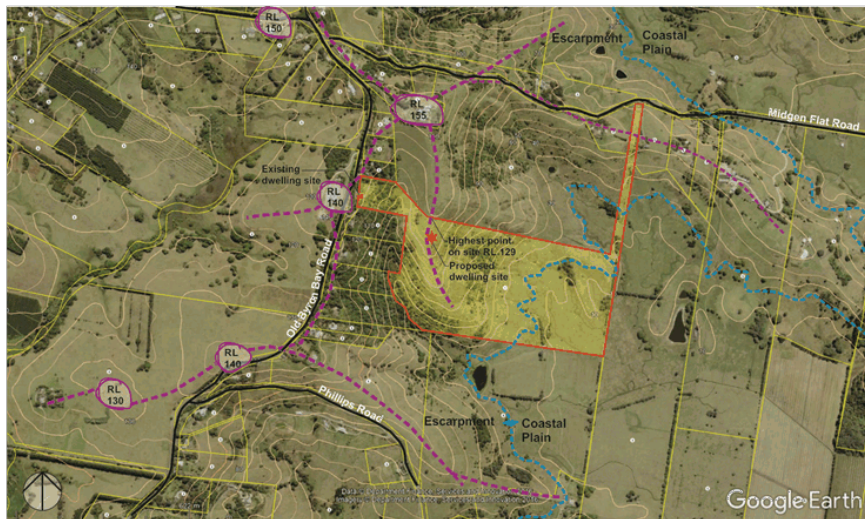


Extract from Ballina Shire Council online Interactive Mapping (GDA 94)

Figure 2.2 The Site and immediate Context



Source: NSW Government, Six Maps. Image downloaded 02 May 2018.



Source: NSW Government, NSW Globe. Image downloaded 02 May 2018. RL's are approximate only based upon available 10m contours.

The Site
 ——— Ridgeline
 Crest
 ——— Approx junction of escarpment and coastal plain

2.2 Landscape Character of the Locality

Landscape Character between Ballina and Byron Bay

The area between Ballina and Byron Bay consists of a series of small coastal villages and hamlets clearly separated by rural or vegetated lands. These urban centres have developed in response to a unique and evolving natural and cultural environment. The broader area supports a variety of land uses including farming, environmental protection, tourism, rural industries and housing. A key component of the visual experience is the predominance of farmlands, forests, lowlands and other natural features (or what has a visual appearance of "ruralness" or "naturalness"). Escarpments and ridgelines form a backdrop to the west. The juxtaposition between the coastal plain and the escarpment is a consistent visual feature of the landscape.

The coastline contains prominent scenic and geographic features, such as headlands, which are locally and some nationally significant. These areas are a focal point of views from the western escarpment.

Outside the village centers, between the Pacific Highway and The Coast Road, rural residential development is clustered along and down the ridges where historically roads were built and where, in most cases, the hilltop provides flatter land suitable for building. Where once these areas were cleared for pastoral land, many have now been revegetated with native and garden plantings. In most areas a rural residential or natural character dominates the viewshed.

Much of the coastal plain consists of geometric patterns formed by cropping such as sugar cane, macadamias, soy beans and the like. These geometric patterns are in contrast to the organic natural forms of creeklines and the vegetated hillsides of the escarpment.

There are a range of housing types and settlement patterns. These represent a combination of dispersed households and rural lifestyle living choices that have evolved over time. The built form of housing is predominantly single and double storey, varying in size from small cottages to large luxurious homes. Newrybar itself is known for its historic, informal village character and low key ambience (*Newrybar Rural Character Statement*) which is underpinned by a predominance of natural and rural landscapes.



Above: Typical Landscape of the Locality – Escarpment areas overlook coastal plains, predominantly rural

Landscape Character of Old Byron Bay Road

Old Byron Bay Road is a low-key, narrow, rural road constructed from bitumen with no formal kerb or gutter. It is typical of rural roads in the locality. It is situated at, or near to, the top of the escarpment and is undulating in form. Whilst broadly rural in character, the journey along Old Byron Bay Road includes an eclectic mix of landscape elements including rural farmland, farm ancillary buildings, manicured gardens, unmanaged and managed bushland, aged and recently gentrified housing.

The roads position on a ridgeline means that extended views over the coastal plains to the coastline and Lennox Headland are possible from some areas. In other areas this view is screened by dense roadside vegetation creating a sense of enclosure to the road. As you travel along Old Byron Bay Road from the south to the north, the road generally becomes more enclosed by vegetation contained in the road reserve. This screens many houses from view from the road.

The parts of Old Byron Bay Road in the immediate vicinity of the site are heavily vegetated making it difficult to see into the lot from the road. Many of the dwellings off the eastern side of Old Byron Bay Road appear to be orientated to reveal important views and vistas such as to the ocean and Lennox Headland.



Above: Typical Landscape near 36 (left) and 72 (right) Old Byron Bay Road (Source: Google Streetview)



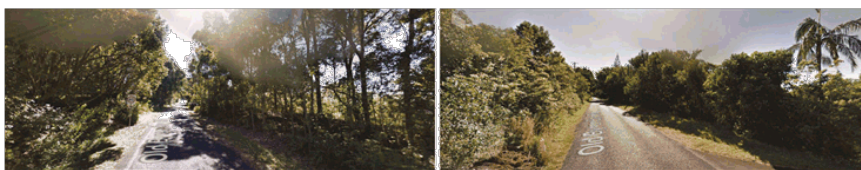
Above: Typical Landscape near 103 (left) and 205 (right) Old Byron Bay Road (Source: Google Streetview)



Above: Typical Landscape near 272 (left) and Phillips Road (right) Old Byron Bay Road



Above: Typical Landscape near 318 (left) and 360 (right) Old Byron Bay Road (Source: Google Streetview)



Above: Typical Landscape near 382 (left) and 404 (the subject site - right) Old Byron Bay Road (Source: Google Streetview)



Above: Typical Landscape near 420 (left) and 426 (right) Old Byron Bay Road (Source: Google Streetview)



Above: Typical Landscape near 456 (left) and Midgen Flat Road (right) (Source: Google Streetview)



Above: View of escarpment from the coastal plain towards Old Byron Bay Road where the houses are seen dotted along the vegetated ridgelines accessed from Old Byron Bay Road

Summary of Key Visual Features of the Area

- A key feature of the visual experience is the predominance of farmlands, forests, lowlands and other natural features (or what has a visual appearance of “ruralness” or “naturalness”).
- Escarpments and ridgelines form a backdrop to the west.
- The juxtaposition between the coastal plain and the escarpment is a consistent visual feature of the landscape.
- Lennox headland is an iconic landscape feature which is a focal point of views from the western escarpment.
- Rural residential development is clustered along and down the ridgeline.
- Rural residential or natural character dominates the viewsshed.
- The built form of housing is predominantly single and double storey.
- Many properties contain multiple buildings.
- The journey along Old Byron Bay Road includes an eclectic mix of landscape elements.
- Dwellings on the eastern side of Old Byron Bay Road appear to be orientated to reveal important views and vistas such as to the ocean or Lennox Headland.

- The visual mass of built form is generally broken up by domestic plantings, vegetated screening and corridors.
- When viewed from the coastal plains the most western ridgeline is predominantly vegetated against the sky. Some built forms protrude but occupy a small part of the viewshed.

These key principles will be considered when reviewing the potential visual impacts.

2.3 Landscape Character of the Site and Immediate Context

In order to describe the existing character of the site and later to comment on the visual impacts, it is important to understand the community's values and vision for their village of Newrybar.

In 2014 Ballina Shire Council released Rural Settlement Character Statements for the local villages and hamlets. These character statements were based upon a consultation process and sought to set a foundation for area specific planning.

The rural settlement character statement for Newrybar is as follows:

"Newrybar is a compact, safe, small village characterized by its open main street and a network of rural roads leading into surrounding open farmland and horticultural activities. The small main street urban environment of Newrybar has been gentrified in recent years with authentic, historic buildings taking on a new focus such as restaurants and shops. It retains and strong sense of its history and low key ambience yet is in proximity to bigger centres such as Bangalow, Byron Bay, Lismore and Ballina where the community can visit for additional services and facilities. Moving the highway will strengthen connections to the outlying parts of Newrybar including the public primary school and Broken Head Road and the elevated, good quality farmland with views to the ocean and Richmond Ranges. Residents identify with Newrybar as a place with a strong sense of community, and they consider the quiet rural atmosphere and historic old-world charm of the locality to be distinguishing features that they want to keep." (Mike Sviki Planning, 2014)

Some other comments coming out of this rural settlement character statements consultation include:

- *"The village is still quite agricultural and lots of horticulture exists – this creates rural scenery";*
- *There are "views to the ocean and coastal escarpment";*
- *There are a "diverse range of buildings throughout the wider locality – old Queenslanders, brick and tile, modern style buildings";*
- *"Some new buildings have excessive visual impacts and are not always used for the purpose for which they were erected";*
- *"The rural and natural environment is enjoyed including the dams, the creeks and vegetation – would not like to see that ruined";*
- *"The low density, rural style lots are valued";*
- *"The rural and agricultural land is valued".*

Subsequent to this, in 2015, business owners in Newrybar commenced a separate place making engagement process driven out of concern for the future of the village. This process was undertaken by de Greenlaw Consultancy and developed the following vision:

"Newrybar is a friendly, united community that cherishes its rural lifestyle, heritage village and diverse thriving businesses".

Whilst most of the studies focus on the village centre, the consultation from these studies reveals a number of common principles that provide an indication of the community's values relating to the broader visual landscape of the locality:

- *The geography is physically beautiful;*
- *The village has an established identity;*
- *The place is agriculturally rich;*
- *There is no over-development;*
- *The community retains its village lifestyle as it steps into the future;*
- *The village has grown in population with sea-changers and tree-changers since the 1980's and this has brought greater diversity of people, ideas, skills and built form.*

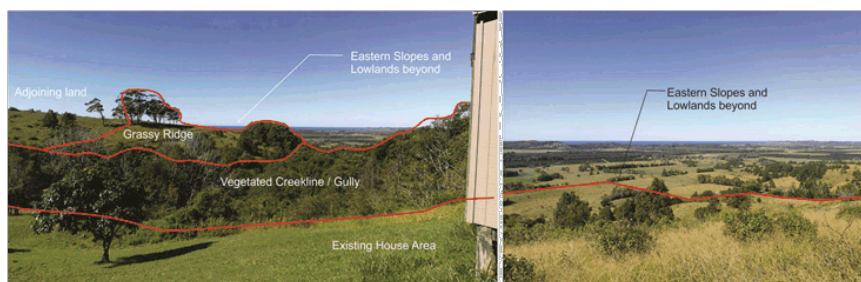
These principles can be seen in the landscape of the site and immediate surrounds.

Landscape Character of the Site and Immediate Context

The Site itself is located on part of a system of interconnecting ridges which form the western escarpment to the coastal plains. The land is undulating with a central ridgeline creating a visual separation between the land near Old Byron Bay Road and the lower eastern parts of the site. There is a variety and contrast of landforms and landcovers present with the landscape of the site being typical of the local area.

The site contains four character areas:

- the area around the existing house;
- the vegetated creekline and gully;
- the grassy ridge, and
- the eastern slopes and lowlands.



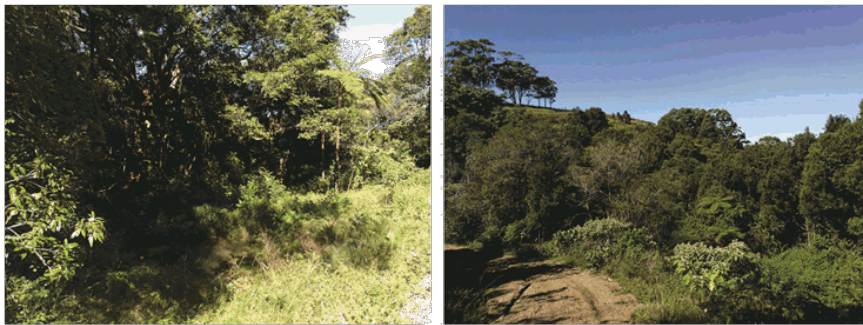
Above: Site character areas

The existing house is located 3m from the western property boundary. The building structure is small in the scale of the context and is of an aged external appearance. The existing house has an upper floor level which was surveyed to be at RL 129.49. This would make the top of the roof at approximately RL 132.9. Vegetation to the west extends higher than the roofline. The house is surrounded by randomly placed garden plantings typical of a domestic landscape (e.g. fruit trees, clusters of shrubs etc). The frontage to the site is vegetated and the dwelling is concealed from the road by dense roadside vegetation. Vegetation forms a backdrop to the existing house. The house and yard are enclosed to the west and open to the east with extended views to the ocean and Lennox Headland.



Above: View from within the site looking towards the existing dwelling and yard. This is a very typical landscape character for an older style property in the area.

The vegetation of the gully is regenerating rainforest which creates a sense of landscape texture and enclosure as you move into and out of the space. Camphor laurels and other weed species, as well as native species are present.



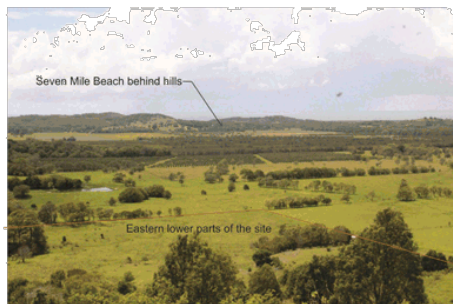
Above: Vegetated creekline and gully area

The ridgeline is used for cattle grazing and is generally unmaintained so exhibits some evidence of weed emersion. The shape of the ridge is simple in form and landcover and has a feeling of openness which is in contrast to the creekline gully area. A copse of Eucalyptus species exist on the hill near the proposed new building site. South west of the ridge and driveway is another copse of trees within a vegetated area. The top of these trees was surveyed at RL 130. The ridgeline area enjoys extended views over the coastal plains to the ocean and to Lennox Headland. The outline of the ridge is broken by the shapes of the Eucalyptus trees and upper gully vegetation and the grassy parts where the new dwelling is proposed is below the skyline when viewed from the existing property dwelling and parts of Old Byron Bay Road where it is possible to see beyond the roadside vegetation.



