

ATTACHMENTS TO

Ordinary Meeting Business Paper

28 March 2024

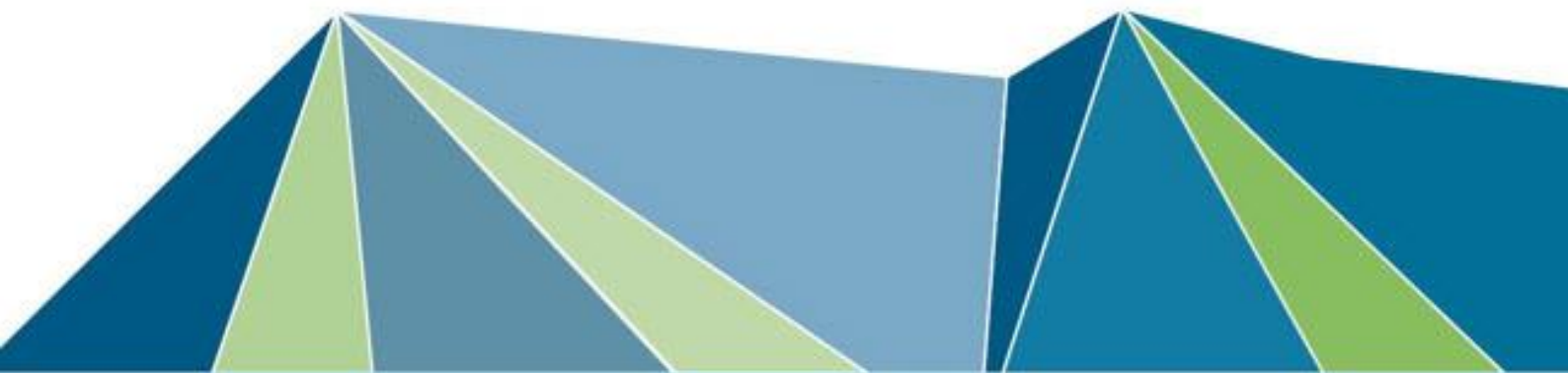
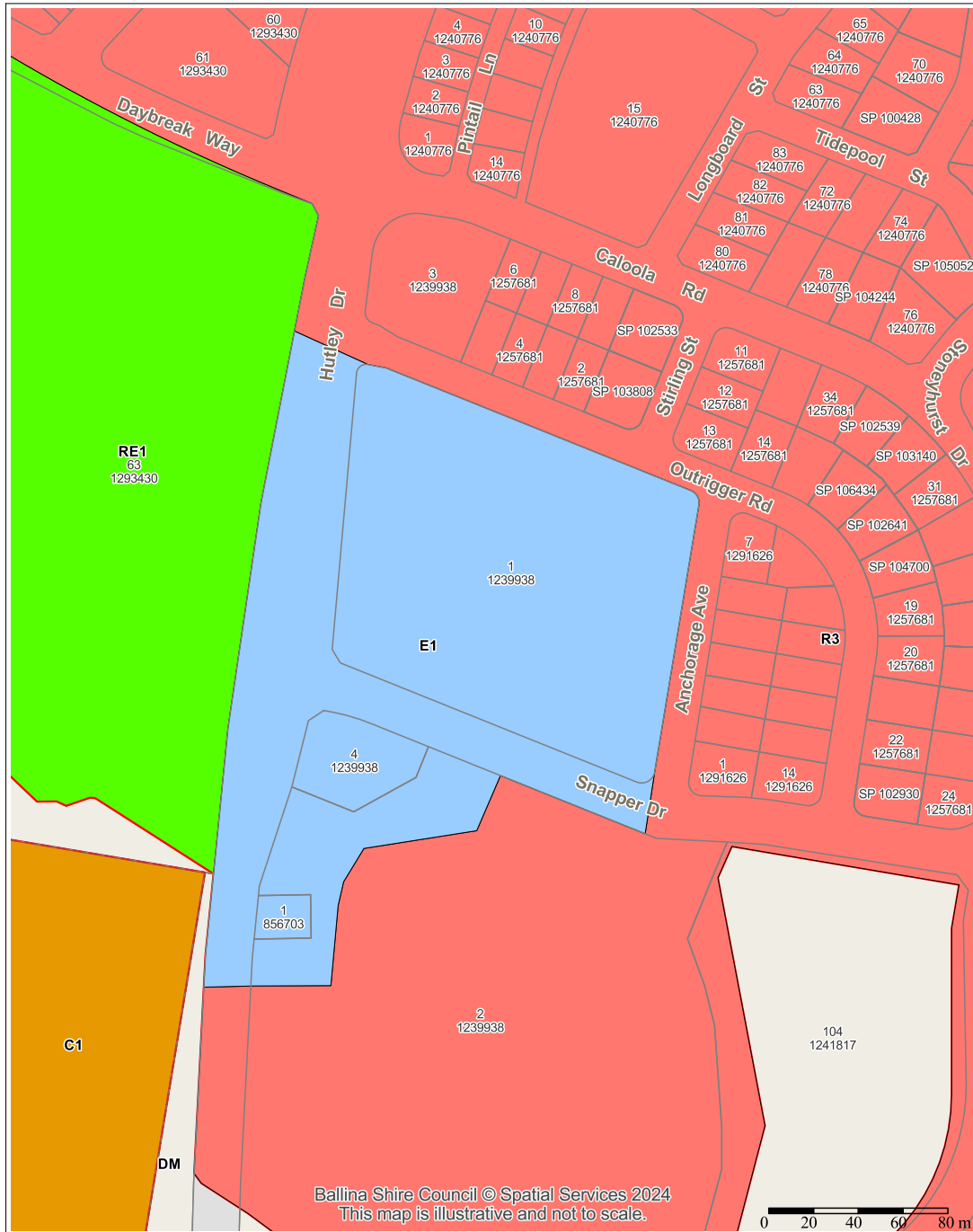


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DA 2023/339 - 5 Snapper Drive, Lennox Head

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

Aims, objectives of BLEP (Clause 1.2)

The proposal is generally consistent with the broad aims and objectives of the BLEP 2012.

Land use definition (Clause 1.4)

The proposed development falls under the definition of ‘Commercial Premises’, defined within the BLEP 2012 as follows:

commercial premises means any of the following—

- a) *business premises,*
- b) *office premises,*
- c) *retail premises.*

The commercial premises is proposed to comprise of office premises and retail premises (food and drink premises and shops), which are defined as follows:

office premises means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

retail premises means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following—

- (a), (b) *(Repealed)*
- (c) *food and drink premises,*
- (d) *garden centres,*
- (e) *hardware and building supplies,*
- (f) *kiosks,*
- (g) *landscaping material supplies,*
- (h) *markets,*

- (i) plant nurseries,
- (j) roadside stalls,
- (k) rural supplies,
- (l) shops,
- (la) specialised retail premises,
- (m) timber yards,
- (n) vehicle sales or hire premises,

but does not include farm gate premises, highway service centres, service stations, industrial retail outlets or restricted premises.

food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

shop means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop and neighbourhood supermarket, but does not include food and drink premises or restricted premises.

Zoning under BLEP 2012, permissibility within zone and regard for zone objectives (Clause 2.3)

The objectives of the E1 Local Centre zone are as follows:

- To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.
- To encourage investment in local commercial development that generates employment opportunities and economic growth.
- To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To ensure the adequate provision of infrastructure to support neighbourhood shopping facilities.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.
- To encourage development that—
 - a) recognises natural, cultural and built heritage, and
 - b) uses resources efficiently, including energy and water, and
 - c) is compatible with the hierarchy of centres, and
 - d) has high accessibility and amenity, particularly for pedestrians.
- To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and contribute to vibrant, diverse and functional streets and public spaces.

Commercial premises is permitted with consent in the E1 Local Centre zone and is consistent with the objectives of the E1 zone.

Height of buildings (Clause 4.3), Exceptions to height of buildings (Clause 4.3A), Exceptions to development standards (Clause 4.6)

The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Building Map. In this instance, the subject site is mapped as having a maximum height of 9m. Pursuant to Clause 4.3A, the building height is required to be measured from RL 1.9m AHD.

The proposed development exceeds a building height of 10.9m AHD and seeks a Clause 4.6 variation. Please refer to commentary in the body of the Council report for assessment of these provisions.

Floor space ratio (Clause 4.4)

The maximum floor space ratio (FSR) for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. In this instance, the subject site is mapped as having a maximum FSR of 0.6:1, or a total gross floor area (GFA) allowance of 12,630m².

The development has a total GFA as follows:

- Proposed building: 758m²
- Existing building: 5,687m²
- Total: 6,510m²
- FSR: 0.3:1

The proposal has a compliant FSR.

Flood planning (Clause 5.21)

The western portion of the site is identified on the medium hazard flood mapping (refer to **Figure 12**). Accordingly, Council is to consider the matters in Clause 5.21 prior to granting approval.

The site was established and filled to a minimum RL 3.5m AHD under DA 2017/447 and DA 2017/221. The minimum fill level prescribed for the site in the DCP is 2.1m AHD (FPL1) and 2.3m AHD (FPL2). The minimum design floor level for the site is 2.5m AHD. The proposed development does not involve any significant earthworks and maintains the existing ground level at a minimum RL of 3.5m AHD. Therefore, the proposed development achieves the minimum fill levels and minimum floor levels for the site.

Council is satisfied the proposal:

- is compatible with the flood function and behaviour of the land.
- will not adversely affect flood behaviour on or off-site.
- will not affect the safe occupation or evacuation from the site or surrounding area.
- will manage risk in the event of a flood.
- will not adversely affect the environment or cause erosion, siltation, destruction of riparian vegetation, or a reduction in the stability of watercourses.



Figure 12. Flood hazard mapping (Source: Ballina Shire Council)

Acid sulfate soils (Clause 7.1)

The subject site is mapped as containing Class 2 and Class 5 acid sulfate soils (refer **Figure 13** below).

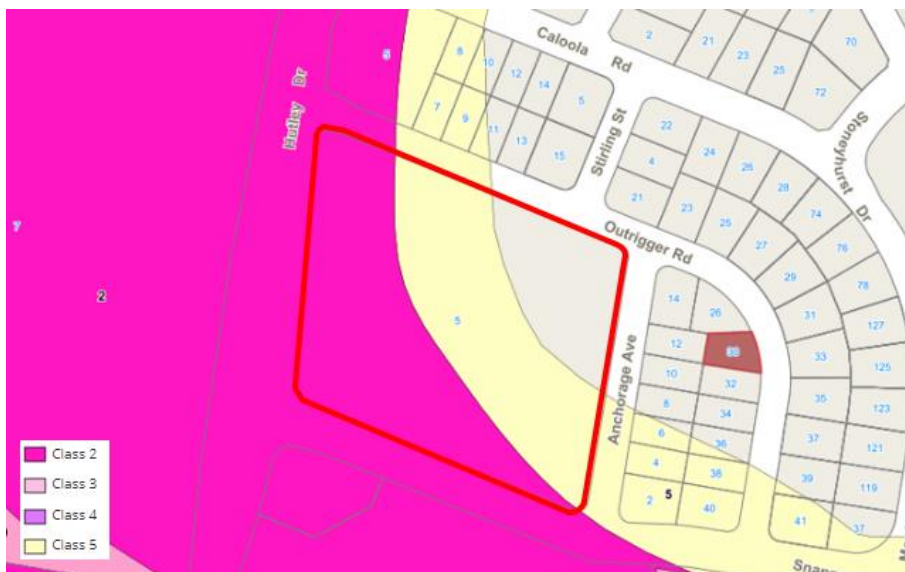


Figure 13. Acid Sulfate Soils Mapping (Source: Ballina Shire Council)

Development consent is required for works below the natural ground surface on the Class 2 land. Assessment under DA 2017/447 found no acid sulfate soils would be disturbed. The earthworks for the pad site were undertaken under DA 2017/221 and the proposed

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DA 2023/339 – Section 4.15 Assessment

development does not involve any additional significant earthworks, apart from minor earthworks for the relocation of the stormwater drainage and to accommodate the new commercial building on the site. Accordingly, the proposed development complies with Clause 7.1.

Earthworks (Clause 7.2)

The earthworks for the pad site were undertaken under DA 2017/221. Some minor earthworks are required as part of the proposed development, inclusive of the stormwater drainage relocation works which are to be undertaken as part of Stage 1, however these works are unlikely to:

- have any detrimental impact on drainage patterns or soil stability in the locality
- impact the future use of the site
- disturb any relics
- have any detrimental impact on waterways, drinking water catchment, or environmentally sensitive areas

The quality of any fill or excavated soil will be managed by way of condition on consent. No further concerns are raised in relation to the proposed earthworks.

Airspace operations (Clause 7.5)

The proposed building has a maximum building height of RL 13.725m and will not penetrate the Limitation or Operations Surface of 46.5m AHD.

Essential services (Clause 7.7)

Subclause (2) provides that development consent must not be granted unless the supply of the following services is satisfied:

- a) *the supply of water,*
- b) *the supply of electricity,*
- c) *the disposal and management of sewage,*
- d) *stormwater drainage or on-site conservation,*
- e) *suitable vehicular access,*
- f) *telecommunication services.*

All required services are available to the site, as established under DA 2017/447.

Stormwater drainage infrastructure was established under the previous development approval on the site which involved the construction of the existing neighbourhood supermarket on the site (DA 2017/447). The proposed new commercial development is to be located on top of where the existing stormwater drainage intersects the site and therefore would make it difficult to access this infrastructure for future servicing and maintenance.

The applicant requested to amend the application under Section 37 of the Environmental Planning and Assessment Regulations 2021 to include drainage works for the relocation of the current stormwater infrastructure and to stage the development, with the drainage works to be undertaken as Stage 1.

The stormwater drainage is now proposed to be relocated with a pipe connecting between two junction pits located internal to the north-eastern and north-western boundaries of the site. All works are proposed entirely within private land and Council's engineer and plumbing and

drainage officer reviewed the proposed stormwater plan and raised no concerns with the works. Section 68 approval will need to be obtained prior to commencement of the relocation works.

State Environmental Planning Policies (SEPPs)

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is in a Coastal Use Area and Coastal Environment Area (refer **Figure 14**). Accordingly, the proposal is subject to assessment against Section 2.10, 2.11, 2.12, and 2.13 of the SEPP (Resilience and Hazards) 2021.

The proposed kiosk is within an existing building and the pad site for the proposed commercial building was approved under DA 2017/447. The proposed development will not have any adverse impact on the matters identified in Section 2.10(1).

The proposed development is not in close proximity to a foreshore, beach, headland, or cultural heritage place. Accordingly, the proposed development will not have any adverse impact on the matters identified in Section 2.11(1)(a).

Given the site has been established and the use is anticipated, the proposed development is not considered to increase risk of coastal hazard in accordance with Section 2.12. There is no coastal management program that applies to the site in accordance with Section 2.13.



Figure 14. Coastal Use Area Map and Coastal Environment Area Map (Source: NSW Planning Portal)

Chapter 4 – Remediation of land

Section 4.6 of the SEPP (Resilience and Hazards) 2021 requires potential contamination and remediation to be considered in the determination of a development application.

The site, including the pad site, was established under DA 2017/447 which included a Preliminary Contaminated Land Assessment, prepared by Greg Alderson & Associates and dated 29 March 2017. The report confirmed the suitability of the land for the commercial use.

The uses occurring on site since the preparation of the report are limited to commercial uses. Therefore, the land is considered to be suitable for the proposed commercial use.

SEPP (Industry and Employment) 2021

Chapter 3 of the SEPP (Industry and Employment) 2021 applies to applications seeking approval for signage. Consent cannot be granted for signage unless Council is satisfied:

- a) *that the signage is consistent with the objectives of this Chapter [Chapter 3] as set out in section 3.1(1)(a), and*
- b) *that the signage the subject of the application satisfies the assessment criteria specified in Schedule 5.*

The proposed signage is consistent with the objectives in Section 3.1(1)(a) which seek to ensure the proposed signage:

- *is compatible with the desired amenity and visual character of an area, and*
- *provides effective communication in suitable locations, and*
- *is of high quality design and finish*

An assessment against the assessment criteria specified in Schedule 5 is provided below:

Criteria	Response
<p>(1) Character of the area</p> <ul style="list-style-type: none"> ▪ Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located? ▪ Is the proposal consistent with a particular theme for outdoor advertising in the area or locality? 	<p>The proposed building identification signage is considered to be compatible with the existing character of the area, which is established as a commercial centre. The proposed signage will be fixed to the proposed building and is consistent with other signage on site.</p>
<p>(2) Special areas</p> <p>Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?</p>	<p>The proposal does not detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas.</p> <p>The proposed signage is compatible with the desired streetscape. The sign will be internally illuminated to Australian Standard and will not impact residential amenity.</p>
<p>(3) Views and vistas</p> <ul style="list-style-type: none"> ▪ Does the proposal obscure or compromise important views? ▪ Does the proposal dominate the skyline and reduce the quality of vistas? ▪ Does the proposal respect the viewing rights of other advertisers? 	<p>The proposal does not obscure or compromise any important views. The signage is fixed to the proposed building and does not protrude beyond the envelope of the building.</p>

<p>(4) Streetscape, setting or landscaping</p> <ul style="list-style-type: none"> ▪ Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape? ▪ Does the proposal contribute to the visual interest of the streetscape, setting or landscape? ▪ Does the proposal reduce clutter by rationalising and simplifying existing advertising? ▪ Does the proposal screen unsightliness? ▪ Does the proposal protrude above buildings, structures or tree canopies in the area or locality? ▪ Does the proposal require ongoing vegetation management? 	<p>The scale, proportion and form of the proposed signage is considered appropriate for the setting, given the scale of the existing and proposed built form and landscaping proposed. The proposed landscaping will not cause any concern for obstructing the signage. There will be no ongoing maintenance required.</p>
<p>(5) Site and building</p> <ul style="list-style-type: none"> ▪ Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located? ▪ Does the proposal respect important features of the site or building, or both? ▪ Does the proposal show innovation and imagination in its relationship to the site or building, or both? 	<p>The proposed signs are compatible with the scale, proportion and other characteristics of the site and proposed building. The proposed signs are considered appropriate in the context of the site.</p>
<p>(6) Associated devices and logos</p> <p>Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?</p>	<p>There are no safety devices, platforms, lighting devices or logos proposed with the signage.</p>
<p>(7) Illumination</p> <ul style="list-style-type: none"> ▪ Would illumination result in unacceptable glare? ▪ Would illumination affect safety for pedestrians, vehicles or aircraft? ▪ Would illumination detract from the amenity of any residence or other form of accommodation? ▪ Can the intensity of the illumination be adjusted, if necessary? ▪ Is the illumination subject to a curfew? 	<p>The proposed sign will be internally illuminated. This will allow guests and visitors to identify the site when arriving in the evening.</p> <p>Conditions will be applied to consent requiring lighting to comply with the relevant Australian Standards to avoid impacts to surrounding properties/uses.</p>
<p>(8) Safety</p> <ul style="list-style-type: none"> ▪ Would the proposal reduce the safety 	<p>The proposed signage will not reduce the safety of motorists, pedestrians or cyclists on</p>

<p>for any public road?</p> <ul style="list-style-type: none"> ▪ Would the proposal reduce the safety for pedestrians or bicyclists? ▪ Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas? 	<p>any public road. The scale of the signs will not reduce the visibility of the road network or obscure sightlines from areas. The signage will be illuminated which will enhance the visibility and safety of the entrance and locality generally. The signs are static signs with no moving parts. The proposal will not have an adverse impact with regard to safety.</p>
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SEPP (Transport and Infrastructure) 2021

Clause 2.48 of the SEPP (Transport and Infrastructure) 2021 requires Council to give notice of a development application to Essential Energy and invite comments about potential safety risks in the following scenarios:

- (a) *the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,*
- (b) *development carried out—*
 - i. *within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*
 - ii. *immediately adjacent to an electricity substation, or*
 - iii. *within 5m of an exposed overhead electricity power line,*
- (c) *installation of a swimming pool any part of which is—*
- (d) *within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or*
- (e) *within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool,*
- (f) *development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.*

The development does not appear to meet any of these scenarios. However, comment was sought from Essential Energy for certainty to confirm no safety concerns. Essential Energy confirmed there are no safety concerns associated with the proposed development.

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)

Not applicable.

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

Ballina Shire Development Control Plan 2012**Chapter 2 – General and Environmental Considerations****3.3 Natural Areas and Habitat**

A minor portion of the south-east corner of the site is in the Natural Areas and Habitat 50m Buffer (refer **Figure 15**). The proposed commercial building is in the north-west corner of the site and the proposed kiosk is within the existing building on site. There are no anticipated impacts on any natural areas or habitat as a result of the development.



