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ballina shire council
 geographical information system

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ASSESSMENT OF THE APPLICATION UNDER SECTION 4.15 (1) OF THE EP& A ACT 1979

4.15 (1) (a) (i) - the provisions of any environmental planning instrument

Local Environmental Plans (LEPs)

Relevant LEP	Applies YES/NO
Ballina Local Environmental Plan 2012	Yes
Ballina Local Environmental Plan 1987 (Note: BLEP 1987 only applies to land identified as "Deferred Matter" on the Land Application Map accompanying the BLEP 2012)	No

Ballina LEP 2012 – Zoning, Permissibility and Relevant Clauses	Comments/Is consistency with these provisions achieved?
Aims, objectives of BLEP (Clause 1.2)	The application is generally consistent with the aims and objectives of the Ballina Local Environmental Plan (BLEP) 2012.
Land use definition (Clause 1.4)	<p>Development consent is sought for the construction of an industrial complex containing two buildings to be used for light/general industrial and a gymnasium and take away food and drink premises. These uses are defined within the BLEP 2012 as follows:</p> <p>general industry means a building or place (other than a heavy industry or light industry) that is used to carry out an industrial activity.</p> <p>Note— General industries are a type of <i>industry</i>—see the definition of that term in this Dictionary.</p> <p>light industry means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following—</p> <p>(a) high technology industry, (b) home industry, (c) artisan food and drink industry.</p> <p>Note— Light industries are a type of <i>industry</i>—see the definition of that term in this Dictionary.</p> <p>industrial activity means the manufacturing, production, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling, transforming, processing, recycling, adapting or servicing of, or the research and development of, any goods, substances, food, products or articles for commercial purposes, and includes any storage or transportation associated with any such activity.</p> <p>recreation facility (indoor) means a building or place used</p>

	<p>predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club.</p> <p>take away food and drink premises means premises that are predominantly used for the preparation and retail sale of food or drink (or both) for immediate consumption away from the premises.</p> <p>Note— Take away food and drink premises are a type of food and drink premises—see the definition of that term in this Dictionary.</p>
<p>Zoning under BLEP 2012, permissibility within zone and regard for zone objectives (Clause 2.3)</p>	<p>The subject site is zoned IN1 General Industrial under the BLEP 2012.</p> <p>The objectives of the IN1 General Industrial zone are as follows:</p> <ul style="list-style-type: none"> • To provide a wide range of industrial and warehouse land uses. • To encourage employment opportunities. • To minimise any adverse effect of industry on other land uses. • To support and protect industrial land for industrial uses. • To enable non-industrial uses that are compatible with the industrial nature of the locality. • To provide for the efficient use of industrial land. • To encourage development that achieves the efficient use of resources such as energy and water. • To ensure that development does not expose adjoining uses to hazard risks. <p>The proposal is permitted with Council consent in the IN1 zone.</p> <p>The proposal will provide for a range of industrial and non-industrial uses (i.e. gymnasium, take away food and drink premises) that are compatible with the industrial nature of the locality.</p> <p>It has been assessed that adverse effect of industry on other land uses will be minimal.</p> <p>The proposal is generally consistent with the objectives of the IN1 General Industrial zone.</p>
<p>Height of buildings (Clause 4.3)</p>	<p>A maximum building height of 8.5 metres is applicable to the subject site.</p> <p>Building height (or height of building) is defined within the BLEP 2012 as follows:</p>

	<p>a) <i>in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or</i></p> <p>b) <i>in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,</i></p> <p><i>including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.</i></p> <p>The subject land was filled to a level of RL 2.0m AHD during the subdivision that was approved and developed under DA 1985/192.</p> <p>The applicant has indicated that the proposed industrial building has a maximum height of 9.807m and the proposed gymnasium building has a maximum height of 9.997m. These are height variations of 1.307m and 1.497m respectively.</p> <p>The applicant has sought a variation to a development standard and is therefore relying upon Clause 4.6 of the BLEP 2012. A detailed assessment of this clause is provided with the associated Council report.</p>
<p>Exceptions to height of buildings (Clause 4.3A)</p>	<p>Subclause 3 states that the maximum height of a building is to be measured from the minimum level AHD permitted for that land on the Building Height Allowance Map.</p> <p>The proposed development is located within the area marked 'C' on the Building Height Allowance Map. As such, the building height would be measured from RL 2.0m AHD in the instance of the proposal.</p> <p>As the site has already been filled to a level of RL 2.0m AHD under DA 1985/192, this clause does not provide any flexibility in the measurement of building height for the purposes of this development and the extent of variation remains unchanged.</p>
<p>Floor space ratio (Clause 4.4)</p>	<p>The subject land is not identified on the Floor Space Ratio map.</p>
<p>Exceptions to development standards (Clause 4.6)</p>	<p>The applicant has sought a variation to a development standard and is therefore relying upon Clause 4.6 of the BLEP 2012. A detailed assessment of this clause is provided with the associated Council report.</p>
<p>Acid sulfate soils (Clause 7.1)</p>	<p>The subject site is identified as containing Class 2 Acid Sulfate Soils (ASS). As such, development consent is required for works below the natural ground surface or works by which the watertable is likely to be lowered.</p> <p>Council's Environmental Health section has carried out an assessment of the proposal.</p> <p>A condition is recommended to be imposed to ensure the Acid Sulfate Soil Management Plan prepared by Ardill Payne &</p>

	<p>Partners dated September 2020 approved by the Principal Certifying Authority (PCA) is implemented in full during the construction period.</p> <p>Subject to compliance with the recommended conditions of consent, no issues are raised in relation to this clause.</p>
<p>Earthworks (Clause 7.2)</p>	<p>Earthworks are proposed on the site. Clause 7.2(3) of the BLEP 2012 states that before granting consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:</p> <p><i>(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,</i></p> <p>The subject land was filled to a level of RL 2.0m AHD during the subdivision that was approved and developed under DA 1985/192. In this regard, the proposal is unlikely to disrupt drainage patterns and soil stability in the locality.</p> <p>Council's Civil Services Division have assessed the stormwater plan submitted which is generally supported.</p> <p><i>(b) the effect of the development on the likely future use or redevelopment of the land,</i></p> <p>As the site has already been filled, the proposal is not expected to have a significant impact on the likely future use or redevelopment of the land.</p> <p><i>(c) the quality of the fill or the soil to be excavated, or both,</i></p> <p>No issues are raised in relation to land contamination – refer to SEPP 55 section of this assessment.</p> <p>A condition is also recommended requiring that any new information that becomes known during remediation, demolition or construction works which has the potential to alter previous conclusions about the site contamination must be immediately notified to the Council and the Principal Certifying Authority.</p> <p><i>(d) the effect of the development on the existing and likely amenity of adjoining properties,</i></p> <p>Conditions are recommended to be imposed ensure stormwater is managed in accordance with the requirements of Council's Development Control Plan Chapter 2 – Section 3.9 - Stormwater Management and the Site Stormwater Management Plan by Ardill Payne and Partners dated November 2020.</p> <p><i>(e) the source of any fill material and the destination of any excavated material,</i></p>

	<p>The subject land has already been filled to a level of RL 2.0m AHD (via DA 1985/192). Conditions are recommended regarding the management of waste (including any excavated material).</p> <p><i>(f) the likelihood of disturbing relics,</i></p> <p>Council is not aware of any deposit, artefact, object or material evidence on the subject site that relates to the settlement of the area. Council is also not aware of any item of State or local heritage significance on the subject site. An AHIMS search conducted on the site has determined no Aboriginal cultural items exist on the site.</p> <p><i>(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,</i></p> <p>The subject land is currently mapped as containing a waterway/stream. The subject land was filled during 2020 (in accordance with the approval issued via DA 1985/192). The 'River Catchments and Drainage' map reflects the condition of the site prior to filling and is therefore no longer considered relevant to the assessment of the subject application.</p> <p>Subject to compliance with the recommended conditions of consent for sediment and erosion control, no adverse impacts are anticipated.</p> <p><i>(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</i></p> <p>Conditions are recommended to be imposed on the consent with relation to managing sediment and erosion impacts during the construction stage of the development.</p> <p>Council's Civil Services Division have assessed the stormwater plan submitted which is generally supported.</p> <p>Given the above, the development is considered acceptable with regard to the earthworks proposed.</p>
Flood planning (Clause 7.3)	<p>The subject site is identified as being subject to flooding with the minimum required fill level being noted as RL 2.0m AHD on the flood planning maps. The design floor level is required to be RL 2.3m AHD.</p> <p>Clause 7.3(3) of the BLEP 2012 states that development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:</p> <p><i>(a) is compatible with the flood hazard of the land, and</i></p>

	<p>The proposal generally meets the minimum flooding requirements of Chapter 2b of the Ballina DCP 2012 for the proposed building given the site of the proposed development is already filled to the required level. The proposed building will achieve floor level of RL 2.3m AHD, as shown on the development plans submitted. The required flood level is to be maintained by way of the recommended conditions. Therefore, the proposal is considered to be compatible with the flood hazard of the land.</p> <p><i>(b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and</i></p> <p>The subject site has already been filled to the required level via DA 1985/192. In this regard, it is not considered the proposed buildings will result in the potential flood affectation of other development or properties.</p> <p><i>(c) incorporates appropriate measures to manage risk to life from flood, and</i></p> <p>Achieving the minimum fill level and floor level as specified within Chapter 2b of the Ballina DCP 2012 is considered to appropriately manage risk to life from flood.</p> <p><i>(d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and</i></p> <p>No adverse impacts are anticipated subject to compliance with the recommended conditions regarding sediment and erosion control.</p> <p><i>(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.</i></p> <p>The development is not considered to result in unsustainable social and economic costs to the community as a consequence of flooding.</p> <p>Given the above, the development is considered acceptable with regard to flood planning.</p>
<p>Essential services (Clause 7.6)</p>	<p>The objectives of Clause 7.7 are to ensure that development is supplied with adequate and appropriate levels of infrastructure servicing.</p> <p>Water supply servicing Water supply servicing can be provided by connection to the existing system.</p> <p>Stormwater servicing</p>

	<p>Council's Civil Services Division have assessed the stormwater plan submitted which is generally supported.</p> <p>Sewer servicing Sewer servicing can be provided by connection to the existing pressure sewer system.</p> <p>Power supply servicing No issues raised.</p> <p>Existing services The development does not encroach on any easement or the zone of influence of any existing water, sewer or drainage mains.</p> <p>Having regard for the above, no issues are raised in relation to this clause.</p>
<p>Strategic urban growth areas (Clause 7.8)</p>	<p>The subject land is mapped as 'Land adjacent to Strategic Urban Growth Area).</p> <p>Clause 7.8(3) states that development consent must not be granted to development on land identified in subclause (2)(a) unless the consent authority has considered whether the development may preclude future urban or employment land uses on the land having regard to—</p> <p style="padding-left: 40px;"><i>(a) the orderly and coordinated provision of infrastructure, and</i></p> <p>The proposed development relates to the construction of an industrial complex containing two buildings to be used for light/general industrial and a gymnasium and take away food and drink premises. The proposed development is not considered to have an adverse impact on the orderly and coordinated provision of infrastructure for the future use of land within strategic growth areas. All necessary services will be provided at sufficient capacity to service the proposed development.</p> <p style="padding-left: 40px;"><i>(b) the maintenance of amenity and scenic values, and</i></p> <p>The subject site is removed from areas of significant scenic value. However there is the potential for impacts on amenity of the local area, particularly in relation to noise. Conditions have been recommended to manage these impacts – refer to Section 4.15(1)(b) <i>xvi) Noise and vibration</i> later in this report.</p> <p style="padding-left: 40px;"><i>(c) land use conflict impacts associated with stormwater or wastewater discharge and emissions, including noise, dust and odour, and</i></p> <p>The proposed development is considered to be suitable within the IN1 General Industrial zone. However, given the nature of the proposed activities to occur within the buildings, noise</p>

	<p>mitigation is a key consideration in minimising conflict between the proposed development and surrounding land uses. The management of noise impacts is discussed in <i>xvi) Noise and vibration</i> within Section 4.15(1)(b) of this report.</p> <p>There is the potential for dust to be generated during construction works. Conditions are recommended to be imposed with respect to the control of dust and other emissions during construction to ensure there are no adverse impacts on the amenity of the locality.</p> <p>Stormwater management has also been considered as part of the application – the plan submitted has been deemed acceptable by Council’s Civil Services Division.</p> <p><i>(d) site access, generation of traffic and the efficient functioning of transport infrastructure.</i></p> <p>Council’s Civil Services Division have carried out an assessment of the proposal. Access and traffic considerations are discussed within the Ballina DCP 2012 sections within this report.</p> <p>The proposed development will not preclude the future urban use of the land. Conditions are recommended to manage potential land use conflict impacts associated with the industrial use and gymnasium (noise, dust).</p> <p>Subject to compliance with the recommended conditions, no issues are raised in relation to this clause.</p>
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State Environmental Planning Policies (SEPPs)