*Above: The simple form of the grassy ridge.
 Top left: View from near the existing dwelling to the east.
 Top right: View from the ridgeline near the proposed building site looking north towards the copse of Eucalyptus trees and higher ridge beyond.
 Bottom: View from the north western corner of the proposed building site looking south towards Lennox Head.*

The eastern lower slopes are visually disconnected from the existing dwelling and western part of the site. This area is predominantly pastoral grasslands with scattered trees.



Above: View from the ridge looking over the lower slopes of the site towards the coast

Nearby dwellings are scattered randomly or in clusters on a more western ridge with most being set within a vegetated landscape. These dwellings are mostly single and double storey with open and enclosed undercroft areas where the land is steep. Some are natural in colour and others are bright in contrast with the surrounding landscape. It is likely that from these dwellings the outlook is open to the east and Lennox Headland is probably a distant focal point. Vegetation penetrates between buildings.



Above: View from the western side of the ridge near the driveway looking westward towards the existing dwelling, neighbouring lands and Old Byron Bay Road

Summary of Key Visual Features of the Site and Immediate Context

- There are four character areas on the site which include a mix of natural, rural and residential uses
- There are a variety and contrast of landforms and landcovers present with the landscape of the site being typical of the local area
- The frontage to the site is vegetated and the dwelling is concealed from the road by dense roadside vegetation
- The house and yard are enclosed to the west and open to the east
- The shape of the ridge is simple in form and landcover and has a feeling of openness which is in contrast to the creekline gully area
- The ridgeline area enjoys extended views over the coastal plains to the ocean and to Lennox Headland
- The outline of the ridge is below the skyline when viewed from the existing property dwelling and parts of Old Byron Bay Road
- Nearby dwellings are located on a more western ridge with most being set within a vegetated landscape. Vegetation penetrates between buildings.
- Elements with a rural residential and natural appearance dominate the landscape.
- Dwellings are predominantly scattered randomly or in small clusters throughout the landscape
- Old Byron Bay Road contains a scattering of dwellings located on a vegetated ridgeline
- Residential buildings are predominantly single and double storey
- Old Byron Bay Road is heavily vegetated with a variety of native and weed plants
- When driving along Old Byron Bay Road views to the ocean are screened in most areas by dense vegetation. Some ocean glimpses are possible from small gaps in the vegetation.

These key features will be considered in the assessment of potential visual impacts.

3

Description of the Proposed Development

This section of the report provides a brief description of the proposed works to provide an impression of the intended appearance of the proposed development.

3.1 Description of the Proposed Works

The proposed residential development is shown in Figure 3.1 and consists of construction of a residential dwelling (two storey), swimming pool, waste water treatment system, upgrading of an access driveway and decommissioning of the existing dwelling.

The Architect and land owners have considered the buildings placement on a scenic ridgeline and have taken measures within the design to address any potential visual impact. The building has been sited off the crest and shoulder of the ridge so that it is cut into the eastern face of the hillside. The building will be two storeys in height with the main part of the building at RL 124.8 with an atrium protrusion to RL 125.5. The building consists of a series of flat roof forms to keep the building as low as possible in the landscape. The form of the building is rectangular so as to fit longitudinally on the site to minimize the depth of cutting required.

The new dwelling is proposed to be constructed from mid-grey coloured concrete panels, natural stone, shiplapped timber panels and window glass. These materials are of natural tones designed to fit, and age with, the landscape. Parts of the roof will include solar panels as the building will be "off the grid" and self-sufficient.

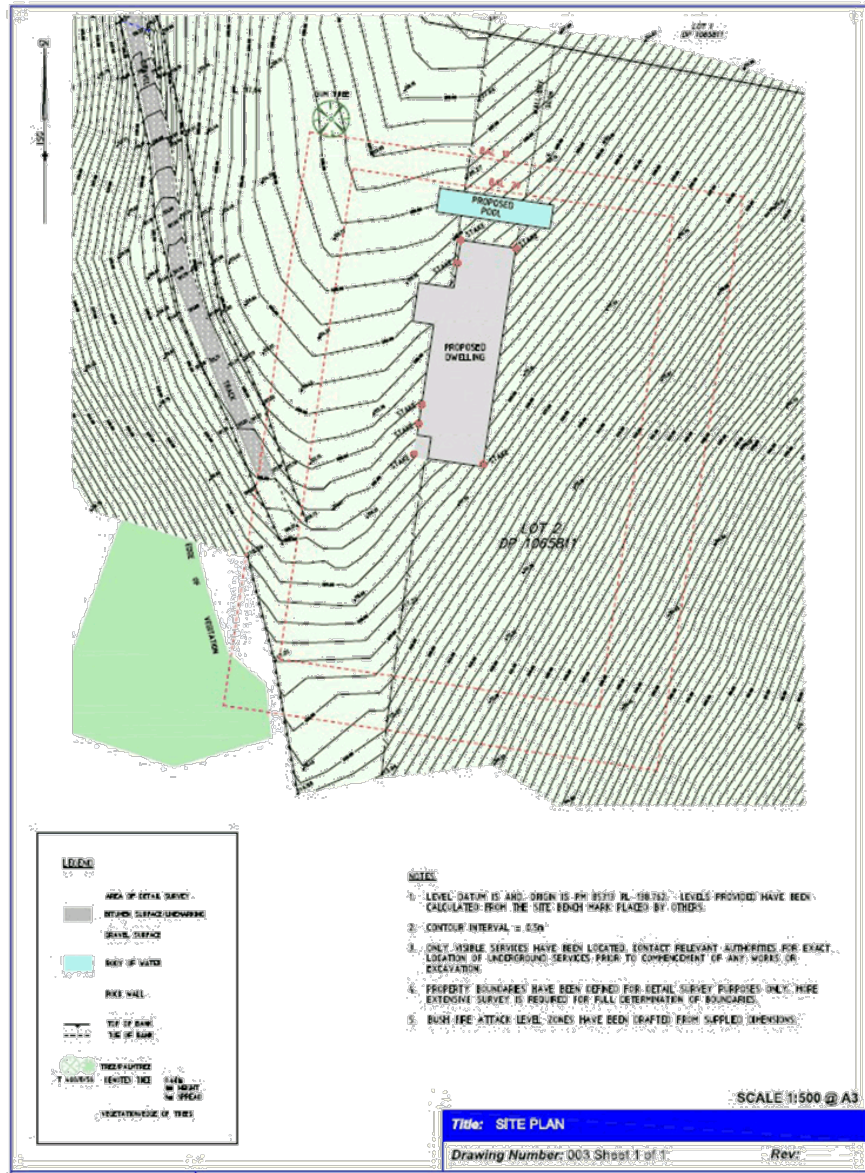
The primary access to the Site is from an existing farm track off Old Byron Bay Road which will be upgraded to an asphalt finish.

The wastewater system includes an irrigation field which will be regenerated as natural grass in the same form as the ridgeline.

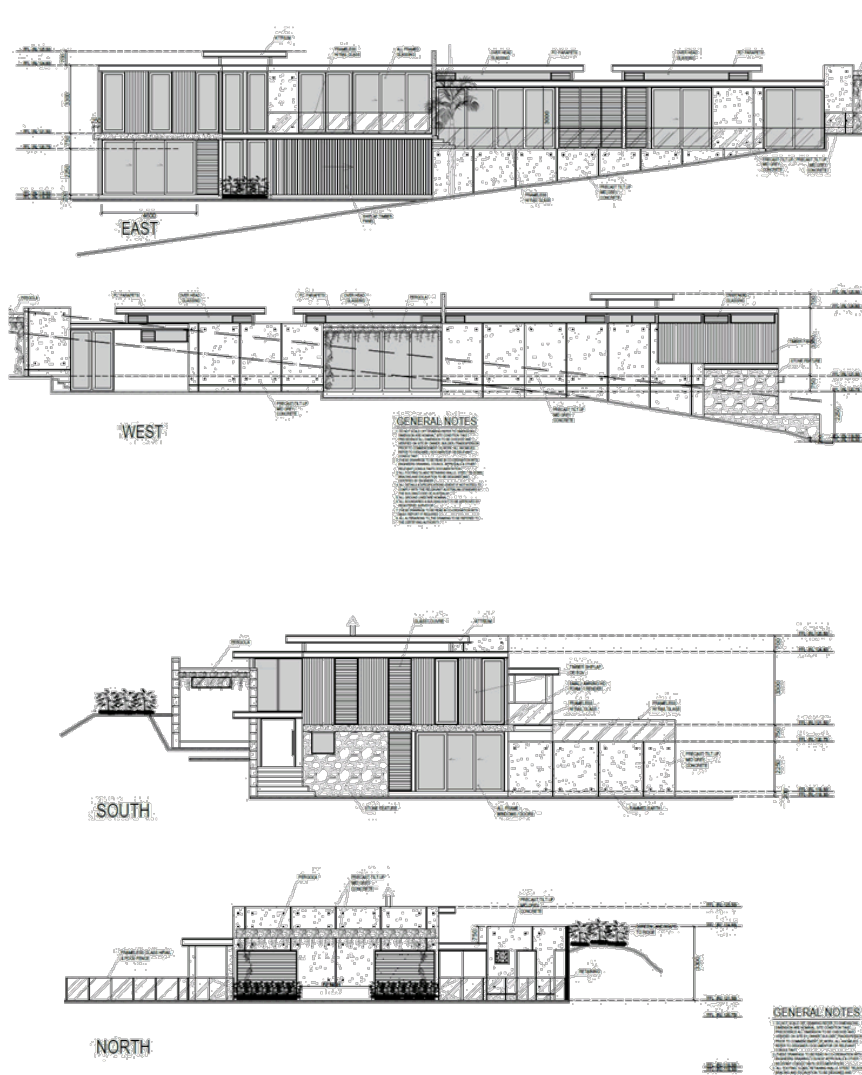
Retaining walls are proposed to be constructed from natural stone.

The proposal includes retention of existing plantings and further establishment of tall native vegetation along the driveway as well as mass planting of native rainforest grasses and understorey plants near the proposed building.

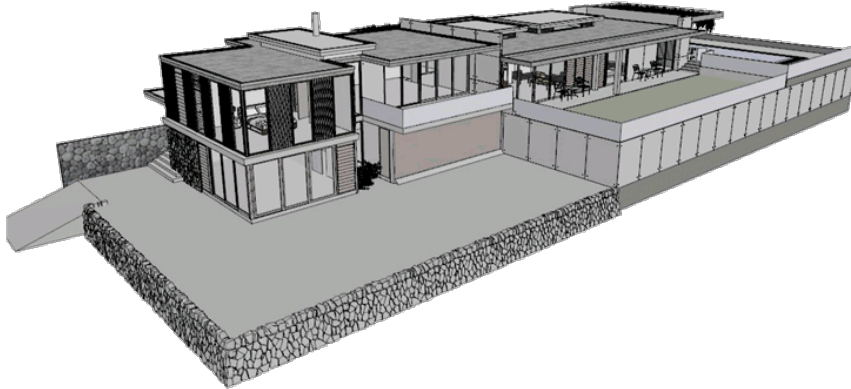
Figure 3.1: Site Plan and Building Design



design team ink | landscape architecture | urban design



design team ink | landscape architecture | urban design



Above: Perspective model of the proposed building viewed from the south-east (excludes surrounding landform)

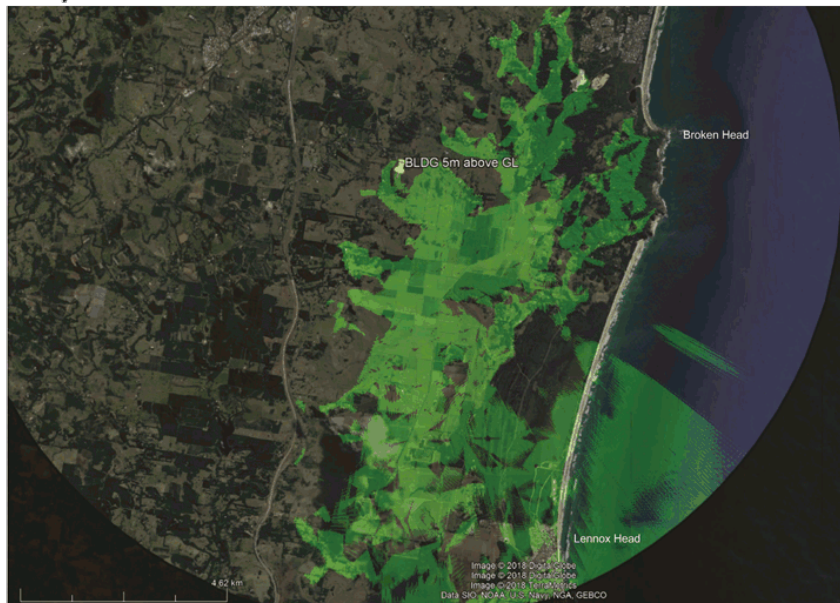
4**Description of Sensitive Visual Receptors and Views from Key Viewing Locations**

This section of the report identifies important public and private viewing places and key locations from where the proposed work may be seen, identifies the nature of the viewing location and provides images or artistic impressions of the site from that location.

4.1 Zone of Potential Visual Influence

The visual catchment is the extent of the landscape which it is likely will see part or all of the proposed new building. To determine the visual catchment and potential key viewing locations the theoretical zone of potential visual influence was determined. This analysis uses topographic contours, to identify the areas at which there is potential for a line-of-sight to some portion, be it small or extensive, of the building.

A Google Earth Pro viewshed analysis utilizing 10m contours was undertaken from a placemark located at the building site at a height of 5m above the mapped ground surface. This represents approximately the south western corner of the building which is that part of the building which is highest above the ground. This analysis does not consider vegetation which in this instance restricts views from many areas. This mapping was used as a basis for field investigations to verify the actual visibility from within this area.



Above: Theoretical "Zone of Potential Visual Influence" based upon a height of 5m above the ground contour at the south-western corner of the proposed building (excludes vegetation layer)

The landscape's vegetation, landuse and landform play a key role in determining the visual catchment, and in this case represent a smaller area than the zone of potential visual influence. Vegetation is the main element that restricts the visual catchment and shields some areas from view of the site.