Figure 15. Natural Areas and Habitat Map (Source: Ballina Shire Council)

3.4 Potentially Contaminated Land

An assessment for SEPP (Resilience and Hazards) 2021 – Chapter 4 (Contaminated Lands) occurred under DA 2017/447 and the site was found to be suitable for the proposed land use. No potentially contaminating activities have occurred on the site since the approval of DA 2017/447. Therefore, Council is satisfied the site is suitable for the proposed development.

3.6 Mosquito Management

The site is identified as both “Coastal Plain & Low Lands” and “Elevated Land” on Council’s mosquito management mapping. Conditions requiring screening of external windows and doors to comply with Chapter 2 of the DCP will be imposed.

3.7 Waste Management

A Site Waste Minimisation and Management Plan (SWMMP) prepared by HMC Environmental Consulting Pty Ltd was provided with the application documentation. The SWMMP addresses waste management in the construction and operational phases of the development.

Construction

During construction, waste will be collected on demand via:

- 1 x 6m³ skip bin for general waste
- 1 x 6m³ skip bin for co-mingled building waste

There is sufficient space on site to provide temporary waste storage for these bins during construction. The waste will be transferred to Ballina Waste Management Centre where it is anticipated that 80-90% will be recycled/reused.

Operation

During operation, it is anticipated that the proposed development will generate:

- 2,016L of general waste/week
- 2,142L of recycling/week

To accommodate the proposed use, the following bins are proposed to be provided:

- 1 x 1.5m³ general waste bin
- 1 x 1.5m³ co-mingled recycled waste bin
- 1 x 1.5m³ paper/cardboard waste bin
- 1 x 660L organic waste bin

These bins will be stored in a dedicated refuse room, adjacent to the proposed loading area, and will be collected weekly.

Council's Environmental Health Officer has reviewed the application and confirmed the waste management proposed is suitable.

A condition will be imposed on the consent requiring operational waste management activities to be in accordance with the SWMMP. Waste generated on site is to be disposed of and stored in the nominated waste area/s. Bins shall remain in the bin enclosure at all times, except during waste collection.

3.9 Stormwater Management

Stormwater management associated with the site was assessed and resolved in DA 2017/447. The existing stormwater drainage is proposed to be relocated as part of Stage 1 of this development application as the location of the current infrastructure conflicts with the proposed location of the commercial building.

A condition will be imposed on the consent requiring hydraulic drawings to be prepared and submitted as part of a Section 68 application which will address the stormwater drainage relocation.

3.10 Sediment and Erosion Control

Conditions will be imposed on the consent requiring sediment control barriers to be put in place prior to construction.

3.11 Provision of Services

Services essential to the development are available to the site.

3.15 Crime Prevention through Environmental Design

The application documentation provides a Crime Risk Assessment against the principles contained in *Crime Prevention and the Assessment Of Development Applications*. The assessment is summarised as follows:

Surveillance

The design of the new commercial building provides for extensive glazing which allows for natural surveillance of both street frontages, as well as internally to the shared car park. The proposed landscaping will not obstruct the ability for casual surveillance or provide any hiding places or areas of entrapment. Adequate street lighting is provided on Hutley Drive and Outrigger Place to provide for the safety of pedestrians on the public footpath. Internally, security lighting and CCTV will be installed adjacent to the car parking, refuse room, and loading area.

Access control

There is a clear delineation between private and public land through level changes and landscaping. Access to the new building from external to the site is limited to a single footpath connection from Outrigger Road. Otherwise, access is provided from the shared car park.

Territorial reinforcement

Territorial management is reinforced through level change and landscaping. Clear signage will indicate tenancies and how spaces on site are to be used. The proposal does not involve any fencing or enclosures that would present a safety risk.

Space management

The property manager for the site will be responsible for site cleanliness, repair of vandalism/graffiti, replacement of lighting, and landscape management. The building materials proposed will allow for efficient vandalism/graffiti repair, where required.

The proposed development is not anticipated to increase the likelihood of crime in the area.

3.16 Public Art

Conditions will be imposed on the development consent requiring payment of a contribution for public art to be installed on public land.

3.19 Car Parking and Access

The existing external road network is constructed to a suitable standard to service the proposed development.

Site access, internal parking and driveway design, and parking design were resolved under DA 2017/447. There is satisfactory provision on site for a Small Rigid Vehicle (SRV) to service the proposed development.

The application documentation provided with the application notes a parking requirement of 24 spaces. This appears to be calculated on a total gross floor area of 815m², broken down as follows:

- Office premises – 360m²
- Retail premises – 200m²
- Food and drink premises (including the outdoor terrace) – 255m²

Council's development engineer reviewed the proposal and confirmed that the above calculations are correct and sufficient carparking spaces exist on the subject site. The existing car park for EPIQ Market Place had a surplus of 26 spaces and therefore no additional spaces are required to accommodate the proposed development.

No provision for bicycle or scooter parking is provided at the pad site. Accordingly, a condition will be imposed on the consent requiring the provision of appropriate parking.

3.20 Vibration

Driven piling will not be adopted as a construction method for the proposed development. Therefore, it is unlikely that the construction will result in any vibration impacts that would be noticeable off site.

Chapter 2B – Floodplain management

The western portion of the site is mapped medium flood hazard. The pad site was established and filled to a minimum RL of 3.5m AHD under DA 2017/447 and DA 2017/221. The minimum fill level prescribed for the site in the DCP is 2.1m AHD (FPL1) and 2.3m AHD (FPL2). The minimum design floor level for the site is 2.5m AHD. The proposed development does not involve any significant earthworks and maintains the existing ground level at a minimum RL of 3.5m AHD. Therefore, the proposed development achieves the minimum fill levels and minimum floor levels for the site.

Chapter 6 – Commercial development

3.1 General Controls applying to business and commercial development		
A. Element – Building Height		
i. Building heights are to comply with the provisions of BLEP 2012.	Refer to Clause 4.6 assessment in Council report.	Yes
B. Element – Floor Space Ratios		
i. Where development is proposed on land identified on the Floor Space Ratio Map, the following approach will be applied to the calculation of FSR: <ul style="list-style-type: none"> • Where a mixed use development is proposed involving commercial premises, the floor space ratio (FSR) shown on the Floor Space Ratio Map will be applied; and • Where a dwelling house or dwelling house and secondary dwelling that is not part of a mixed use development involving commercial premises is proposed, a FSR of 0.5:1 will be applied. 	Refer to Clause 4.4 assessment.	Yes
C. Element – Roof Form		
i. Roof forms are to be varied where practical and shall include the use of skillions, gables and hips; ii. Roofs are to have a minimum pitch of 5 degrees, unless, in the opinion of Council, it is considered necessary to	The proposed commercial building provides for a varied, skillion roof form. The design is compatible with the existing building on site.	Yes

<p>maintain views or to fulfil a particular building design;</p> <p>iii. Parapets and flat roofs should be avoided;</p> <p>iv. Roof forms shall be consistent with or complementary to existing surrounding developments;</p> <p>v. Lift over runs and other visually prominent infrastructure shall, as far as practicable, be concealed within roof structures;</p> <p>vi. All roof plant is to be represented on development application plans and elevations; and</p> <p>vii. Roofing colours, materials and finishes shall have a low reflectivity index.</p>	<p>Part of the roof does not achieve a minimum pitch of 5 degrees, however this assists in reducing the overall building height and the resulting bulk of the building.</p> <p>The roof plant and lift overrun is indicated on the plan and are concealed, to a practical extent, by the roof structure proposed. The proposed Colorbond roof sheeting is considered appropriate.</p>	
<p>D. Element – Building Setbacks</p>		
<p>i. Where applicable, building lines or setbacks shall comply with the detailed requirements established for each precinct outlined in Chapters 6a – 6d;</p>	<p>N/A – the site is not in a precinct outlined in Chapters 6a – 6d.</p>	<p>N/A</p>
<p>ii. Any automatic teller machine or other vending machine is to be:</p> <ul style="list-style-type: none"> • Setback 0.5 metres in addition to any applicable building line or setback; • Well illuminated at all times; 	<p>N/A – no ATM or vending machine is proposed.</p>	<p>N/A</p>
<p>iii. Garage doors and/or car parking access security gates must be setback a minimum of 5.5 metres from the lane or street boundary where direct vehicle access is obtained;</p>	<p>N/A – the proposal does not involve a garage or car park access gates.</p>	<p>N/A</p>
<p>iv. Except where buildings are built to the boundary, balconies may project forward of the specified building line or setback provided that:</p> <ul style="list-style-type: none"> • The balcony is of cantilevered construction; • No walls or columns are erected below the balcony; • No walls or roofs are erected above the balcony; and • The balcony has a projection not exceeding 1.8 metres from the building; 	<p>N/A – the proposed development does not involve balconies projecting forward of the building line/setback.</p>	<p>N/A</p>

<p>v. No balconies or verandahs are to project over the public domain (awnings are excepted);</p>	<p>The proposal does not involve balconies or verandahs in the public domain.</p>	<p>Yes</p>
<p>vi. Fences or courtyard walls greater than 1 metre in height and forward of the building line or setback are to comply with the following design requirements:</p> <ul style="list-style-type: none"> • The wall or fence is to be articulated so as to provide visual relief and opportunities for landscape plantings between the wall and public areas; • Elements of the wall or fence that are higher than 1 metre are to be visually permeable for not less than 30% of the total length of the wall or fence; and • Where erected on a lane frontage adjacent to a vehicular access, the fencing and/or landscaping shall provide reasonable sight distance for drivers reversing off the site based in the requirements of AS 2890. 	<p>N/A – the proposal does not involve fences or courtyards forward of the building line.</p>	<p>N/A</p>
<p>E. Element – Arcades</p>		
<p>i. Arcades are to:</p> <ul style="list-style-type: none"> • Accommodate active uses such as shops, commercial uses, public uses, residential lobbies, cafes or restaurants; • Be obvious and direct thoroughfares for pedestrians; • Provide for adequate clearance to ensure pedestrian movement is not obstructed; • Provide public access from at least 7.00am to 9.00pm daily; • Have, where practicable, access to natural light for part of their length and at openings at each end; • Have, where air conditioned, clear glazed entry doors for at least 50% of the entrance frontage; • Have signage at the entry indicating public accessibility and to where the arcade leads, and • Have clear sight lines and no opportunities for concealment; 	<p>N/A – the proposal does not involve an arcade.</p>	<p>N/A</p>

ii. Where arcades or internalised shopping malls are proposed, those shops at the entrance must have direct pedestrian access to the street; and	N/A – the proposal does not involve an arcade.	N/A
iii. Incorporate pavement areas accessible to pedestrians throughout.	N/A – the proposal does not involve an arcade.	N/A
F. Element – Awnings		
i. Awnings providing continuous shelter from the weather are to be provided for the full extent of an active street frontage;	N/A – the site does not have frontage to an active street frontage. No awnings are required.	N/A
ii. Awnings are to: <ul style="list-style-type: none"> • be horizontal or near horizontal with a pitch not exceeding 10%; • provide a minimum 3.2 metres and maximum 4.2 metres clearance from the finished ground level at the property boundary; • provide a minimum width of 2.5 metres (unless constrained by narrow pavements, street trees, infrastructure or the like); • be set back at least 1 metre from the kerb; 	N/A – the site does not have frontage to an active street frontage. No awnings are required.	N/A
iii. Awnings on sloping streets shall step down in horizontal steps (maximum 700 millimetres per step) to follow the slope of the street;	N/A – the site does not have frontage to an active street frontage. No awnings are required.	N/A
iv. All contiguous awnings must be of consistent height and depth and of complementary design and materials;	N/A – the site does not have frontage to an active street frontage. No awnings are required.	N/A
v. New awnings shall be designed to be consistent with and complementary to existing adjoining awning structures and be integrated into the building design;	N/A – the site does not have frontage to an active street frontage. No awnings are required.	N/A
vi. Awnings shall wrap around street corners and contribute to the articulation and focal design of corner buildings; and	N/A – the site does not have frontage to an active street frontage. No awnings are required.	N/A
vii. Under awning lighting shall comply with Australian Standard 1158 – Lighting for roads and public spaces.	N/A – the site does not have frontage to an active street frontage. No awnings are required.	N/A
G. Element – Landscaping		
i. Development applications for new buildings in a business zone must be	A Statement of Landscape Intent (SoLI), prepared by	Yes

<p>supported by a landscape plan that details the following, where applicable:</p> <ul style="list-style-type: none"> • existing vegetation; • existing vegetation proposed to be removed; • proposed general planting and landscape treatment for all public, private and car parking areas of the site; • design details of hard landscaping elements and major earthworks (cut and fill) and any mounding; • street trees; • existing and proposed street furniture including proposed signage; and 	<p>Project Landscape and dated July 2023, was provided with the application documentation. The SoLI identifies existing landscaping to be retained, proposed planting, and hard landscaping.</p>	
<p>ii. A species list comprising native vegetation that is consistent with the Ballina Shire Urban Garden Guide is to be provided as part of the landscape plan.</p>	<p>The SoLI identifies a species list containing native vegetation consistent with the Ballina Shire Urban Garden Guide.</p>	<p>Yes</p>
<p>H. Element – Gateways and Landmark Sites</p>		
<p>i. The design of buildings on corner sites or at the ends of a business/commercial zone shall emphasise the corner as a focal point through design elements such as:</p> <ul style="list-style-type: none"> • increased wall heights; • splayed corner details; • expression of junction of building planes; • contrasting building materials; and 	<p>The proposed building is on the corner of the site. The design of the building creates a focal point on the corner through the incorporation of a timber look curved feature screen and interesting roof form.</p>	<p>Yes</p>
<p>ii. Shopfronts are to wrap around corners and entrances shall be located centrally to the corner.</p>	<p>The entry to the building is not located on the corner of the site due to the level differences in this location. Further, the proposed development has been orientated towards the existing EPIQ Market Place which provides an acceptable address for the site.</p>	<p>No – accepted variation</p>
<p>I. Element – Vehicular Access and Parking</p>		
<p>i. On-site car parking and vehicular access is to be provided for development in accordance with the car parking requirements specified in Chapter 2;</p>	<p>In accordance with Chapter 2 of the BDCP 2012, the proposed development attracts a parking demand of 24 spaces. The existing car park for the EPIQ Market Place has a</p>	<p>Yes</p>

	<p>surplus of 26 spaces. Accordingly, no additional spaces are required to accommodate the proposed development.</p> <p>The existing vehicular access, approved under DA 2017/447, will not be altered as part of this proposal.</p>	
ii. Car parking shall be designed in accordance with Australian Standard 2890 and the RTA Guide to Traffic Generating Developments;	The proposed development does not seek to alter the existing vehicular access and car park established under DA 2017/447, which was designed and delivered in accordance with AS2890.	Yes
iii. Car parking spaces required for customer parking in commercial, business and retail developments are to be freely accessible at all times and must not be gated or secured for exclusive use in any form;	The proposed development does not limit the existing free access to car parking on site.	Yes
iv. Site access and kerb crossover points shall have adequate sight distances and are to be designed to ensure that all vehicles are able to safely enter and exit the site while maintaining the safety and integrity of the road network;	The proposed development does not seek to alter the existing vehicular access and sight lines established under DA 2017/447.	Yes
v. The visual impact of car parking areas is to be softened by the incorporation of appropriate landscaping;	The existing car park layout incorporates appropriate landscape screening.	Yes
vi. Vehicular access points are to be provided from rear lanes or secondary street frontages wherever possible;	The proposed development does not seek to alter the existing vehicular access established under DA 2017/447.	Yes
vii. Vehicular access points should be located to increase or maximise on-street parking opportunities;	The proposed development does not seek to alter the existing vehicular access established under DA 2017/447.	Yes
viii. Driveways and car parking areas must not hinder the free flow of pedestrians on or adjacent to the site;	The proposed development does not seek to alter the existing vehicular access or car	Yes

	parking established under DA 2017/447.	
ix. Where possible, car parking areas should be designed to facilitate the long term integration of car parking areas between allotments;	N/A – the site is isolated and does not have adjoining sites to consider.	N/A
x. The number of loading bays to be provided shall be determined having regard to the scale and type of use proposed. In this regard full details of the anticipated volume and frequency of deliveries shall be supplied with each development application;	Sufficient loading facilities are provided for the pad site.	Yes
xi. Service areas and loading bays should be designed to cater for the vehicles and servicing operations anticipated to occur in a particular development. Designs shall comply with Australian Standard 2890.2 Part 2: Off-street commercial vehicle facilities; and	The proposal has satisfactory provision for an SRV to service the pad site.	Yes
xii. The location and design of loading bays are to integrate into the overall design of the building, be separate from customer car parking areas and be appropriately screened when located adjacent to sensitive adjoining land uses.	Sufficient loading facilities are provided for the pad site.	Yes
J. Element – Waste Storage Facilities		
i. Waste storage facilities are to be physically and visually integrated into the design of the development at ground or basement level and are to be of a size appropriate to the scale of the development;	The refuse storage room is integrated into the built form and completely enclosed.	Yes
ii. Waste storage facilities shall meet the following design requirements: <ul style="list-style-type: none"> • located behind the building line or setback and screened from the street or a public place; • accessed from a rear lane or secondary street frontage wherever possible;. • easily accessible for all tenancies/occupancies in the building; 	The refuse room is: <ul style="list-style-type: none"> • behind the building line and completely enclosed • easily accessible for tenants • adjacent to the loading bay for ease of servicing • will be conditioned to be connected to the sewer (refer below) 	Yes

<ul style="list-style-type: none"> can be adequately serviced by waste collection vehicles, having regard for safety and ease of manoeuvring; has water and drainage facilities for cleaning and maintenance, where necessary; does not immediately adjoin habitable rooms or outdoor seating/recreation areas; and shall be appropriately screened and oriented when located adjacent to sensitive adjoining land uses. 	<ul style="list-style-type: none"> does not adjoin habitable rooms or outdoor seating areas 	
<p>iii. Where storage and handling of putrescible (organic) or food waste is anticipated, waste storage areas must incorporate an appropriate roofed and screened area that is connected to the sewer system.</p>	<p>The proposed use is likely to involve putrescible waste. Conditions will be applied to the consent requiring the refuse room to be connected to the sewer system.</p>	<p>Yes</p>
<p>K. Element – Pedestrian Entries and Access</p>		
<p>i. Development is to comply with Australian Standard 1428 – Design for Access and Mobility; and</p>	<p>Conditions will be applied to the consent requiring the development to provide disability access in accordance with AS1428.</p>	<p>Yes</p>
<p>ii. Secure and convenient parking and storage areas for bicycles are to be provided close to the entrance of the development.</p>	<p>A condition will be imposed on the consent requiring bicycle parking near the entrance to the new commercial building.</p>	<p>Yes</p>
<p>L. Element – Energy Efficiency</p>		
<p>i. Any residential accommodation component of new commercial buildings is to demonstrate compliance with State Environmental Planning Policy – Building Sustainability Index (BASIX) and State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development;</p>	<p>N/A – the proposal does not involve a residential component.</p>	<p>N/A</p>
<p>ii. All non-residential development is to comply with the Building Code of Australia Class 5 to 9 energy efficiency provisions;</p>	<p>Condition to be imposed.</p>	<p>Yes</p>
<p>iii. Mechanical space heating and cooling is to be designed to target only those spaces which require heating or cooling, not the whole building; and</p>	<p>Condition to be imposed.</p>	<p>Yes</p>
<p>iv. Development is to be designed to reduce reliance on artificial lighting</p>	<p>The proposed commercial building incorporates extensive</p>	<p>Yes</p>

	glazing to provide for access to natural light.	
M. Element – Water Efficiency		
i. Development must incorporate the following; <ul style="list-style-type: none"> • Use at least AAA rated shower roses, taps and appliances; • Use of dual flush toilets; 6 litres or less for a full flush and 3 litres or less for a half flush; • Use of waterless urinals; and • Install sensor operated taps, or automatic shut-off taps, especially in public areas. 	Condition to be imposed.	Yes

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

Not applicable – the proponent has not offered or agreed to enter into a planning agreement.

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

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 – the development application does not involve demolition.

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 – the development is not only for a change of use.

If the DA 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 – the development application is not for alterations to an existing building.

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 – the development application is not for the erection of a temporary structure.