Relevant SEPPs	Comments/Is consistency with these provisions achieved?
SEPP 55 – Remediation of Land	<p>The objective of SEPP 55 is to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.</p> <p>Clause 7 provides that Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated, and if so whether the land is suitable in its current state or subject to remediation for the intended land use.</p> <p>The applicant has commented that the subject land and adjoining lots have recently been constructed and created under the terms and conditions of DA 1985/192, with titles being registered on the 24th July 2020. It was commented that there were no contamination issues associated with the approval and development of the subdivision. The subject land is vacant and has not been used for any purpose and does not adjoin any use that would have</p>

	<p>contaminated the site. Under the circumstances, it was submitted that there were no further contamination investigations required.</p> <p>Council's Environmental Health Section has commented that as the development is proposed on a greenfield industrial site, no assessment of contaminated land required.</p> <p>A condition is recommended to be imposed to ensure any new information that becomes known during remediation, demolition or construction works which has the potential to alter previous conclusions about the site contamination is immediately notified to the Council and the Principal Certifying Authority.</p> <p>Having regard for the above, no issues are raised in relation to the requirements of SEPP 55.</p>
SEPP (Coastal Management) 2018	<p>The subject site is identified within the Coastal Use Area and Coastal Environment Area as specified within the SEPP.</p> <p>Clause 13 of the SEPP includes controls with respect to the coastal environment area:</p> <p>13 Development on land within the coastal environment area</p> <p><i>(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—</i></p> <ul style="list-style-type: none"> <i>(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,</i> <i>(b) coastal environmental values and natural coastal processes,</i> <i>(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,</i> <i>(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,</i> <i>(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,</i> <i>(f) Aboriginal cultural heritage, practices and places,</i> <i>(g) the use of the surf zone.</i>

	<p>(2) <i>Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—</i></p> <p style="padding-left: 40px;">(a) <i>the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or</i></p> <p style="padding-left: 40px;">(b) <i>if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</i></p> <p style="padding-left: 40px;">(c) <i>if that impact cannot be minimised—the development will be managed to mitigate that impact.</i></p> <p>With respect to impacts on the coastal environment, the proposed development is not located in proximity to a foreshore area, nor will the development be visible from such areas. As such, no issues are raised in relation to the requirements of Clause 13.</p> <p>Clause 14 of the SEPP includes controls with respect to the coastal use area.</p> <p>14 Development on land within the coastal use area</p> <p>(1) <i>Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—</i></p> <p style="padding-left: 40px;">(a) <i>has considered whether the proposed development is likely to cause an adverse impact on the following—</i></p> <p style="padding-left: 80px;">i) <i>existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,</i></p> <p style="padding-left: 80px;">ii) <i>overshadowing, wind funnelling and the loss of views from public places to foreshores,</i></p> <p style="padding-left: 80px;">iii) <i>the visual amenity and scenic qualities of the coast, including coastal headlands,</i></p> <p style="padding-left: 80px;">iv) <i>Aboriginal cultural heritage, practices and places,</i></p> <p style="padding-left: 80px;">v) <i>cultural and built environment heritage, and</i></p> <p style="padding-left: 40px;">(b) <i>is satisfied that—</i></p> <p style="padding-left: 80px;">i) <i>the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or</i></p> <p style="padding-left: 80px;">ii) <i>if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</i></p> <p style="padding-left: 80px;">iii) <i>if that impact cannot be minimised—the development will be managed to mitigate that impact, and</i></p> <p style="padding-left: 40px;">(c) <i>has taken into account the surrounding coastal and built</i></p>
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	<p><i>environment, and the bulk, scale and size of the proposed development.</i></p> <p>The proposed works are not directly adjacent to a foreshore, beach, headland or rock platform. There are no issues with overshadowing, windfunnelling or the loss of views from public spaces to foreshores.</p> <p>There are no issues with visual amenity and scenic qualities of the coast or the use of the surf zone. No issues raised with regard to Aboriginal cultural heritage.</p> <p>In relation to Clause 14(b), the proposal relates to the construction of an industrial complex containing two buildings to be used for light/general industrial and a gymnasium and take away food and drink premises. The bulk and scale of the development has been assessed as suitable in the locality and has been further addressed in the Council report (as part of the applicant's request to vary the height of building development standard).</p> <p>The proposed development is considered acceptable with regard to the Coastal Management SEPP 2018.</p>
SEPP No. 64 – Advertising and Signage	<p>The applicant has commented that the application does not propose any signage. Signage will either be compliant with the "exempt development" signage provisions or will be subject to a separate Development Application. A condition is recommended to be imposed in this regard.</p>

4.15 (1) (a) (ii) – any proposed instrument that is or has been the subject of public consultation under the EP&A Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)

Draft EPI/Planning Proposal	Comments/Is consistency with these provisions achieved?
<p>Draft State Environmental Planning Policy – Remediation of Land</p> <p>Draft Amendment to State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007.</p> <p>Draft State Environmental Planning Policy (Short-term Rental Accommodation) 2019.</p>	<p>No issues raised in relation to the draft SEPPs.</p>

4.15 (1) (a) (iii) – any development control plan (DCP)

DCPs currently in force:

Ballina Shire Development Control Plan 2012	☒
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Ballina Shire DCP 2012	Comments/Assessment of proposal against provisions of DCP
Chapter 2 – General and Environmental Considerations	<p>Part 2 Chapter Planning Objectives The proposal has addressed and generally complies with the overarching objectives of this chapter.</p> <p>The following relevant sections of the BDCP 2012 have been taken into consideration:</p> <p>Section 3.4 Potentially contaminated land Land contamination has been discussed previously, refer to SEPP 55 of this assessment for further comment.</p> <p>Section 3.6 Mosquito management Council's Environmental Health section has carried out an assessment of the proposal in relation to mosquito management. A condition is imposed requiring that stormwater detention areas are designed to drain within 48 hours after the end of a rainfall event to minimise the opportunity for mosquitoes to breed. Details to be included on the Construction Certificate plans.</p> <p>Section 3.7 Waste management The proposal to construct an industrial complex containing two buildings to be used for light/general industrial and a gymnasium and take away food and drink premises is likely to generate a significant amount of waste materials.</p> <p>The proposal includes one covered waste enclosure and one internal waste area.</p> <p>The applicant has provided the following comments regarding waste:</p> <p style="padding-left: 40px;"><i>Waste generated during construction works will be the responsibility of the principle building contractor. Any construction waste will be managed on-site by the principle contractor and will be appropriately disposed of in accordance with best practice and Council's requirements.</i></p> <p style="padding-left: 40px;"><i>As per the Note at the bottom of Table 2.2 of Section 3.7 of Chapter 2 of the DCP 2012, construction waste details will be submitted with the Construction Certificate Application once the builder has been appointed.</i></p> <p style="padding-left: 40px;"><i>A designated roofed/covered waste storage area has been provided between Parking Space 35 and the proposed gymnasium building. A waste bin storage area has also been provided in the industrial building. Due to the unknown nature of the future use of the industrial building, it is not possible to articulate the nature of the future waste stream therefrom.</i></p> <p style="padding-left: 40px;"><i>Gymnasiums generate only small amounts of waste and the proposed café will generate small amounts of food scraps and</i></p>

	<p><i>food/drink packaging which are able to be practically and efficiently managed and disposed.</i></p> <p><i>Further details of the waste management will be provided to Council as part of the Construction Certificate application if required.</i></p> <p>Council's Environmental Health Officer has recommended conditions regarding the management of waste both during construction and operation.</p> <p>Council's Trade Waste Officer has also recommended conditions requiring the lodgement of a Trade Waste application.</p> <p>Subject to compliance with the recommended conditions of consent, no issues are raised in relation to this section.</p> <p>Section 3.9 Stormwater management The applicant has commented that there will be an increase in impervious areas/surfaces on the land as a consequence of the proposed buildings, driveways and parking areas and thus a stormwater management plan.</p> <p>Council's Civil Services Division have commented that the stormwater plan provided is considered to be generally acceptable (report by Ardill Payne and Partners dated November 2020). This plan provides stormwater treatment via bio retention. Detention was not required as per the subdivision DA assessment.</p> <p>Section 3.10 Sediment and erosion control The applicant has proposed that the appropriate sediment and erosion controls will be implemented during the demolition and subdivision phase. Details are able to be provided prior to any works commencing on site, as conditioned.</p> <p>Section 3.11 Provision of services Council's Development Engineer has commented that water and sewer supply servicing can be provided by connection to the existing system. The development does not encroach on any easement or the zone of influence of any existing water, sewer or drainage mains.</p> <p>Section 3.15 Crime Prevention through Environmental Design The proposal is unlikely to result in significant impacts on crime in the locality.</p> <p>The following comments are made in relation to the CPTED principles for the proposed development.</p> <ul style="list-style-type: none"> • <u>Surveillance</u> <p>The proposed buildings are substantially set back from the public street system and is not likely to result in any unacceptable impacts upon surveillance to and from the site. A condition is recommended to be imposed requiring landscaping to be provided in a manner that does not impede</p>
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	<p>surveillance or result in concealment areas.</p> <ul style="list-style-type: none"> • <u>Territorial reinforcement</u> <p>The proposed site design provides clear transitions between public and private space, particularly through the use of landscaping.</p> <ul style="list-style-type: none"> • <u>Access control</u> <p>The vehicular access to the premises is clearly visible from the public streetscape, with on-site car parking provided at the same level, maximising visibility.</p> <ul style="list-style-type: none"> • <u>Space management</u> <p>The site operator will be responsible for ensuring that the site is kept in a presentable manner.</p> <p>Having regard for the above, no issues are raised in relation to this section subject to compliance with the recommended conditions of consent.</p> <p>Section 3.19 Car parking and access</p> <p>The existing external road network is constructed to a suitable standard to service the proposed development. Sight distances at access points are suitable to service the development.</p> <p>The following car parking requirements apply to the development:</p> <table border="1" data-bbox="596 1057 1273 1361"> <thead> <tr> <th colspan="2">Council Requirement</th> <th rowspan="2">Proposed Gross Floor Areas</th> <th rowspan="2">Required Number of Parking Spaces</th> </tr> <tr> <th>Use</th> <th>Rate</th> </tr> </thead> <tbody> <tr> <td>Gym</td> <td>4.5 spaces per 100m² gross floor area</td> <td>896m²</td> <td>40.3</td> </tr> <tr> <td>Cafe</td> <td>15/100</td> <td>50m²</td> <td>7.5</td> </tr> <tr> <td>Industrial</td> <td>1.3/100</td> <td>343.2m²</td> <td>4.5</td> </tr> <tr> <td colspan="2"></td> <td>Total required</td> <td>53</td> </tr> </tbody> </table> <p>53 spaces (including one accessible space) have been provided on the site. In this regard, the proposal complies with Council's car parking requirements.</p> <p>There is provision for MRV service vehicles to enter the site in a forward direction, safely manoeuvre and unload on site and leave the site in a forward direction.</p> <p>Conditions are recommended requiring the construction of all car parking and vehicular accesses to be in accordance with the approved construction plans and Australian Standard AS/NZS 2890.1: 2004.</p>	Council Requirement		Proposed Gross Floor Areas	Required Number of Parking Spaces	Use	Rate	Gym	4.5 spaces per 100m ² gross floor area	896m ²	40.3	Cafe	15/100	50m ²	7.5	Industrial	1.3/100	343.2m ²	4.5			Total required	53
Council Requirement		Proposed Gross Floor Areas	Required Number of Parking Spaces																				
Use	Rate																						
Gym	4.5 spaces per 100m ² gross floor area	896m ²	40.3																				
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Industrial	1.3/100	343.2m ²	4.5																				
		Total required	53																				

	<p>Having regard for the above, no issues are raised in relation to this chapter.</p>
Chapter 2B – Floodplain Management	<p>The subject site is identified as being subject to flooding. The subject site has already been filled to the required level (RL 2.0m AHD) via DA 1985/192.</p> <p>Council's Civil Services Division have assessed the proposal in relation to floodplain management. The required floor level is RL 2.3m AHD and the proposal will be conditioned to comply.</p> <p>Flood planning matters have also been previously addressed within this report – refer to Clause 7.3 of BLEP 2012 assessment for discussion.</p>
Chapter 5 – Industrial Development	<p>3.1.3 Development Controls</p> <p>A. Element – Building Design Requirements</p> <p>Site Layout – Control</p> <p><i>i. Industrial buildings and all ancillary development on a lot must have a building line or setback from the boundary with a primary road and parallel road of at least 6.0m; and</i></p> <p>Complies. The proposed building is set back a minimum of 6m from the boundary.</p> <p><i>ii. Variations to the front building line or setback will be considered where an alternate building line or setback can be established on the basis of the average existing building lines or setbacks of the 2 nearest industrial buildings having a boundary with the same primary road.</i></p> <p>No variation to the building line is sought.</p> <p>Building Appearance – Control</p> <p><i>i. Exterior walls of buildings, including any outbuildings, shall comprise materials with a low reflective index and must not be constructed using uncoated/untreated metal sheeting, fibre-cement or like materials;</i></p> <p>The applicant has commented that all exterior walls comprise painted concrete tilt-up panels which will have a low reflective index characteristic.</p> <p><i>ii. The full length of any exterior wall facing a road frontage, including any adjoining exterior wall for a minimum length of 5 metres, must be of masonry construction and painted where of plain concrete finish;</i></p> <p>The applicant has commented that all of the exterior walls are constructed of painted concrete tilt-up panels.</p>