The undulating topography of the escarpment and locality offers opportunities for significant extended views from the site towards the east. It also helps to shield views to the Site from other locations. The dense vegetation along roadsides and creeklines also screens views to the Site from many roads and properties that may otherwise experience this view.

4.2 Sensitive Visual Receptors

Sensitive visual receptors are places in the public domain which may be iconic, frequently visited, offer an elevated outlook or which may be easily affected by changes to the visual landscape. These might include lookouts, headlands, lighthouses, major tourist routes or beachfronts. The potential impacts of changes to the landscape on sensitive visual receptors are important to consider due to their iconic nature or popularity (high viewing frequency). In some cases, even minor visual changes could be significant from these locations.

In determining sensitive visual receptors regard has also been given to the NSW Land and Environment Court planning principles determined by *Tenacity Consulting V Warringah Council* (2004) (NSWLEC 140). These principles include:

- *Water views are valued more highly than land views*
- *Iconic views are valued more highly than views without icons*
- *Whole views are valued more highly than partial views e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

In this case the following locations are considered to be sensitive visual receptors:

- Lennox Headland including Pat Morton Lookout
- Lake Ainsworth Precinct

Sensitive Visual Receptor 1: Lennox Headland

Lennox Headland, with its abrupt cliff faces, is a prominent visual element of the landscape. Pat Morton Lookout offers extended views of the western hills, village centre and Seven Mile Beach towards Broken Head. It is also popular for recreational purposes such as hang gliding, surfing and walking and for observing the hump back whales during their migration period. Lennox Headland forms part of the National Surfing Reserve.

From this location, the site is more than 11km away in the background viewing zone. There are few distinguishing features and therefore the site is barely perceptible in the landscape. The shape of the headland is distinctive, so when viewed from Old Byron Bay Road it can be clearly identified although occupying a small portion of the viewshed from a distance of more than 11km.

Sensitive Visual Receptor 2: Lake Ainsworth Precinct

Lake Ainsworth is a fresh water dunal lake located north of the village of Lennox Head. It is a very popular tourist destination for day trippers and long stay recreational users. The lake is surrounded by

tall Melaleuca trees which provide an mostly enclosed visual catchment. From some elevated areas a small glimpse to the distant escarpment is possible. From this location, the site is more than 10km away in the background viewing zone and is barely perceptible in the landscape.



Above Left: View from near Pat Morton Lookout (Lennox Headland) north-westwards towards the Site which is more than 11km in the background and barely perceptible.



Above Left: The escarpment can be seen as a slither above the lakeside vegetation more than 10km away and is barely perceptible in the landscape.

Above Right: View from the western upper level landing of the Lennox Head Surf Club

4.3 Key Viewing Location Discussion

Key viewing locations are places where the Site can be seen and changes to the landscape potentially observed.

The sensitivity of these viewing locations to changes in the visual landscape is not only related to the viewing context but also a factor of viewing distance (how far away is the viewer from the Site), frequency (how many people experience this view) and the duration (for how long is the view experienced).

Viewing Distance

Viewing distance is important because, for instance, a residence is close to the proposed site the visual impact may be greater than if it were located further from it. The following key viewing distances adapted from Yeomans (cited in Smardon, Palmer, Felleman, 1986) are used:

- the foreground is the area within 0 to 600 metres of the observer, where landscape details are visible. This is "the area which can be designated with clarity and simplicity..." (Yeomans);

- the middle ground is the area between 600m to 5km from the observer, where vegetation textures and land use patterns are visible. "This is where the parts of the landscape can be seen to join together, where hills become a range or where trees make a forest. This is also where man-made changes may be revealed as sitting comfortably in the landscape, or where conflicts or form, colour, shape or scale show up" (Yeomans); and
- the background is the area which is 5km beyond the observer, where textures and patterns are indistinct and emphasis is on an outline, edge or land mass.

Foreground viewing distances are generally of highest visual impact because the site or the particular element of the landscape being assessed occupies more of the total viewed area (viewshed) than if it were located in the middleground or background.

Figure 4.1 Viewing Distances



Viewing Frequency

Viewing frequency is the number of people who might view the proposed development on a day to day basis. If more people are likely to be affected then the potential visual impact is higher. The following levels of visual frequency have been adapted from Forest Practice Board, Tasmania (2006) and Smardon, Palmer, Felleman (1986):

- High
These are popular public places or routes or high density residential uses such as:
 - Views from state level facilities or recreation areas
 - Highways and major tourist routes
 - Town centres
 - Urban residential areas with high levels of scenic quality
 - Residential care facilities
 - High use recreational areas such as camp grounds, beaches, picnic areas, visitor centres

- Moderate
These are moderately used public places or routes or residential areas such as:
 - Large volume regional roads
 - Secondary roads and recreational driving routes or roads to recreational facilities
 - Low use landscape dependent recreation areas
 - Small lot rural residential properties with moderate to high scenic quality
 - Residential areas
 - Schools and hospitals
 - Urban employment lands

- Low
These are minor public places and routes and less visited places such as:
 - Local rural roads or roads with commuter traffic
 - Recreational areas with occasional use
 - Low density rural residential areas with moderate to high levels of scenic quality

- Very low
 - Vegetated local rural roads or outback roads
 - Private bushland areas
 - Large acreage farmland

Viewing Duration

Different levels of potential viewing duration were identified. The longer the observer views the landscape, the greater their appreciation of its visual characteristics and the greater their awareness of any alterations to the landscape. The Forest Practice Board of Tasmania (2006) suggests that if visitors spend five minutes or more at any viewpoint, they recognize not only major contrasts in the scene but also more subtle contrasts. A landscape viewed as glimpses from a moving vehicle or out of the central cone of vision will not be seen in detail. It is only the more dominant forms, lines, colours, textures and shapes that can be perceived. With increased speed the foreground blurs with the background and a memory of the 'whole' becoming more evident.

4.4 Key Viewing Locations

Both private and public key viewing locations were identified by mapping and site visitation and include:

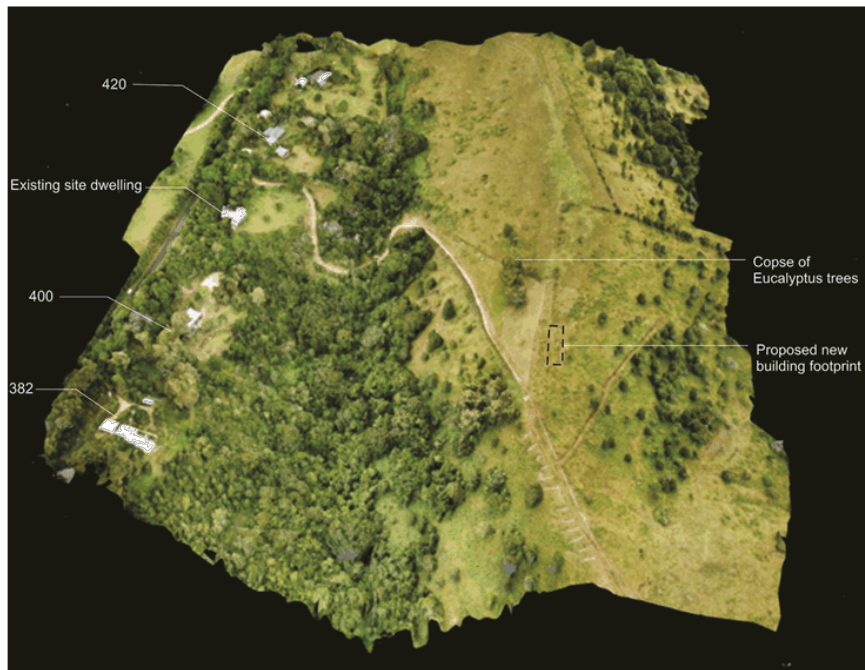
Private Key Viewing Locations

1. Residences accessed from Old Byron Bay Road
2. Residences accessed from Midgen Flat Road
3. Residences accessed from Phillips Road
4. Residences access from Armstrong Lane
5. Residence accessed from Bundaleer Road and Owenia Way
6. Residences near Martins Lane
7. Residences on the coastal plain

Public Key Viewing Locations

8. Public roads which were investigated
 - Old Byron Bay Road
 - Midgen Flat Road
 - Armstrong Lane
 - Bundaleer Road and Owenia Way
 - Martins Lane
 - Newrybar Swamp Road
 - The Coast Road

Permission was sought to access some of the dwellings on Old Byron Bay Road for the purpose of verifying the visibility of the proposed work from the dwelling on the property. The land owners denied access. In these cases, drone footage was taken by Roman Boneza from within the proponents land and in accordance with aviation safety regulations. A 3 dimensional terrain and vegetation model was generated and digital montages prepared as a representation of the view which is typical from existing dwellings along this part of Old Byron Bay Road. These montages represent the typical view from a height of 1.56m (average eye height) above the balcony, interpreted from surveyed gutter levels on the dwellings, on the line of sight towards the proposed new building. These were used as a basis for determining visibility, and making design decisions to minimize visual impact. During the site assessment process, height poles were installed on the property along the western edge of the building. These poles assisted to identify the corners of the proposed building on the property and to also determine the height at the south-western corner. The top of the height pole at the north western corner was close to ground level (as the building is cut almost entirely into the hillside at this point) so a pole extension was used so this position could be identified in photographs.



Above: Extent of drone terrain and vegetation model prepared by Roman Boneza

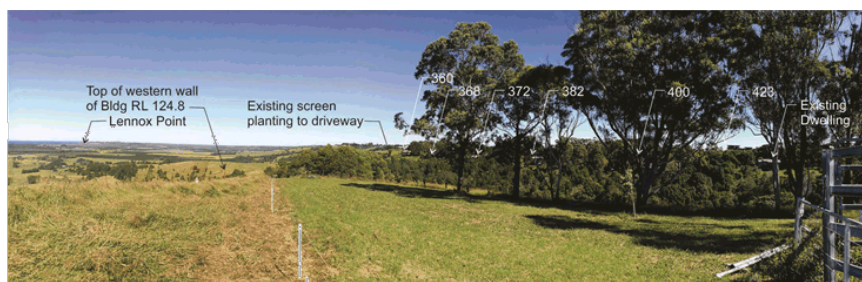
Figure 4.2: Key Viewing Locations



Key Viewing Location 1: Residences Accessed from Old Byron Bay Road

There are predominantly two clusters of dwellings from where it may be possible to see the proposed new building. These are between 344 and 448 Old Byron Bay Road (Dwelling Cluster 1) and 148 to 170 Old Byron Bay Road (Dwelling Cluster 2). Dwelling cluster 1 is located in the foreground viewing distance with houses between 260 and 580m from the proposed building location. Views from houses in dwelling cluster 1 are across the vegetated gully and in some instances through this vegetation. Dwelling cluster 2 is located in the middleground at more than 2km from the proposed building location. Dwellings at these locations are orientated towards the ocean but there is potential

for the proposed new building to be seen as a distant view from their yard areas. More specific detail on the potential views from each of the dwellings in Clusters 1 and 2 is provided below.



Above: View from the highest part of the site near the northern boundary looking south towards the dwellings in Cluster 1. The proposed new building is set down low in the landscape and screen planting along the driveway, when established, will screen views from these dwellings.

Dwelling Cluster 1: Dwellings at 344, 356, 360, 368, 372, 382, 400, 420, 426, 430 and 448 Old Byron Bay Road

The table below shows the distance that each of the cluster 1 dwellings are located from the proposed building site as well as the typical frequency of view and the viewing duration.

Dwelling number	Viewing Distance from proposed new building	Viewing Frequency	Viewing Duration
344	Approximately 580m (< 600m - foreground)	Medium (Rural residential lot orientated towards the ocean)	Variable – short to long depending upon arrangement of living spaces
356	Approximately 520m (< 600m - foreground)	Medium (Rural residential lot orientated towards the ocean)	Variable – short to long depending upon arrangement of living spaces
360	Approximately 463m (< 600m - foreground)	Medium (Rural residential lot orientated towards the ocean)	Variable – short to long depending upon arrangement of living spaces
368	Approximately 420m (< 600m - foreground)	Medium (Rural residential lot orientated towards the ocean)	Variable – short to long depending upon arrangement of living spaces
372	Approximately 350m from proposed dwelling (< 600m - foreground)	Medium (Rural residential lot orientated towards the ocean)	Variable – short to long depending upon arrangement of living spaces
382	Approximately 289m (< 600m - foreground)	Medium (Rural residential lot orientated towards the ocean)	Variable – short to long depending upon arrangement of living spaces
400	Approximately 260m from proposed dwelling (< 600m - foreground)	Medium (Rural residential lot orientated towards the ocean)	Variable – short to long depending upon arrangement of living spaces
420	Approximately 280m (< 600m - foreground)	Medium (Rural residential lot orientated towards the ocean)	Variable – short to long depending upon arrangement of living spaces
426	Approximately 320m (< 600m - foreground)	Medium (Rural residential lot orientated towards the ocean)	Variable – short to long depending upon arrangement of living spaces
430	Approximately 378m	Medium (Rural residential lot	Variable – short to long

	(< 600m - foreground)	orientated towards the ocean)	depending upon arrangement of living spaces
448	Approximately 371m (< 600m - foreground)	Medium (Rural residential lot with tourist villas orientated towards the ocean)	Variable – short to long depending upon arrangement of living spaces

Generally, site observations and 3D modelling suggest that views from dwellings in Cluster 1 will be minimal and that only a small portion of the roofline and upper wall may be seen from some of these locations because:

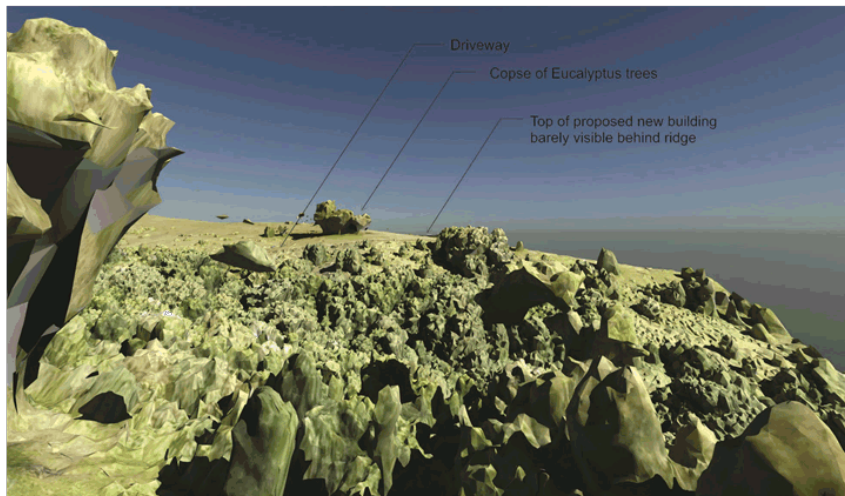
- The building has been designed so that it is cut into the eastern face of the hillside so that the roofline remains low to the ridge;
- The building materials and colours are of natural tones to assist the building to blend into the landscape;
- The proximity of the dwellings to the proposed new building site is far enough away that the small area of roof that may be seen from some viewing locations occupies only a small portion of the viewshed.