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

Urban and Building Design

i) Context and Settings

The proposed development seeks to establish a small kiosk within an existing shopping centre building, as well as a new two storey commercial building on an established pad site. The proposed development is consistent with the objectives of the E1 zone and the existing development on site. The proposed bulk and scale are generally consistent with the requirements of the BLEP 2012 and BDCP 2012 and the proposal is compatible with both development on site and within the street.

The proposal was formally amended on 15 December 2023 to include the relocation of the existing stormwater drainage which currently intersects through the pad site. The relocation of the stormwater infrastructure will allow future maintenance or upgrades to occur without impacting on the commercial building.

ii) Site Design and Internal Design

The proposed development seeks to establish a small kiosk within an existing shopping centre building, as well as a new two storey commercial building on an established pad site. The proposed development is consistent with the FSR requirements for the site and is of an appropriate bulk and scale. The tenancies are afforded access to natural light, with extensive glazing proposed, and sufficient parking and servicing.

iii) Ecologically Sustainable Building Design

Conditions will be applied to the consent requiring compliance with the Building Code of Australia Class 5 to 9 energy efficiency provisions.

iv) Access, Transport and Traffic

The proposed development does not seek to change the existing access, internal manoeuvring, or car parking that was established under DA 2017/447. The existing access and manoeuvrability on site are adequate to address the requirements of the proposed development. The additional parking demand associated with the proposal is accommodated by the existing surplus in parking supply on site. A condition is imposed requiring the provision of 4 bicycle and mobility scooter parking spaces.

v) Public Domain

The proposed development will not have an unreasonable impact on the public domain. The built form itself is consistent with the existing development on site and the intent for the zone. Conditions have been imposed on the consent to manage potential lighting and noise impacts associated with the use.

vi) Utilities

The site has access to all essential services.

vii) Heritage

The site is not impacted by matters of heritage significance.

viii) Construction

Construction of the development will occur in accordance with Council conditions of consent, the Building Code of Australia, and WorkCover requirements.

Appropriate erosion and sediment control measures shall be implemented during the construction phase to mitigate opportunities for soil erosion and water pollution.

Construction activities are to adhere to Council’s standard hours of construction.

Environmental Impacts

ix) Other Land Resources

The proposed development is not anticipated to have any impact on other land resources.

x) Water

The site has access to reticulated water supply. The proposed development will utilise the stormwater management system that was established for the site under DA 2017/447. The development will not have any adverse impact on nearby waterways.

xi) Soils

Earthworks required to establish the pad site have already occurred under DA 2017/221. Conditions will be imposed on the consent to address erosion and sediment control during construction.

xii) Air and Microclimate

The proposed development is unlikely to result in any emissions or pollution that would impact the air quality or microclimate.

xiii) Flora and Fauna

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The proposal does not involve the clearing of any vegetation or habitat. The development is unlikely to have any adverse impacts on flora or fauna.

xiv) Waste

The application documentation was accompanied by a Waste Management Plan, prepared by HMC Environmental Consulting and dated July 2023. The proposed development incorporates an enclosed refuse room that is accessible to future tenants, as well as to service vehicle. The refuse room is of a sufficient size to accommodate the bins associated with the future commercial use of the site. Conditions will be imposed on the consent to manage construction waste, ongoing waste management, and trade waste.

xv) Energy

Conditions will be applied to the consent requiring compliance with the Building Code of Australia Class 5 to 9 energy efficiency provisions.

Hazards

xvi) Noise and Vibration

The application documentation was accompanied by a Noise Impact Assessment, prepared by Tim Fitzroy and Consultants, and dated 27 July 2023. The Noise Impact Assessment:

1. Establishes the existing background noise levels across the subject site,
2. Examines the likely impacts of the proposed development on the existing surrounding residences and residences within the development in accordance with the NSW EPA Noise Policy for Industry (2017), and
3. Reports on noise levels and provide recommendations to ensure that the proposed development complies as far as practicable with the intent of the NSW EPA Noise Guidelines.

Noise emission levels are predicted to meet the relevant criteria at all nearby sensitive receptors during the day period. Minor exceedances of less than 2 dB(A) are predicted during the evening and night at the closest residential receivers. Accordingly, the Noise Impact Assessment has no recommended ameliorative measures, given compliance will be achieved at the closest affected residences. However, the assessment did not address the use of the loading dock, outdoor dining area or waste collection. Conditions will be applied to address these issues, as well as the final plant selection.

The construction of the new commercial building is unlikely to result in any significant vibration impacts.

xvii) Natural Hazards

The western portion of the site is in a medium hazard flood mapped area. The pad site was established and filled to a minimum RL of 3.5m AHD under DA 2017/447 and DA 2017/221. The minimum fill level prescribed for the site in the DCP is 2.1m AHD (FPL1) and 2.3m AHD (FPL2). The minimum design floor level for the site is 2.5m AHD. The proposed development does not involve any significant earthworks and maintains the existing ground level at a

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minimum RL of 3.5m AHD. Therefore, the proposed development achieves the minimum fill levels and minimum floor levels for the site.

xviii) Technological Hazards

The proposed development does not involve technological hazards.

xix) Safety, Security and Crime Prevention (CPTED)

As discussed in this report, the proposed development has been designed to achieve the four principles contained in *Crime Prevention and the Assessment Of Development Applications*. The proposed development is not anticipated to increase the likelihood of crime in the area.

Social and Economic Impacts

xx) Social Impacts in the Locality

The proposed development will not have any adverse social impacts in the locality.

xxi) Economic Impact in the Locality

The proposal will have a positive economic impact in the locality. During construction, the proposal will provide for construction jobs. Once completed, the proposal provides for 8 commercial tenancies for local business to establish in.

Cumulative Impacts

xxii) Cumulative Impacts

The proposed development is not anticipated to have any cumulative impacts. The proposed commercial building and kiosk was anticipated under DA 2017/447 and is consistent with the objectives of the E1 zone.

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

i) Does the proposal fit in the locality?

Yes – the proposed development is consistent with the objectives of the E1 zone, as well as the existing development on site.

ii) Are the site attributes conducive to development?

Yes – the kiosk will be located within an existing building and the proposed two storey commercial building will be established on an existing pad site.

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 practice?

Yes

If YES, how many submissions were received?

One submission was received.

Document general terms of issues raised in any submission and how they are being considered/ assessed:

Public Submissions:

One public submission was received against the development application raising concern regarding noise, waste, safety, light, and visual intrusion.

Refer to the Council report for a detailed response to each concern. The matters raised in the submission have been adequately addressed and do not warrant refusal of the application.

Public Authority Submissions:

N/A

4.15 (1)(e) The public interest

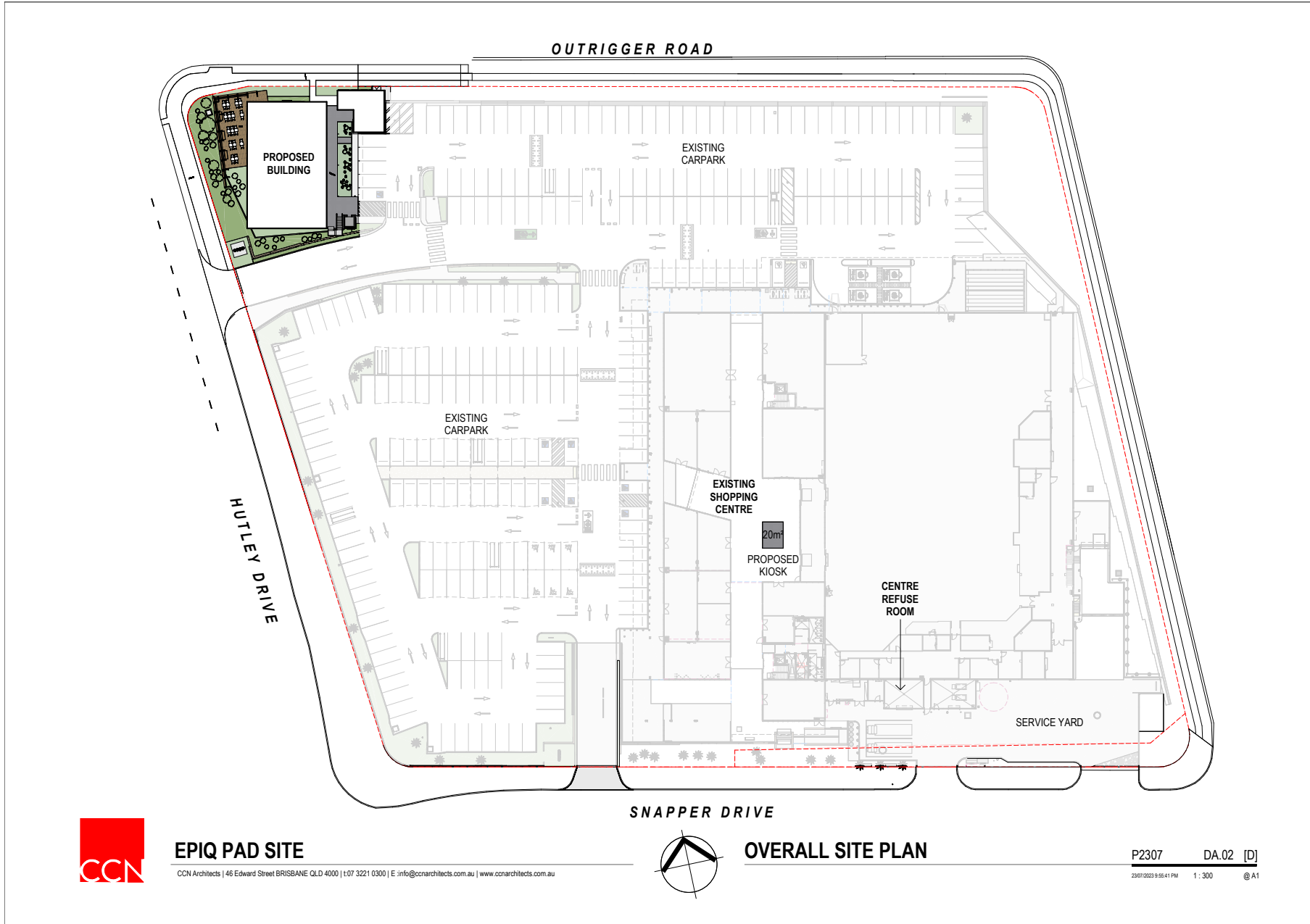
Federal, State & Local Government interests and Community interests

The proposed development is consistent with the objectives of the E1 zone and provides for employment in the locality. The development is considered to be in the public interest.

Section 64 Contributions and Section 7.4 or 7.11 Contributions

Contributions have been levied on the development consent.

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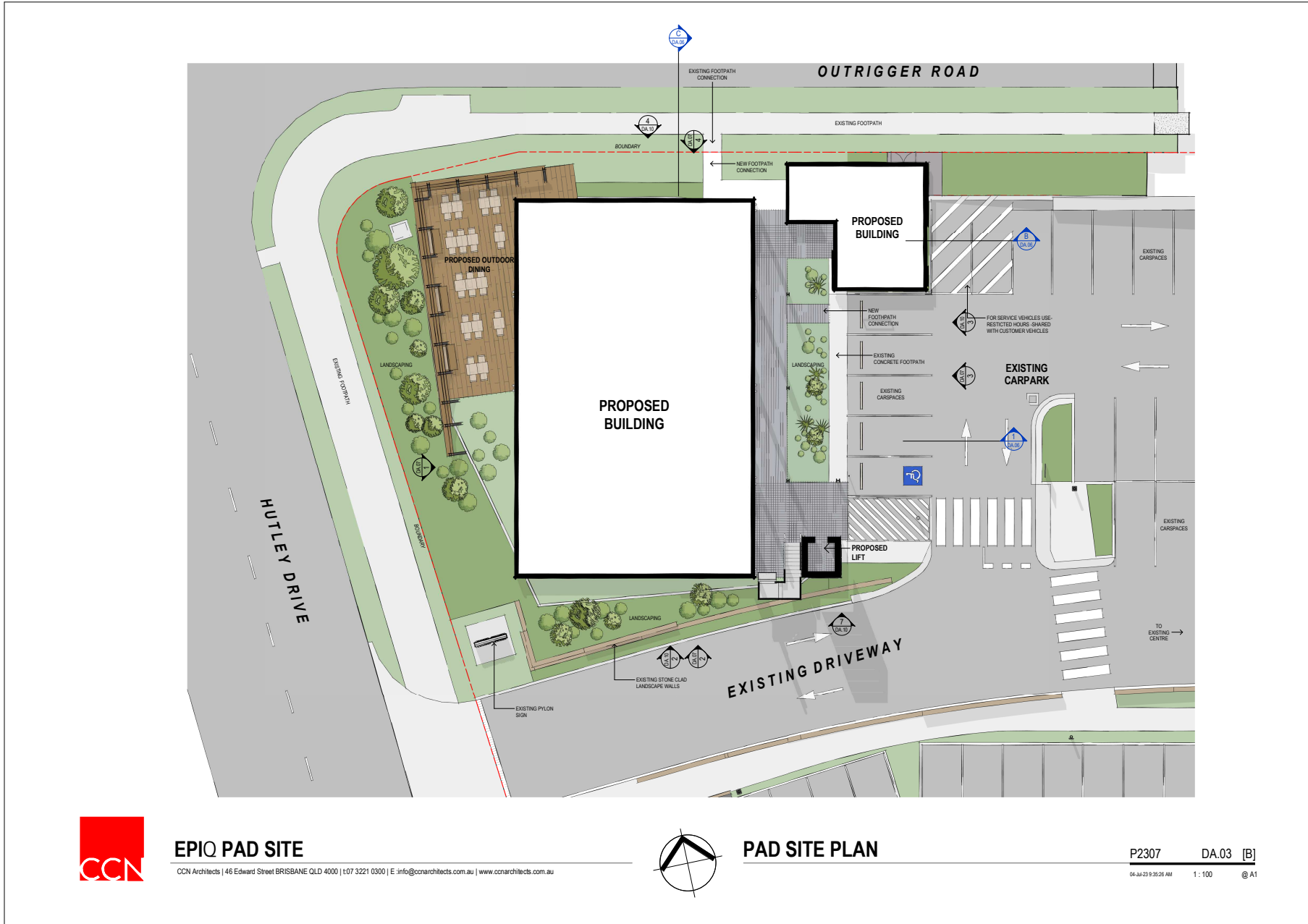
EPIQ PAD SITE

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OVERALL SITE PLAN

P2307 DA.02 [D]
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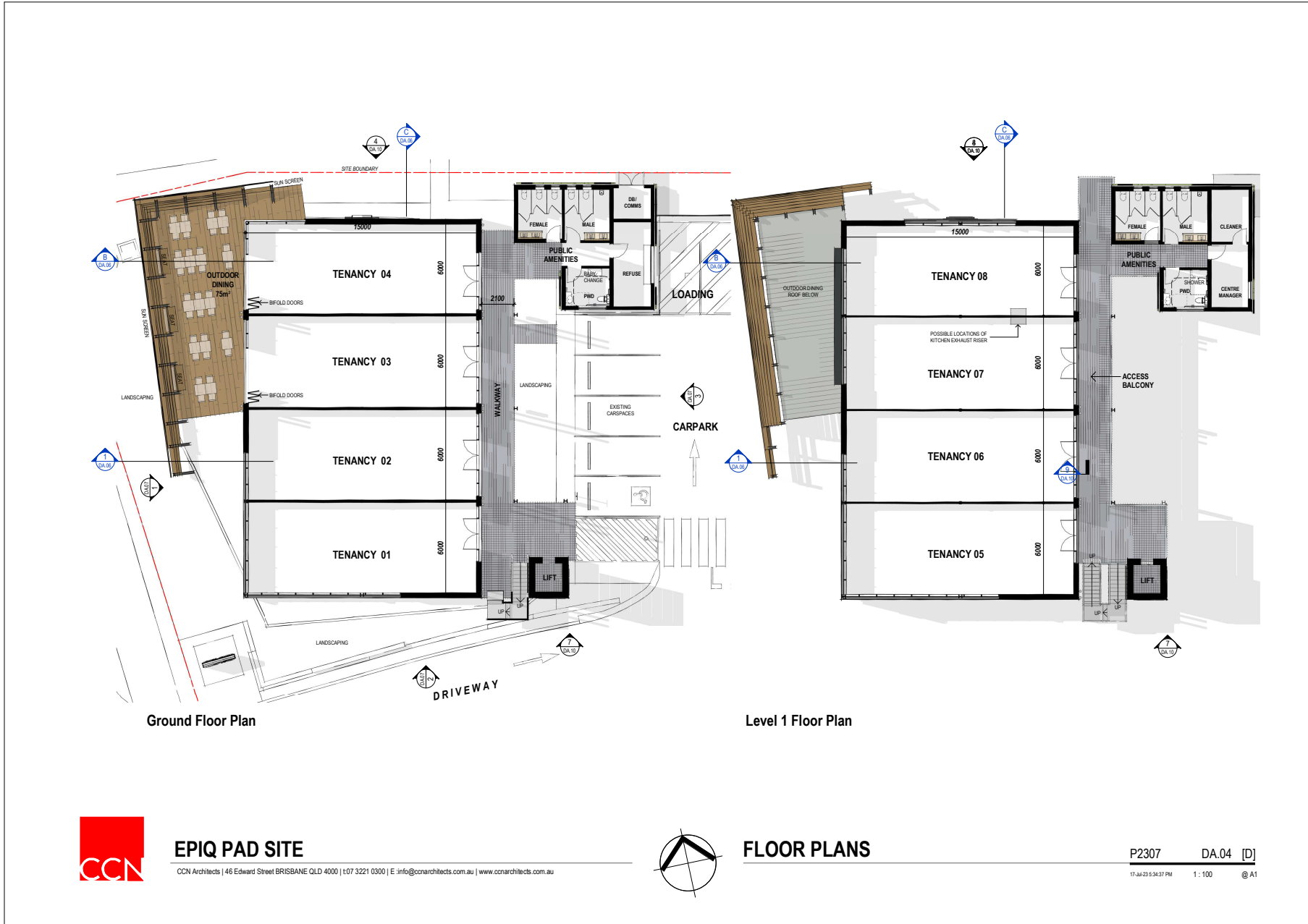
EPIQ PAD SITE

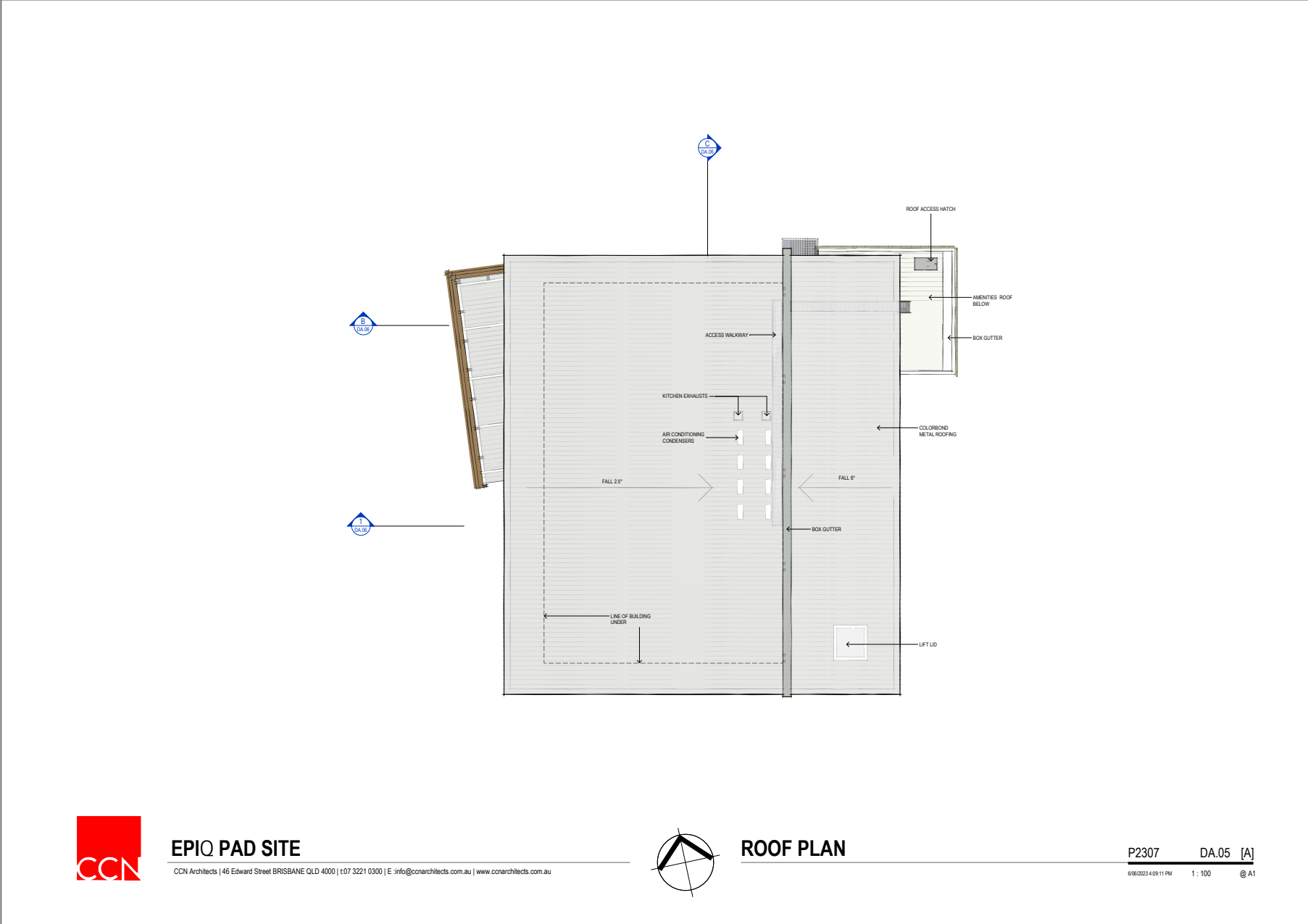
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PAD SITE PLAN