	<p><i>iii. Buildings shall have a roof pitch no greater than 3.5 degrees unless roofing materials have a low reflective index;</i></p> <p>The applicant has indicated that the proposed roof pitch is 3.5 degrees. In this regard there is no requirement for a low reflective index.</p> <p><i>iv. The scale and selection of building forms, materials and elements must relate to the perceived use, such as expressing office components differently to warehouse or factory components of a development;</i></p> <p>The applicant has commented that the facades are varied and attractive to Ascot Road and relate to the proposed uses. The building form and materials are compatible with other industrial buildings in the locality.</p> <p><i>v. The architectural form and character of a building must not include large unbroken expanses of wall or roof facing a street frontage; and</i></p> <p>The applicant has commented that the building facades have been broken by the use of windows, glass sliding doors and roller doors and are considered to present well in the streetscape, which is accepted.</p> <p><i>vi. Roof forms shall be designed to minimise visual intrusions and to prevent any roof top equipment from being visible from the street. Where this cannot be achieved, roof top equipment shall be screened by materials of the same nature as the building's basic materials.</i></p> <p>The applicant has indicated there is no roof top equipment proposed as part of this application. No issues are raised.</p> <p>Signage – Controls</p> <p><i>i. Signage shall comprise business identification signs only and can be free-standing or attached to the building. General advertisements will only be permitted where they relate to activities or services provided from the site on which they are erected; and</i></p> <p>The applicant has commented that the application does not propose any signage. Signage will either be compliant with the “exempt development” signage provisions or will be subject to a separate Development Application.</p> <p><i>ii. Freestanding signs must complement the design of the buildings to which they relate, clearly identify the product or business being promoted and be compatible with signage on adjoining sites without dominating the streetscape or locality.</i></p> <p>Not applicable – no signage is proposed.</p>
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	<p>B. Element – Landscaping and Screening</p> <p><i>i. A landscape plan is to be submitted with a development application and will form part of the development consent. The landscape plan shall be fully implemented prior to occupancy;</i></p> <p>A concept landscaping plan has been provided, which is acceptable having regard to the DCP controls.</p> <p><i>ii. A landscaped area with a minimum depth of 3.0m is to be provided along all frontages of the site. Unless otherwise utilised for access ways, forward of the front building line or setback should be landscaped for the full depth of the frontage. This may include pedestrian pathways;</i></p> <p>A 3.0m wide landscaping strip has been provided along the Ascot Road frontage (excluding the driveways).</p> <p><i>iii. Plantings used in landscaped areas are to be in scale with the buildings proposed and shall consist of native and endemic species;</i></p> <p>A plant species list is provided on the landscape plan and comprises native species.</p> <p><i>iv. A tall tree species must be planted for every 10 metres of street frontage, supplemented by massed groups of native shrubs and ground covers. Species should be selected for their relatively fast growth and low maintenance characteristics. Tree species should be capable of achieving a canopy spread of 50% over the landscaped areas of the site within 5 years of occupation;</i></p> <p>A number of taller trees, shrubs and ground covers/small plantings are proposed along the Ascot Road frontage.</p> <p><i>v. Landscaped areas should be separated from car parks and driveways by appropriate barriers such as low timber railings or constructed kerbs;</i></p> <p>The landscaped areas will be separated from the car parking spaces and driveways by kerbing.</p> <p><i>vi. Garbage and storage areas must be screened from the street frontage and located on-site, behind the building line or setback and are not to occupy driveways, turning circles, car parking or landscaped areas;</i></p> <p>A covered waste enclosure is proposed between parking space No. 35 and the gymnasium building which will not be highly visible in the local landscape and does not occupy driveways, turning circles, car parking or landscaped areas. A waste bin storage area has been provided within the industrial building.</p> <p><i>vii. External storage areas are to be screened from view of public</i></p>
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	<p><i>places by means of fencing and/or landscaping, and are not to be located within the front building line or setback area; and</i></p> <p>There are no external storage areas proposed.</p> <p><i>viii. All security fencing is to be located behind the front building line or setback in order to present landscaping to its best advantage. Where particular circumstances warrant a variation to this requirement, applications will be considered on a merit basis.</i></p> <p>No security fencing is proposed as part of this application.</p> <p>C. Element – Car Parking and Access</p> <p>Car Park Design – Control</p> <p><i>i. Car parking and manoeuvring areas must not encroach into the front landscaped area except for the purposes of disabled access.</i></p> <p>There are no encroachments of the front 3m wide landscaping area.</p> <p><i>ii. Parking bays, manoeuvring areas, service areas, loading bays, queuing areas, set down/pickup areas, and driveways are to be designed in accordance with the dimensions specified in Australian Standard 2890</i></p> <p>The applicant has commented that all areas have been designed to comply with AS 2890.1-2004. Conditions have been recommended to ensure compliance with the Australian Standard.</p> <p><i>iii. Internal access ways are to permit entry and exit of the site by customers and visitors while a vehicle is being loaded or unloaded;</i></p> <p>The applicant has commented that internal access ways will permit entry to and exit from the site by customers/visitors. Due to the nature of use of the gymnasium building (including the café), there is no need for a designated loading area/bay for trucks.</p> <p>Council's Civil Services Division have confirmed that there is provision for MRV service vehicles to enter the site in a forward direction, safely manoeuvre and unload on site and leave the site in a forward direction.</p> <p><i>iv. Car park areas shall be sited to allow for safe and convenient pedestrian access to buildings;</i></p> <p>The car parking areas have been designed to provide safe and convenient access to the buildings.</p> <p><i>v. Development within an area of 2,000m² or greater must provide for the separation of service and delivery vehicle access from car parking areas to ensure safe and unimpeded</i></p>
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	<p><i>pedestrian access from car parking areas to the building's main entrance; and</i></p> <p>The applicant has commented that provision has been made for MRV's to enter and leave the main parking area/access in a forward direction will not compromise safe pedestrian access to/from the main entrances to the buildings. This has been deemed acceptable by Council's Civil Services Division.</p> <p><i>vi. Planting must be used to highlight pedestrian and vehicular access points and easements. Car parks should be landscaped to complement the surrounding areas and provide shade for parked cars.</i></p> <p>Landscaping has been provided to the street elevation and in front of the car parking areas.</p> <p>Car Parking – Control</p> <p><i>i. On site car parking is to be provided in accordance with the rates indicated in Chapter 2 – General and Environmental Considerations unless otherwise specified in Table 5.1.</i></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #ADD8E6;"> <th colspan="2">Table 5.1 – Car parking</th> </tr> <tr style="background-color: #D3D3D3;"> <th>Industrial Uses</th> <th>Parking Rate</th> </tr> </thead> <tbody> <tr> <td>Industry</td> <td>1.3 spaces per 100m2 <i>gross floor area</i> (GFA)</td> </tr> <tr> <td>Warehouse or Distribution Centre</td> <td>1 per 300m2 GFA</td> </tr> <tr style="background-color: #D3D3D3;"> <th colspan="2">Other Uses</th> </tr> <tr> <td>Industrial Training Facility*</td> <td>Merit assessment</td> </tr> <tr> <td>Self-Storage Premises</td> <td>1 space per 10 storage sheds, plus 1 space per 40m² GFA office space</td> </tr> <tr> <td>Hospital*</td> <td>Merit assessment</td> </tr> <tr> <td>Educational Establishment*</td> <td>Merit assessment</td> </tr> </tbody> </table> <p><small>*Parking rate to be determined based on a detailed Traffic Impact Assessment</small></p> <p>The area of gross floor area proposed required 53 on-site car parking spaces, with 53 spaces provided (including one covered accessible space).</p> <p>In this regard, no issues are raised in relation to this control.</p> <p>Service Vehicle Access – Control</p> <p><i>i. Premises are to be designed to accommodate access and parking by service vehicles in accordance with Table 5.2.</i></p>	Table 5.1 – Car parking		Industrial Uses	Parking Rate	Industry	1.3 spaces per 100m2 <i>gross floor area</i> (GFA)	Warehouse or Distribution Centre	1 per 300m2 GFA	Other Uses		Industrial Training Facility*	Merit assessment	Self-Storage Premises	1 space per 10 storage sheds, plus 1 space per 40m ² GFA office space	Hospital*	Merit assessment	Educational Establishment*	Merit assessment
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Hospital*	Merit assessment																		
Educational Establishment*	Merit assessment																		

Table 5.2 – Service Vehicle Requirements	
Lot Size	Service Vehicle Requirements
Up to 2000m ²	Small Rigid Vehicle (SRV) – light trucks to a maximum capacity of 4.0t
In excess of 2000m ² , but less than 4000m ²	Medium Rigid Vehicle (MRV) – common service truck having a load capacity of up to 8.0t
Greater than 4000m ²	Heavy Rigid Vehicle (HRV) – a single unit truck which typically has a load capacity of up to 12t

The applicant has commented that the subject split lot component has an area of 2,856m² which is in excess of 2,000m² but less than 4,000m². Access for an MRV has therefore been provided as required.

D. Element – Environmental Management

i. Emissions of contaminants including air pollutants, water contaminants, noise, vibration, heat or light must not cause environmental harm or nuisance. No significant emissions or discharges of contaminants are to occur beyond the boundary of the site or into adjoining waterways;

The applicant has commented that the proposed and any future uses will comply with this control.

Noise impacts of the proposed development have been assessed – refer to 'Noise and Vibration' section of this assessment.

Contamination has been previously assessed – refer to SEPP 55 section of this assessment.

The subject land is currently mapped as containing a waterway/stream. The subject land was filled during 2020 (in accordance with the approval issued via DA 1985/192). The 'River Catchments and Drainage' map reflects the condition of the site prior to filling and is therefore no longer considered relevant to the assessment of the subject application.

ii. Development must include an efficient and cost effective stormwater run-off management system (i.e. a drainage network and detention/retention storage that adequately protects people and the natural and built environments);

A stormwater plan has been prepared and is deemed satisfactory by Council's Civil Services Division.

iii. Stormwater run-off originating from development must be of a quality that will protect or enhance the environmental quality of receiving water;

Council's Civil Services Division have carried out an assessment of the proposal and the submitted stormwater management plan.

	<p><i>iv. Development must integrate and allow for Water Sensitive Urban Design (WSUD) measures to be implemented into lot layouts and drainage systems. This can be incorporated through:</i></p> <ul style="list-style-type: none"> • <i>storage rather than conveyance of stormwater;</i> • <i>maintenance and enhancement of water quality;</i> • <i>permeable surfaces, soakwells and landscaped swales in site layout to increase on site infiltration and treatment;</i> • <i>water conserving landscaping;</i> • <i>localised water supply for irrigation; and</i> • <i>use of rainwater tanks for stormwater re-use.</i> <p>Council's Civil Services Division have carried out an assessment of the proposal and the submitted stormwater management plan, which is generally supported.</p> <p>E. Element – Sustainable Industrial Development</p> <p><i>i. Building forms shall be designed for adaptability through the provision of flexible spaces and regular building form designed to accommodate future conversion or dividing for alternate uses;</i></p> <p><i>ii. A building and its openings are to be configured to maximise passive solar energy and minimise energy use in artificial lighting. This may include the use of skylights to capture natural light through the roof;</i></p> <p><i>iii. A building and its openings are to be orientated to utilise prevailing winds to enhance the opportunity for cross ventilation;</i></p> <p><i>iv. The use of energy efficient appliances and equipment are encouraged to minimise energy usage and greenhouse gas generation; and</i></p> <p><i>v. Safe and convenient bicycle parking is to be provided on site.</i></p> <p>The applicant has commented that the proposed development has been designed taking into consideration the above elements and where possible and practical these have been incorporated into the design. The design and external appearance is consistent with that of other industrial developments in the locality. Two bicycle parking racks have been provided.</p> <p>No issues are raised in relation to this control.</p> <p>Part 4 Precinct Specific Controls</p> <p>4.2 Southern Cross Industrial Estate</p> <p>4.2.2 Development Controls applying to Southern Cross Industrial Precinct</p> <p>A. Element – Building Design</p>
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	<p>The precinct specific controls are not applicable to the proposal, given the building has frontage to Ascot Road only (not a secondary road) and does not adjoin a waterway or land zoned for residential purposes. No issues are raised in relation to this section.</p> <p>Having regard for the above, no issues are raised in relation to Chapter 2 of the DCP.</p>
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4.15 (1) (a) (iia) – any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

Planning Agreement (or draft)	Comments
None applicable	

4.15 (1) (a) (iv) – any matters prescribed by the regulations

	Comments/Is consistency with these provisions achieved?
If the DA is for the demolition of a building, consider the provisions of AS 2601-1991: The demolition of structures (as in force 1 July 1993):	Not applicable.
If the DA is only for a change of use or the use of an existing building as a place of public entertainment, is the fire protection and structural capacity of the building appropriate to the building’s proposed use?	Not applicable.
If the DA is involves the rebuilding/ alteration/enlargement/extension of an existing building, is the existing building required to be brought into total or partial conformity with the Building Code of Australia (BCA)?	Not applicable.
If the DA is for the erection of a temporary structure, is the fire protection and structural capacity of the structure appropriate to the proposed use of the structure?, and is the ground or other surface, on which the structure is to be erected, sufficiently firm and level to sustain the structure while in use?	Not applicable.