3D digital montages have been generated from three locations:

- 382 Old Byron Bay Road;
- 400 Old Byron Bay Road;
- 420 Old Byron Bay Road.

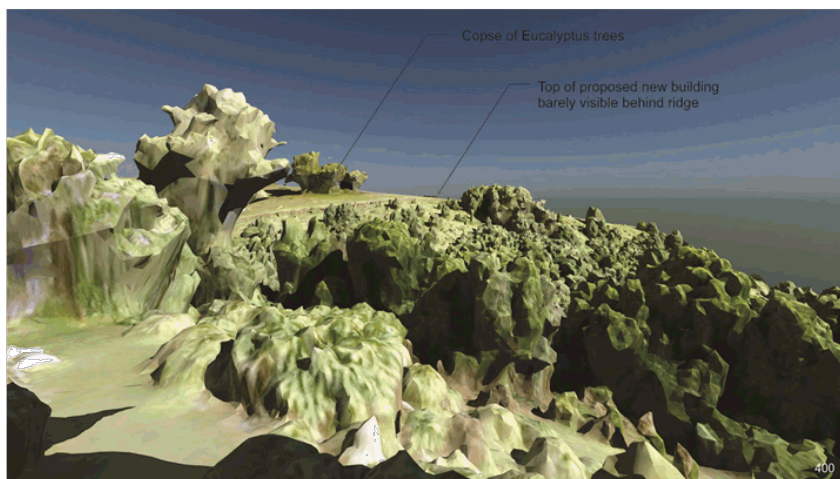
These montages are representative of the extent of the building likely to be seen from other viewing locations in Cluster 1.

The dwelling at 382 Old Byron Bay Road is located approximately 289m, in the foreground viewing distance, from the proposed new building. It is clear in the montage below that there will only be a very small portion of the roof and western wall visible from this dwelling. In addition, over time as the planting along the driveway establishes, it is unlikely that the proposed new building will be seen at all.



Above: Digital montage of the proposed new building from 382 Old Byron Bay Road. The montage has been created from a snapshot of a drone generated terrain model generated at an average eye height on the upper level verandah interpreted from surveyed gutter levels in a line of sight towards the proposed building location.

The dwelling at 400 Old Byron Bay Road is located approximately 260m, in the foreground viewing distance, from the proposed new building. Similarly, the montage clearly demonstrates that there will only be a very small portion of the roof and western wall visible from this dwelling. In addition, over time as the planting along the driveway establishes, it is unlikely that the proposed new building will be seen at all. The further south that the viewer goes along Old Byron Bay Road (that is including dwellings at 344, 356, 360, 368, 372) the less likely it is that the building will be seen because these dwellings in Cluster 1 are located behind existing site vegetation with a surveyed height of RL 130 which is higher than the viewing location.

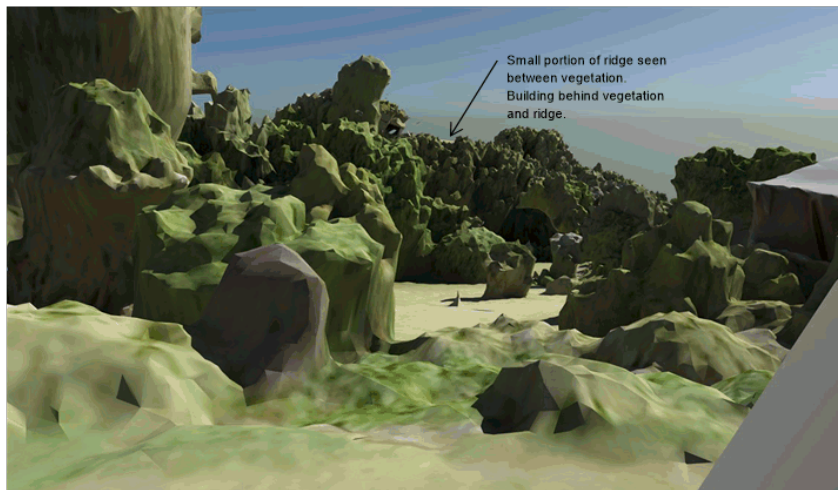


Above: Digital montage of the proposed new building from 400 Old Byron Bay Road. The montage has been created from a snapshot of a drone generated terrain model generated at an average eye height on the verandah interpreted from surveyed gutter levels in a line of sight towards the proposed building location.

The dwelling at 420 Old Byron Bay Road is located approximately 280m, in the foreground viewing distance, from the proposed new building. The property is well vegetated. The digital montage demonstrates that the proposed building will not be seen. There is only a small portion of the ridgeline that can be seen through onsite and adjoining vegetation. The proposed building is set down below the ridge.



Above: View from the property looking towards the dwelling at 420 which is just seen behind the trees.



Above: Digital montage of the proposed new building from 420 Old Byron Bay Road. The montage has been created from a snapshot of a drone generated terrain model generated at an average eye height on the upper level verandah interpreted from surveyed gutter levels in a line of sight towards the proposed building location.

The dwelling at 426 Old Byron Bay Road is located within dense vegetation. The building on this property can not be seen from the subject site, so it is unlikely that the proposed new building will be seen from this viewing location.



Above: Photo from near the driveway (which is west of and higher than the proposed building location) looking north-west towards 426 Old Byron Bay Road

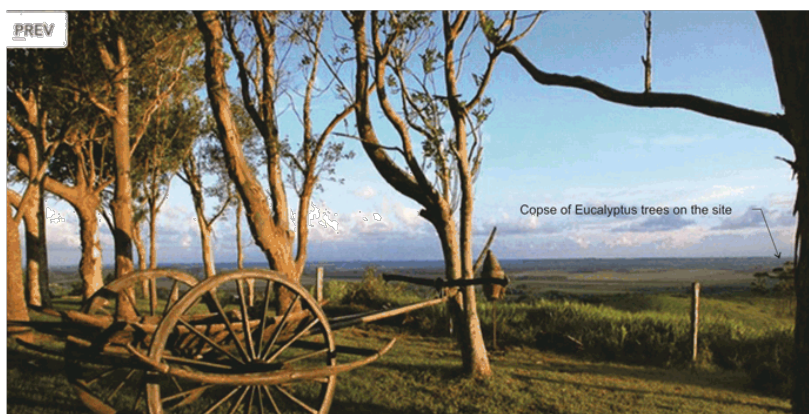
The dwelling at 430 Old Byron Bay Road is located at a higher elevation approximately 378m from the proposed building location and is in the foreground viewing distance. From this location the proposed building is positioned substantially behind the existing copse of Eucalyptus trees. Most of the building is cut into the eastern side of the hill leaving only the upper parts of the upper level potentially visible from this location. The design includes vegetation of the bank immediately west of the proposed building with rainforest grasses (such as Lomandra species). Upon establishment, these will almost entirely screen the small portion of the building that is shown in the photo below, entirely from view. Existing onsite bushland regeneration as well as existing tree planting along the driveway will establish to a height of 8-10m (or more), providing further opportunities for screening.

The proposed new building is set down and when viewed from the dwelling is low to the ridge. The proposed new building is not in a direct line of sight from the dwelling at 430 to Lennox Point.



Above: Photo from the gazebo next to the dwelling at 430 Old Byron Bay Road looking towards the proposed building location

The dwelling at 448 Old Byron Bay Road (Four Winds Villas) is located on the same ridge approximately 371m north of the proposed building location at a higher elevation of approximately RL 150 - 152. The roofline of the proposed new building is at RL124.8 with a small atrium protrusion to 125.5, which is approximately 5-6m below the ground level at 448 Old Byron Bay Road. Most of the building is cut into the eastern side of the hill and the roof of the proposed new building also sits below the level of the ridgeline within its own site which rises to about RL129 on the northern boundary. The proposed new building is also positioned behind the copse of Eucalyptus trees which provide some view filtering. Planting to provide privacy is proposed around the northern side of the pool area. This will screen the pool from view from the north.



Above: View from the yard space of Four Winds Villas at 448 Old Byron Bay Road published on their web site. This shows a view towards the site from the yard of the property. The copse of Eucalyptus trees on the subject site can be seen. The proposed new dwelling is positioned behind and below the Eucalyptus trees from this viewing point.

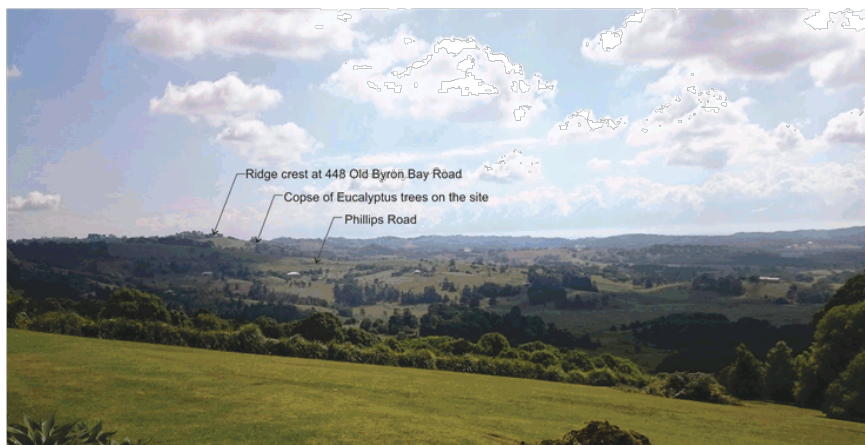
Dwelling Cluster 2: Dwellings between 148 and 170 Old Byron Bay Road

Viewing Distance: More than 2km from proposed dwelling (600m – 5km middleground)

Viewing Frequency: Medium (Rural residential lots orientated towards the ocean)

Viewing Duration: Variable – short to long depending upon arrangement of living spaces

Dwellings at 148 to 170 and possibly some other locations near this section of Old Byron Bay Road may see the proposed building from the rear yards of their properties or dwellings in the central-middleground viewing distance typically 2km away. From this location the proposed building location may be seen above the closer ridge associated with Phillips Road. Most dwellings along this part of Old Byron Bay Road appear to have an orientation away from the site and towards the east and Lennox Point. The construction materials and additional plantings proposed as part of the work will assist to blend the proposed building into the landscape and whilst the building may be seen in the distance it will occupy only a small portion of the viewshed and will have a vegetated backdrop. Overtime, as site vegetation establishes, views from some of these key viewing locations to the site may be reduced or totally screened.



Above: Photo taken from the rear yard of a property in this dwelling cluster looking towards the site

Key Viewing Location 2: Residences accessed from Midgen Flat Road

Viewing Distance: More than 850m from proposed dwelling (600m – 5km close middleground)

Viewing Frequency: Low (Rural residential lots orientated southward, northward and eastward towards the ocean)

Viewing Duration: Variable – short to long depending upon arrangement of living spaces

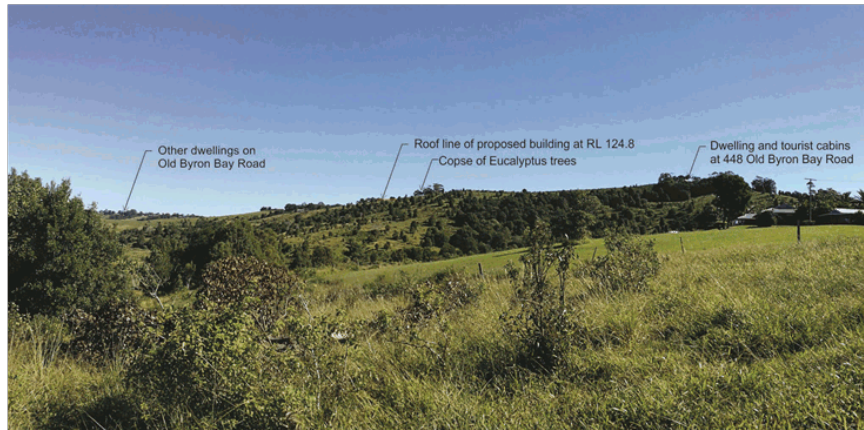
There are four residential locations accessed from Midgen Flat Road where there may be potential to view the proposed new building. These are at 102, 118, 136 and 178 Midgen Flat Road. These views are from more than 850m in the middleground viewing distance.

The property at 118 Midgen Flat Road adjoins the eastern boundary of the narrow portion of the subject site which provides connectivity to Midgen Flat Road (although there is no physical access due to poor sight distance and grade constraints). Whilst the proposed new building may be seen from this viewing location, it is not in the primary viewing direction as the dwelling has a northern and eastern orientation. The lineal form of the proposed new building sits low on the ridge with vegetation forming a backdrop above the roofline. This view may also be possible from the dwelling at 102, although this was not confirmed.