P2307 DA.03 [B]
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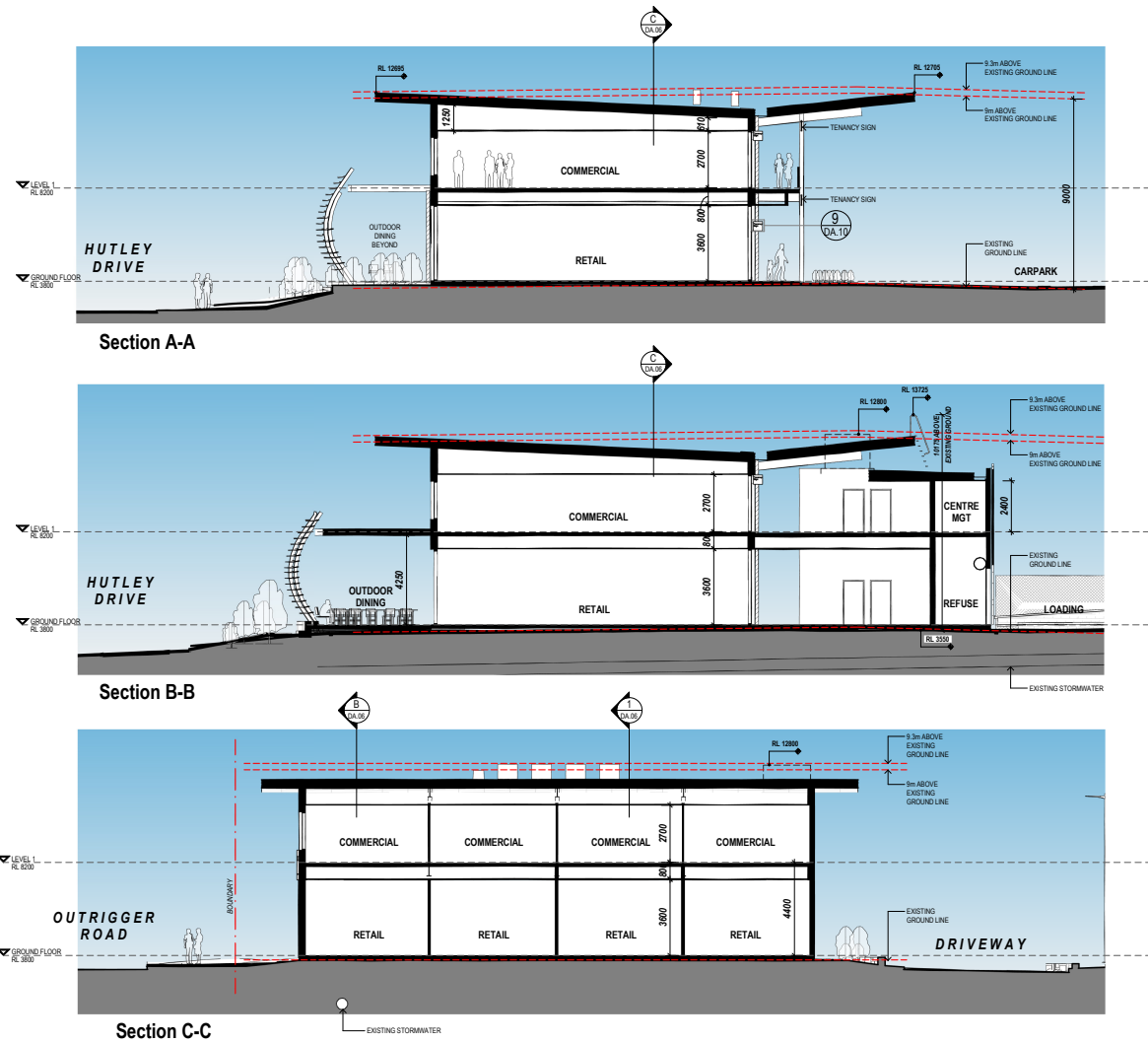
EPIQ PAD SITE

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ROOF PLAN

P2307 DA.05 [A]
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EPIQ PAD SITE

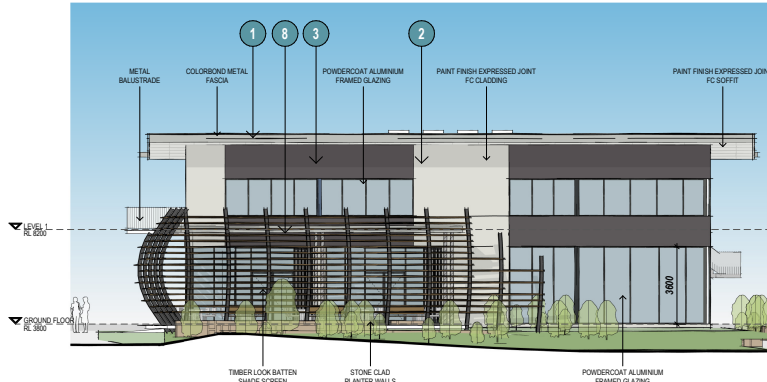
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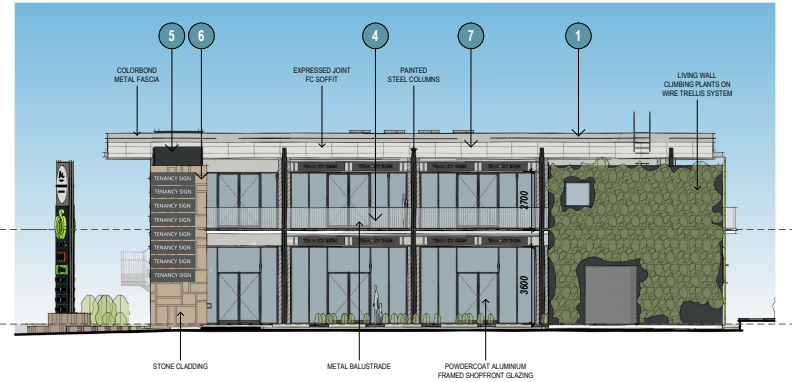
BUILDING SECTIONS

P2307 DA.06 [E]

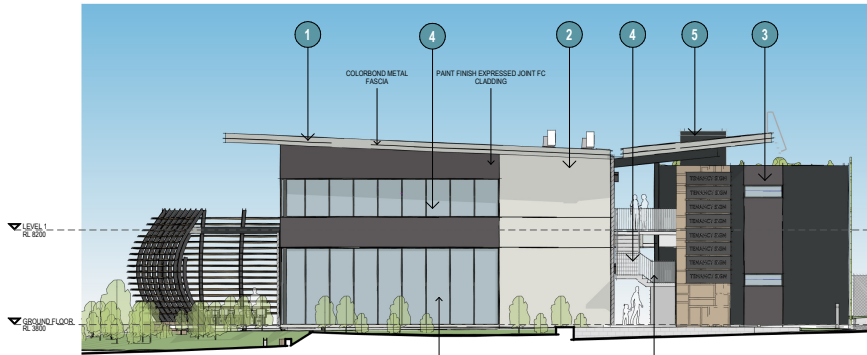
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West Elevation



East Elevation



South Elevation



North Elevation



EPIQ PAD SITE

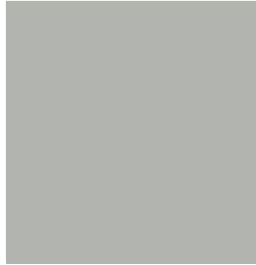
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BUILDING ELEVATIONS

P2307 DA.07 [D]

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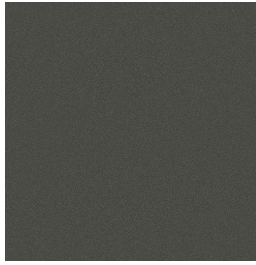
1 COLORBOND 'SHALE GREY' ROOFING



2 DULUX 'VINTAGE LINEN' PAINT FINISH



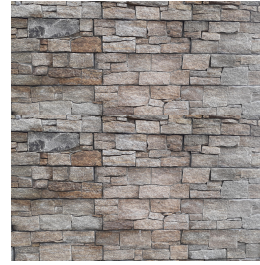
3 DULUX 'BABBLER' PAINT FINISH



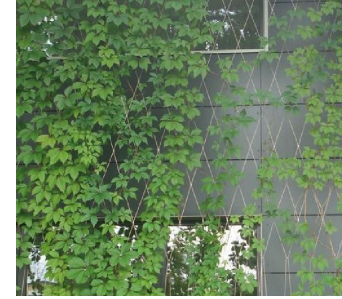
4 POWDERCOAT ALUMINIUM 'TITANIUM PEARL'



5 DULUX 'MONUMENT' PAINT FINISH



6 STONE CLADDING TO MATCH EXISTING STONE CLAD WALLS ON SITE



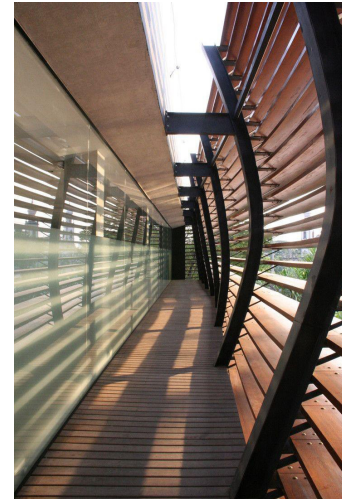
STAINLESS STEEL CLIMBING PLANT MESH



7 PAINT FINISH EXPRESSED JOINT FIBRE CEMENT SOFFIT



8 PREFINISHED STAINED & TREATED EXPRESSED JOINT PLYWOOD SOFFIT



FEATURE TIMBER LOOK CURVED SCREEN DETAIL



EPIQ PAD SITE

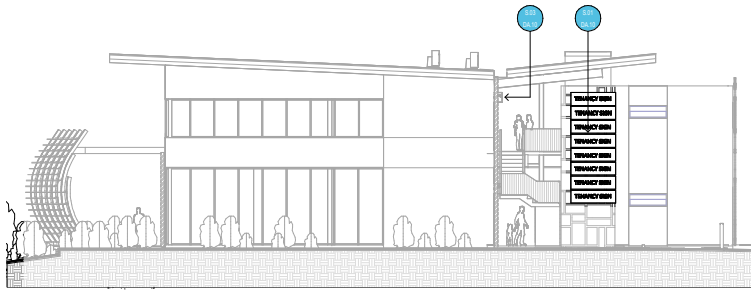
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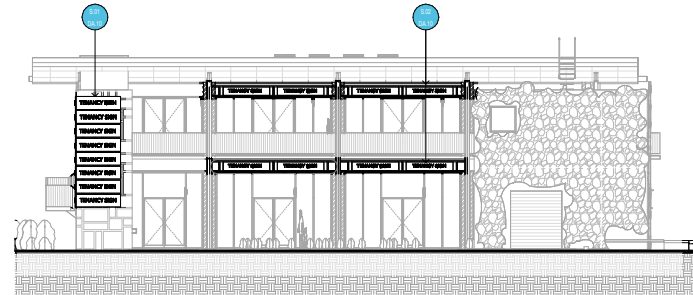
BUILDING MATERIALS & FINISHES

P2307 DA.08 [B]

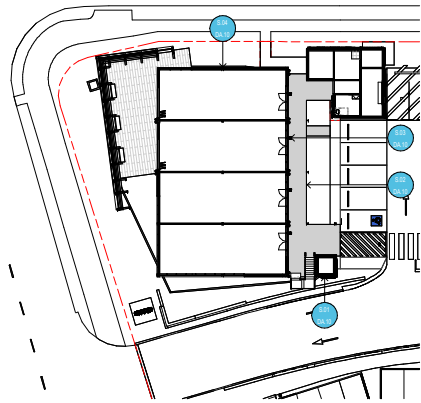
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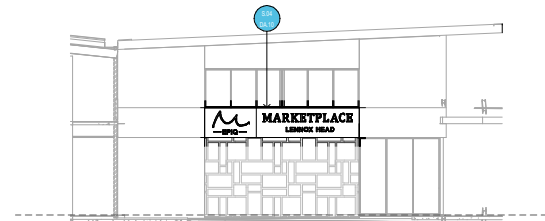
South Elevation



East Elevation



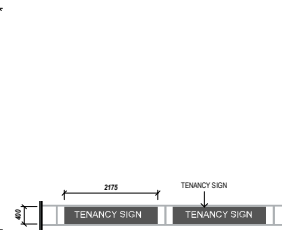
Signage Plan



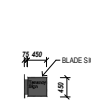
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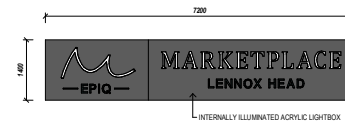
Sign Type - S.01
Illuminated Sign



Sign Type - S.02
Illuminated Sign



Sign Type - S.03
Illuminated Sign



Sign Type - S.04
Illuminated Sign

SIGNAGE			
Sign #	Dimensions (mm)	No. of Signs	Area (m ²)
01	2000 x 6100	2 x single sided	21.42
02	2180 x 400	8 x single sided	6.97
03	450 x 450	8 x double sided	3.24
04	7200 x 1400	1 x single sided	10.08
TOTAL			41.71



EPIQ PAD SITE

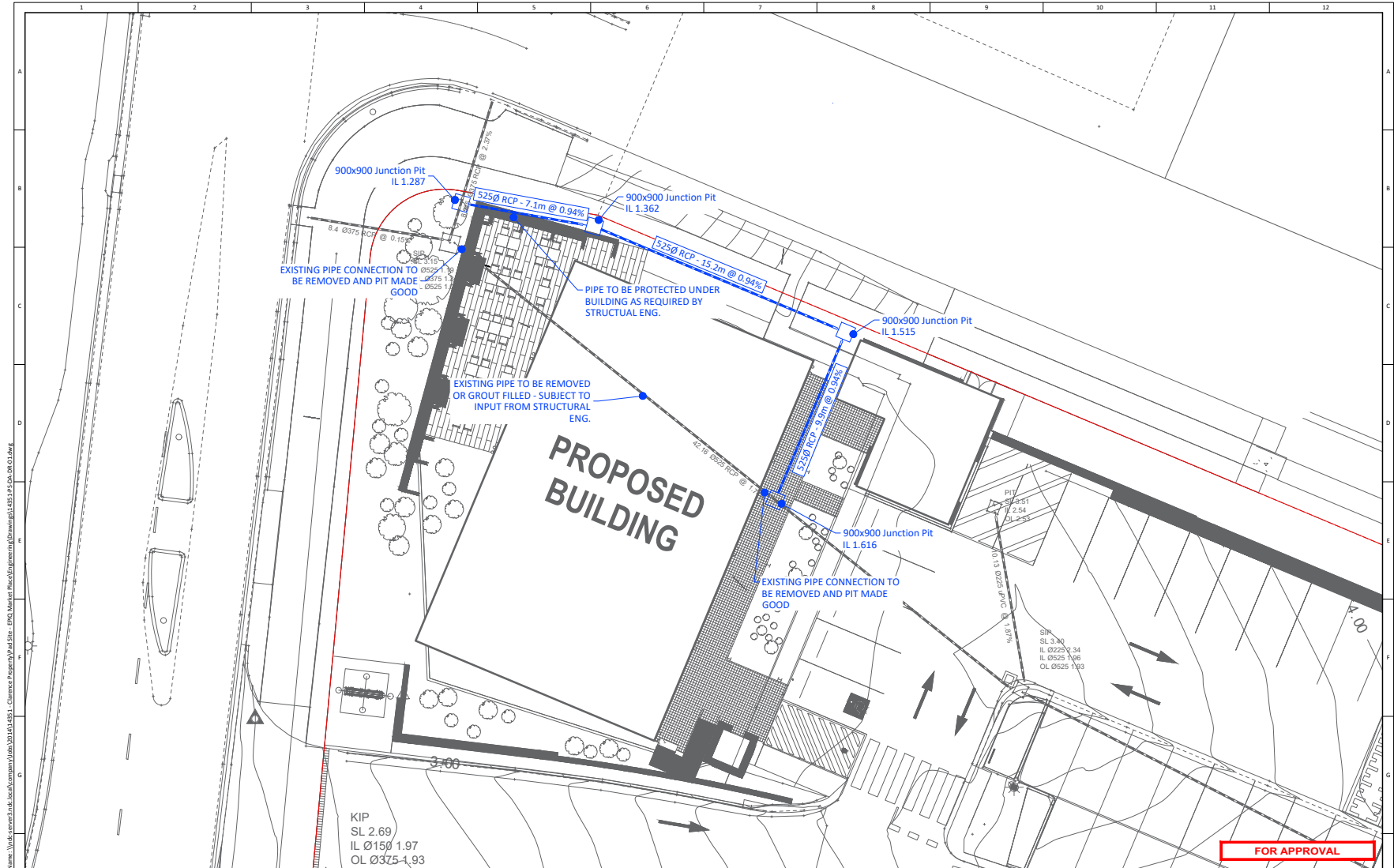
CCN Architects | 46 Edward Street BRISBANE QLD 4000 | 107 3221 0300 | E: info@ccnarchitects.com.au | www.ccnarchitects.com.au



SIGNAGE PLAN & ELEVATIONS

P2307 DA.10 [C]

04 Jul 23 9:36:54 AM As indicated @ A1



A1 SIZE ORIGINAL DRAWING SCALE (m) A1 0 1 2 4 6 1:100		HORIZ. DATUM: GDA2020 PROJECTION: MGA MERIDIAN: AHD VERT. DATUM: AHD VERT. ORIGIN: SURVEYED DATE SURVEYED DATE: 11/12/23	GROUND: DRAWN: AH CHECKED: AH DESIGN: AH CHECKED: AH APPROVED: AH CERTIFICATION: B. ENG DATE: 11/12/23	Newton Denny Chapelle Surveyors Planners Engineers 131 Carrington St, Lismore B/480 Casuarina Way, Casuarina Phone 02 6622 1011 Email office@ndc.com.au	Client: CLARENCE PROPERTY EPIQ MARKETPLACE Site: LOT 1 DP 12399938 5 SNAPPER DRIVE LENNOX HEAD	STORMWATER RELOCATION PLAN Reference No: 14351 DRAWING No: 14351-PS-DA-DR-01 REVISION: A
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THIS PLAN IS NOT FOR CONSTRUCTION UNLESS STAMPED BY THE PRINCIPAL CERTIFYING AUTHORITY AND ISSUED WITH A NUMERICAL REVISION