4.15 (1) (b) – the likely impacts of that development

	Discuss whether or not the impact is acceptable or not? If not, then describe the adverse impacts and the steps taken to mitigate the impacts
Urban and Building Design	
i) Context and Settings	The proposal is seeking consent for the construction of

	<p>an industrial complex containing two buildings to be used for light/general industrial and a gymnasium and take away food and drink premises.</p> <p>The subject land is situated within a largely developed urban area that is characterised by industrial uses (Southern Cross Industrial Estate) to the south and west, residential uses to the north and cleared grassland and bushland to the east. The immediate surrounds (Ascot Road) is currently undeveloped industrial zoned land. The site does not form part of a broader view corridor.</p> <p>The subject land was filled to a level of RL 2.0m AHD during the subdivision that was approved and developed under DA 1985/192. The subdivision of the land has not yet been registered. The subject land is flat and currently vacant/undeveloped.</p> <p>A maximum height of building of 8.5 metres applies to the subject land. The applicant has indicated that the proposed industrial building has a maximum height of 9.807m and the proposed gymnasium building has a maximum height of 9.997m. These are height variations of 1.307m and 1.497m respectively.</p> <p>The applicant has submitted a written request to vary this standard. This has been addressed in detail within the associated Council report.</p>
<p>ii) Site Design and Internal Design</p>	<p>The subject land is Lot 8 DP 1262723, which is 2.22 hectares in total area. The part of existing Lot 8 to be developed is flat, rectangular in shape with frontage to Ascot Road and is approximately 2,856m² in area. The dimensions of the site are as follows:</p> <ul style="list-style-type: none"> • 78.22m north-eastern boundary to Ascot Road • 37.205m south-eastern boundary to Lot 4 DP 1262723 • 78.2m south-western boundary to Lot 72 DP 737313 • 36.445m north-western boundary to Lot 3 DP 1262723 <p>The proposal is seeking consent for the construction of an industrial complex containing two buildings to be used for light/general industrial and a gymnasium and take away food and drink premises.</p> <p>In relation to the fit-out of the food premises, a condition is recommended requiring plans (including sections and elevations) and specifications showing details of all food preparation and storage areas, layout, construction and method of installation of all fittings and fixtures, together with floor, wall and ceiling</p>

	<p>finishes, are to be submitted to Council's Environmental Health Officer prior to the issue of the Construction Certificate.</p> <p><u>Accessibility issues</u></p> <p>Council's Building Services section has carried out an assessment of the proposal. The internal design of the proposal is considered acceptable.</p> <p>The proposal will be conditioned to comply with the National Construction Code (NCC) and relevant Australian Standards regarding access and facilities for the disabled.</p> <p><u>Car parking and access</u></p> <p>The proposal includes the provision of 53 car parking spaces on site in accordance with the DCP requirements.</p> <p>The design and layout of the vehicle parking areas and access aisles has been assessed and is supported by Council's Civil Services Division, subject to compliance with the relevant Australian Standards.</p> <p><u>Landscaping</u></p> <p>A concept landscaping plan has been prepared and is generally acceptable. The landscaped areas will be separated from the car parking areas and driveways by kerbing.</p> <p>A 3m wide site landscaping to Ascot Road frontage has been provided in accordance with the DCP requirements. A number of taller trees, shrubs and ground covers/small plantings are proposed along the Ascot Road frontage.</p> <p>A condition is recommended to be imposed requiring landscaping to be provided in a manner that does not impede surveillance or result in concealment areas.</p> <p><u>Acoustic and visual privacy</u></p> <p>The proposed development has the potential to generate noise during construction and operation. Further discussion is provided below in <i>xvi) Noise and vibration</i>.</p> <p>With respect to visual privacy, it is considered adequate separation distance is provided to site boundaries and nearby industrial and residential uses. It is not considered the proposal will result in adverse visual privacy impacts.</p>
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		<p><u>Building materials and finishes</u></p> <p>The proposed building materials and finishes comprise reinforced concrete tilt-up painted walls and colourbond metal roofing.</p> <p>The applicant has indicated that the materials/finishes will have a low reflective index characteristic.</p> <p>The proposed materials are compatible with other buildings in the locality.</p> <p><u>Building Code of Australia</u></p> <p>Council's Building Services Section has carried out an assessment of the proposal. A condition is recommended to be imposed to ensure the development complies with the requirements of the National Construction Code (NCC) and relevant standards.</p> <p><u>Fire Risk</u></p> <p>The proposal will be conditioned to comply with the National Construction Code (NCC) in relation to fire safety.</p> <p>On completion of the erection of the building, the owner is required to provide Council with a Fire Safety Certificate certifying that all essential services installed in the building have been inspected and tested by a competent person and were designed and installed to be capable of operating to the minimum standard required by the NCC. The owner will be required to provide Council with an annual Fire Safety Statement at least once in every 12 months. These requirements are recommended to be imposed as a condition of consent.</p>
iii)	Ecologically Sustainable Building Design	No issues raised.
iv)	Access, Transport and Traffic	<p>The existing external road network is constructed to a suitable standard to service the proposed development.</p> <p>Sight distances at access points are suitable to service the development.</p> <p>There is provision for MRV service vehicles to enter the site in a forward direction, safely manoeuvre and unload on site and leave the site in a forward direction.</p>
v)	Public Domain	No adverse public domain impacts anticipated.
vi)	Utilities	No issues raised – refer to BLEP 2012 and BDCP sections of this assessment.

vii)	Heritage	No issues raised.
viii)	Construction	<p>The proposal is for the construction of an industrial complex containing two buildings to be used for light/general industrial and a gymnasium and take away food and drink premises.</p> <p>Conditions can be imposed on any consent granted to mitigate potential impacts in relation to sediment and erosion control, waste management, hours of noise generating works and protection of adjoining properties.</p>
Environmental Impacts		
ix)	Other Land Resources	Not directly applicable.
x)	Water	<p>The subject land is currently mapped as containing a waterway/stream. The subject land was filled during 2020 (in accordance with the approval issued via DA 1985/192). The 'River Catchments and Drainage' map reflects the condition of the site prior to filling and is therefore no longer considered relevant to the assessment of the subject application.</p> <p>No particular issues raised in relation to the servicing of the development. Stormwater management has been addressed – refer to discussion under BDCP Chapter 2.</p>
xi)	Soils	<p>The subject site is identified as containing Class 2 Acid Sulfate Soils (ASS). Council's Environmental Health Officer has recommended a condition requiring the Acid Sulfate Soils Management Plan to be implemented in full during works.</p> <p>Conditions are recommended in relation to sediment and erosion control during works.</p> <p>Land contamination has been addressed previously, refer to SEPP 55 section of this assessment.</p>
xii)	Air and Microclimate	<p>A condition is recommended requiring the applicant to have a dust management plan which outlines the methods that will be employed to effectively suppress dust during and after construction stages.</p> <p>A condition has also been recommended to ensure the construction site must not emit objectionable or offensive dust to the extent that the discharge causes an adverse effect at or beyond the boundary of the construction site.</p>
xiii)	Flora and Fauna	No issues raised. The proposal does not involve vegetation management works.
xiv)	Waste	Waste management has been previously addressed – refer to BDCP Chapter 2 section of this assessment.

xv)	Energy	No issues raised.
Hazards		
xvi)	Noise and Vibration	<p>Noise impacts during constructed can be managed by way of the recommended conditions.</p> <p>The applicant has indicated that noise during operation would likely be consistent with other adjacent industrial type uses.</p> <p>Council's Environmental Health Officer has commented that the operation of the gym will be 24 hours per day/7 days per week with staff on site from 5am to 8pm weekdays and reduced hours on weekends. Amplified music will be played in the gym and voice amplification will be used during classes. There will be video surveillance undertaken that will also be able to monitor amenity. A noise management plan can be implemented for both customers and staff.</p> <p>Conditions are recommended to be imposed on the consent requiring a Noise Management Plan to be submitted to and approved by the Principal Certifying Authority prior to the release of any Occupation Certificate. The Noise Management Plan shall detail the onsite measures to be implemented to mitigate any noise impact on nearby residential premises from the operation of the gym.</p> <p>A condition is also recommended in relation offensive noise during operation (including mechanical plant, amplified music and voice).</p> <p>Following occupation, should complaints of a noise nuisance be justified, a condition is recommended requiring an acoustic assessment to be conducted by a qualified consultant and report provided to Council. The applicant shall then implement all recommendations provided under the assessment within a timeframe set by Council, to the satisfaction of Council and comply with any additional direction given by Council.</p> <p>Subject to compliance with the recommended conditions of consent, no issues are raised in relation to this section.</p>
xvii)	Natural Hazards	<p>The subject site is identified as being subject to flooding.</p> <p>The subject land has been filled to the required level (RL 2.0m AHD) via DA 1985/192. The proposal will be conditioned to ensure the floor levels are constructed in accordance with Council's requirements.</p>

		The subject site is not mapped as being bushfire prone land or affected by landslip. Subject to compliance with the recommended conditions of consent, there is not likely to be any adverse natural hazard effects from the proposed subdivision.
xviii)	Technological Hazards	No issues raised – refer to SEPP 55 section of this assessment.
xix)	Safety, Security and Crime Prevention (CPTED)	No issues raised – refer to Chapter 2 of DCP section of this assessment.
Social and Economic Impacts		
xx)	Social Impacts in the Locality	The proposal is not considered to result in significant adverse social impacts in the locality, subject to compliance with the recommended conditions of consent. The mitigation measures proposed will ensure impacts on the health and safety of the community are minimised.
xxi)	Economic Impact in the Locality	The proposal will create employment in the local area during the construction period and the provision of a new industrial building, recreation facility (indoor) and take away food and drink premises will allow for new businesses to be established within the Ballina Shire.
Cumulative Impacts		
xxii)	Cumulative Impacts	No cumulative issues raised as a result of the proposal. Refer to assessment via Clause 4.6 in the Council report.

4.15 (1) (c) – The suitability of the site for the development

		Comments
i)	Does the proposal fit in the locality?	The proposed development is considered to be consistent with the character of the locality. It has been assessed that any potential impacts can be suitably addressed and are to be managed by way of the recommended conditions, should consent be granted.
ii)	Are the site attributes conducive to development?	The attributes of the site are considered to be conducive to the development, particularly as there are no real identified site constraints.

4.15 (1) (d) Any submission made in accordance with this Act or the Regulations?

Is advertising required because the development is designated or “advertised” development?	No
If YES, how many submissions were received?	N/A
Is advertising required in accordance with established Council policy and	No

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practice?	
If YES, how many submissions were received?	N/A

4.15 (1) (e) The public interest

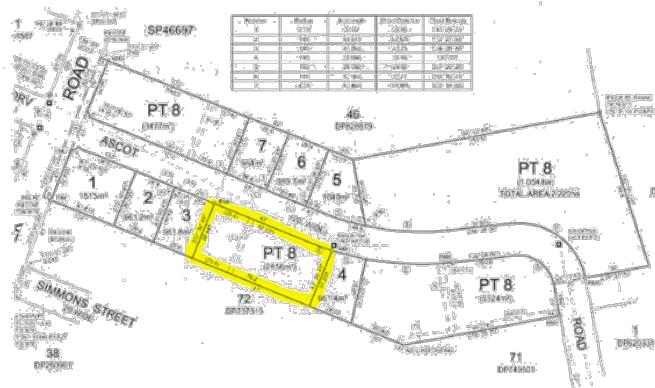
Federal, State & Local Government interests and Community interests	The proposed development is considered to be in the interest of the Federal, State and Local Governments and in the interest of the wider community.
Section 64 Contributions and Section 7.4 Contributions	Contributions are applicable – refer to Schedule 1 and Civil Services referral.

Ardill Payne & Partners

**Written request pursuant to Clause 4.6 to vary a Development Standard
- Building Height**

Subject Property: Lot 8 DP 1262723, Ascot Place, Ballina.

Lot 8 is a split lot that contains 4 x component parts, that has further subdivision potential under the terms and conditions of DA 1985/192. The proposed development is situated on one of the parts of the lot, being the 2856m² section as shown below in yellow:



Proposed Development: The construction of 2 x industrial type buildings for light/general industrial purposes and for a gymnasium and café.

This written request directly addresses the matters for consideration in Clause 4.6 at Paragraphs 1 to 13 and particularly Paragraphs 10 to 13. It also provides additional information as follows:

- I. Information relevant to the development, the information consistent with those matters that are required to be addressed pursuant to the Department's "Varying Development Standards: A Guide" (Paragraphs 14 to 17 of this Written Request).
 - 1. **What is the name of the environmental planning instrument that applies to the land?**
Ballina LEP 2012 (came into effect 4th February 2013).

2. What is the zoning of the land?

IN1 – General Industrial Zone.

3. What are the objectives of the zone?

- *To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To enable non-industrial uses that are compatible with the industrial nature of the locality.*
- *To provide for the efficient use of industrial land.*
- *To encourage development that achieves the efficient use of resources such as energy and water.*
- *To ensure that development does not expose adjoining uses to hazard risks.*

4. What is the development standard being varied? eg FSR, height, lot size

Maximum building height = 8.5m (Clause 4.3 – Height of Buildings & Height of Buildings Map – Sheet HOB_006).