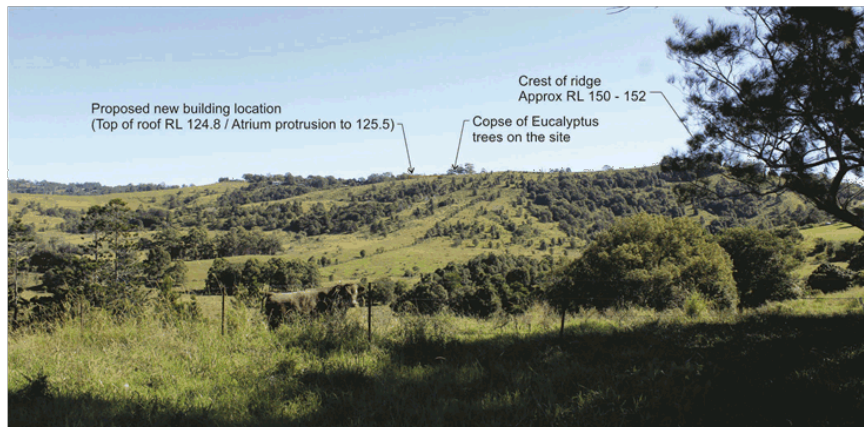
Access to 136 Midgen Flat Road was not obtained. However, the building position and elevation is similar to that at 118 therefore it may be possible to obtain views from this viewing location towards the proposed new building location. The views are likely to be similar to those from the adjoining property which are from a middleground viewing distance and not in the predominant direction of view.

It is possible to see the proposed building location from the property at 178 Midgen Flat Road (the piggery), but not from the dwelling at the site.

It may also be possible to see the site from some properties on the northern side of Midgen Flat Road, although based upon site observations it is unlikely that these views are from the main dwelling or in the predominant direction of view.



Above: View from near dwelling at 118 Midgen Flat Road (850m from the proposed building)



Above: View from the yard of 178 Midgen Flat Road (Piggery) more than 1.2km away. The dwelling on this lot can not see towards the site.

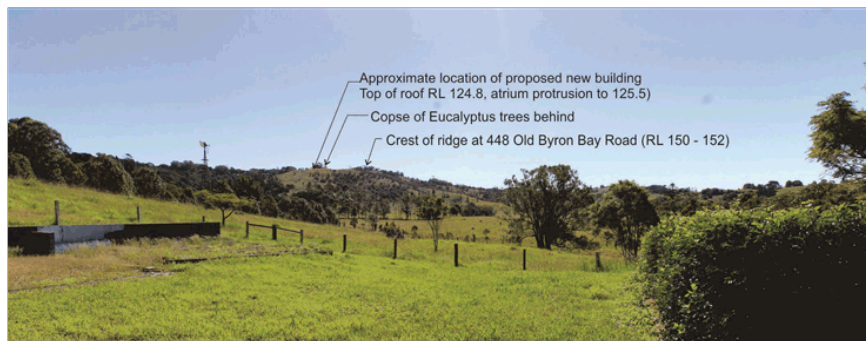
Key Viewing Location 3: Residences accessed from Phillips Road

Viewing Distance: Approximately 1.1 – 1.4km from proposed dwelling (600m – 5km close middleground)

Viewing Frequency: Low (Rural residential lot orientated northward in enclosed visual catchment)

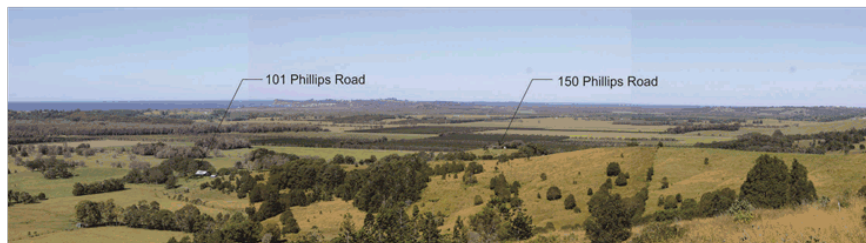
Viewing Duration: Variable – short to long depending upon arrangement of living spaces

Field observations suggest that there are two residences on Phillips Road at 101 and 150 Phillips Road that may see towards the site. The viewing location at 101 Phillips Road consists of a two storey dwelling with north and western facing patios and balconies at a distance of 1.1km from the proposed building. The dwelling is presently unoccupied. Viewers at this location will see the two storey eastern face of the proposed new building set into the hillside. The existing copse of Eucalyptus trees as well as the existing driveway plantings when established will form a backdrop to the building.



Above: View from 101 Phillips Road towards the proposed building location

The viewing location at 150 Phillips Road is located on a knoll south of Phillips Road and is more than 1.4km in the middleground. The building is single storey and set within landscaped gardens. It is accessed from the north and appears to have a primary orientation to the east over the coastal plains. Whilst there is potential to view the proposed building from this location, the view is likely to be through trees associated with garden plantings on the property.



Above: View from the site towards 150 Phillips Road

Key Viewing Location 4: Residences access from Armstrong Lane

Viewing Distance: More than 2.5km from proposed building location (600m – 5km middleground)

Viewing Frequency: Low (Conventional rural residential lots)

Viewing Duration: Variable – short to long depending upon arrangement of living spaces

Armstrong Lane is heavily vegetated and contains low density rural residential dwellings on both sides of the road. There is a cluster of dwellings at the end of the lane at 83, 85 and 87 Armstrong Lane which have the potential to see the proposed new building. In particular, the dwelling at 87 Armstrong Lane has a north and westerly orientation and extended views to the escarpment. From this viewing location the proposed new building will be seen in the middleground more than 2.5km away. The building is proposed to be constructed of natural tones and is of a low profile design. This, coupled with the position of the building set down on the ridge and with a vegetated backdrop will mean that the dwelling will appear insignificant in the context of the viewshed.



Above (left): Typical view of the vegetated Armstrong Lane

Above (right): View from the end of the public road near 87 Armstrong Lane

Key Viewing Location 5: Residences accessed from Bundaleer Road and Owenia Way

Viewing Distance: More than 4km from proposed dwelling (600m – 5km distant middleground)

Viewing Frequency: Low (Conventional rural residential lots)

Viewing Duration: Variable – short to long depending upon arrangement of living spaces

There is a small cluster of dwellings located high on a secondary ridge at approximately RL 40-50 which are accessed from Bundaleer Road and Owenia Way. These dwellings can be seen in the distant middleground view from the site. Due to the buildings location on the hilltop, it is assumed that their main view would be towards the ocean, however, a westerly view towards the site may be possible. From these viewing locations, more than 4km from the site, the proposed new building location would appear small and almost imperceptible in the context of the viewshed.



Above: View from the site looking towards Bundaleer Road and the dwellings on the hilltop on Owenia Way

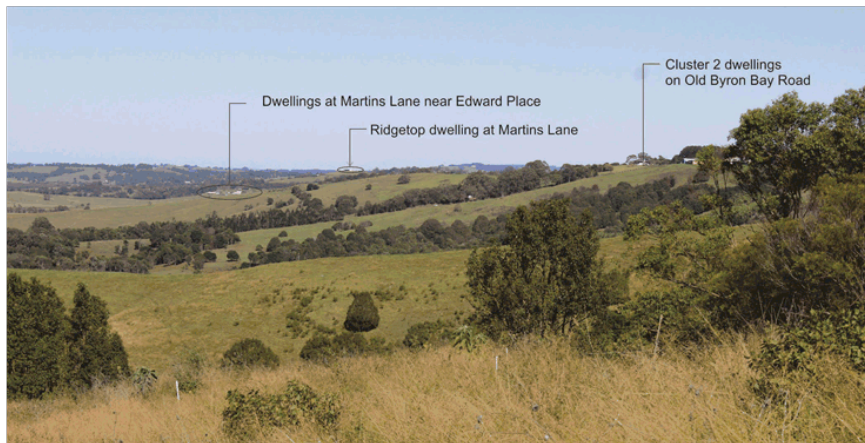
Key Viewing Location 6: Residences near Martins Lane

Viewing Distance: More than 5km from proposed dwelling (> 5km background)

Viewing Frequency: Low (Conventional rural residential lots)

Viewing Duration: Variable – short to long depending upon arrangement of living spaces

There is a cluster of dwellings on Martins Lane which have a northward orientation towards the site. These dwellings are more than 5km away in the background viewing distance. From these locations the proposed new building will be almost imperceptible in the broader context of the landscape.



Above: View from the site towards Martins Lane (lens zoomed in)



Above (left): View from Martins Lane about 250m west of the intersection of Edward Place
 Above (right): View from the lower part of Martins Lane

Key Viewing Location 7: Residences on the Coastal Plain

Viewing Distance: More than 4km from proposed dwelling (600m – 5km far middleground)

Viewing Frequency: Low (Conventional rural residential lots)

Viewing Duration: Variable – short to long depending upon arrangement of living spaces

There are only a few residences located on the coastal plain. Some of these are accessed from Newrybar Swamp Road and others from the Coast Road such as near Sugarcane Road. Many appear to be surrounded by vegetation. Many of these dwellings are associated with sugarcane or macadamia crops. It is likely that Macadamia plantations, when established and also seasonal sugar cane cropping would screen views to the escarpment from these viewing locations.

Key Viewing Location 8: Public Roads

There are 6 public roads where there are locations with potential to see towards the site. These include:

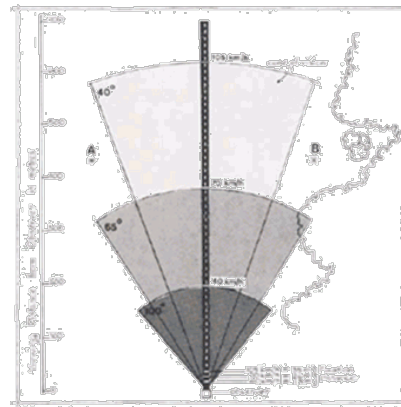
- Old Byron Bay Road
- Midgen Flat Road
- Armstrong Lane
- Martins Lane
- Newrybar Swamp Road
- The Coast Road

These roads are undivided rural roads with an 80km/hr speed zones. They predominantly service local traffic providing connectivity between residential areas and local villages and hamlets. On public roads the views are predominantly from a moving vehicle where the focus is on driving.

Landscapes viewed from a moving vehicle will generally not be seen in detail; only the most dominant forms, lines, colours and textures will be perceived. A memory of the whole experience is retained. As speed increases, foreground detail blurs and distant objects become more obvious (Forest Practice Board, Tasmania, 2006).

A viewer travelling in a vehicle has little more than 25 degrees angle of vision either side of a central view axis at speeds of 80km/hr and a focusing distance of about 450m (RTA, 1991). The driver has a significantly reduced horizontal field of vision and discerns maximum levels of detail only within 1.5 degrees either side of the central view. This means a reduced capacity to absorb details other than those relating to the activity of driving.

Many of the public roads within the locality are windy and heavily vegetated. This affects the duration of view because often the view is not in the direct line of sight from a vehicle. There are few places to stop along the roadside to take in the view and the view is shortened by the screening effect of vegetation as the motorist drives along the road.



Old Byron Bay Road

Old Byron Bay Road traverses the top of the escarpment. This elevated position means that there is potential for extended views across the coastal plains towards the ocean. However much of the roadside is vegetated and there are few safe places to stop on the roadside. This means that there are few opportunities to see the site. Where gaps open up in the vegetation, the focus of the view is towards the ocean and Lennox Headland more than 11km away. Old Byron Bay Road is a local road only with low traffic volumes and therefore low viewing frequency.



*Above (top left): Typical view from Old Byron Bay Road near Watsons Lane
 Above (top right): View of Old Byron Bay Road near the driveway to 404 Old Byron Bay Road looking south*



Above (bottom): View from Old Byron Bay Road near the Phillips Road intersection looking north-eastward

Midgen Flat Road

Midgen Flat Road is located to the north of the site and connects the Coast Road to Old Byron Bay Road, Coopers Shoot Road and Piccadilly Hill Road at the top of the escarpment. The eastern parts of Midgen Flat Road are heavily vegetated and on flat land with limited views beyond the vegetation possible. As it travels westward across the coastal plain, the top of the copse of Eucalyptus trees on the site become visible, but the proposed building location is behind a frontal ridge and paddock trees. The road then climbs onto elevated lands where the road is in cut which prevents views beyond the cut batter until close to the top where the top of the Eucalyptus trees at the site become visible again but the proposed building site remains behind the ridgeline.

Armstrong Lane, Newrybar

Armstrong Lane is situated approximately 2km east of the site. It is a local rural road and has no-through access. It services only a few dwellings and the lane is heavily vegetated for most of its length. Views towards the site are only possible from the end of the lane near the driveways to 83, 85, and 87 Armstrong Lane. At this location it may be possible to see the proposed new building from more than 2km in the middleground viewing zone. This is a dead-end residential laneway with no formal places to park. There are also no public lookouts, parks or points of interest to attract people to this viewpoint or to a view towards the site. Therefore, it is likely to be only the few local residents at the end of this lane as the predominant viewers.

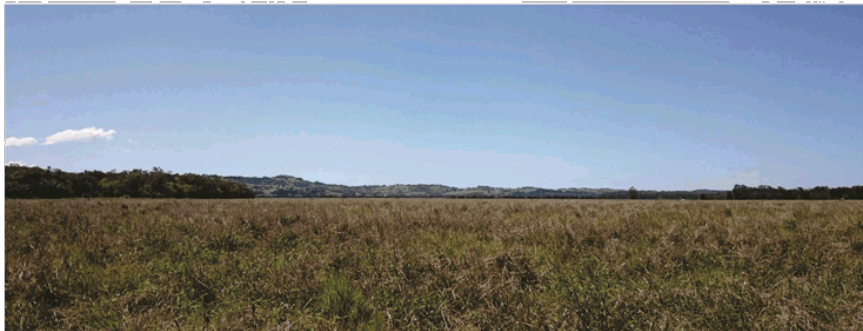


Above (left): View from Midgen Flat Road

Above (right): Typical view of the vegetated Armstrong Lane

Martins Lane, Knockrow

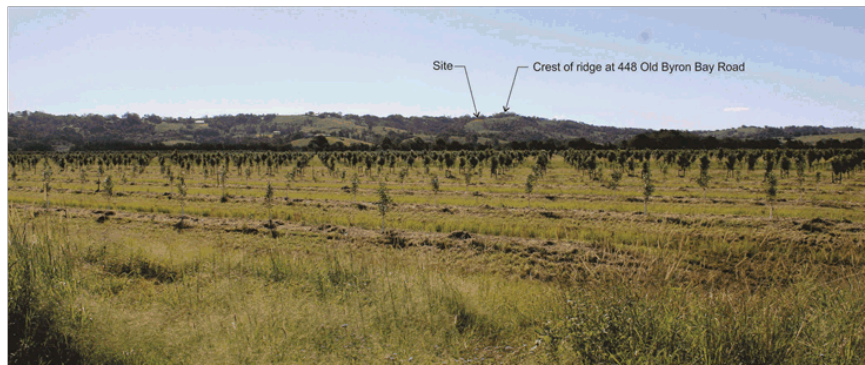
Martins Lane is located to the south of the site and connects Hinterland Way on the escarpment to Newrybar Swamp Road on the coastal plain. Martins Lane runs in a predominantly east-west direction. This means that most of the time the site is outside the driver's central cone of vision. Most of Martins Lane is also more than 4.5km from the site. At 80km/hr and from this distance, it is difficult for the viewer to locate the site in the context of the broader escarpment.