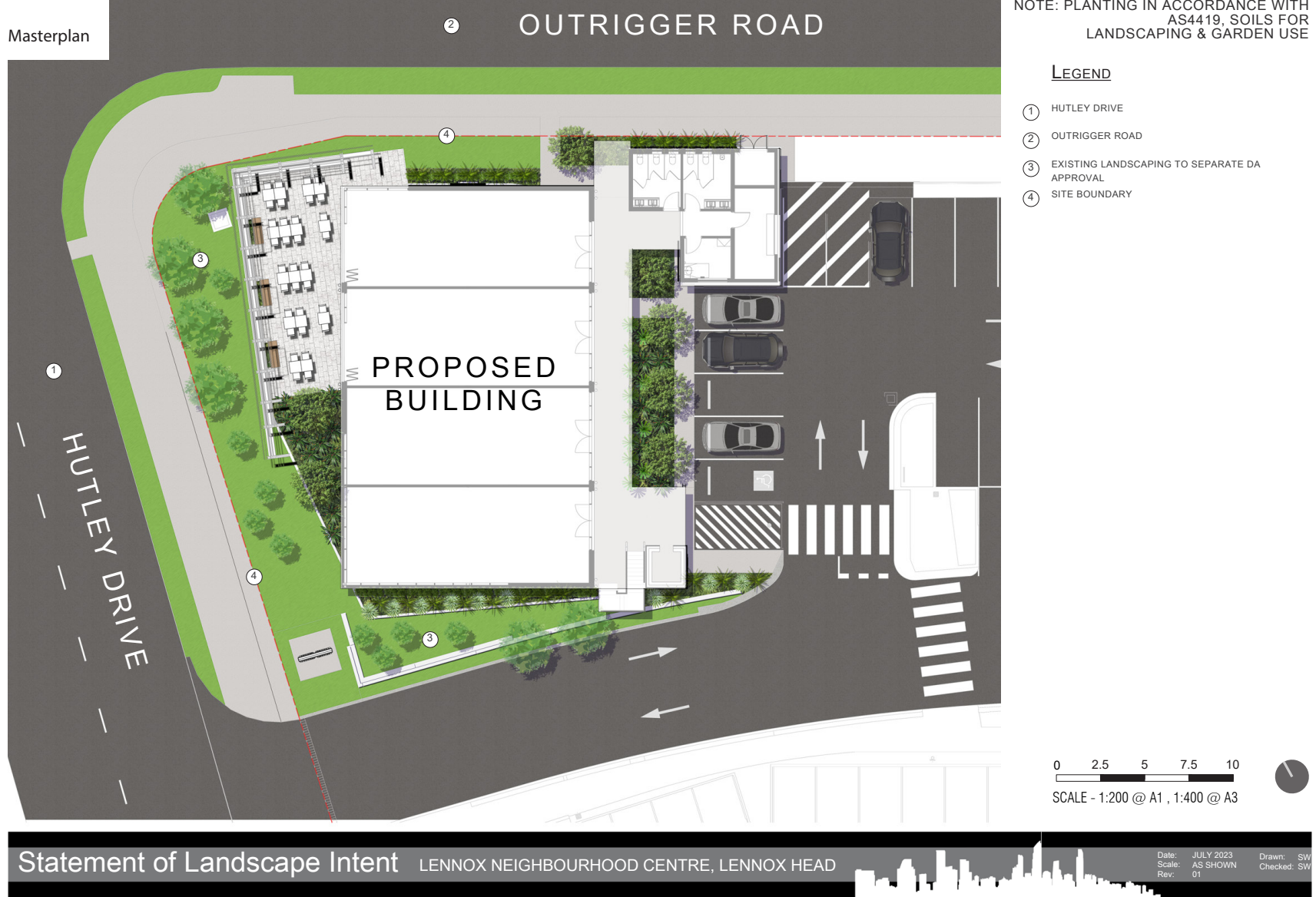
STATEMENT OF LANDSCAPE INTENT

EPIQ - LENNOX NEIGHBOURHOOD CENTRE, HUTLEY DRIVE, LENNOX HEAD



**Project
Landscape**

EST 2015

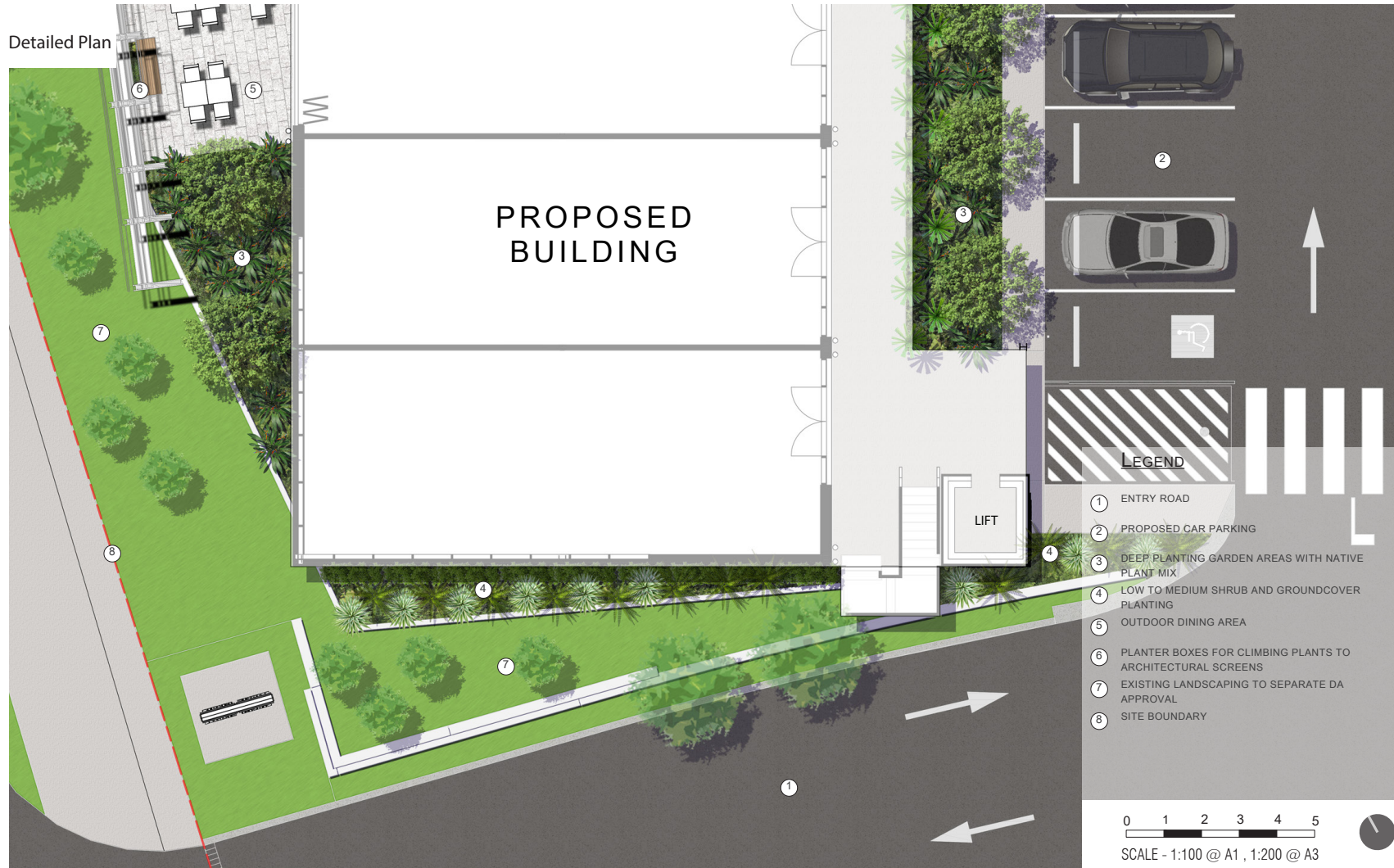


Statement of Landscape Intent LENNOX NEIGHBOURHOOD CENTRE, LENNOX HEAD



Statement of Landscape Intent LENNOX NEIGHBOURHOOD CENTRE, LENNOX HEAD

Date: JULY 2023
 Scale: AS SHOWN
 Rev: 01
 Drawn: SW
 Checked: SW



Statement of Landscape Intent LENNOX NEIGHBOURHOOD CENTRE, LENNOX HEAD

Date: JULY 2023
 Scale: AS SHOWN
 Rev: 01
 Drawn: SW
 Checked: SW

Planting Palette - Trees, Shrubs & Groundcovers



TREES

01	<i>Cupaniopses anarcardioides</i>	Tuckeroo
02	<i>Eleoacarpus eumundi</i>	Eumundi quandong
03	<i>Waterhousia floribunda</i>	Weeping Lilly Pilly

SHRUBS

04	<i>Westringia fruticosa</i>	Native Rosemary
05	<i>Lomandra longifolia</i>	Matt Rush
06	<i>Syzygium CV Resilience</i>	Lily Pilly

GROUNDCOVERS

07	<i>Hardenbergia violacea</i>	Native Sarsparilla
08	<i>Dianella longifolia</i> var.	Smooth Flax Lily
09	<i>Myoporum ellipticum</i>	Creeping Boobialla



Keely Bradley

From:
Sent: Wednesday, 27 September 2023 9:35 AM
To: Ballina Shire Council;
Subject: Submission - DA 2023/339 OBJECTION

Dear Sir/Madam

I lodge this objection the proposed commercial development for the following reasons:

NOISE

The increase in noise would have a detrimental affect on the properties closest to the development;
The level of continuous noise would be considered highly intrusive and would negatively impact the properties in Outrigger Road which face the commercial area;
The proposed development of a commercial building includes large scale air conditioning of which many outside condensers placed on the roof and exhaust fans also placed on the roof would be in operation 24 hours a day, 7 days a week. Air conditioning units for commercial premises emit loud, continuous noise which travels and the impacts of the constant noise would severely impact the quality of life of the residents in the properties facing the development;
In addition to the commercial space is an area of toilet facilities, a refuse room and a loading dock. That equates to the movement of people, more heavy trucks moving in and out to remove waste and therefore more noise as the proposed buildings are across the road from residential houses.

The noise report included in the documents state that the level of noise is 'predicted' to meet standards however in reality that is completely speculative and not a known fact. I believe the noise level would be far worse and unbearable. The level of continuous noise every minute of every day would cause extreme problems for sleep and there would be no enjoyment or quality of life.

The character of the noise is not in keeping with a quiet residential area. It is more comparable to living in the city where it is expected to have large scale developments.

The time and duration of the noise would be constant, never ending, no reprieve. 24 hours a day, every day and night of the week.

The noise would not be typical of the area which is primarily residential, family oriented with many young children.

The number of people affected is unacceptable. Any one person affected is a person who would suffer loss of enjoyment of living, loss of quality of life, loss of sleep and ultimately loss of the will to live. Constant and continual noise which cannot be blocked out can cause severe mental health issues and Council have the responsibility to the residents to protect the environment in which the residents reside.

The proposed development includes outdoor dining area which again is close to Outrigger Road. The noise from people talking, laughing carries and would impact on the residential houses in Outrigger Road in a negative manner. Outdoor dining attracts more waste, litter and rodents which would also affect the residential houses.

The proposed site is currently a lovely 'buffer' area with grass, shrubs and trees. It is visually pleasing and enhances the commercial area as it softens the area. This area is visible from the stretch of houses in Outrigger Road and more 'green' spaces are needed to deflect the heat generated from carparks and buildings. Loss of this area would be detrimental to the residents who overlook the area.

The proposed development is too close to the residential properties in Outrigger Road and would have the greatest negative impact on these properties including the child care centre which is directly opposite. The noise would be intrusive and destroy the relaxed atmosphere that currently exists.

The commercial centre already emits 'noise' of a humming nature which is constant. To add to that would be catastrophic for close by residents.

WASTE

The proposed development would create an enormous amount of extra waste. The centre currently has a high amount of waste with waste removal trucks entering and exiting the site which creates very audible noise. Adding more frequency and probably more trucks to deal with the increase in waste directly impacts the residents. The noise level is disturbing. The trucks can be heard especially in the early hours even with doors and windows completely closed.

SAFETY

The safety of residents must be of paramount importance. The area has many young families with young children who would be at greater risk of injury due to an increase in traffic of cars and trucks. It would take away the 'family friendly' tag this area currently enjoys.

It is a quiet, residential area and further development would change that to one of a busy, unpleasant, noisy and unsafe area. There is a much higher risk of accidents with an increase of cars and trucks. The proposal of outdoor dining and service of alcohol is highly undesirable. The safety of residents would be compromised. These venues increase risks of crime, violence and vandalism. It puts people at higher risk of becoming a victim of violence. The Epiq marketplace does not need to incorporate taverns or outdoor dining as all of those types of venues are easily accessible in Lennox Village where they are equipped to host such venues. Locals and tourists enjoy the ocean vistas, the green hills and the vibe of a beachside cafe or tavern. Epiq marketplace is a handy spot to pick up some groceries. The proposed extension to trading hours is of major concern to the residents who again need to get children to bed and enjoy some peace and quiet. Having more people and cars coming in and out of the centre creates a lot of noise in the evenings and an added danger to children not being seen. Children go to bed early as do many of the residents. Keeping the trading hours as they have been are more manageable for families and residents especially those properties in closest proximity to the centre.

LIGHT

The proposed development would increase the lighting which directly impacts the properties facing the complex. An increase to lighting which includes neon lit signage is a disturbance to night sleeping. Unnatural light is a stressor as it impacts the quality of sleep in an extreme negative manner. The lighting in the carpark area is on all night and the signs are also alight all night adding to the unnatural light. My suggestion to help the residents is to dim the lights after 9pm to give some relief to the residents in Outrigger Road.

VISUAL INTRUSION

The proposed development would be a negative impact on the area. The grassed area with trees and shrubs help to 'soften' the impact of having a commercial complex in the middle of a residential area. There is an absolute need to maintain and increase the amount of green space, open space and give 'break out' areas for people who work in the commercial sector and the residents to use as a public space to relax, enjoy and use. The more green spaces we have help to offset the negative impact of hard surfaces which create more heat. We need more shade trees and tall trees to help the visual aspects for residents. There is currently not enough green space or parks within the marketplace area which just makes it a hot, unpleasant place.

The proposal to build a huge building on the small green space is in direct contradiction to the needs of the community. We need more trees, not commercial buildings. The plantings around the commercial complex are inadequate to address the changing climate. The trees are small, do not provide shade and need more tending.

The residents and locals of Lennox Head do not want over development in their faces. I certainly do not want commercial building in my face. Lennox Village and Ballina provide enough larger commercial complexes and shopping for the shire where it is set up to cope and have the space to accommodate such buildings.

Living in Lennox is about 'lifestyle'. A relaxed lifestyle with the sounds of birdlife, the surf and the 'quiet'. Not trucks and air conditioning compressors and exhaust fans and a constant stream of cars 24/7.

As one of the residents who would be directly affected, the visual impacts of increased buildings and traffic and noise would destroy this area and destroy my quality of life. I moved from Sydney to escape the noise and to live a more relaxed lifestyle. The proposed development would destroy that lifestyle.

The residents of Lennox Head have expressed their feelings that have been recorded by council and it is clear that residents do not want more development.

Residents have voiced;
 Maintain open spaces
 Consider the environmental values
 Low density/rural
 Less development/not over developed
 Development fatigue
 Access to open space and sport facilities
 More shade, more shade trees, more trees, more plantings
 Retain the local character
 Maintain the village feel
 Safety is paramount
 Friendly
 Beautiful parks
 Calm
 Family friendly
 Small
 Natural
 Green and pristine

The list is not exhaustive.

People are fatigued with over development and too much change, enough has been done already.

There is car parking on the other side of the site which borders Snapper Drive and Hutley Drive. Any future development if proposed would be better suited to that area as there are no residential houses on either frontage of those two roads. A much larger, wider buffer zone is needed between commercial complexes and residential homes. Noise can destroy the lives of people who cannot get away from that noise. One expects to consider their home their safe haven to get away from the outside

world. Constant noise and artificial light causes mental illness. Please consider the health and wellbeing of the residents in Outrigger Road.

In respect of my personal details, I request Council to keep my details private

In conclusion to my submission, the proposed development does not take serious consideration of the negative impacts on the properties directly affected by the proposal.

I thank you for your time and consideration in this most distressing matter.

**Attachment 5 - Recommended Non-Standard
Conditions**

1.	External Lighting
	Any external lighting to be installed and operated on site shall comply with the AS 4282:2019 <i>“Control of the Obtrusive Effects of Outdoor Lighting”</i> . Details demonstrating compliance being provided to the Principal Certifier before issue of a Construction Certificate. Condition Reason: To protect the amenity of other properties.
2.	Noise Impact Assessment
	Certification from a suitably qualified person that the design and location of all external plant and equipment, noise level emissions and if required, design of noise control measures are in accordance with the specifications of the Environmental Noise Impact Assessment prepared by Tim Fitzroy & Associates dated 27 July 2023 is to be submitted to Council before issue of the Construction Certificate. Condition Reason: To manage noise impacts.
3.	Waste Disposal Area
	The waste disposal areas are to be screened, covered, graded, bunded and drained to the sewer via a Council approved pre-treatment device. Drainage details are to be incorporated into the hydraulic plans and are required to be submitted to and approved by Council before issue of the Construction Certificate. Condition Reason: To protect public health and the environment.
4.	Floor Levels
	A Registered Surveyor’s certificate is to be submitted to the Principal Certifier at each floor level of construction of the buildings (prior to the pouring of concrete) verifying that the finished floor levels are in accordance with the approved plans. Condition reason: To ensure the building is constructed in accordance with the approved building height.
5.	Waste Disposal
	The waste disposal areas are to be screened, covered, graded, bunded and drained to the sewer via a pre-treatment device in accordance with the approved details before issue of the interim or final Occupation Certificate. Condition Reason: To protect the environment.
6.	External Lighting
	All external lighting to be installed and operated on site shall comply with the AS 4282:2019 <i>“Control of the Obtrusive Effects of Outdoor Lighting”</i> . Upon installation of lighting and before final commissioning, a report from a qualified consultant shall be submitted to the Principal Certifier before issue of an Occupation Certificate demonstrating compliance with AS 4282:2019 <i>“Control of the Obtrusive Effects of Outdoor Lighting”</i> . Condition Reason: To protect public amenity.
7.	Vehicle Loading
	Vehicles servicing the loading dock (including deliveries and waste collection) shall be restricted to after 7.00am and prior to 6.00pm Monday to Saturday. Condition Reason: To protect public amenity.

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<p>8.</p>	<p>Noise Level of Music</p> <p>Any recorded music, live music or other entertainment played or provided within the premises shall be controlled to comply with the requirements of the Protection of the Environment Operations Act, 1997. Noise shall not exceed 5dB(A) above the background noise level when measured at the boundary of any affected residence. The noise level shall not exceed the background noise level between 12.00 midnight and 07.00am at the boundary of any affected residence.</p> <p>Condition Reason: To protect public amenity.</p>
<p>9.</p>	<p>Operational Waste Management</p> <p>Operational waste management activities at the site shall be in accordance with the Site Waste Minimisation and Management Plan (SWMMP) prepared by HMC Environmental Consulting, dated July 2023, which has been approved by Council.</p> <p>Condition Reason: To protect public health and the environment.</p>

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Department of Planning, Housing and Infrastructure

dphi.nsw.gov.au



Discussion paper on short-and long-term rental accommodation

Review of regulations and supply in New South Wales

February 2024



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Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land, and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

Published by NSW Department of Planning, Housing and Infrastructure

dphi.nsw.gov.au

Discussion paper on short- and long-term rental accommodation

First published: February 2024

Department reference number: SF24/8579

More information

Produced by Housing and Economic Policy (NSW Department of Planning, Housing and Infrastructure) and Property and Revenue Initiatives (NSW Treasury)

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Discussion paper on short- and long-term rental accommodation | 2

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1 Introduction

1.1 Purpose of this discussion paper

The New South Wales Government is investigating policy levers to help unlock housing supply and ease the ongoing pressure on housing affordability across New South Wales (NSW). This discussion paper starts a public consultation process so you can have your say and give feedback.

The NSW Government would like your views and feedback as it reviews:

- how well the current planning and regulatory framework for short-term rental accommodation in NSW is balancing benefits to the tourism economy with the potential costs for housing availability and affordability
- potential policy options, including revenue measures, to encourage property investors to make homes available for long-term rental accommodation.

You can give your feedback by uploading a submission or taking a survey by **14 March 2024**. Go to the 'Have your say' section below to find out how.

Solutions for the longer term

Housing affordability has deteriorated significantly over the past few years in NSW. At the same time, current projections indicate that another 1.7 million people will call NSW home by 2041. This suggests nearly 900,000 additional homes will be needed.¹

The most effective way to ensure house prices and rents are affordable is to increase housing supply where demand is highest. The NSW Government has committed under the National Housing Accord to unlock around 375,000 homes over the next 5 years.