5. Under what circumstances is the development standard listed in the environmental planning instrument?

The development standard is a numerical enabling standard, such that consent **may** be granted to the construction of a building subject to compliance with the maximum height shown on the Height of Buildings Map.

6. What are the objectives of the development standard?

The objectives of Clause 4.3 are:

- (a) *to ensure that the height of buildings is compatible with the bulk, scale and character of the locality,*
- (b) *to minimise adverse impacts on existing or future amenity of adjoining properties and the scenic or landscape quality of the locality,*

(c) to protect significant views from public places.

7. What is the numeric value of the development standard in the environmental planning instrument?

The maximum permitted building height is 8.5m.

8. What is the proposed numeric value of the development standard in your development application?

The proposed industrial building has a maximum height of 9.807m and the proposed gymnasium building has a maximum height of 9.997m. These are height variations of 1.307m and 1.497m respectively.

9. What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variations are 15.37% and 17.61% respectively.

10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

It is considered that strict compliance with the maximum permitted height development standard required by Clause 4.3 of the BLEP 2012 is unreasonable and unnecessary in the circumstances of the case because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: (cls. 4.6(3)(a)); *Wehbe v Pittwater Council* at [42] and [43]. The "Objectives" of the standard are identified in paragraph 6 above. The reasons for stating that the objectives of the development standard are achieved are set out below:

10.1 The first Objective (1(a)) is satisfied in that the height of the proposed buildings is compatible with the bulk, scale and character of other industrial and bulky goods retail buildings in the locality (and particularly in the Southern Cross Industrial Estate).

10.2 The second Objective (1(b)) relates to minimising adverse impacts on the existing or future amenity of adjoining properties and the scenic or landscape quality of the locality. Adjoining properties comprise vacant industrial lots (that have recently been developed under the terms and conditions of DA 1985/192), an industrial road (Ascot Road) and a vegetated drainage reserve (15m wide). The proposed buildings (and in particular the proposed additional height thereof) will not have any adverse impacts on the existing or future amenity of any adjoining properties or the scenic or landscape quality of the locality. The adjoining vacant industrial lots will be developed for industrial purposes and are situated in a recently constructed and developing industrial estate. There will

not be any adverse impacts on the adjoining road (to the north) or drainage reserve (to the south). There is a 10m building height applying to the adjoining/adjacent Southern Cross Industrial Estate (including lots fronting Simmons Street and Ray O'Neill Crescent).

- 10.3 The third Objective (1(c)) relates to the protection of significant views from public places. The proposed buildings (and in particular the proposed additional height thereof) will not have any impacts on any views from any public places.
- 10.4 The proposed buildings are setback well in excess of the required 6m building line/setback to Ascot Road, being 20m for the industrial building and 13m for the gymnasium/café building, which will significantly reduce the perception of their bulk, scale and setting and presentation in the streetscape when viewed from the road.
- 10.5 Those parts of the buildings that exceed the height control do not give rise to any loss of privacy. There is no opportunity to overlook any neighbouring properties from the buildings due to the absence of windows.
- 10.6 The buildings both have a long east-west axis, with the bulk of shadows being cast to the south, over the existing 15m wide vegetated drainage reserve. The additional overshadowing caused by the built elements that exceed the height control is minor, and in any event, would largely fall within the drainage reserve. Further, the land on the southern side of the drainage reserve (fronting Simmons Street) comprises developed industrial lots.

The proposed buildings are in full compliance with the objectives of clause 4.3 of BLEP 2012. In the circumstances, the consent authority would be satisfied that this written request adequately addresses the matter in cl 4.6(3)(a) by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

11. Are the sufficient environmental planning grounds to justify contravening the development standard?

It is considered that there are sufficient environmental planning grounds to justify contravening the development standard (cls. 4.6(3)(b)).

"The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act"

(Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 at [23]) (Initial Action).

In *Initial Action* his Honour Chief Justice Preston identifies two ways in which the written request must be sufficient:

- the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development

standard" and the focus must be on the contravention not the development as a whole; and

- the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter.

(Initial Action at [25])

This aspect of the written request commences with a consideration of the relevant Objects in Section 1.3 of the *Environmental Planning and Assessment Act 1979*.

- 11.1 The height variation is a result of attempting to provide future adaptable buildings, to enable them to be used for a broader range of industrial uses (including warehousing – extra building height will permit extra capacity for pallet racking/storage etc).
- 11.2 The height variations are considered to be negligible variations that would not be readily observed from the public domain given the proposed height of the structures and the increased setbacks from the road.
- 11.3 Although there is an exceedance of the height control, there is respect for, and compliance with other controls and consistency with the Ballina LEP and DCP as a result of the design of the buildings. The development observes and respects the requirements of planning law.
- 11.4 The design of the buildings sets a desirable precedent with respect to a practical design for industrial functions and for future adaptable re-use.
- 11.5 The EP&A Act and associated legislation permits and promotes development within parameters - but parameters that are (in the main) flexible in order to deliver better outcomes. In this respect, development standards "are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives" (*Wehbe v Pittwater Council* 156 LGERA 446 [2007] NSWLEC 827 at [43]). Development standards, including height controls, are to be respected but can be varied when better design outcomes can be achieved without sacrificing amenity. This development is consistent with that environmental planning ground.
- 11.6 A consideration of the relevant "environmental planning grounds" also requires a consideration of the Objectives for development in the IN1 zone.
- 11.7 The Objectives are as follows:

Zone IN1 General Industrial

 - To provide a wide range of industrial and warehouse land uses.
 - To encourage employment opportunities.

- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To enable non-industrial uses that are compatible with the industrial nature of the locality.*
- *To provide for the efficient use of industrial land.*
- *To encourage development that achieves the efficient use of resources such as energy and water.*
- *To ensure that development does not expose adjoining uses to hazard risks.*

- 11.8 The proposed development involves the construction of 2 x industrial type buildings that will be subject to a number of industrial and related uses that are permitted with consent in the IN1 zone and are consistent with the zone objectives.
- 11.9 The exceedance of the height control is requested to facilitate future adaptable re-use for a range of other industrial and related uses that are permitted in the IN1 zone.
- 11.10 As shown below, the proposed height is consistent with the permitted 10m height under the BLEP 2012 for the Southern Cross Industrial Estate (including the adjoining and adjacent industrial lots to the south, being Stinson Street and Ray O'Neill Crescent), with the extent of the 10m mapped height being coloured yellow and the subject land being circled in red.



In the circumstances the consent authority would be satisfied that this written request adequately addresses the matter in Clause 4.6(3)(b) by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard.

12. Is the consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by subclause 4.6(3)?

For the reasons set out in Paragraphs 10 and 11 above, the consent authority would be satisfied that this written request has adequately address the matters required to demonstrated by Subclause 4.6(3).

13. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

For the reasons set out in Paragraph 10 above, the consent authority would be satisfied that this written request has adequately demonstrated that the proposed development is consistent with the objectives of the height standard.

For the reasons set out in Paragraph 11 above, the consent authority would be satisfied that this written request has adequately demonstrated that the proposed development is consistent with the objectives for development within the IN1 zone in which the development is proposed to be carried out.

14. How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?

Strict compliance with the standard would hinder the attainment of the Objects specified in Section 1.3 of the Act particularly:

1.3 Objects of Act

The objects of this Act are as follows:

...

- (c) to promote the orderly and economic use and development of land*
- (g) to promote good design and amenity of the built environment*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants*

Otherwise the most relevant Objects of the Act have been specifically addressed above (Paragraph 11).

15. Is the development standard a performance based control?

No the development standard is not a performance based control. It is a numerical based enabling development standard as defined in s1.4 ("Definitions") of the *EP & A Act 1979* viz (**emphasis** added):

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

...

(c) *the character, location, siting, bulk, scale, shape, size, **height**, density, design or external appearance of a building or work,*

...

16. Would strict compliance with the standard, in your particular case, be unreasonable or unnecessary? Why?

In addition to the matters identified in Paragraph 10 above, this written request also notes that strict compliance with the standard having regard to the particular circumstances of the case is considered unreasonable and/or unnecessary due to the fact that:

- The proposed height variation will not result in any unreasonable or adverse amenity impacts for any adjoining or adjacent properties.
- The proposed buildings are compatible and consistent with the bulk, scale, external appearance etc of existing and future adjoining and adjacent industrial type buildings.
- There will not be any resultant adverse impacts on the privacy or overshadowing of any adjoining properties.
- The subject split lot section is adjoined by a public road to the north, vacant industrial lots to the east and west and a drainage reserve and developed industrial lots to the south.
- The proposed buildings have increased building setbacks to Ascot Road and landscaping is proposed to soften the built form.
- The proposed height variations are considered to be relatively minor and will not be overly perceptible to the broader industrial landscape and streetscape.
- The development and buildings are compliant with Council's DCP 2012.

- The proposed buildings are in full compliance with the objectives of clause 4.3 of the LEP 2012.

17. Are the sufficient environmental planning grounds to justify contravening the development standard? Give details.

It is submitted that there are sufficient environmental planning grounds to justify contravening the maximum building height, with details of such being provided above. It is submitted that the proposed development:

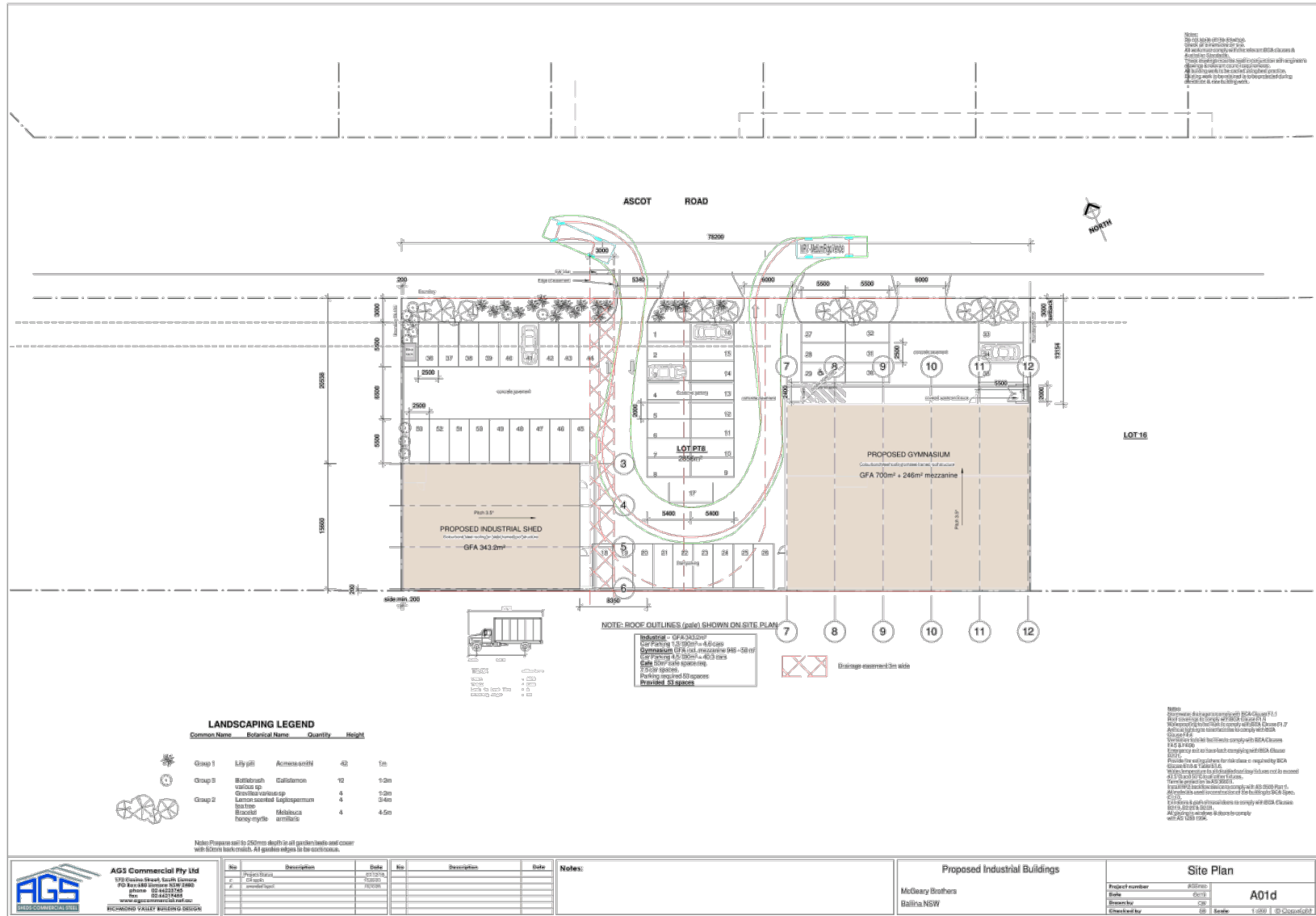
- is not contrary to the objects of the *EP & A Act 1979* (per Section 1.3)
- is not contrary to the aims of the BLEP 2012 (per Clause 1.2)
- is permitted with consent in and is consistent with the objectives of the IN1 zone
- is not contrary to the objectives of Clause 4.3 of the BLEP 2012
- is not contrary to the best public interest