Above: Typical views from Martins Lane (taken while stopped on the road verge and out of the vehicle)

Newrybar Swamp Road, Lennox Head

Newrybar Swamp Road is located to the east of the site on the coastal plain. It is accessed from Ross Lane at a point approximately 8km south of the site and comes as close as approximately 2.5km to the site. Newrybar Swamp Road provides access to two quarries, a commercial pool, timber yard and some agricultural residential lots. At the southern end near the pool and quarries it is difficult to locate the site in the context of the landscape from a moving vehicle due to it being in the background and far middleground viewing distances. Towards the northern end of Newrybar Swamp Road the site is to the side of the central cone of vision where the observer needs to look up and away from the road to view the site. At these locations, the road is surrounded by sugar cane and recently planted macadamia farmlands. Upon establishment of the macadamia trees it is likely that views to the site from some parts of Newrybar Swamp Road will be screened from view. Also seasonal sugar cane crops will also screen the site from view. This end of Newrybar Swamp Road supports low volumes of local rural/residential traffic only.



Above: View from the northern end of Newrybar Swamp Road looking towards the site over recently planted macadamia farmland.

The Coast Road

The Coast Road is the main road connecting the coastal villages of Lennox Head and Byron Bay. It is a popular tourist route and is marketed online as a scenic drive. At its closest point, the Coast Road is situated more than 9.5km east of the site. It traverses the coastal plain as well as undulating topography associated with the coastal headland geomorphology. Most the road reservation is vegetated providing few opportunities for views to the escarpment. The consistent predominance of vegetation along the corridor is important to the overall 'natural' experience of the journey throughout the coastal precinct. In most parts of the Coast Road reservation the vegetation screens views to the escarpment and site. There are few places to stop along this road and so the observer is restricted to mostly views from within the moving vehicle.

A small view is possible from the Coast Road near Sugar Cane Road where the site can be seen as a small glimpse through roadside vegetation. This view is out of the driver's direct cone of vision and can only be obtained while the vehicle is stopped on the roadside.



Above (left): Typical view driving along the Coast Road.

Above (right): View from the Coast Road near Sugar Cane Road where a narrow slither of the escarpment can be seen over the sugarcane in the background out of the driver's cone of vision.

Other Views which have been Considered

In addition to these key viewing locations, a drive around the locality confirmed the following:

- A random drive around the locality confirmed that the Site cannot be seen from publically accessible parts of Phillips Road or Broken Head Nature Reserve.
- Some of the Site can be seen from parts of Fig Tree Hill, Ross Lane, Seven Mile Beach Road, the eastern side of the Coast Road and Lennox Head Village Centre from a background viewing distance. From these locations the details of the development would be almost imperceptible as they are more than 10km away.
- There is potential for parts of the proposed new building to be seen from residences accessed at the northern end of Cooper Shoot Road (near Prior Drive, Baileys Road and Kamala Court) in the distant-middleground to background viewing zones. From these locations it is likely that paddock vegetation will partially, if not totally obscuring the view. If it can be seen it is likely that the proposed new building would occupy only a very small portion of the viewshed. Also the primary view from these locations would be towards the iconic Lennox Headland and ocean rather than towards the site.
- In all instances where there are views to the proposed building, conventional domestic night lighting will be visible for the extent of the view. This lighting is consistent with other low level domestic lighting in the locality..

5

Visual Changes and Impacts

This section of the report summarises the overall anticipated level of change to the visual environment, the fit of the proposal with the character of the broader locality and immediate context.

5.1 Visual Changes

A review of existing studies shows that there are some common visual aesthetic values and factors affecting the viewer's perception of visual amenity and impact that are likely to be consistent across communities. When making an assessment of the visual impact the following assumptions have been made:

- **Visual Field:** The process of observing and recognising an object or scene is complex and involves constant scanning, recognition and refocusing within the visual field. This process is altered by viewer movement, speed and secondary activities such as driving.
- **Viewing Distance:** The viewer's ability to discern detail diminishes with increasing distance, therefore diminishing the visual impact.
- **Relative elevation:** Objects viewed against a skyline or at the edge of a juxtaposed slope are likely to have a greater visual impact than objects or changes viewed from an elevated location where features are viewed against a land backdrop.
- **Proportion of View and Contrast:** The greater proportion of a view occupied by new features or activity the greater the potential impact. Contrasting colours and forms increase the relative impact of change.
- **Activity:** Movement of objects, including vehicles and reflected light as a result of movement will increase impact.
- **Familiarity:** Changes to a familiar visual setting or where the viewer interacts with the setting is likely to have a relatively greater impact on the viewer than changes to a setting that is rarely seen or poorly understood.
- **Context:** The extent to which the proposed development is in character with the land use and landscape character of the site and context will affect the perceived level of impact.
- **Change:** The degree of change in the view and the process of change will affect the degree of impact on the viewer. Visual changes do not necessarily mean negative visual impacts or a decrease of visual amenity.

(Adapted from Parsons Brinkerhoff)

The NSW Land and Environment Court Determination 140, Tenacity Consulting Pty Ltd v Warringah Council (2004) noted that when assessing visual impact, consideration must be given to from what part of the property the views are obtained. *"For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is*

often unrealistic". Also, "the impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them)."

The components of the proposal resulting in changes to the visual landscape include:

- Earthworks and other works required to construct the driveway, walling, pool and building and the temporary exposure of soils;
- Construction of a new residential building (and ancillary features such as solar panels, underground water tanks etc), and grassed effluent disposal field;
- Reforming the existing driveway and sealing with asphalt;
- Residential planting works and landscaping;
- Construction of a swimming pool and associated retaining walls and fencing;
- Residential lighting in areas where there is no lighting at present.

5.2 Summary of Visual Impacts

The visual impact is a measure of the extent of visual change perceptible in the landscape having consideration to:

- Fit with the landscape character of the locality.
- Fit with the landscape character of the immediate context of the Site and its capacity to absorb these visual changes.
- The distance from which the changes are viewed.
- The number of people viewing the changes.
- The duration for which the changes are likely to be viewed.

Section 2 of this report identified a number of key features of the existing visual environment that contribute to the character of the locality. The table below provides comment on the fit of the proposed development with these key features.

Key Visual Feature of the Locality	Comments
A key feature of the visual experience is the predominance of farmlands, forests, lowlands and other natural features (or what has a visual appearance of "ruralness" or "naturalness").	When viewed from private and public viewing locations the proposed new building occupies a very small part of the viewshed and will not detract from a predominantly natural or rural residential character.
Escarpments and ridgelines form a backdrop to the west.	From viewing locations on the coastal plain the escarpment containing Old Byron Bay Road will remain as a backdrop to the view to the west.
The juxtaposition between the coastal plain and the escarpment is a consistent visual feature of the landscape.	The proposed development will not alter this juxtaposition as it is not at this interface.
Lennox Headland is an iconic landscape feature which is a focal point of views from the western	The proposed building is set down to the east of the ridge and will not block views of

escarpment.	Lennox Headland from any key viewing locations on the escarpment.
Rural residential development is clustered along and down the ridgeline.	This will remain unchanged.
Rural residential or natural character dominates the viewshed.	When viewed from private and public viewing locations only a very small portion of the proposed building may be seen and it will occupy a very small part of the viewshed and will not detract from a predominantly natural or rural residential character.
The built form of housing is predominantly single and double storey.	The proposed building is double storey which is consistent with the height of other buildings in the locality.
Many properties contain multiple buildings.	The existing dwelling is proposed to be decommissioned. This is consistent with other properties in the locality which have multiple farm buildings on the property.
The journey along Old Byron Bay Road includes an eclectic mix of landscape elements.	There are few locations on Old Byron Bay Road from where the proposed new building may be seen. Therefore this is unlikely to change.
Dwellings on the eastern side of Old Byron Bay Road appear to be orientated to reveal important views and vistas such as to the ocean or Lennox Headland.	This will remain unchanged as only a very small portion of the proposed new building will be seen from some dwellings. It will not detract from the primary views to the ocean and Headland.
The visual mass of built form is generally broken up by domestic plantings, vegetated screening and corridors.	Existing plantings along the driveway and proposed plantings on the ridgetop will break up the building mass and provide a backdrop.
When viewed from the coastal plains the most western ridgeline is predominantly vegetated against the sky. Some built forms protrude but occupy a small part of the viewshed.	This will remain unchanged.

Section 2 of this report also identified a number of key features of the existing environment that contribute to the character of the Site and its immediate context. The table below provides comment on the fit of the proposed development with these key features.

Key Visual Feature of the Site and Immediate Context	Comments
There are four character areas on the site which include a mix of natural, rural and residential uses.	The addition of the proposed building will add a residential component to the grassy ridge but this will not significantly alter the overall character of the site when viewed from key viewing locations as the rural character will dominate the viewshed. Buildings within a rural context are part of the overall character of the area.
There are a variety and contrast of landforms and landcovers present with the landscape of the site being typical of the local area.	This will remain unchanged.
The frontage to the site is vegetated and the	This will remain unchanged. The proposed

dwelling is concealed from the road by dense roadside vegetation.	new building will also be screened by vegetation when viewed from the road.
The house and yard are enclosed to the west and open to the east.	The proposed new building is set down on the eastern face of the ridge which provides enclosure to the west. It remains open with extended views to the east. The eastern orientation of the building will not compromise privacy to dwelling to the west.
The shape of the ridge is simple in form and landcover and has a feeling of openness which is in contrast to the creekline gully area.	The shape of the ridge shoulder will remain unchanged apart from where the driveway is cut in on the southern side. The building is set down off the top of the ridge.
The ridgeline area enjoys extended views over the coastal plains to the ocean and to Lennox Headland.	This will remain unchanged.
The outline of the ridge is below the skyline when viewed from the existing property dwelling and parts of Old Byron Bay Road.	This will remain unchanged as the proposed building is set down on the eastern side of the ridge.
Nearby dwellings are located on a more western ridge with most being set within a vegetated landscape. Vegetation penetrates between buildings.	This will remain unchanged. The proposed building will also be set within a vegetated landscape.
Elements with a rural residential and natural appearance dominate the landscape.	From most viewing locations in the foreground, only a very small portion of the proposed building is likely to be seen. None will be seen upon establishment of vegetation. From the coastal plain, the building is set down from the ridge and occupies a small portion of the overall viewshed.
Dwellings are predominantly scattered randomly or in small clusters throughout the landscape	The proposed new building is consistent with this arrangement.
Old Byron Bay Road contains a scattering of dwellings located on a vegetated ridgeline.	This building is set down on the eastern face of the ridge and is much less visually prominent than many other dwellings in the locality which are location on the very top of ridges and are of contrasting colours.
Residential buildings are predominantly single and double storey.	The proposed building is double storey which is consistent with the height of other buildings in the locality.
Old Byron Bay Road is heavily vegetated with a variety of native and weed plants.	This will remain unchanged.
When driving along Old Byron Bay Road views to the ocean are screened in most areas by dense vegetation. Some ocean glimpses are possible from small gaps in the vegetation.	This will remain unchanged.

The undulating topography of the locality in concert with the surrounding vegetation has considerable influence on the visual exposure of the Site. More specifically, the shoulder of the ridgeline that runs through the property and the existing copse of Eucalyptus trees as well as the regenerating gully vegetation screen or block views from many viewing locations to the west. This in addition with the

Careful siting of the proposed building so that it is set down into the eastern face of the ridge, mean that there is potential to view only very small portions of the building from viewing locations to the west. Whilst these views are in the foreground where there is maximum discernment of detail, the small portion of the building that will be seen in the broader context of a stunning iconic landscape will preclude it from being a focal point of the view.

The proposed building and ancillary facilities will be most obviously seen from the residence at 101 Phillips Road where there is potential to see the full two storeys of the eastern face of the dwelling. From this location, the building occurs with a vegetated backdrop and the natural tones of the building materials will assist it to blend into the context.

Conventional domestic night lighting will be seen from some viewing locations but will be consistent with other residential lighting on the surrounding hillsides.

From viewing locations in the middle ground such as residential areas accessed from Armstrong Lane and Midgen Flat Road, the changes to the landscape as a result of the development comprise a very small component of the vertical and horizontal field of vision and, upon establishment of vegetation, be almost imperceptible without direct comparison between pre and post development scenarios. In these instances the predominant character of the landscape will remain rural or natural with scattered residential built forms as it is at present.

The proposed residential development is consistent with the existing hinterland rural residential development style and maintains the vegetated ridgeline of Old Byron Bay Road as a backdrop. This combined with the undulating landform and generally dense vegetation surrounding areas means that from many viewing locations the capacity of the surrounding landscape to absorb changes to the visual environment is high.

As a result of careful siting of the building by the landowners and upon establishment of vegetation, the development can occur without significant alteration to the existing underlying character, or loss of key elements which define that character within its broader context.

5.3 Consistency with Planning Objectives Relating to Visual Matters

Tenacity Consulting Pty Ltd v Warringah Council (2004), also links potential visual impact to an assessment of "reasonableness" of a proposal based upon its compliance with planning objectives. Therefore, as part of the formulation of recommendations the objectives of relevant parts of the following strategic planning documents and consultations have been considered:

- Ballina Shire Council Development Control Plan 2012
- Newrybar Master Planning and Rural Settlement Character Statement Consultations

The development application planning report and documentation provides a detailed response to statutory requirements and achievement of the objectives of the zone.