Worsening housing affordability has coincided with an increase in the number of people in NSW sleeping rough and the number of priority applicants for social housing. These suggest that homelessness, in addition to financial stress, is becoming an increasingly serious

¹ NSW Government (2023) through the former Department of Planning and Environment, 'Population projections', <https://www.planning.nsw.gov.au/research-and-demography/population-projections>, accessed January 2024

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challenge in NSW. Homelessness is more than just a housing problem – it is a complex, multifaceted issue, and there is no single solution. However, a key to reversing this trend is the supply of social housing and wraparound support services.

Solutions for the near future

Policies to unlock supply will not yield immediate effects. It takes time for rezonings or land release to translate into housing approvals, construction and then into properties ready for living. Policies that encourage people to make short-term rental accommodation or underused properties (for example, holiday homes and vacant properties) available for long-term use could make a difference sooner.

1.2 Have your say

The NSW Government would like your feedback on the regulatory framework for short-term rental accommodation and potential policy options to increase the use of properties for long-term housing. The aim is to encourage long-term rental accommodation and strike a fair balance between NSW housing needs and the benefits of short-term rental accommodation.

To give feedback, you can:

- [complete our survey via Qualtrics](#), or
- [upload a submission via the NSW Planning Portal](#).

Email questions about the discussion paper or review to the project team at STHL@planning.nsw.gov.au

Submissions are open until 14 March 2024

We prefer submissions through the online options on the Have Your Say website, or by email in an accessible format. Accessibility is about making documents easy to use for everyone, including people with disability. For more information on how you can make your submission accessible, visit <http://webaim.org/techniques/word/>

The [NSW Government's Guide to Better Regulation](#), which sets out how to apply the 7 principles of better regulation to regulatory proposals, may help you consider the issues and prepare a submission.²

² Visit <https://www.treasury.nsw.gov.au/finance-resource/best-practice-regulation-guidelines>

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Likewise, section 4.3 Potential revenue measures outlines some guiding principles of revenue policies that could help in your submission.

We may publish submissions

We may publish submissions. If you do not want your personal details or any part of your submission published, **please say so clearly in your submission**. An automatically generated confidentiality statement in your email is not enough.

We may refer to submissions in a report on the outcome of the consultation. We will accept anonymous submissions if you do not want us to publish yours, or if you have concerns about safety or your submission being linked back to you. We will refer to these in our report as anonymous submissions.

There may be circumstances where the NSW Government is required by law to release the information in your submission. For example, this may be in keeping with the requirements of the *Government Information (Public Access) Act 2009*.

Discussion paper on short- and long-term rental accommodation | 6

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2 Context of this review

2.1 Housing pressures in NSW

NSW is an attractive and highly sought after place for people to live, work and visit. Yet the factors that make our state desirable to visitors can increase housing pressures for current and future residents.

Housing affordability is deteriorating

Since the end of 2019, advertised prices for long-term rentals in NSW have increased more than 38%. Last year alone they rose 14%. Rental vacancy rates are also at near historically low levels. The vacancy rate in Greater Sydney was 1.7% in December 2023, below the decade average of 2.3%. In regional NSW, the vacancy rate has fallen even lower.³

Despite the rapid increase in interest rates since May 2022, Sydney dwelling prices by the end of 2023 were 28% higher compared to the end of 2019, and prices in the regions are now up 48% over the same period.⁴

Poor housing affordability in NSW is symptomatic of an enduring supply problem, which is likely to worsen in the near term as new dwelling approvals and completions remain subdued. Rising house prices should encourage more dwelling construction to meet this strong demand. However, it takes time for this new supply to come to the market. Historically, there is a lag of around 2 years between approvals and completions. Shortages of both materials and labour and rising borrowing costs are also affecting construction.

From September 2022 to September 2023, NSW completed about 49,000 dwellings. This is well short of what is required to achieve the NSW target under the National Housing Accord.⁵

Vulnerable households

The deterioration in housing affordability has coincided with increased demand for social housing and an increase in the number of people sleeping rough.

³ Changes in advertised rents as reported by CoreLogic; rental vacancy rates are from SQM Research.

⁴ Dwelling prices as reported by CoreLogic.

⁵ Data on dwelling completions is from the ABS.

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The number of priority applicants for social housing on the NSW Housing Register has grown nearly 70% from 4,484 applicants in June 2019 to 7,573 in June 2023. There are now over 55,000 applicants on the NSW Housing Register.⁶

Sleeping rough is also becoming a growing problem in NSW. The NSW Statewide Street Count has found the number of people sleeping rough in the state has increased 34% from 2022 to 2023.⁷ The problem is even more pronounced in some coastal regional areas with a high proportion of short-term rental accommodation properties. Within the top 10 local government areas by the concentration of short-term rental accommodation (see Table 1), sleeping rough has increased 72% since 2022. Byron Shire has amongst the highest number of people sleeping rough in the state, and has surpassed the City of Sydney as the local government area with the most people sleeping rough in NSW in 2023.

The rise of short-term rental accommodation

As housing affordability in NSW has decreased, people have become concerned that owners are making fewer properties available for long-term use, and that this may be contributing to a rise in costs.

Over the past decade, the short-term rental accommodation market has expanded rapidly in NSW. The emergence of online booking platforms has supported this, as they make it easier for property owners to enter the short-term rental market.

In response, the NSW Government introduced a statewide regulatory policy framework in November 2021. The regulations aimed to balance the positive effects of short-term rental accommodation on the tourism economy with the amenity of local neighbourhoods and supporting housing supply and affordability.

The existing regulatory framework for short-term rental accommodation in NSW is purposely 'light touch'.

This approach to regulating short-term rental accommodation was informed by a 2016 Parliamentary Inquiry. It found that short-term rental accommodation was generally seen as a low-impact activity that does not alter the otherwise residential characterisation of a dwelling but makes a significant contribution to the tourism economy. The inquiry did touch on housing

⁶ Social housing applications data is from the Department of Communities and Justice.

⁷ 2023 NSW Statewide Street Count, Department of Communities and Justice.

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affordability, but found that short-term rental accommodation's contribution to housing pressures at the time was mostly anecdotal.⁸

In an increasingly tight housing market, the effects of short-term rental accommodation on housing affordability have become more apparent. In some local government areas with high concentrations of short-term rental accommodation registrations, such as Shoalhaven and Eurobodalla, local mayors wrote to non-resident owners of such dwellings. The mayors urged owners to make their dwellings available for long-term rental to ease rental availability pressures in these areas.

The focus of the government has, therefore, shifted from addressing guest behaviour and neighbourhood amenity to the effects of short-term rental accommodation on the housing market and housing affordability.

⁸ Section 1.71, Adequacy of the regulation of short-term holiday letting in New South Wales

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Managing the existing housing stock

While increasing housing supply is the best way to address affordability, there is a renewed focus on how we manage the use of the existing housing stock. For example, we need to consider if we should encourage owners of vacant homes, holiday homes and non-hosted short-term rental accommodation to make these properties available for long-term use.

Internationally, academic studies of short-term rental accommodation have suggested that an increase in short-term rental listings can increase house prices and rents. A 1% increase in short-term rental listings has been found to increase house prices by as much as 3.7%, and rents by up to 0.52%.⁹ However, the impact is highly variable across countries. The extent of the impact depends significantly on the local housing market. Short-term rental listings will have a bigger effect on housing markets that have more constraints on supply.

As of January 2024, there are approximately 52,300 dwellings registered for short-term rental accommodation across the state. About 33,000 of these are registered for non-hosted short-term rental accommodation.

The number of registered dwellings fluctuates throughout the year. For example, the number of registrations may increase during peak seasons, or some dwellings may be deregistered.

The total number of non-hosted short-term rental accommodation registrations represents approximately 1% of the stock of private dwellings in NSW. However, concentrations of non-hosted short-term rental accommodation vary across the state. Registrations in some tourist destinations make up a significantly larger share of total private dwellings.

Table 1 outlines the local government areas with the highest concentrations of non-hosted short-term rental accommodation registrations. These locations are historically popular tourist destinations, but have also had constraints on housing supply.¹⁰

⁹ Franco & Santos (2021), The impact of Airbnb on residential property values and rents: Evidence from Portugal.
Ayoub et al. (2019), Does Airbnb Disrupt the Private Rental Market? An Empirical Analysis for French Cities

¹⁰ Non-hosted short-term rental accommodation registrations are from the NSW Short-Term Rental Accommodation Register as of 15 January 2024. These numbers are compared to the total stock of private dwellings as reported in the ABS 2021 Census.

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Table 1. Areas with the highest concentrations of non-hosted short-term rental accommodation registrations

Local government area	Total private dwellings	Non-hosted short-term rental accommodation dwellings	Percentage of total private dwellings
Byron Shire	15,220	1,259	8%
Snowy Monaro Regional	10,589	771	7%
Shoalhaven	55,463	3,418	6%
Kiama	10,317	612	6%
Eurobodalla	22,827	1,074	5%
Kempsey	13,104	570	4%
Port Stephens	34,100	1,472	4%
Waverley	31,190	1,217	4%
Bega Valley	17,546	654	4%
Mid-Coast	47,366	1,608	3%

High-level estimates suggest around 95,000 residential properties in NSW are not used for long-term housing.¹¹ This includes around:

- 35,000 dwellings used as non-hosted short-term rental accommodation throughout the year¹²
- 45,000 dwellings used as holiday homes that are not also used as short-term rentals
- 15,000 dwellings that are left vacant throughout the year.

This represents around 3% of the stock of private residential properties. This is broadly equivalent to about 2 years of current home completions in NSW.

¹¹ NSW Treasury calculations based on analysis of ABS Census 2021 data on dwelling occupancy and on data from the NSW Short-Term Rental Accommodation Register. This analysis was also based on earlier research by SGS Economic and Planning in 2017, available at <https://sgsep.com.au/publications/insights/why-was-no-one-home-on-census-night>

¹² As properties can leave the Register, the total number of STRA properties through the year is higher than the number at any one point in time.

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In the context of rising housing costs and a growing number of people sleeping rough, the NSW Government is committed to achieving the right balance between improving housing affordability, reducing episodes of homelessness and supporting the tourism economy and other benefits of short-term rental accommodation.

This discussion paper uses specific terms for short-term and long-term rental accommodation. Box 1 outlines key terms and definitions.

Box 1: Key terms and definitions

Principal place of residence means the one place of residence that a person uses and occupies as their main place to live. This definition is used, for example, to assess if a property is subject to land tax in NSW.

Short-term rental accommodation means a dwelling the host uses to provide accommodation on a commercial basis for a temporary or short-term period.¹³

Hosted short-term rental accommodation means accommodation where the host lives on the premises while providing the accommodation.

Non-hosted short-term rental accommodation is where the host does not live on the premises while providing the accommodation.

21-day exemption means non-hosted short-term rental accommodation bookings for a period of 21 consecutive days or more that do not count towards any applicable day cap.

Long-term rental accommodation means a home let on a long-term basis, which is generally for longer than 90 days.

Holiday homes are typically dwellings used by the owners occasionally during holidays but not on a permanent basis. Owners may also let out their holiday homes for short-term rental accommodation.

Vacant property means a dwelling that is not used or occupied.

¹³ Part 6, State Environmental Planning Policy (Housing) 2021 – also known as the Housing SEPP – accessible at <https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0714#ch.3-pt.6>

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2.2 Policy considerations for the review

The NSW Government will consider the right balance between improving housing affordability and supporting tourism, and the policy levers it can use to achieve this.

Benefits of short-term rentals

Dwellings used as holiday homes and short-term rental accommodation play a key role in supporting local economies, particularly in holiday destinations such as Byron Bay, the South Coast or the Snowy Mountains. Tourists benefit from increased accommodation options, new travel destinations, greater flexibility and potentially greater cost-effectiveness compared to other forms of accommodation.

Local businesses benefit from the increased demand for goods and services, which also supports the employment and wages of workers. In the case of short-term rental accommodation, owners benefit from the potential to earn a return while retaining flexibility in how they use their property.

The benefits of short-term rental accommodation can go beyond tourism. Short-term rental accommodation near hospitals and medical centres, or near employment or education hubs, gives patients, their families, workers and students added accommodation availability. It gives them flexibility of location, reduced costs, and better amenity.

Disadvantages of short-term rentals

Dwellings that are not used for long-term purposes may contribute to higher housing costs by reducing the availability of long-term rental accommodation and the number of properties available to buy. This can lead to higher property prices and long-term rental costs.

Vacant properties and holiday homes

Making vacant properties available for long-term users would contribute to housing supply with the least effect on tourism markets.

Similarly, making holiday homes that are not used as short-term rentals available for long-term users could result in fewer homes being left vacant for much of the year.

Regulatory and revenue measures

The NSW Government can use a mixture of regulatory and revenue measures to strike the right balance between the benefits of short-term rental accommodation and housing affordability.

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Regulatory measures that could increase the use of properties for long-term housing include:

- higher registration fees for short-term rental accommodation
- more onerous approval requirements for short-term rental accommodation
- lower day caps on the maximum number of nights a dwelling can be let for non-hosted short-term rental accommodation
- limits to the number of homes in an area that can be used for short-term rental accommodation
- limits on the number of guests that can use a short-term rental property.

Revenue measures that could increase the use of properties for long-term housing include:

- a levy on the revenues from bookings of short-term rental accommodation
- day fees per guest staying in short-term rental accommodation
- an annual levy based on the use of the property (for example, non-hosted short-term rental accommodation, holiday homes and vacant properties).

Lower day caps

Lower day caps on non-hosted short-term rental accommodation can encourage some property owners to lease their property in the long-term rental market rather than on the short-term market. This is because day caps may make short-term rental accommodation less profitable.

However, day caps could also encourage owners to leave properties vacant throughout much of the year, as they restrict their short-term rental accommodation availability to peak holiday periods when they can earn the highest returns. This could hinder tourism and affect local economies without necessarily increasing the availability of properties for long-term users.

In addition, some owners of short-term rental accommodation may want to keep the ability to use their property for personal purposes. Because of this, they may be reluctant to make their property available for long-term use in response to a day cap.

Revenue measures

Revenue measures can be designed to shift the financial returns of a broader set of properties, including non-hosted short-term rental accommodation, holiday homes and vacant properties. Imposing a levy on these properties that are not used as a long-term rental or as a principal place of residence can increase the financial incentives for owners to shift these properties to the long-term uses.

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Revenue measures can raise government funds for programs to support the most vulnerable. With rising housing affordability pressures and increasing numbers of people sleeping rough in NSW, support for homelessness is an important priority of the government.

Considering all options

The costs and benefits of different policy options differ. The government will consider them carefully, including the extent of any potential side effects beyond the intended policy objectives. One potential side-effect could be properties being left vacant for longer periods. Vacant homes do not contribute to long-term rental supply, and, unlike short-term rental accommodation, do not support the tourism economy.

The NSW Government aims to find the right mix of regulatory settings and revenue measures. The aim is to balance the ongoing housing affordability pressures throughout NSW with supporting tourism and economic activity throughout the state.

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3 Current regulatory and policy environment

3.1 Regulatory and policy environment in NSW

3.1.1 Regulatory framework for short-term rental accommodation

On 1 November 2021, the NSW Government introduced a statewide planning and regulatory framework for short-term rental accommodation. This was in response to the industry's growth. It aimed to provide a consistent approach to balancing the effects of short-term rental accommodation on local tourism, housing supply and affordability, and neighbourhood amenity.

The planning and regulatory framework for short-term rental accommodation does not extend to holiday homes or vacant property, as the planning system is not designed to regulate how owners use their property.

The current planning and regulatory framework in NSW for short-term rental accommodation involves the Department of Planning, Housing and Infrastructure; the Department of Customer Service; and local councils. The framework comprises:

- an exempt development planning pathway for hosted and non-hosted short-term rental accommodation within the *State Environmental Planning Policy (Housing) 2021* – also known as the Housing SEPP, including:
 - definitions for short-term rental accommodation, hosted short-term rental accommodation and non-hosted short-term rental accommodation
 - associated general requirements
- a 180-day cap in any 365-day period on non-hosted short-term rental accommodation in Greater Sydney and certain local government areas, including:
 - Ballina
 - Byron Shire (with a 60-day cap commencing in most of the local government area from September 2024)
 - parts of Clarence Valley and Muswellbrook(hosted short-term rental accommodation is not restricted)

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- an exemption for bookings of 21 consecutive days or more from the day limits for non-hosted short-term rental accommodation
- fire and safety requirements for short-term rental accommodation dwellings within the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 – also known as the EP&A Regulation (Fire Safety) – and the Short-term Rental Accommodation Fire Safety Standards
- an online, government-run Short-term Rental Accommodation Register to capture compliance with the fire safety standards and other regulations for short-term rental accommodation (for example, day caps).

Registrations

Hosts of short-term rental accommodation must register their dwelling on the NSW Government's Short-term Rental Accommodation Register. Booking platforms must ensure that a short-term rental accommodation dwelling is registered and that the registration number for the dwelling is displayed before being listed on a platform's online booking service.

The Short-term Rental Accommodation Register is accessible to local governments, allowing them to verify registrations for short-term rental accommodation dwellings in their areas, and to support compliance and enforcement activity.

3.1.2 Independent Planning Commission review of Byron Shire Council's planning proposal for short-term rental accommodation

In April 2023, the Independent Planning Commission gave advice to the Minister for Planning and Public Spaces after its review of Byron Shire Council's planning proposal for short-term rental accommodation. The planning proposal proposed to reduce the annual day limit for non-hosted short-term rental accommodation in most of its local government area to 90 days.

The Independent Planning Commission made 12 recommendations, including that the non-hosted short-term rental accommodation day cap be reduced to 60 days for a 365-day period across the whole local government area.¹⁴

After considering the Independent Planning Commission's advice, the Minister for Planning and Public Spaces determined the Byron Shire Council's planning proposal in September 2023. The new provisions in the Housing SEPP will apply from 23 September 2024.

¹⁴ Byron Shire Short-Term Rental Accommodation Planning Proposal PP-2021-3351 Advice Report at NSW Independent Planning Commission (<https://www.ipcn.nsw.gov.au/news/2023/04/byron-bay> and https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2022/12/byron-shire-short-term-rental-pp/advice/230424_byron-stra-pp_advice-report_final.pdf)

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They introduce a 60-day cap for non-hosted short-term rental accommodation across the entire Byron Shire local government area, except for 2 precincts in and around Byron Bay Town Centre and at Brunswick Heads.

The NSW Government acknowledges the advice and recommendations handed down by the Independent Planning Commission on Byron Shire Council's planning proposal. While the NSW Government did not implement all the recommendations from the Independent Planning Commission because of implications for councils beyond Byron Shire, this discussion paper draws from the recommendations where relevant for aspects of the current planning and regulatory settings.

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3.1.3 Revenue policy settings

The NSW Government and local councils do not currently apply specific revenue measures to:

- short-term rental accommodation
- holiday homes not used for short-term rental accommodation
- vacant property.

The NSW land tax does not differentiate investment properties by use. The land tax system treats investment properties used for long-term rental accommodation the same way as those that are rarely or never occupied.

3.1.4 Other policy settings

The planning and regulatory framework for short-term rental accommodation is complemented by the Code of Conduct for the Short-term Rental Accommodation Industry. This sets out responsibilities for all industry participants. The Commissioner for Fair Trading administers the code, which commenced on 18 December 2020.

Under the code, the Commissioner for Fair Trading can impose a range of disciplinary actions, including warnings, directions and recording a strike against a host, a host's dwelling, or a guest. The Commissioner can also record a host, a host's dwelling, or a guest on the exclusion register for 5 years if they have 2 strikes against them within a 2-year period, and the Commissioner considers it appropriate to exclude them.

Changes were also made in April 2020 to the:

- *Fair Trading Act 1987*
- *Strata Schemes Management Act 2015*
- *Residential Tenancies Act 2010*.

These changes allow owners corporations to pass by-laws that ban short-term rental accommodation within strata schemes, but only in lots that are not a host's principal place of residence.

This review will not consider changes to the existing policy and regulatory settings of the code or strata legislation.

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3.2 Policies in other jurisdictions

Jurisdictions outside NSW have responded in various ways to the expansion of the short-term rental accommodation industry and to growing concerns about housing affordability pressures.

Some jurisdictions have chosen relatively minimalist approaches, with little or no regulation and limited oversight. Other jurisdictions have implemented new regulations or taxes on short-term rental accommodation and vacant properties. In some places, such as New York, the restrictions effectively ban short-term rental accommodation outside narrow exceptions.

Policy responses have also varied in their intended goals. Common policy objectives typically include a combination of addressing:

- housing supply and affordability
- preserving neighbourhood amenity
- concerns about guest safety
- ensuring that the short-term rental accommodation market operates on a level playing field with the hotel industry.