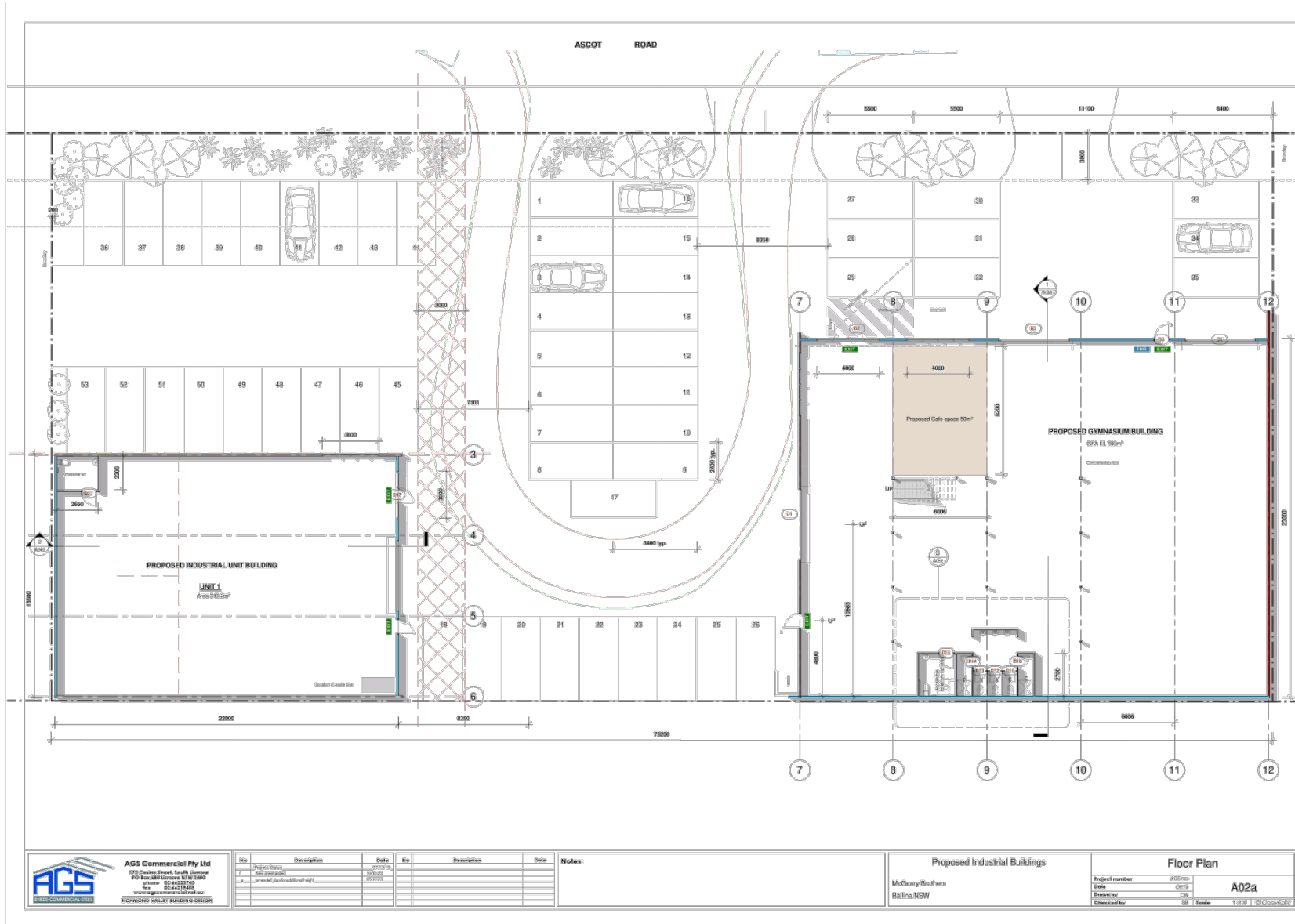
Further, it is considered that there are sufficient environmental planning grounds to justify contravening the maximum permitted height development standard for the following additional reasons:

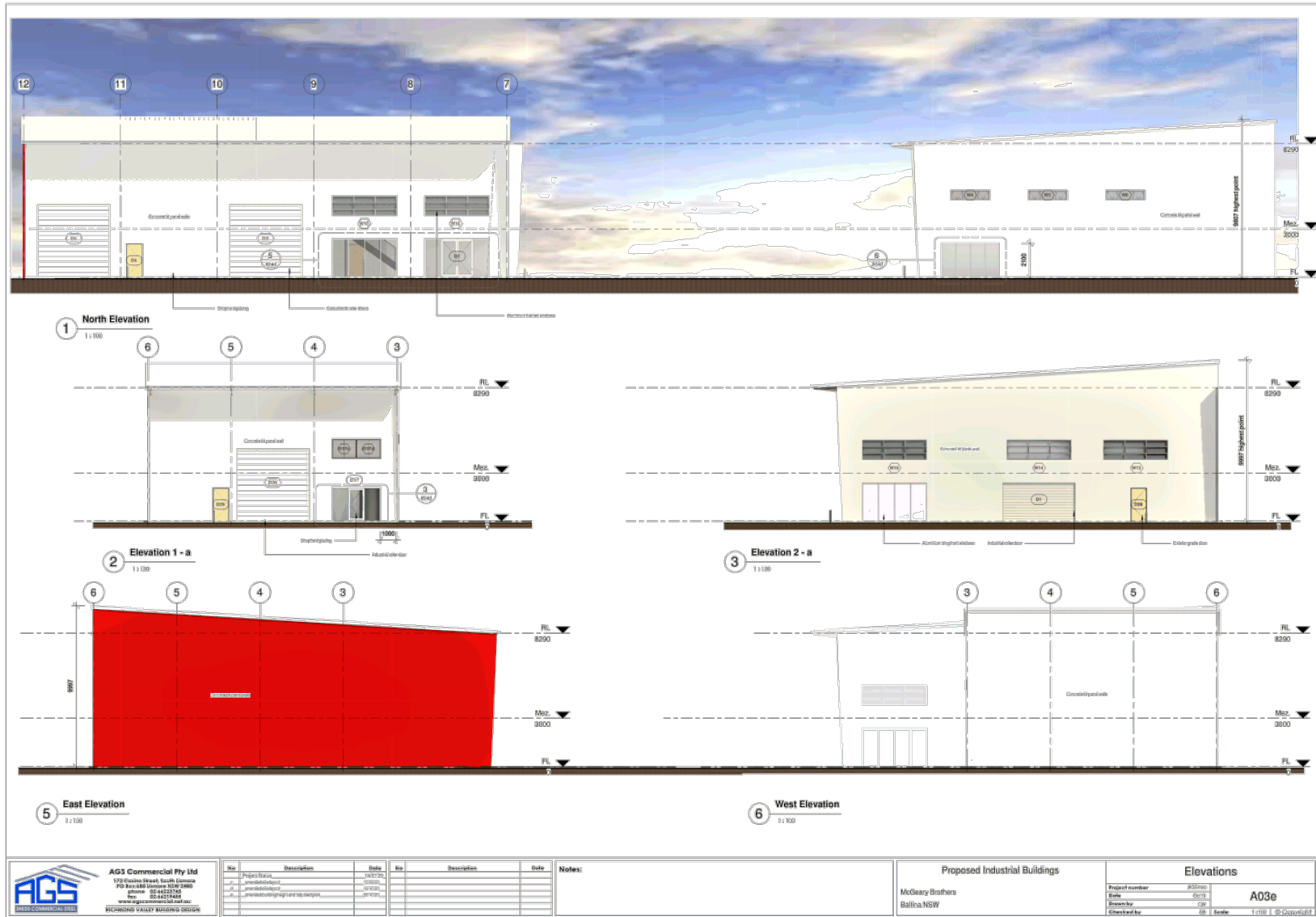
- The proposed height variations will not result in any unreasonable amenity impacts for any neighboring properties.
- The proposed buildings are consistent with the bulk, height, scale, external appearance and built form of other industrial buildings in the locality.
- There will not be any resultant adverse impacts on the privacy or overshadowing of any adjoining properties.
- The proposed height variations are relatively minor having regard to their position on the lot and in the streetscape and will not likely be perceptible to the broader community.
- The proposed buildings are compliant with the other relevant provisions of Council's DCP 2012.
- The proposed building is in full compliance with the objectives of Clause 4.3 of BLEP 2012.

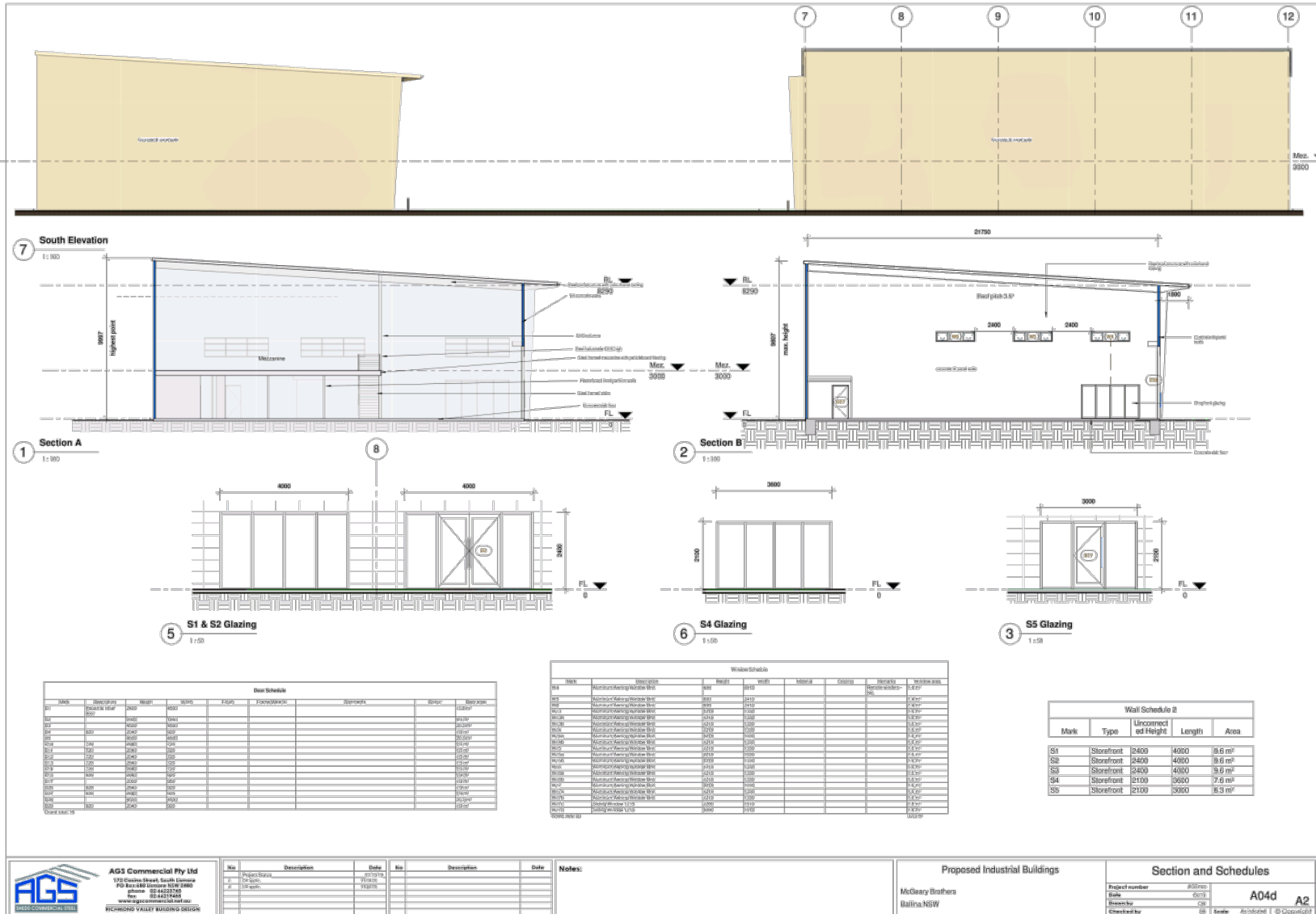
The proposal is in full compliance with all development standards contained within BLEP 2012 (apart from Clause 4.3) and in full compliance with all the applicable design elements contained within DCP 2012. The proposal does not create any adverse impacts on surrounding properties or the industrial landscape or streetscape which would suggest that there are sufficient environmental planning grounds to justify contravening the subject development standard.

8.1 DA 2020/766 - Industrial Building, Gymnasium and Take Away Premises









DA 2020/766 – DRAFT CONDITIONS**GENERAL**

1. Development being carried out generally in accordance with the plans and associated documentation lodged by, or on behalf of, the applicant, including:

Plans prepared by	Drawing No.	Drawing Title	Dated
AGS Commercial Pty Ltd	A01d	Site Plan	19 October 2020
AGS Commercial Pty Ltd	A02a	Floor Plan	26 October 2020
AGS Commercial Pty Ltd	A03e	Elevations	26 October 2020
AGS Commercial Pty Ltd	A05c	Accessible WC details and notes	26 October 2020
AGS Commercial Pty Ltd	A04d	Section and Schedules	19 October 2020

except as modified by any condition in this consent.