Ballina Shire Council Development Control Plan 2012

Ballina Shire Council's DCP Chapter 2 – General and Environmental Considerations Part 3.2 "Ridgelines and Scenic Areas", applies to this land which is zoned 7(d1) Environmental Protection (Newrybar Scenic Escarpment) zone under Ballina Shire Council's LEP 1987.

The planning objectives include:

- *Protect and enhance those areas of particular scenic value to the Ballina Shire;*
- *Encourage development that minimizes intrusion into the skyline when viewed from public land;*
- *Encourage retention of prominent vegetation along ridgelines and visually prominent areas;*
- *Encourage development that maintains the rural character of the locality and minimizes any adverse scenic impacts.*

The proposed development addresses these matters in the following ways:

- The proposed residential building will not detract from the visual quality of the locality because from all key viewing locations, whether in the foreground, middleground or background, the visible part of the building will occupy a small portion of the viewshed and the predominant character of the view will remain rural or natural with some residential built forms. This is also consistent with primary objectives 1A(c) and 1A(d) of the zone.
- The development has been designed so that the form of the roofline has a similar slimline form to the ridge. The proposed building is of a two-storey construction (consistent with surrounding dwellings) and is to be constructed from materials with natural tones and earthy colours which will help it to blend with the greens, greys and dull browns of the landscape.
- The proposed building has been sited off the crest and shoulder of the ridge on the eastern face where, from most viewing locations, it will have the site vegetation and existing vegetation of Old Byron Bay Road on a higher ridge to the west as a backdrop. In addition to this, upon establishment of the existing plantings near the driveway and the regenerating gully forest, the visual density of this vegetated backdrop will be reinforced. This will also screen even further any potential views from dwellings to the west. This is also consistent with primary objectives 1A(a), 1A(c) and 1A(d) of the zone.
- All existing site vegetation on the ridge will remain and additional planting of native rainforest plants is proposed.
- When viewed from sensitive visual receptors such as Lennox Headland, the proposed building is more than 11km in the background viewing distance and will be almost imperceptible in the context of the landscape. This is also consistent with primary objective 1A(a) of the zone.

Newrybar Master Planning and Rural Settlement Character Statement Consultations

Consultations from the master planning for Newrybar identified the following placemaking vision:

"Newrybar is a friendly, united community that cherishes its rural lifestyle, heritage village and diverse thriving businesses".

The visual effect of changes to the landscape as a result of the proposed work will not detract from the achievement of this vision.

Similarly, the careful siting of the building on the eastern face of the ridge coupled with building materials of natural/earthy tones, self-sustainable building function and substantial existing and proposed vegetation on and near the site, mean that the community's values of the broader

landscape identified by the placemaking process will not be compromised. These common principles and values include:

- *"The geography is physically beautiful;*
- *The village has an established identity;*
- *The place is agriculturally rich;*
- *There is no over-development;*
- *The community retains its village lifestyle as it steps into the future;*
- *The village has grown in population with sea-changers and tree-changers since the 1980's and this has brought greater diversity of people, ideas, skills and built form".*

Some other comments coming out of this rural settlement character statements consultation include:

- *"The village is still quite agricultural and lots of horticulture exists – this creates rural scenery";*
- *There are "views to the ocean and coastal escarpment";*
- *There are a "diverse range of buildings throughout the wider locality – old Queenslanders, brick and tile, modern style buildings";*
- *"Some new buildings have excessive visual impacts and are not always used for the purpose for which they were erected";*
- *"The rural and natural environment is enjoyed including the dams, the creeks and vegetation – would not like to see that ruined";*
- *"The low density, rural style lots are valued";*
- *"The rural and agricultural land is valued".*

The proposed works, whilst resulting in some minor visual changes, as construction of any new dwelling in any location does, will not compromise these valued parts of the local landscape character. By maintaining site vegetation and through considered architectural decisions regarding building height, scale, materials and detailing which achieves a slimline built form and earthy tones, views and vistas, to and from, prominent ridgelines, sensitive visual receptors and other residences are protected.

6**Conclusions**

The Site is situated within a scenic broader rural landscape. The undulating topography of the locality in concert with the abundant vegetation within existing residential areas has considerable influence on the visual exposure of the proposed building location.

There are eight key locations from where the proposed development may be seen. These include residential locations in two clusters off Old Byron Bay Road and off Midgen Flat Road, Phillips Road, Armstrong Lane, Bundaleer Road, Owenia Way, Martins Lane, on the coastal plain and from these associated public roads.

The proposed development will result in visual changes to the landscape but will retain the predominantly rural and natural character of the landscape of the locality and site. In most cases these visual changes are either temporary (during construction) or are able to be absorbed within the undulating and vegetated landscape context. Also and significantly because:

- The proposed works will not have any impact upon amenity from sensitive visual receptors such as Lennox Headland or Lake Ainsworth because it is more than 10km in the background viewing distance which makes it almost imperceptible in the context of the broader landscape;
- The proposed building is unlikely to be seen with the sky as a backdrop due to the presence of established and establishing site vegetation and the higher ridge of Old Byron Bay Road which is located further west.
- The proposed building is sited so that it is set down low on the eastern face of the ridge with the closest residence being more than 260m from the proposed building.
- There will be no direct line of sight from any rooms of the proposed building to dwellings located in the foreground on Old Byron Bay Road.

Despite the views from some key viewing locations being significant in that they contain an iconic visual element (being Lennox Headland at approx. 11km in the background), in all cases the proposed building and associated works will not obstruct this view. The proportion of the viewshed occupied by the proposed building is small relative to the expanse of the view.

The proposed work is consistent with the objectives of the zone and development controls which relate to the visual matters and preservation of scenic values.

The land owners proactive response to concerns from adjoining landowners about visual impacts, by lowering the level of the building by 2m, shows their commitment to minimizing any potential impacts upon their site and the amenity of the locality.

As a result of careful siting of the building by the landowners and upon establishment of vegetation, the development can occur without significant alteration to the existing underlying character, or loss of key elements which define that character within its broader context.



.....
Sheryn Da-Re AILA Registered Landscape Architect

References

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BALLINA SHIRE COUNCIL

ENVIRONMENTAL SCIENCE ASSESSMENT
Environmental Assessment

Application No.	2018/381 (*2018.*000381*)	
Planning Officer:	Martin Scott	
Description	New Dwelling - Single Residence and New Swimming Pool - Inground New Dwelling - Single Residence New Swimming Pool - Inground	
Property	404 Old Byron Bay Road NEWRYBAR -	
Environmental Scientist	Ian Gaskell	
Trim Ref	19/85475	
Copy to	Martin Scott, Ian Gaskell, Andrew Smith, Matthew Wood	
Reference to CM lodgment documents reviews in assessment	<input checked="" type="checkbox"/> Ecological Restoration Action Plan(19/11975)	<input checked="" type="checkbox"/> Landscape Concept Plan (18/46209)
	<input checked="" type="checkbox"/> SEE and Bushfire Assessment Report (18/46208)	<input checked="" type="checkbox"/> BDAR
	<input type="checkbox"/>	<input type="checkbox"/>

COUNCIL INSPECTION AND REFERRAL

<i>A site inspection was conducted on:</i> 22/03/2019, 10/04/2019		<i>By the following persons:</i> ET, IG, SR, MW (10/4 only), MS	<i>N/A</i> <input type="checkbox"/>
The DA may require extra comments from...	<input checked="" type="checkbox"/> Senior Environmental Officer		
	<input checked="" type="checkbox"/> Building Surveyor		

1. Environmental Assessment of the Previous Access Way Construction Activities

While the landowner undertook construction works for an internal access way without prior approval from Council towards the end of 2016 Council's Environmental Scientist did not inspect the development site until the current development application was lodged with Council. The works had a number of ecological impacts including:

- vegetation removal
- alteration to the natural flow of an existing creek
- the planting of inappropriate plant species within environmental significant land

The ecological impacts of the works are discussed below.

When the attached pre and post aerial photographs (Plates 1 and 2) are compared it is evident that vegetation inclusive of trees were removed to facilitate the construction of the driveway.



Plate 1: 18 October 2016. Contiguous vegetation prior to the construction of the road.



Plate 2: 10 September 2017 Post road construction previous vegetation is fragmented.

Although subjected to weed invasion the vegetation adjoining the access driveway namely, lowland rainforest provides an indication what vegetation may have occurred prior to carrying out of the construction activities. The rainforest is listed as a Threatened Ecological Community pursuant to both the Biodiversity Conservation (BC) Act (2016) and the Environmental Protection and Biodiversity Conservation Act (EPBC) 1999. The areas of retained rainforest are now impacted by edge effects.

The portion of the land where the internal access way construction took place is zoned "7 (d1) Environmental Protection (Newrybar Scenic/Escarpment)" under the 1987 BLEP. Clause 23 of Council's BLEP 1987 states:

"23 Development within Zone No 1 (d), 7 (c), 7 (d), 7 (d1), 7 (f), 7 (i) or 7 (l)

A person shall not, on land within Zone No 1 (d), 7 (c), 7 (d), 7 (d1), 7 (f), 7 (i) or 7 (l):

- (a) notwithstanding clause 8 of the Environmental Planning and Assessment Model Provisions 1980, cut down, top, lop or otherwise destroy a tree (other than a tree planted for commercial or landscaping purposes), or*
- (b) clear, fill or otherwise alter the surface level of land, without the consent of the council."*

Consequently, regardless whether vegetation removed was native or not, the prior consent of Council was required. As a result, the following assessment has been prepared on the presumption the access driveway is still vegetated. As a result, the applicant will be required to offset for the loss of the subject vegetation.

As part of the construction works, the landowner installed box culverts over an intermittently (ephemeral) flowing creek. It would appear culverts were installed without having any regard for the ecological flow requirements of the creek. Site inspections confirmed the base level (invert level) of the culverts is too high and, as such, restricting the natural flow of the creek. To address this matter the landowner will be required to remove and reinstall the culverts to reinstate the natural hydrology such actions can be enforced via Conditions of Approval

Since the construction of the access road the landowner has planted vegetation adjacent to the road. It is understood, the primary purpose of the planting works is to increase the biodiversity values of the subject property. Although, well intentioned in some instances, the landholder has planted some invasive plant species which are not endemic the locality. Such outcomes are inconsistent with Chapter 2, Section 3.2.3ii and 3.3 of Council's DCP. It is considered this issue can be rectified by applying suitable Conditions of Consent.

2. Ecological Assessment of the current Development Application

Legislative Framework

As the development application was lodged on 28 June 2018 the ecological impacts of the development are assessed under the BC Act 2016 rather than the repealed Threatened Species Conservation Act (1995).

Under the BC Act 2016 the ecological impacts of a development area are assessed via a standardized assessment process referred to as the Biodiversity Assessment Method (BAM). The BAM is a scientific document that provides:

- a consistent method for the assessment of biodiversity on a proposed development or a clearing site
- guidance on how a proponent can avoid and minimise potential biodiversity impacts, and
- an assessment on the number and class of biodiversity credits (payments) that need to be offset a development to achieve a standard of 'no net loss' of biodiversity.

The BAM is supported by an online database, which allows accredited assessors (typically ecological consultants) to enter field data and determine the number and class of biodiversity credits. The BAM tool also helps with preparation of standardised reports for consent authorities to consider.

An accredited assessor must apply the BAM. The assessor documents the results of the biodiversity assessment in a Biodiversity Development Assessment Report (BDAR).

The BDAR identifies:

- how the proponent has avoided and minimised the environmental impacts of their development
- any potential impact that could be characterised as serious and irreversible according to specified principles and
- the offset obligation required to offset the likely biodiversity impacts of the development or clearing proposal, expressed in biodiversity credits.

A critical part of the legislation is the Biodiversity Offsets Scheme (BOS) which identifies when a development is required to pay a monetary contribution (biodiversity credits) for impacts of that development on the environment. Entry into the BOS is triggered when:

- when the amount of native vegetation being cleared at a development site exceeds a defined area threshold
- whether the development impacts (including *prescribed impacts*) occur on an area mapped on the Biodiversity Values (BV) Map published by the Minister for the Environment.
- if a development has significant impact on a threatened species and/or ecological community.

Ecological Impact Assessment

While a development application was submitted to Council for assessment the application was considered deficient, as it did not include any ecological assessment.

Part of the development (access driveway) is located within land affected by the BV Map the application was required to be supported by a BDAR. In addition, the culverts which, are located within BV Map area, were identified as interfering with the natural flow of the creek. Under the BC Act (2016) alterations to hydrology arising from a development are known as a "*prescribed impact*" thus further reinforcing the need for the applicant to prepare a BDAR.

On 15 February 2019, the applicant submitted a BDAR for Council's review. The BDAR was also referred to OEH for their comment. Unfortunately, the submitted BDAR was found to be non-compliant with the requirements of the BC Act. Consequently, Council advised the applicant the BDAR required significant revision. While the applicant resubmitted, a revised BDAR, this report was also deficient. The primary issues revolved around:

- the independence of the BDAR

- the method the applicants ecological consultant used to calculate biodiversity credits (monetary contributions)
- the inaccuracy of the BDAR when identifying the area of impact
- the applicant's ecological consultant failed to undertake surveys for targeted flora at the correct time of the year
- the applicant's ecological consultant failed to undertake targeted surveys for a number of predicted species of fauna.

Given the inadequacy of the submitted BDAR Council Environmental Scientists are not prepared to rely on the findings of the submitted report. Consequently, from an ecological perspective the application can only be supported if the shortcomings of the applicant's BDAR can be nullified.

The issue of the independence of the BDAR is a complex matter which is best dealt with outside of this assessment.

One of the key issues in the processing of the current application and the BDAR revolved around how the current development application would account for the loss of vegetation associated with unapproved construction activities in 2016.