3.2.1 Policy approaches within other Australian jurisdictions

Victoria, Queensland, Western Australia and Tasmania regulate short-term rental accommodation, mostly at the local government level. Figure 1 shows the key policy approaches within these jurisdictions. Regulations include:

- data reporting requirements for booking providers (Tasmania)
- specific codes of conduct managing guest and host behaviour (Yarra Ranges, Frankston)
- registration fees (Warrnambool, Frankston)
- zones with limitation on short-term rental accommodation use (Noosa)
- planning approvals (Perth, Gold Coast, Tasmania)
- day caps (Perth)
- higher council rates for short-term rental accommodation properties (Brisbane, Sunshine Coast and Hobart).

Following recent reviews, Western Australia and Queensland may bring forward statewide registers for short-term rental accommodation. The Queensland review also proposed a

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statewide code of conduct and information portal.¹⁵ Western Australia has announced that councils will bring forward specific planning pathways, meaning non-hosted short-term rental accommodation will require development approval from the local government.¹⁶

More details about short-term rental accommodation policies are set out below:

- Victoria announced in September 2023 the introduction of a 7.5% levy on short-term rental accommodation properties from January 2025, which is expected to raise around \$70 million each year.
- Tasmania has a data-sharing agreement with short-term rental accommodation platforms, including on the number and location of short-term rentals in the state. Hobart requires permits for non-hosted short-term rental accommodation properties.
- From 2025, Western Australia will offer non-hosted short-term rental accommodation owners in certain areas \$10,000 to encourage them to transfer their property to the long-term rental market for 12 months.

At this time, it is unclear on how many properties have been returned, or may return, to the long-term rental market because of these measures.

¹⁵ Recommendation 1, Review of impacts of short-term rental accommodation in QLD available at <https://planning.statedevelopment.qld.gov.au/planning-issues-and-interests/short-term-rental-accommodation-review>.

¹⁶ WA Short-Term Rental Accommodation Planning Reforms available at <https://www.wa.gov.au/organisation/department-of-planning-lands-and-heritage/short-term-rental-accommodation-planning-reforms#:~:text=A%20property%20can%20be%20operated%20as%20a%20short-term,for%20un-hosted%20short-term%20rental%20accommodation%20within%20the%20Perth%20metropolitan%20area%3B>

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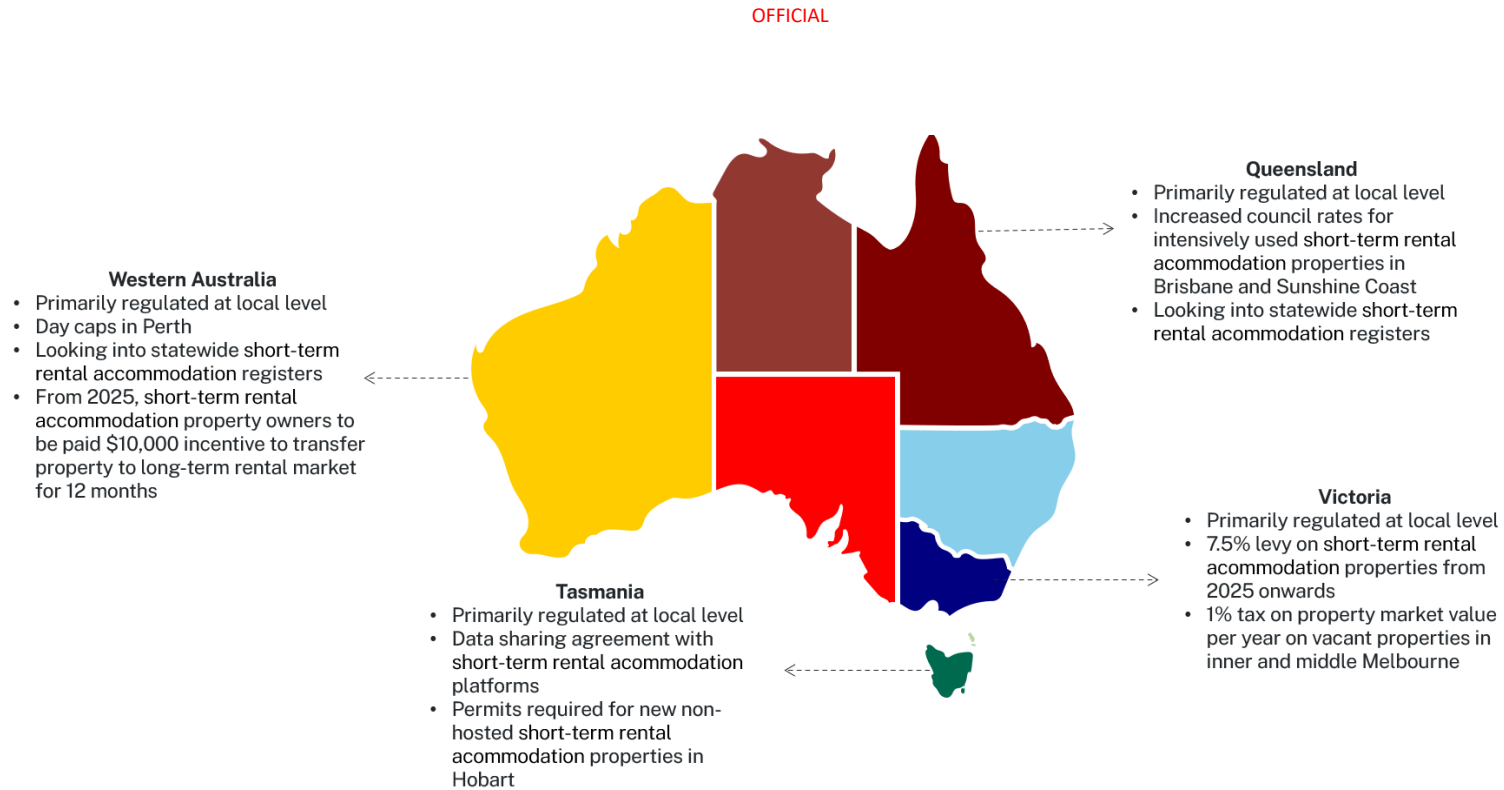


Figure 1. Summary of policy approaches within other Australian jurisdictions

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Vacant properties

Measures to discourage vacant properties in Australia are more limited.

The Australian Government imposes an annual vacancy fee on foreign-owned property bought after 9 May 2017. Foreign owners must pay this fee if their dwelling is not occupied or rented out for 6 months in a year. The fee starts at \$14,100 for property acquired for \$1 million or less. The Australian Government announced in December 2023 that it will double vacancy fees on foreign-owned dwellings.¹⁷

The Victorian Government currently imposes an annual tax of 1% of the property's market value on vacant properties in inner and middle Melbourne. The tax applies to homes that were vacant for more than 6 months in the preceding calendar year. In October 2023, the Victorian Government announced an expansion of the tax. From 2025, the tax will:

- apply Victoria-wide, and include vacant, undeveloped land zoned for residential use if it has not been improved within 5 years
- increase from 1% the first year, to 2% the second year a property is vacant, and 3% in later years.¹⁸

3.2.2 International policy approaches

Regulatory and tax policies on short-term rental accommodation vary widely internationally. They typically entail a combination of registration requirements and day caps. They may include either a fixed daily charge for each guest or a charge based on a percentage of the listing price.

Strict regulations

For example, New York and Amsterdam have some of the strictest short-term rental accommodation regulations. Both jurisdictions have data-sharing agreements with online platforms to help monitor and enforce regulatory and taxation measures.

New York mandates a minimum 30-day stay for non-hosted bookings, with a maximum of 2 guests per booking. Guests are granted access to all the rooms in the dwelling. These requirements essentially ban the majority of non-hosted properties. Short-term rental

¹⁷ The announcement of changes to vacancy fees on foreign-owned dwellings is available at <https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/media-releases/higher-foreign-investment-fees-housing>

¹⁸ The announced changes to Victoria's vacant residential land tax (VRLT) are available at <https://www.sro.vic.gov.au/news/state-taxation-acts-and-other-acts-amendment-bill-2023-0>

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accommodation can also be subject to New York's Hotel Room Occupancy Tax of 5.875% of rent, plus a fixed component for each room. Sales taxes can also apply.

Amsterdam limits total annual bookings to 30 days and levies a 12.5% tax on short-term rental accommodation booking prices.

A more permissive approach

Other jurisdictions have taken a more permissive approach to short-term rental accommodation. For example, Auckland only requires that short-term rental accommodation properties pay increased council rates if they are let for more than 28 nights each year.¹⁹

Other jurisdictions, like Rome, employ a short-term rental accommodation register similar to the NSW register. Booking taxes are based on the number of guests each night, up to a maximum of 5 to 10 nights.²⁰

Overall, Airbnb reports 16 countries where the platform has entered into agreements to collect short-term rental accommodation taxes. Most agreements are at a sub-national level, covering specific cities or states within the country. Where the tax is based on a percentage of rents, rates are typically around 5% to 15%.

Vacant homes

Some jurisdictions, like Ireland, France, and British Columbia (Canada), also tax vacant homes. Unlike short-term rental accommodation, vacant homes do not produce income and are not publicly advertised on platforms, making tax enforcement potentially more challenging.

British Columbia has tried to improve compliance to its vacant property tax by requiring all property owners to report on the occupation status of their property. This differs from other jurisdictions, such as Ireland, which require property owners to self-report their properties as vacant.

The British Columbia system may improve compliance. However, this is done by obliging virtually all property owners to make an annual declaration, despite the overwhelming majority not owning a vacant property.

¹⁹ Rating of providers of online accommodation properties at <https://www.aucklandcouncil.govt.nz/property-rates-valuations/your-rates-bill/Pages/accommodation-provider-targeted-rate.aspx>

²⁰ https://www.airbnb.com.au/help/article/1228?_set_bev_on_new_domain=1694587237_NTc5ODlxZTViYWQz

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4 Issues for consultation

This review considers the current planning and regulatory framework for short-term rental accommodation and the supply of long-term rental accommodation. It aims to explore ways to better balance the housing needs of the people of NSW with the benefits that tourism brings to the state.

Encouraging owners to change their non-hosted short-term rental accommodation, vacant properties and holiday homes to long-term rental use could help reduce the cost of long-term rentals.

We can achieve this through a balance of planning regulation and revenue policies.

This chapter raises issues for discussion and feedback. It lays out the NSW Government’s policy objectives for this review. It also outlines the scope and some of the policy levers the government can use to achieve these objectives.

The government welcomes your feedback and input on the issues raised.

4.1 Policy objectives

The policy objectives of this review are set out in Figure 2.



Figure 2. Policy objectives of the review

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This review is underpinned by the broad policy objectives to:

- **encourage favourable and efficient use of dwellings** – giving property owners incentives to move property into long-term use

Housing policy should prioritise the use of the housing stock for long-term housing.

Incentives to shift property use can boost the supply of long-term rental accommodation in the short run. Importantly, housing policy should encourage owners to use properties more, not less.

- **balance the economic benefits of short-term rental accommodation with costs to housing affordability** – in the context of rising housing costs, increasing demand for social housing and a growing number of people sleeping rough

While shifting properties from short-term to long-term rental accommodation can help increase the supply of long-term accommodation in the immediate term, short-term rental accommodation plays an important role in the tourism industry, particularly in regional areas. The NSW Government is committed to achieving the right balance to improve housing affordability and reduce episodes of homelessness.

Tourism is an important contributor to the NSW economy, and every year thousands of people use short-term rental accommodation to explore and enjoy NSW. Short-term rental accommodation is not just used for leisure – it offers options for people travelling for business or for a hospital appointment, for example.

The government also recognises that accommodation for tourists includes both short-term rental accommodation and traditional accommodation such as hotels, motels, caravan parks and bed and breakfasts. Providers of traditional tourism accommodation compete against short-term rental accommodation, though each are subject to different planning regulations, fire safety standards and taxation arrangements including liability for the GST.

- **minimise market distortions** – in particular, to avoid disrupting housing supply or constraining the highest and best use of dwellings

NSW needs to boost the supply of housing. Planning and rezoning is a key part of the mix, but we should also adjust revenue measures and regulations to support housing supply. Revenue measures or regulation that inadvertently discourages either investment in the long-term supply of housing or the efficient use of the current residential stock should be avoided.

Some properties that are used occasionally for short-term rental accommodation are not likely to be offered as long-term rental accommodation. For example, homeowners who make their principal place of residence available for short-term rental

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accommodation while they travel would still be using their property continuously for most of the year.

Likewise, measures that restrict short-term rental accommodation should encourage property owners to move their property to long-term uses, rather than encouraging them to underuse their property.

- **ensure compliance, enforcement and reporting are effective** – the mix of regulation and revenue measures should be practical and enforceable

A regulation, planning and revenue framework that we cannot enforce is unlikely to meet other policy goals. Compliance should be supported by enforceable policy and regulatory settings, and reliable and accurate data.

Ultimately, the policy outcomes should be balanced, effective, efficient, equitable, transparent and easy to comply with.

4.2 Review of the planning and regulatory framework for short-term rental accommodation

When first introduced, the current planning and regulatory framework for short-term rental accommodation in NSW was purposely designed to be 'light touch'. More recently, however, people are questioning the positive aspects of short-term rental accommodation. This is part of broader discussions about housing affordability, historically low rental vacancy rates and increased demand for social housing.

Concerns about how the policy works were also brought to light in the advice and recommendations handed down by the Independent Planning Commission in April 2023. The recommendations came from its review of Byron Shire Council's planning proposal for short-term rental accommodation.

4.2.1 Scope of review of planning and regulatory framework

The scope of the present review into the regulatory framework for short-term rental accommodation covers the following aspects of policy:

- **Planning pathway** – consider if the existing exempt development pathway is still appropriate
- **Day caps** – consider if day caps are appropriate for non-hosted short-term rental accommodation and if they are the most effective way to balance the benefits and effects of this accommodation

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- **Reporting requirements** – consider the operation of the Short-term Rental Accommodation Register and reporting requirements for hosts, letting agents and industry
- **Compliance and enforcement** – consider the compliance regulatory framework, including complaints-handling and enforcement processes under the planning framework (this includes the relationship with the code of conduct and other legislation).

4.2.2 Suitability of the exempt development planning pathway

In NSW, people can carry out short-term rental accommodation in types of residential accommodation that are lawfully approved (for example, a dwelling house) as exempt development. Exempt development is described as very low-impact development that can be done without planning approval, if it complies with any relevant standards and requirements. This means the local council does not need to give planning approval.

The current exempt development pathway is still considered to give the most balanced response to short-term rental accommodation. It keeps a streamlined and consistent statewide framework. It also acknowledges short-term rental accommodation as a low-impact activity that does not alter the otherwise residential characterisation of a dwelling.

The Independent Planning Commission recommended introducing a new planning approval pathway for non-hosted short-term rental accommodation activities in the Byron Shire (Recommendation 2). Under this recommended arrangement, owners would need to submit a development application for non-hosted activities that sought to go beyond the recommended 60-day cap. It commented that the council would be best placed to consider short-term rental accommodation activities of this nature.

If applied across NSW, we would need to establish specific day caps, taking into account local housing markets and tourism economies. If we introduced development applications for short-term rental accommodation, local governments would need to assess each application and consider the likely effects of the development. This process can be lengthy, create uncertainty for applicants and increase costs and administration.

4.2.3 Planning policy settings for short-term rental accommodation

Land use type and definitions

The NSW planning system includes land uses to describe development that could be permitted or prohibited in certain zones.

General feedback on the short-term rental accommodation policy has been that the activity is now overly commercialised and closer to a tourist and visitor accommodation activity. The

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Independent Planning Commission also commented that identifying short-term rental accommodation as a type of tourist and visitor accommodation land use was the simplest method of formalising the characterisation of short-term rental accommodation in the Byron Shire.

The current planning and regulatory framework considers short-term rental accommodation as an activity that does not alter the 'residential accommodation' land use characterisation of a dwelling.

While there is no current proposal to change this characterisation, the NSW Government could consider introducing thresholds to ensure the activity remains low-impact and residential in nature. The thresholds could establish a tipping point for activities that blur the lines between residential accommodation and tourist and visitor accommodation land uses. This could include:

- limiting short-term rental accommodation registrations to only one dwelling per property in certain land use zones, or
- characterising the activity by use (that is, new day cap thresholds).

People have been confused about the definitions of hosted and non-hosted short-term rental accommodation. They have also been unsure of the type of residential accommodation in which the short-term rental accommodation activity will take place (that is, the type of dwelling).

There are instances of hosts incorrectly identifying secondary dwellings as hosted short-term rental accommodation when they should be registered as non-hosted short-term rental accommodation. This is because the host lives in the principal dwelling and not the secondary dwelling. Similarly, people often register their short-term rental accommodation dwellings as a 'dwelling house' when in fact they should be registering their apartment as a 'residential flat building'. This creates inaccurate data and compliance difficulties for local governments.

To overcome this, the NSW Government could consider making these definitions clearer. For example, it could consider certain dwelling types as 'hosted', keeping in mind the characteristics of particular residential accommodation types and amenity impact (for example, secondary dwellings where the host resides in the principal dwelling or dwellings below a specified size/floor area).

Further considerations to this would need to include, for example, the question of whether secondary dwellings and dwellings of any size could be used for long-term rental accommodation and so contribute to overall supply of homes for long-term use.

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General requirements for short-term rental accommodation

Before they can carry out a short-term rental accommodation activity, the host must ensure that they comply with the exempt development general requirements for such accommodation, as set out in the Housing SEPP. General requirements include, for example, that the dwelling must:

- have been lawfully constructed
- meet the relevant fire safety standards for short-term rental accommodation
- be registered on the Short-term Rental Accommodation Register.

Lastly, short-term rental accommodation **cannot** be carried out in:

- a boarding house
- co-living housing
- a group home
- a hostel
- a rural workers' dwelling
- seniors housing
- build-to-rent housing.

The Independent Planning Commission recommended that owners should be encouraged to use secondary dwellings and dual occupancies for long-term rental accommodation, not short-term rental accommodation (Recommendation 5). This is because they provide a form of affordable rental housing for essential workers within the Byron Shire local government area. Such dwellings could be excluded from the current exempt development pathway for short-term rental accommodation to discourage owners from putting them on the short-term rental market.

The Independent Planning Commission also recommended (Recommendation 2) that additional restrictions be introduced to prevent newly constructed residential accommodation from being used for short-term rental accommodation to help retain new housing stock for the traditional housing market.

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Requirements introduced overseas

Examples of other requirements introduced in international jurisdictions have included:

- occupancy limits for short-term rental accommodation dwellings to limit effects on amenity and limit large gatherings
- short-term rental accommodation registration systems based on a lottery, where only a certain number of dwellings are permitted to be used as short-term rental accommodation
- heavily restricting or prohibiting short-term rental accommodation in certain land use zones.

Any new requirements introduced would need to be enforceable. They also should not outweigh the benefits of tourism activities done in short-term rental accommodation.

4.2.4 Day caps on non-hosted short-term rental accommodation

A cap of 180 days currently applies to non-hosted short-term rental accommodation in Greater Sydney and nominated regional local government areas, including:

- the Ballina and Byron Shire local government areas
- mapped land in the Clarence Valley and Muswellbrook local government areas.

From 23 September 2024, a new 60-day cap will apply across the Byron Shire local government area. This is with the exception of certain land in the Byron Bay Town Centre and Brunswick Heads, which will have no restrictions.

The cap was implemented to help balance the potential negative effects non-hosted short-term rental accommodation may have on local areas with the positive economic benefits.

When the day cap was established, it considered:

- holiday and weekend periods
- how properties were let
- views expressed during consultation
- cost-benefit analysis results
- existing local government planning policies.

Bookings over 21 consecutive days do not count towards the day cap. This provision (within the Housing SEPP) acknowledges the role of short-term rental accommodation in supporting mobile workforces and the corporate accommodation sector, which tend to stay longer and have less effect on amenity.

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Localised day caps

Recently, people have been questioning if the 180-day cap balances the effects that short-term rental accommodation has on the long-term rental market. Of the top 10 local government areas with the highest concentration of non-hosted short-term rental accommodation registrations (see Table 1), only 2 local government areas, Byron Shire and Waverley, have the 180-day cap.

In its advice to the then Minister for Planning and Public Spaces, the Independent Planning Commission recommended tightening the day cap for non-hosted short-term rental accommodation for the Byron Shire. Its aim is to ensure the financial returns from non-hosted short-term rental accommodation are closer to those for long-term rental accommodation.