2. The total height of the development shall not exceed 9.997 metres.
3. **Driveway construction**
The driveways and parking bays within the development are to be constructed of reinforced concrete or similar paved material. All driveway areas are to be adequately graded and drained to stormwater treatment areas. These areas must discharge to Council's stormwater system to ensure that stormwater is not directed onto adjoining properties.
4. **NCC compliance**
The building, any required parking and access for persons with a disability are to comply with the requirements of the *National Construction Code (NCC)*, relevant Australian Standards and the *Disability (Access to Premises – Buildings) Standards 2010* as applicable to the buildings classification under the *NCC*.
5. **Commencement of occupation or use**
Occupation or use of the premises for the purposes authorised by this consent shall not commence until all relevant conditions of this consent have been complied with and a final Occupation Certificate has been issued by the Principal Certifying Authority (PCA), unless alternative arrangements have been made with Council.
6. **No advertising signage to be displayed**
No advertising sign(s) is to be erected or displayed without prior submission of a Development Application to, and approval from, Council, unless the proposed signage is consistent with the terms and conditions of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

The following conditions in this section of the consent must be complied with prior to the issue of any Construction Certificate relating to the approved development.

7. **Trade Waste**
Prior to issue of the Construction Certificate, the applicant is to submit a Classification A Trade Waste Application and pay the associated fee.

8. Administration/inspection fees

Where Council is not chosen as the Principal Certifier, the relevant certificate registration fee and required sewer inspection fees are to be paid to Council in accordance with Council's Fee Schedule, prior to the issue of a Construction Certificate.

9. Long Service Levy

In accordance with Section 109F of the EP & A Act (Section 109 F) a Construction Certificate will not be issued with respect to the plans and specifications for construction works until any long service levy payable under section 34 of the Building and Construction Industry Long Service Payments Act 1986 has been paid. Currently this rate is 0.35% of the cost of the construction works costing \$25,000 or more. Works less than \$25,000 are not subject to the levy.

10. Section 68 Application

Prior to issue of a Construction Certificate an application is to be lodged with Council and approved under Section 68 of the Local Government Act for all water, sewer, stormwater and any proposed fire service installations. Hydraulic details of all water, sewer and stormwater installations are to be submitted to Council with the Section 68 application and approved prior to the issue of a construction certificate. The plans are to be designed in accordance with *AS3500* and *NSW Code of Practice* and other relevant Australian Standards.

11. Civil works

Prior to the issue of the Construction Certificate, engineering design drawings shall be submitted to and approved by Council for civil/subdivision works required by this consent. These drawings shall also include associated works required under Section 138 of the Roads Act 1993 and Section 68 of the Local Government Act for the following civil works. Details are to be in accordance with the current Northern Rivers Local Government Development Design and Construction Manuals and/or in accordance with other design requirements from Austroads, Australian Standards and/or Roads & Maritime Services where specified.

- **Footpath and gutter crossing** - The provision of a footpath and gutter crossing for the development. Details are to be in accordance with Standard Drawing R05 and R06 of Northern Rivers Local Government Development Design and Construction Manuals. Details are to be submitted to and approved by Council prior to the issue of the Subdivision Works Certificate/Construction Certificate.

12. Car parking & vehicular access

The development shall provide 53 parking spaces including one covered disabled space on-site. The design of all car parking and vehicular accesses are to be in accordance with the Australian Standard AS/NZS 2890.1:2004. Design plans are to be certified by a suitably qualified professional and approved by the Principal Certifying Authority prior to issue of the Construction Certificate.

13. Car parking for disabled

The design of the covered disabled car parking space is to be in accordance with Australian Standard AS/NZS 2890.6: 2009. Design plans are to be certified by a suitably qualified professional and approved by the Principal Certifying Authority prior to issue of the Construction Certificate.

14. Stormwater management plan

The provision of stormwater controls on site shall be in accordance with the Water Sensitive Design requirements of Council's Development Control Plan Chapter 2 –

Section 3.9 - Stormwater Management and in accordance with the Site Stormwater Management Plan by Ardill Payne and Partners dated November 2020. Overland flow paths must be incorporated into the design directing overflows to the street or public drainage systems. Overland flow paths must not be impeded by structures or landscaping. A detailed design must be submitted to and approved by the Principal Certifying Authority prior to the issue of the Construction Certificate.

15. Water meters (residential developments with 3 units or more)

Each tenancy is to be fitted with a water meter of a minimum size of 20mm depending on the nature and size of the development. Prior to the issue of the Construction Certificate, the applicant is required to submit an "Application for a Water Service" to Council, along with a site plan clearly showing the location of the required meter/s.

For multiple unit developments, Council shall require the installation of remote read meters in accordance with Council's Water Metering Policy. This includes a master meter and sub meters on each tenancy.

16. Water backflow prevention (Industrial & Commercial refurbishments)

The site's containment backflow prevention shall be to current standards as per AS/NZS 3500 and Councils Backflow Prevention Policy. The design must be certified by a suitably qualified professional and submitted to and approved by Council prior to the issue of a Construction Certificate. Water connections not required to service this development must be disconnected in accordance with Council requirements.

Testable backflow devices will be required to be tested and certified annually by a suitably qualified NSW licensed plumber and the annual certificate submitted to Council.

17. Section 138 Driveway Approval

Prior to the issue of a Construction Certificate, a Section 138 application is to be made and fee paid for works on the road reserve. The fee is subject to review and may vary from the time of consent till time of payment see Councils schedule of Fees and Charges for the current rates

18. Food preparation and storage areas

Plans (including sections and elevations) and specifications showing details of all food preparation and storage areas, layout, construction and method of installation of all fittings and fixtures, together with floor, wall and ceiling finishes, are to be submitted to Council's Environmental Health Officer prior to the issue of the Construction Certificate. The applicant shall construct and fit-out the premise in accordance with the provisions of the Australian Food Safety Standards 3.1.1, 3.2.2 and 3.2.3.

19. Mosquito management

Stormwater detention areas shall be designed to drain within 48 hours after the end of a rainfall event to minimise the opportunity for mosquitoes to breed. Details to be included on construction certificate plans.

20. Waste management

Adequate provision must be made on site for the storage and disposal of solid and liquid wastes from the development. Details of the location and method of storing and disposing of solid wastes must be submitted to and approved by the Principal Certifying Authority (PCA) prior to the release of the Construction Certificate.

21. Waste disposal areas

The waste disposal areas are to be screened, covered, graded, bunded and drained to the sewer via a Council approved pre-treatment device if necessary. Drainage details are to be incorporated into the hydraulic plans and are required to be submitted to and approved by Council prior to the release of the Construction Certificate.

22. Erosion and Sediment Control Plan

An Erosion and Sediment Control Plan (ESCP) shall be submitted to and approved by the Principal Certifying Authority (PCA), prior to the issue of the Construction Certificate. The ESCP shall be prepared in accordance with the requirements of Managing Urban Stormwater – Soils and Construction, LANDCOM, March 2004.

23. External plant and equipment

The design and location of all external plant and equipment, noise level emissions and if required, design of noise control measures are to be submitted to and approved by Council prior to the release of the Construction Certificate.

24. Developer Contributions

Prior to issue of a Construction Certificate where building works is proposed, payment to Council of non-refundable monetary contributions shall be made towards the provision of public services, infrastructure and amenities, which are required as a result of the development in accordance with the following contribution plans prepared under Section 94 of the Environmental Planning & Assessment Act, 1979:

Contribution Plan/Development Servicing Plan	Adopted
Cumalum Urban Release Area Precinct A Contributions Plan 2015	26 February 2015
Ballina Shire Roads Contribution Plan Version 4.1	26 July 2018
Ballina Shire Open Spaces and Community Facilities Contributions Plan 2016	1 January 2017
Ballina Shire Carparking Contributions Plan 2014	14 May 2014
Ballina Shire Heavy Haulage Contribution Plan	24 October 2019

The Contribution Plans provide for the indexing of contribution amounts and are also subject to amendment. The contribution rates payable will be the rates that are applicable at the time payment is made. Copies of the Contribution Plans may be viewed at Council's Customer Service Centre, Cherry Street, Ballina or on Council's website www.ballina.nsw.gov.au.

The Contribution amounts applicable at the time this consent is issued are as per Schedule 1 (**attached**).

25. Developer Charges

Prior to issue of a Construction Certificate where building works are proposed, payment to council of non-refundable monetary charges shall be made towards the provision of bulk water supply, water reticulation and sewer infrastructure which are required as a result of the development in accordance with the charges set by Ballina Shire Council and Rous Water as water supply authorities under the Water Management Act 2000.

The amount payable will be the assessed additional equivalent tenements generated by the development multiplied by the charge applicable at the time of payment.

Certificates of Compliance pursuant to Section 306 of the Water Management Act 2000 shall be deemed to have been issued where the required charges have been paid and all construction works required by the water supply authority for the development have been completed.

The charges are currently guided by the following development servicing plans:

Water Supply Authority	Contribution Plan/Development Servicing Plan	Adopted
Ballina Shire Council	Ballina Shire Council Water Supply Infrastructure Development Servicing Plans	27 February 2015
Ballina Shire Council	Ballina Shire Council Sewerage Infrastructure Development Servicing Plans	27 February 2015
Rous Water	Development Servicing Plan for Bulk Water Supply	15 June 2016

The Development Servicing Plans provide for the indexing of charges and are also subject to amendment and replacement. The charges payable are the charges set by the water supply authorities at the time payment is made. Copies of the Development Servicing Plans may be viewed at Council's Customer Service Centre, Cherry Street, Ballina or on Council's website www.ballina.nsw.gov.au.

It should be noted that Ballina Shire Council acts as Rous Water's agent in the collection of Rous Water Bulk Water Supply Charge for developments that are connected to the Ballina Shire water supply.

The charges applicable at the time this consent is issued are included in Schedule 1 (**attached**).

26. Fire Safety Schedule

Prior to the issue of the Construction Certificate, either the Council or an appropriately accredited certifier shall issue a Fire Safety Schedule for the proposed development. In accordance with Clause 168(1) of the *Environmental Planning and Assessment Regulation 2000*, a Fire Safety Schedule must specify the fire safety measures (both existing and proposed to be installed) that should be implemented in the building premises. The Fire Safety Schedule must deal with the whole of the building and not only to the part of the building to which this consent applies as provided for in Clause 168(3), *Environmental Planning and Assessment Regulation 2000*.

It is an offence to fail to provide a Fire Safety Schedule in accordance with the requirements of the *Environmental Planning and Assessment Regulation 2000*.

PRIOR TO CONSTRUCTION WORK COMMENCING

The following conditions in this section of the consent must be complied with prior to commencement of construction works relating to the approved development.

27. Construction Certificate

Prior to construction of the approved development it is necessary to obtain a Construction Certificate from a private or Council Registered Certifier.

28. Notice of Commencement and Appointment of Principal Certifier

Where Council is not nominated as the Principal Certifier, the person having the benefit of this development consent is to submit to Council the following information:

- Written notification of the name and details of the Principal Certifier; and
- The date of commencement and details of the Development Consent and associated Construction Certificate.

The above information is to be submitted at least two (2) days prior to the commencement of any works, in accordance with the requirements of Section 81A(2) of the Environmental Planning & Assessment Act 1979 (as amended).

29. Erection of Signs

- (1) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - a) showing the name, address and telephone number of the Principal Certifier for the work, and
 - b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - c) stating that unauthorised entry to the work site is prohibited.
- (2) Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (3) This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- (4) This clause does not apply in relation to Crown building work that is certified, in accordance with Section 109R of the Act, to comply with the technical provision of the NSW Government's building laws.

30. Building waste containment

A suitable waste container capable of holding blowable type building waste must be made available on the building site during the course of construction. Building waste such as paper, plastic, cardboard, sarking etc. must be regularly cleaned up and placed in the waste container so that it cannot be blown off the building site and litter the locality.

31. Builder's toilet

A suitable builder's toilet is to be provided on-site before building work commences. Such facility is to either connect to Council's sewer or a suitable approved chemical closet is to be provided.

32. Notice of commencement of civil works

Prior to the commencement of construction, the contractor must submit a completed copy of the "Notice of Commencement of Civil Development Work" form and a copy of their \$20M Public Liability Insurance Policy to Council. Copies of the form are available from Council's website.

33. Traffic control

All traffic control shall be in accordance with the Roads and Maritime Services "Traffic Control at Work Sites Manual". A Traffic Control Plan must be prepared and submitted to Council by a person holding a current "Design & inspect Traffic Control Plan" qualification. The traffic control plan must be certified and include the designers Name &

Certificate Number. Details are to be submitted to Council prior to the commencement of construction.

DURING CONSTRUCTION

The following conditions in this section of the consent must be complied with during the course of carrying out the construction works relating to the approved development.

34. Erosion and Sediment Control Plan

An Erosion and Sediment Control Plan (ESCP) which has been prepared in accordance with the requirements of Managing Urban Stormwater – Soils and Construction, LANDCOM, March 2004 and approved by the Principal Certifying Authority (PCA) must be implemented in full during the construction period.

35. Dust management

The construction site must not emit objectionable or offensive dust to the extent that the discharge causes an adverse effect at or beyond the boundary of the construction site.