Normally, the offsetting requirements would be calculated via the BDAR, however the removal of the vegetation prior to the lodgment of the development application has biased this process to the point the applicant's ecological consultant undertook their offset surveys along the unapproved access driveway. Not unsurprisingly that assessment concluded no biodiversity credits were required. Undertaking plot based surveys along linear structures such as roads is prohibited under the BAM.

Given it is evident vegetation was removed to facilitate the unapproved access road it is considered the landowner should now not benefit from those unapproved works. To address this issue, the ecological information (plot survey) obtained from the rainforest which adjoins the access road has been used as a surrogate to derive comparative biodiversity credits (monetary contributions) for the impact of the road on biodiversity.

Section 7.13(4) of the BC Act 2016 allows Council (as the consent authority) to increase the number of biodiversity credits that would otherwise be required to be retired if Council determines the increase is justified having regard to the environmental, social and economic impacts of the proposed development.

In this case, it is considered, appropriate the ecological impact of the development should be assessed on the condition of the land prior to the commencement of the unapproved construction activities. Consequently, the calculation for offsetting (biodiversity credits) needs to be assessed on the land being vegetated rather than being located on the unapproved access road as undertaken in the BDAR (Plates 3 and 4).



Plate 3: Extract from the BDAR showing the location where offset calculations were undertaken by the applicant's ecological consultant.



Plate 4: Extract from the BDAR showing the inappropriate location where the applicant's ecological consultant conducted their offsetting surveys.

The rigor of the applicant's BDAR is further diminished given the report inaccurately identifies the area of rainforest habitat to be impacted by the development. While the BDAR identifies the development will impact on between 0.88 and 2.4 hectares of lowland rainforest neither estimate is accurate. It remains unknown how the applicant's ecological consultant has arrived at the above area calculations.

If the area (rainforest) calculations contained in the BDAR were applied, the applicant would be required to pay the BCT in excess of \$200,000.00 for the loss of the subject vegetation. The requirement for the landowner to pay the above monetary contribution cannot be supported.

Based on aerial photography interpretation it is estimated during unapproved construction works approximately the 0.1 hectares of vegetation was removed. Given no other native vegetation is to be removed to facilitate construction of the current development application, 0.1 hectares was used to calculate the required offsetting (biodiversity credits).

While the applicant's ecological consultant failed to undertake the required flora and fauna survey work this issue was addressed by adding these species into the offset credit calculator.

To derive suitable offsetting values Council employed the services of an accredited ecological consultant calculate the required (biodiversity credits). The results of that work confirmed the applicant will be required to retire 12 biodiversity credits which at the time of calculation having a market value of \$ 22,678.00 plus GST to offset their development.

It is recommended a Condition of Approval be applied requiring the landowner to pay the required required (biodiversity credits).

Ecological Assessment of Objections

In relation to the ecological impacts of project the objectors raised the following issues:

- fragmentation of the wildlife corridor
- ecological impacts of road crossing the creek
- erosion of the caused by the unapproved access road
- the ecological assessment had failed to identify the range of threatened species known to occur in the vicinity of the development site
- the planting of inappropriate species within the wildlife corridor and along the scenic escarpment

The development site is located with the sub regional wildlife corridor mapped by the then Department of Environment and Conservation (DEC). The ecological purpose of the mapped wildlife corridor was to link the coastal vegetation communities to inland vegetation communities. It is important to understand the mapped wildlife corridor occurs over a highly fragmented landscape which includes areas of native and exotic vegetation interspersed with rural farming land. Consequently, the wildlife corridor it is primarily a stepping stone corridor for a range of mobile species of fauna.

It is concluded the internal driveway will have a limited impact on the functionality of the wildlife corridor due to the following:

- the primary use of the internal driveway is to service the proposed dwelling and, as such, traffic movements are expected to be minimal.

- the steep nature of the driveway will ensure that any vehicles using the driveway will be travelling at low speed. Hence, the likelihood of vehicle striking fauna is considered low.
- as the driveway access is located at the northern end of the vegetated portion of the identified wildlife corridor the road only marginally fragments the corridor.
- a proposed restoration program will further enhance the environmental condition of the wildlife corridor.

The issues of erosion and inappropriate planting will be addressed by the required amendments to the submitted (see below) Ecological Restoration Action Plan. As previously discussed, a Condition of Consent will remedy the ecological impacts to the creek.

While, it is likely that some of the threatened species of fauna identified by the objectors may occur on the development site overtime the impact of the development on those species is expected to be negligible given the size of the development and the range of mitigation measures which are to be included into the Conditions of Approval

Proposed Restoration Program

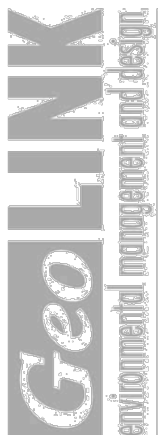
As part of this application, the landowner submitted for approval an "*Ecological Restoration Action Plan*" to restore the more ecologically significant portions of their land. The landholder has also employed the services of a suitably qualified bush regenerator to undertake these works. To address some other environmental issues and to ensure the development complies with Chapter 2, Section 3.2.3ii and 3.3 of Council's DCP it is proposed to increase the geographic extent of the revegetation program. The landholder has been consulted and is accepting with the increase to the proposed restoration program.

Conclusion

If the following mitigation measures are incorporated Conditions of Approval it is concluded the proposed development can be approved from an environmental perspective.

1. Payment by the landowner to retire 12 biodiversity credits to offset their development.
2. The landowner will be required to remove and reinstall the culverts to reinstate the natural hydrology of the creek.
3. The applicant is required to amend their draft "Ecological Restoration Action Plan" to include the additional restoration areas.
4. The applicant is required to employ a suitably qualified bush regenerator to undertake an audit of all planting works undertaken to date with the aim of the audit to remove all inappropriate species of plants.

Provided a range of environmental mitigation measures are incorporated into the development it is considered the application can be supported on environmental grounds.



18 November 2019
Ref No: 3487-1002

Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Attention: Ian Gaskell

Dear Ian

404 Old Byron Bay Road - Biodiversity Matters

As per the project brief, this letter summarises the results of additional biodiversity assessment completed using the Biodiversity Assessment Method (BAM) with regard to DA 2018/381. The following approach has been taken:

- Population of the BAM Calculator (BAM-C), utilising general information contained within the revised Biodiversity Development Assessment Report (BDAR) (Parker 2019) – IBRA region/subregion, native vegetation extent, plant community type (PCT) etc.
- Use of data in Plot 1 (dated 02/10/2018) of the revised BDAR as per the recommendation of DPIE/EES (letter dated 16 August 2019).
- Allowance for an area of loss of native vegetation of 0.1 ha (information supplied by Council).
- Input of 'assumed presence' for nine threatened species for which targeted survey was not completed as per the recommendation of DPIE/EES: *Arthraxon hispidus*, *Isoglossa eranthemoides*, *Marsdenia longiloba*, *Oberonia complanata*, *Sarchochilus dilatatus*, *Sarchochilus fitzgeraldii*, *Coeranoscincus reticulatus*, *Myotis macropus*, *Nurus brevis*.
- Calculation of credits on the basis of the information above.

The following notes are relevant to the input of plot data into the BAM-C:

- All plot data were entered into a spreadsheet which automatically assigns key BAM criteria (growth form, HTEs etc) to reduce human error (refer to **Attachment A**).
- For voucher specimens listed on the data sheet (four in total), species were allocated based on whether they were native or exotic and within the same growth form. While the actual species nominated may be incorrect, essential data in terms of diversity and form are captured. These species are highlighted in yellow in the plot data sheet (**Attachment A**).
- The entry for the exotic species 'monkey bush' could not be determined, and so was entered as Monkey's Comb (*Pithecoctenium crucigerum*).
- The entry for 'prickly tree' in the data sheet could not be determined and was entered as Hoop Pine (*Araucaria cunninghamii*) on the basis it is native and in the 'tree' growth form class.
- Vegetation was allocated to PCT 1201 *Soft Corkwood - Yellow Carabeen - Cryptocarya spp. subtropical rainforest of the NSW North Coast Bioregion* as per the BDAR and allocated as a threatened ecological community (TEC), as indicated on the data sheet and in the BDAR.
- All other plot data (litter, woody debris etc) was entered in the BAM-C as per the data sheet.
- A Vegetation Integrity (VI) score of 21.2 was allocated by the BAM-C on the basis of the above. This is a slightly elevated score from that in the BDAR, likely due to poor data entry in the BDAR and misallocation of some growth forms and species from the plot data.

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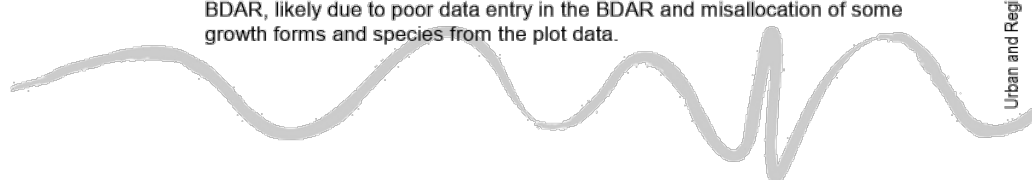
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In addition to the above, potential indirect impacts of the development were also considered as per Section 2.4 of the *Biodiversity Assessment Method Operational Manual – Stage 2* (DPIE/EES 2019). Indirect impacts of vegetation clearing in this instance may include increased light penetration and drying effects ('edge effects') and increased potential for weed intrusion. Without having been to the site and seeing the quality and structure of adjacent vegetation, the ability to assess the potential severity of indirect impacts is difficult. While allowance may be made in the BAM-C for a reduction of values in adjacent vegetation (by forecasting reduced VI scores), it is difficult to do this with rigour and this approach is more often applied on a discretionary basis. Without better data and site assessment it is considered that any 'forecasting' of reduced values of vegetation would be on a relatively arbitrary basis and would lack rigour and so this approach has not been undertaken.

Following entry of all relevant data into the BAM-C, the following credit requirements were allocated:

Entity	Credit requirements
PCT 1201 Soft Corkwood - Yellow Carabeen - Cryptocarya spp. subtropical rainforest of the NSW North Coast Bioregion	1
<i>Arthraxon hispidus</i> (Hairy Jointgrass)	1
<i>Coeranoscincus reticulatus</i> (Three-toed Snake-tooth Skink)	1
<i>Isoglossa eranthemoides</i> (Isoglossa)	1
<i>Marsdenia longiloba</i> (Slender Marsdenia)	1
<i>Myotis macropus</i> (Southern Myotis)	1
<i>Nurus brevis</i> (Shorter Rainforest Ground-beetle)	1
<i>Oberonia complanata</i> (Yellow-flowered King of the Fairies)	2
<i>Sarcochilus dilatatus</i> (Brown Butterfly Orchid)	2
<i>Sarcochilus fitzgeraldii</i> (Ravine Orchid)	1
TOTAL	12

Costs for the credits were calculated at current market value and total approximately \$22,678 + GST. At the time of writing the online payment calculator was out of service, so a detailed cost breakdown cannot be downloaded or provided.

Printouts of the BAM-C are provided at **Attachment B** for your reference.

I trust this information is sufficient. Please contact me if you require further information.

Yours sincerely
GeoLINK



Ian Colvin
Senior ecologist
Biodiversity Accredited Assessor (BAAS18055)

Attach: Attachment A - Plot data sheet
Attachment B - BAM-C Outputs

Attachment A – Plot data sheet

Attachment B - BAM-C Outputs



3487-1002

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BAM Credit Summary Report

Proposal Details

Assessment Id	Proposal Name	BAM data last updated *
00018282/BAAS18055/19/00018283	404 Old Byron Bay Rd	30/10/2019
Assessor Name	Report Created	BAM Data version *
	18/11/2019	16
Assessor Number	BAM Case Status	Date Finalised
	Open	To be finalised
Assessment Revision	Assessment Type	
0	Part 4 Developments (General)	

* Disclaimer: BAM data last updated may indicate either complete or partial update of the BAM calculator database. BAM calculator database may not be completely aligned with Bionet.

Ecosystem credits for plant communities types (PCT), ecological communities & threatened species habitat

Zone	Vegetation zone name	Vegetation integrity loss / gain	Area (ha)	Constant	Species sensitivity to gain class (for BRW)	Biodiversity risk weighting	Potential SAI	Ecosystem credits
Soft Corkwood - Yellow Carabeen - Cryptocarya spp. subtropical rainforest of the NSW North Coast Bioregion								
1	1201_Low	21.2	0.1	0.25	High Sensitivity to Potential Gain	2.00		1
							Subtotal	1
							Total	1

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BAM Credit Summary Report

Species credits for threatened species

Vegetation zone name	Habitat condition (HC)	Area (ha) / individual (HL)	Constant	Biodiversity risk weighting	Potential SAI	Species credits
<i>Arthraxon hispidus / Hairy Jointgrass (Flora)</i>						
1201_Low	21.2	0.1	0.25	2	False	1
					Subtotal	1
<i>Coeranoscincus reticulatus / Three-toed Snake-tooth Skink (Fauna)</i>						
1201_Low	21.2	0.1	0.25	2	False	1
					Subtotal	1
<i>Isoglossa eranthemoides / Isoglossa (Flora)</i>						
1201_Low	21.2	0.1	0.25	2	False	1
					Subtotal	1
<i>Marsdenia longiloba / Slender Marsdenia (Flora)</i>						
1201_Low	21.2	0.1	0.25	2	False	1
					Subtotal	1
<i>Myotis macropus / Southern Myotis (Fauna)</i>						
1201_Low	21.2	0.1	0.25	2	False	1
					Subtotal	1
<i>Nurus brevis / Shorter Rainforest Ground-beetle (Fauna)</i>						
1201_Low	21.2	0.1	0.25	2	False	1
					Subtotal	1

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<i>Oberonia complanata / Yellow-flowered King of the Fairies (Flora)</i>							
1201_Low	21.2	0.1	0.25	3	True		2
						Subtotal	2
<i>Sarcophilus dilatatus / Brown Butterfly Orchid (Flora)</i>							
1201_Low	21.2	0.1	0.25	3	True		2
						Subtotal	2
<i>Sarcophilus fitzgeraldii / Ravine Orchid (Flora)</i>							
1201_Low	21.2	0.1	0.25	2	False		1
						Subtotal	1

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