36. Construction

The hours of operation for any noise generating construction activity (including the delivery of materials to and from the site) on the proposed development are to be limited to within the following times:

Monday to Friday	7.00am to 6.00pm
Saturday	8.00am to 1.00pm

No noise generating construction activities are to take place on Sundays or public holidays.

37. Acid Sulfate Soils Management Plan

The Acid Sulfate Soil Management Plan prepared by Ardill Payne & Partners dated September 2020 approved by the Principal Certifying Authority (PCA) must be implemented in full during the construction period.

38. Food premises

The design and construction of the food premises must permit the premises to be effectively cleaned, not permit the entry of pests and not provide for the harborage of pests.

39. Waste management

An approved facility shall be provided on site for the storage and disposal of all waste and shall be constructed in accordance with AS 4674-2004 "Design, Construction and Fit-out of Food Premises".

40. Contamination

Any new information that becomes known during remediation, demolition or construction works which has the potential to alter previous conclusions about the site contamination must be immediately notified to the Council and the Principal Certifying Authority.

41. Export/Import of Waste

The export/import of waste (including fill or soil) to and from the site must be in accordance with:

- a) the provisions of the *Protection of the Environment Operations Act 1997, Protection of the Environment Operations (Waste) Regulation 2014* and the Environment

Protection Authority 'Waste Classification Guidelines', which may require laboratory testing in accordance with NSW EPA and Council requirements; or
b) current Resource Recovery Orders and Exemptions.

It is an offence to transport waste to a place that cannot lawfully be used as a waste facility.

42. Erosion and Sediment Control

Soil erosion and sediment control measures shall be designed, installed and maintained in accordance with Managing Urban Stormwater – Soils and Construction, LANDCOM, March 2004.

43. Dust Management Plan

The applicant shall have a dust management plan which outlines the methods that will be employed to effectively suppress dust during and after construction stages.

44. Inspection (footpath and gutter crossing)

Council's Engineer must inspect and approve works associated with the construction of the footpath and gutter crossing for the development. Council's Engineer must be contacted on telephone 6686 4444 at the time of excavation and at least 24 hours prior to the concrete pour.

45. Traffic Control

All traffic control during construction shall be in accordance with the Roads and Maritime Services - Traffic Control at Work Sites Manual and the certified traffic control plan. At least one person at the site must be qualified to "Apply Traffic Control Plans" (Yellow Card).

46. Damage to Council infrastructure

Damage to any grass verge, footpath, kerb and guttering, utility services or road within the road reserve as a result of construction works related to the development shall be immediately reinstated to a satisfactory and safe condition. Council's Engineer must be contacted on telephone 6686 4444 at the time any damage occurs to ensure appropriate reinstatement works are undertaken.

47. Floor Level

The finished floor height of the building shall be a minimum 2.3 Metres AHD. A surveyor's certificate verifying compliance with this height is to be submitted to the Principal Certifying Authority at completion of footings/slab formwork (prior to concrete pour) or completion of the timber floor prior to work proceeding beyond these stages.

PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

Unless otherwise stated all conditions referred to in other sections of this consent must be complied with together with the following conditions prior to occupation or use.

48. Height of development

A surveyor certificate verifying the maximum height of the development does not exceed 9.997 metres is to be submitted to the Principal Certifying Authority prior to issue of the Occupation Certificate.

49. Fire safety certificate

Prior to issue of an Occupation Certificate, the owner or owner's agent, is to provide the Principal Certifier with a Fire Safety Certificate certifying that all essential services installed in the building have been inspected and tested by a competent person and were

found to have been designed and installed to be capable of operating to the minimum standard required by the Building Code of Australia.

50. Trade Waste

Prior to the operational use of the facility, the applicant must ensure that all pre-treatment equipment as outlined in the Trade Waste Approval is installed, inspected and commissioned. A pre-operation inspection is required by Council that demonstrates compliance with the requirements of the Trade Waste approval, prior to the issue of an Occupation Certificate.

51. Occupation Certificate

The buildings are not to be occupied until an Occupation Certificate has been issued by the Principal Certifier.

52. Food premises

Trading must not commence until the premise has been inspected and approved by Council's Environmental Health Officer and an application has been made to Council to register the business on Council's "Commercial Premises Register" and the appropriate fee paid.

53. Final inspection

A final inspection of the commercial premises fit-out by Council's Environmental Health Officer is to be conducted and the appropriate professional services fee is to be paid prior to the issuing of any Occupation Certificate.

54. Pest control

Written evidence shall be provided to Council's Environmental Health Officer that a pest control program has been implemented throughout the premises prior to the introduction of foods into the premises.

55. Waste disposal area

The waste disposal area/s are to be covered, graded and drained to the sewer and if required via a pre-treatment device prior to the issue of the interim or final occupation certificate.

56. Screening of waste disposal area

The waste disposal area is to be screened from public view and located behind the building line. Details shall be submitted to and approved by the Principal Certifying Authority (PCA) prior to the release of the Occupation Certificate.

57. Drainage grates

All drainage grates located within traffic movement areas shall be fixed to avoid rattling.

58. Noise Management Plan

A Noise Management Plan shall be submitted to and approved by the Principal Certifying Authority prior to the release of any Occupation Certificate. The Noise Management Plan shall detail the onsite measures to be implemented to mitigate any noise impact on nearby residential premises from the operation of the gym.

59. Civil works

All civil works approved under Section 138 of the Roads Act 1993, are to be completed to the satisfaction of Council prior to issue of an Occupation Certificate. All works are to be completed in accordance with the Northern Rivers Local Government Development Design and Construction Manuals and the approved design.

60. Car parking (standard)

The construction of all car parking and vehicular accesses is to be in accordance with the approved Construction Plans and Australian Standard AS/NZS 2890.1: 2004. All works are to be certified by a suitably qualified consultant prior to issue of the Occupation Certificate.

61. Car parking (disabled)

The construction of all disabled car parking spaces is to be in accordance with the approved Construction Plans and Australian Standard AS /NZS 2890.6: 2009. All works are to be certified by a suitably qualified consultant prior to issue of the Occupation Certificate.

62. Stormwater

Prior to the issue of an Occupation Certificate, certification must be provided to the Principal Certifying Authority that all stormwater works have been provided in accordance with the approved Construction Plan. Overland flow paths must not be impeded through structures or landscaping and must direct stormwater flows to the public drainage system and not onto adjoining properties. This certification is to be provided by a registered certified practicing Engineer competent in the field of stormwater design and familiar with all aspects of the project.

CONDITIONS OF USE/DURING OCCUPATION

The following conditions in this section of the consent are to be complied with in the day-to-day use or operation of the approved development.

63. Fire safety statement

The owner of the building must provide Council with an annual Fire Safety Statement at least once in each twelve months certifying that the essential and statutory fire safety measures in the building have been inspected and tested by a competent person and were found to be capable of operating to the minimum standard required by the Fire Safety Schedule. A copy of the Annual Fire Safety Statement together with a copy of the Fire Safety Schedule are to be forwarded to the Commissioner, NSW Fire Brigades, and a copy of the Fire Statement and Schedule, prominently displayed in the building.

64. Waste management

All waste generated on site is to be disposed to and stored in the nominated waste area/s. Bins shall remain in the bin enclosure at all times, except during waste collection. Bins shall not be stored in driveway or carpark areas at any time.

65. Waste collection

Waste collection must occur as required to prevent the creation of an odour or pest nuisance.

66. Maintenance

Ground maintenance involving the use of power equipment, including lawn mowers and leaf blowers, shall be restricted to between 7.30am and 6.00 pm, Mondays to Fridays inclusive and 8.00am and 1.00pm on Saturdays.

67. Noise Management Plan

Operational activities at the site shall be in accordance with the Noise Management Plan which has been approved by the PCA. A copy of the approved management plan shall be made available at the premise and details provided to staff and users of the facility.

68. Noise impacts

The development shall not cause a noise nuisance to any other person. Following occupation, should complaints of a noise nuisance be justified, an acoustic assessment shall be conducted by a qualified consultant and report provided to Council. The applicant shall then implement all recommendations provided under the assessment within a timeframe set by Council, to the satisfaction of Council and comply with any additional direction given by Council.

69. Noise – Mechanical Plant, Amplified Music and Voice

Noise associated with the gym must not give rise to any one or more of the following:

- (a) Transmission of 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 to any place of different occupancy;
- (b) A sound pressure level at any affected property that exceeds the background (LA90, 15 minute) noise level by more than 5dB(A). The background noise level must be measured in the absence of noise emitted from the subject premises. The source noise level must be assessed as LAeq, 15 minute; or
- (c) Notwithstanding compliance with (a) and (b) above, the noise from mechanical plant, amplified music and voice must not be audible within any habitable room in any residential property between the hours of 10.00pm and 7.00am.

70. Service vehicles

Vehicles servicing the loading docks (including deliveries and waste collection) shall not park and or wait in the loading docks or surrounding residential areas prior to 7.00am or after 6.00pm Monday to Saturday.

71. Loading and unloading

All loading and unloading of goods are to be carried out off-street and wholly within the site.

72. Prescribed hours of operation – Industrial Shed

Activities carried out on the land pursuant to this consent (not including initial construction works) shall only be undertaken between the hours of 7am and 7pm, Monday to Saturday and no operation on Sunday or public holidays.

73. Liquid storage

If liquid contaminants and other possible pollutants are stored on site they shall be stored within an impermeable bunded and roofed on site storage area. Where applicable the bunded area must comply with AS 1940-2017 '*The Storage and Handling of Flammable and Combustible Liquids*' and AS 4452-1997 '*The Storage and Handling of Toxic Substances*'. If on site liquid storage is provided clean up equipment including suitable absorbent material shall be stored on site to effectively deal with liquid contaminates such as oils and chemical spills

74. Amenity impacts

The land use on site shall not interfere with the amenity of the locality by reason of the emission of noise, vibration, odours, fumes, smoke, vapour, steam, dust, water, waste products and the like.

75. External lighting

All external lighting to be installed and operated on site shall comply with the AS 4282:2019 "Control of the obtrusive effects of outdoor lighting".

75. Landscaping

Landscaping is to be provided on the site in a manner that does not impede surveillance or result in concealment areas.

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ADVISORY MATTERS**1. Disability Discrimination Act 1992**

The granting of this consent does not imply or confer compliance with the requirements of the *Disability Discrimination Act 1992* (DDA). The applicant is advised to investigate any liability that may apply under that Act. *Australian Standard AS 1428 – Design for Access and Mobility* should be consulted for guidance. The prescriptive requirements of Part 1 of the Standard apply to certain buildings requiring development consent.

Compliance with the BCA does not guarantee compliance with the DDA. The BCA provides important access provisions however:

- (a) it does not cover all developments that are subject to the provisions of the DDA;
- (b) it focuses primarily on access for people with disabilities which affect their mobility and does not address other disabilities, such as sensory disabilities; and
- (c) while it mandates improved access for people with disabilities, it is not framed in terms of "equality of access".

You are therefore advised to investigate your liability under the DDA with respect to any existing and proposed works.

2. Protection of the Environment

The development is to be operated in accordance with the provisions of the *Protection of the Environment and Operations Act 1997* as it applies to issues of air quality, noise generation, water and wastewater quality.

3. Noise control

Use of the premises/services/equipment/ancillary fittings shall not give rise to an "offensive noise" as defined under the provisions of the *Protection of the Environment & Operations Act 1997*.

4. WorkCover requirements

The premises shall be operated in accordance with the requirements of the WorkCover Authority.

5. Wastewater management advice

All work carried out in connection with this approval must comply with any applicable standard established by the Local Government (Approvals) Regulation 1993, the Local Government (Water, Sewerage and Drainage) Regulation 1993, or by or under the Act.

6. Smoke Free Environment

As required by the *Smoke-free Environment Act 2000* smoking is banned within 4 metres of the pedestrian entrance or exit of the building used for non-residential purposes. 'No smoking' signage is recommended to support public awareness of the smoking ban. On the spot fines may be issued to those who do not comply with the 4 metre requirement.

Advisory Note:

The applicant is advised to take care in ensuring that no damage is done to or unauthorised modifications are carried out on either Council's or any other organisation's underground infrastructure assets. Any Council sewer, stormwater or water main or other organisation owned electricity supply or telecommunication facility is not to be damaged or altered in any way without the necessary approvals being obtained beforehand from the relevant server.

You are advised to contact the following:

- Council - for information on sewer, water supply & stormwater
- Rous Water - Water Supply for Rous Water Authority controlled areas
- "Dial Before You Dig" - for other service infrastructure

The information relating to your property is to be obtained prior to any works commencing.

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SCHEDULE 1

Contribution	Receipt Code	Contribution Unit	Rate per contribution Unit	Total Contribution Units Payable	TOTAL COST	Actual Contribution Units Payable (commercial)
Roads Contribution Plan V4.1 (2018)	5206	equivalent residential allotment	\$12,704.00	12.4326	\$157,943.22	12.4326
Roads Administration V4.1 (2018)	5207	equivalent residential allotment	\$190.00	12.4326	\$2,362.19	12.4326
North Ballina Wastewater Services (DSP Area B)	3008	equivalent tenement	\$5,301.00	1.2108	\$6,418.45	1.2108
TOTAL					\$166,723.86	