The NSW Government is also aware that some local governments with no day caps want to introduce one, while others that already have a cap on non-hosted short-term rental accommodation cap have asked for a lower cap, closer to that of the Byron Shire.

There is not enough evidence to suggest that a single day cap restriction is the right way to create a level financial playing field for short-term and long-term rental accommodation. Day caps affect all types of properties – including those better used for tourist accommodation and less suited to long-term rental accommodation.

Day caps may result in more (not less) underuse of the property stock. They may not effectively add more properties to the stock of long-term rental accommodation. By restricting short-term rental accommodation, day caps may push booking prices up and encourage more owners to put their properties on the short-term rental accommodation market, not fewer.

Overall, the financial and economic effects of reducing day caps for non-hosted short-term rental accommodation are largely unknown. Similarly, there is not enough evidence to suggest that owners of short-term rental accommodation would make their dwellings available for long-term rental accommodation in response to such policy settings.

Day caps introduced overseas

Internationally, governments have applied a range of day cap approaches. Where this has reduced the concentration of short-term rental accommodation dwellings, the day caps were accompanied by other policy requirements. For example, requirements included registration, approval/issuing of permits and occupancy limits.

The NSW Government is determined to protect the positive economic contributions that short-term rental accommodation makes to local economies.

But to strike the right balance between short-term and long-term rental accommodation, the NSW Government is open to considering a different approach. That could be:

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- more restrictive day caps for non-hosted short-term rental accommodation
- revenue measures on short-term rental accommodation instead of day caps
- a combination of both revenue measures and targeted day caps in areas with disproportionately high levels of non-hosted short-term rental accommodation.

4.2.5 Short-term Rental Accommodation Register

Under both the Housing SEPP and EP&A Regulation (Fire Safety), all short-term rental accommodation dwellings must be registered on the NSW Government's Short-term Rental Accommodation Register. Registrations must remain valid to maintain compliance with the requirements of the policy settings for exempt development. Registrations must also be renewed annually.

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The registration information required for each dwelling includes:

- the address of the dwelling
- the type of residential accommodation
- whether the dwelling will be used as hosted or non-hosted short-term rental accommodation
- the name and address of the host of the dwelling
- a declaration that the dwelling complies with the fire safety standard.

A person cannot successfully complete the registration without a declaration from the host that the dwelling meets the fire safety standard.

Registration fees and renewals

A \$65 registration fee applies for all new short-term rental accommodation dwellings. An annual renewal fee of \$25 also applies for those hosts who wish to keep their dwelling on the short-term rental market. The fees are nominal and fund the ongoing operation and maintenance of the Short-term Rental Accommodation Register.

The NSW Government's Short-term Rental Accommodation Register fees are low compared to that of other jurisdictions. These fees are also distinct from taxes or development contributions. Fees are charged for a specific service and should reflect the cost of that service.

Changes to the policy for short-term rental accommodation may change the associated administrative and compliance costs. Changes to registration fees could reflect these added costs. For example, we could consider increasing fees to reflect increased compliance monitoring if the day cap policy changes. This alone could dissuade hosts from listing their dwellings for short-term rental accommodation.

However, increasing registration fees does not guarantee that the dwellings will become available as long-term rentals instead.

Responsibilities of hosts and online booking platforms

Under the short-term rental accommodation regulations, hosts or letting agents must report the number of days booked in each property on the Short-term Rental Accommodation Register. Online booking platforms must also share this information with the Short-term Rental Accommodation Register.

Many hosts and owners of short-term rental accommodation use online booking platform services to advertise and manage bookings. Some booking platforms are integrated with the

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NSW Government's Short-term Rental Accommodation Register. This simplifies the sharing of booking information and ensures broader policy compliance by:

- confirming short-term rentals advertised on their website have a current short-term rental accommodation registration
- sharing usage data for short-term rentals to help hosts and councils monitor compliance with applicable caps on non-hosted accommodation.

If online booking platforms fail to share usage data about short-term rental accommodation or if they advertise unregistered short-term rental accommodation, they are committing offences under the *Fair Trading Act 1987*. The Act is administered by NSW Fair Trading.

The integration and data-sharing arrangements have allowed some booking platforms to meet these obligations more easily. Where a dwelling does not have a valid short-term rental accommodation registration ID, or the registration has not been renewed on time, an online booking platform must not allow the property to accept any more bookings until the owner supplies a correct registration or renews it.

The NSW Government has welcomed the integration and partnership with the major online booking platforms, which has helped ensure high compliance with the planning and regulatory framework for short-term rental accommodation.

However, there are several smaller online booking platforms and boutique websites that are not integrated with the NSW Government's Short-term Rental Accommodation Register. For those hosts and letting agents who do not use online booking platforms, we do not know how much accommodation information they are or are not sharing.

4.2.6 Compliance and enforcement

Department of Planning, Housing and Infrastructure

The department does not have a role in statutory compliance or the enforcement of the planning framework for short-term rental accommodation. The department prepares and reviews the legislative and planning instruments necessary to carry out the planning framework for short-term rental accommodation. This includes provisions within Part 6 of the Housing SEPP and Part 13A of the EP&A Regulation (Fire Safety).

The department also administers the mandatory Short-term Rental Accommodation Register through the NSW Planning Portal. This includes operational management and system upgrades, collecting registration fees, providing customer support, and integrating the register with the Department of Customer Service Exclusion Register and major online booking platforms. However, the Department of Planning, Housing and Infrastructure does not

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have a statutory role in monitoring and enforcing the registration of dwellings for short-term rental accommodation.

Local councils

Consistent with other planning policies at the local level, enforcing the planning framework for short-term rental accommodation is a general responsibility of local government. The NSW Government recognises that local governments should have the right legislative and regulatory powers to effectively enforce and regulate short-term rental accommodation activities in their local government areas.

Authorised officers within all NSW councils have access to the Short-term Rental Accommodation Register for their local government area through the NSW Planning Portal.

This includes:

- confirming whether a dwelling is registered
- details of the registered dwelling
- host details
- fire safety declarations
- a record of planned and completed booking days for each short-term rental accommodation premises.

As illustrated in Figure 3, a council may use existing planning enforcement powers. These are for unauthorised activities where short-term rental accommodation premises do not comply with the exempt development provisions or general requirements under the planning framework for short-term rental accommodation.

Such compliance action may relate to short-term rental accommodation happening in a premises that:

- has not been lawfully built for residential accommodation
- is a boarding house, build-to-rent housing unit, group home, hostel, or rural workers' dwelling, or
- has a development consent condition that bans short-term rental accommodation at the premises.

Part 9 of the *Environmental Planning and Assessment Act 1979* has provisions that councils may use to enforce the planning provisions for short-term rental accommodation, including the right to:

- enter and search the property
- require information from a person or organisation

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- take enforcement action if evidence is collected and council can show there has been a breach, using powers within the *Environmental Planning and Assessment Act 1979*
This includes issuing an order requiring a host to stop using the premises for short-term rental accommodation.

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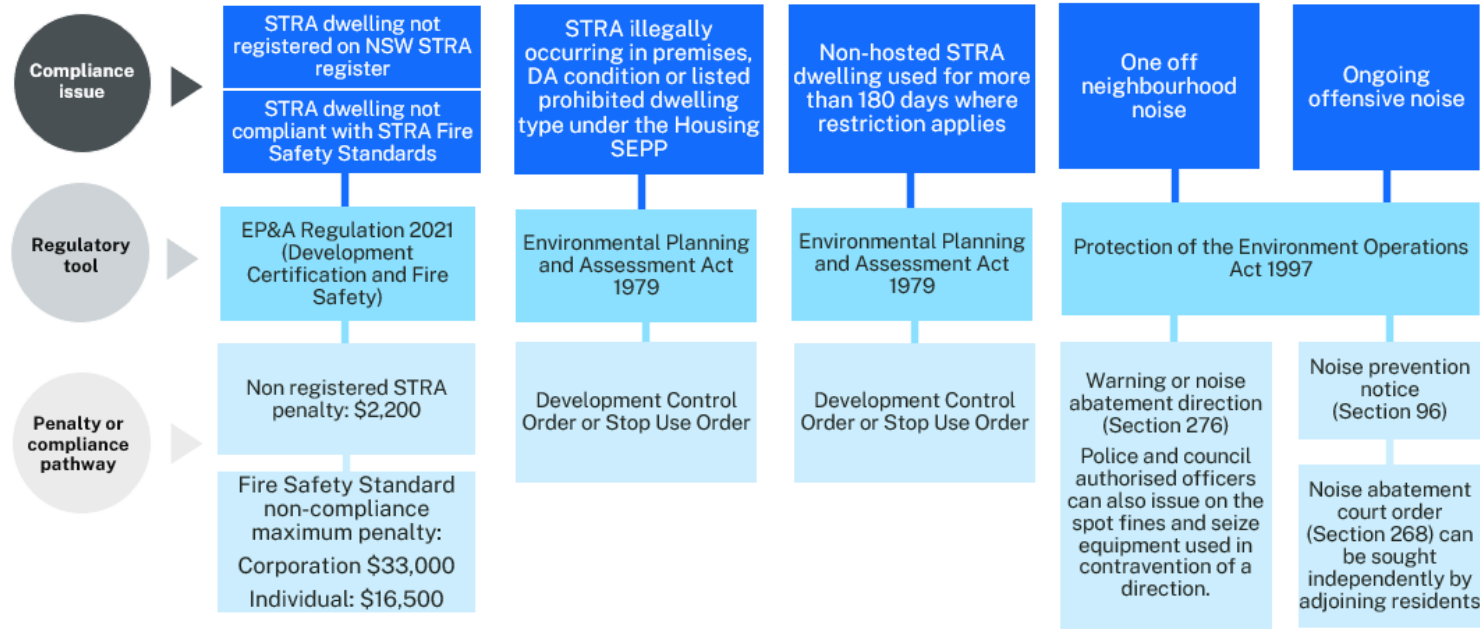


Figure 3. Compliance issues and the regulatory tools to manage them

Key: DA = development application | STRA = short-term rental accommodation

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Compliance under the *Protection of the Environment Operations Act 1997*

The *Protection of the Environment Operations Act 1997* allocates responsibilities for pollution prevention and control to various authorities, including local councils.

The right regulatory authority for most matters concerning non-scheduled activities is the relevant local council. This can include offensive noise emissions from short-term rental accommodation dwellings.

Council (as well as NSW Police) may issue a direction to the occupier of a dwelling (for example, a short-term rental accommodation guest) to stop making the offensive noise.

More offences relating to short-term rental accommodation

The planning framework for short-term rental accommodation introduced new penalty offences for councils to use as part of managing short-term rental compliance issues under the EP&A Regulation (Fire Safety). This sets up the legal mechanism for the Short-term Rental Accommodation Fire Safety Standard and Short-term Rental Accommodation Register.

Under the EP&A Regulation (Fire Safety), a host must not use the dwelling for short-term rental accommodation unless it complies with the fire safety standard. Maximum penalties for non-compliance can reach up to \$16,500 for an individual. Local councils have power under this EP&A Regulation (Fire Safety) to issue a penalty notice under this provision.

There are also penalties for hosts and owners who make their dwelling available for short-term rental accommodation but do not register the dwelling on the NSW Government's Short-term Rental Accommodation Register.

A maximum penalty can reach up to \$2,200 for an individual. However, enforcement actions and fines for this non-compliance depend on the relevant local government bringing the matter before a court. This is time-consuming and costly for local governments, particularly for those that have a large amount of non-compliant short-term rental accommodation activity.

4.3 Potential revenue measures

Currently, the NSW approach to managing short-term rental accommodation relies solely on a planning and regulatory framework. However, as seen in other jurisdictions, revenue measures can play a role too.

More broadly, we can use the revenue system to encourage the supply of long-term rental accommodation. We can do this by giving owners incentives that discourage them from using residential property in certain ways, such as non-hosted short-term rental accommodation, holiday homes or vacant property, while promoting long-term uses.

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By raising government revenue, revenue measures can also be used to fund programs to support homeless people. With rising housing affordability pressures, increased demand for social housing and increasing numbers of people sleeping rough in NSW, support for homelessness is a key priority of the NSW Government.

The NSW Government seeks your views and comments on the merits, benefits and costs of potential revenue measures to achieve the policy objectives identified in section 4.1.

We give the following guiding principles (Box 2) to help the discussion.

Box 2: Guiding principles

A well-designed revenue measure is one that achieves its intended policy goals while minimising side effects. The following principles give guidance on how such measures should be designed.

- **Be broad based** – spreading a levy over a broader set of properties discourages owners from shifting their properties to alternative, more underused purposes that are not subject to a levy. Also, for the same total revenue collected, a broader levy lowers the burden on the average person paying it.
- **Leverage an efficient revenue base** – an efficient revenue base is one which minimises unwanted behavioural changes from individuals trying to avoid or minimise their liabilities.
- **Be simple, fair, and equitable** – levies should avoid imposing unfair or inequitable burdens on specific groups and minimise undue compliance burdens.
- **Strike an effective balance between competing uses** – any levy should recognise the economic benefits of short-term rental accommodation to property owners, tourists and local businesses, and weigh these considerations against the policy objectives.
- **Be complementary** – any levy should complement the regulatory framework in achieving policy objectives.

4.3.1 Revenue policy issues

There is a range of revenue measures, each with its trade-offs, advantages and drawbacks. In considering the use and design of any specific measure, the NSW Government will be guided by the above principles and will take into account feedback from the community and interested stakeholders during consultation.

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Scope

A levy on non-hosted short-term rental accommodation will encourage some owners to shift their dwellings to use as a long-term rental. All else being equal, the broader the revenue measure, the more owners will shift their dwellings to long-term use. Broader measures can also encourage fewer properties to become or stay vacant. The broadest revenue measure to encourage long-term use of dwellings would cover non-hosted short-term rental accommodation, holiday homes and vacant property.

But not all properties used for short-term rental accommodation would be likely to shift to long-term rental accommodation. Some properties are not designed for long-term living (for example, they may lack a proper kitchen). It may be appropriate to exclude these properties. On the other hand, such an exemption might create an incentive to modify properties and make them unviable for long-term use to avoid any levies.

Conversely, some short-term rental accommodation properties are already used as long-term rental accommodation or as principal places of residence. Some people choose to rent out spare rooms as hosted short-term rental accommodation to generate supplementary household income. This practice can help support hosts' mortgage repayments or rental costs and improves housing affordability. Even if these rooms were not used as short-term rental accommodation, it is unlikely they would be added to the long-term rental accommodation market.

Similarly, some people rent out their own home on occasion while away on holiday as non-hosted short-term rental accommodation. Discouraging this is unlikely to have a practical effect on the supply of long-term rental accommodation, but would lower overall use of the housing stock.

Revenue base

A revenue measure could be levied on different bases to:

- discourage non-hosted short-term rental accommodation and underused property
- encourage long-term use of property.

It could be based on annual rental revenue, as is done in several cities across the world. But a levy based on rental revenue would not affect properties that do not produce rental income, such as holiday homes that are not used as short-term rentals or vacant property.

A levy based on land values can use the existing land tax system in NSW. It can also cover, in addition to non-hosted short-term rental accommodation, underused properties that could become long-term rental accommodation but do not produce rental income, such as vacant properties and holiday homes not used as short-term rentals.

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In areas where a high proportion of short-term rental accommodation are apartments, the government would need to carefully calibrate a levy on land to achieve the desired effect. This is because land values of apartments are relatively low, and a levy based on land values would tend to impose a proportionally smaller burden.

In this case, a levy on rents or applying fixed charges would likely be more effective at encouraging owners to put short-term rental accommodation apartments into the long-term market. Many popular short-term rental accommodation areas, such as Sydney's Eastern Suburbs, have a high proportion of short-term rental accommodation apartments.

By location

Generally, short-term rental accommodation and holiday homes are not evenly distributed across NSW.

Some regional areas, especially coastal tourism destinations, have a higher proportion of short-term rental accommodation as a share of their stock of properties (see Table 1). For example, non-hosted short-term rental accommodation properties make up over 8% of private homes in Byron Shire Council. In other areas of the state, such as western Sydney or remote inland areas like Bourke, short-term rental accommodation makes up much less than 1% of the private dwelling stock.

In areas where short-term rental accommodation represents a greater share of the property stock, short-term rental accommodation likely has a bigger effect on the local housing market. Levy rates could vary by location, reflecting the fact that the potential effect of holiday homes, vacant land and short-term rental accommodation on the long-term housing market may vary. However, differential rates may increase complexity and conditions in local housing markets may change over time.

Revenue collection

A levy on short-term rental accommodation could be collected by booking platforms on behalf of the NSW Government. Jurisdictions in countries such as Germany, France, the United States and Canada have established voluntary collection agreements with Airbnb to collect charges on behalf of the government.²¹ In other jurisdictions, platforms might not directly collect levies, but there may be data-sharing agreements to help the government collect revenue. In 2018, the Danish government entered into one such agreement with Airbnb.

²¹ More examples can be found at https://www.airbnb.com.au/help/article/2509?_set_bev_on_new_domain=1702333750_NGJyTI4YmM5M2Zm

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Having booking platforms collect the levy could help with compliance, as platforms can easily monitor users of these platforms and may make for a better user experience for hosts and guests in complying with their obligations.

However, not all short-term rental accommodation is booked through online platforms. The government would need to consider how to collect a levy from property managers or direct booking websites managed by hosts. Furthermore, collection through booking platforms would not be able to cover underused properties, such as vacant homes or holiday homes.

Compliance

The NSW Government, through Revenue NSW, would be responsible for administration of, and compliance with, any state revenue measure for short-term rental accommodation or underused properties. This would provide a consistent approach to the design, implementation and compliance across NSW.

In NSW, short-term rental accommodation hosts must register with the statewide Short-term Rental Accommodation Register and give their property's registration number when listing or advertising on booking platforms. This system of mandatory registration would likely promote compliance with a potential revenue measure. Data-sharing agreements with the booking platforms would also promote compliance. Platforms can provide evidence on the use of properties and the rental income associated with this use. However, compliance on short-term rental accommodation listed through small local agencies or direct booking is more complex.

Vacant properties or holiday homes that are not used as short-term rental accommodation do not produce income and are not publicly advertised on platforms. This would make it harder to monitor compliance on these properties.

Internationally, there are 2 broad approaches to designing a system of reporting property use for a levy:

- a **positive** approach
- a **by-default** approach.

Under a positive approach, only properties that are liable for the levy must be reported, with penalties for non-compliance. For example, for a levy solely on short-term rental accommodation, hosts would be required to register or declare their properties, but general owner-occupiers and other groups that do not list their property as short-term rental accommodation would not. For instance, in San Francisco, if a host rents a property for less than 30 consecutive nights, they must apply for a Certificate of Authority to collect Transient Occupancy Taxes then file returns for the tax on a monthly or annual basis.

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Under a by-default approach, all property owners must report their property use. They must apply for an exemption if not liable, with the scheme levied by default. For example, short-term rental accommodation hosts and owner-occupiers alike would need to register. This method is used for British Columbia's Speculation and Vacancy Tax. This puts greater administrative burdens on the wider population, but likely increases compliance.

Exemptions and concessions

A case could be made to exempt hosted short-term rental accommodation from a potential levy, as it is unlikely that individual rooms would otherwise enter the long-term rental accommodation market. An exemption for hosted short-term rental accommodation currently applies to the regulated day cap in NSW. An exemption for hosted short-term rental accommodation might increase compliance complexity, though.

If the levy were to include vacant properties, we should also consider cases where a property is vacant for valid reasons, such as:

- during construction or renovation
- in cases where the property has been condemned
- when the owner-occupier is temporarily away for justifiable reasons, including for work.

Other property uses that the government may consider for exemptions include:

- non-tenanted property used as main residence for relatives
- worker accommodation, or
- secondary dwellings mostly used for work.

However, while justifiable in many instances, allowing for a wider range of exemptions would make compliance more challenging and could undermine the fairness, simplicity and transparency of the levy.

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5 Have your say

This discussion paper starts a public consultation process. The NSW Government invites all interested people and organisations to comment and give feedback on all or some of the issues under consultation.

The NSW Government will continue to seek feedback over the coming weeks through to 14 March 2024.

We may publish submissions from individuals and organisations. If you would prefer to keep your submission private, please say so in your submission.

Please give your feedback by **11:59pm on 14 March 2024**.

To give feedback, you can:

- [complete our survey via Qualtrics](#), or
- [upload a submission via the NSW Planning Portal](#).

If you have any questions about the discussion paper or review, you can email the project team on STHL@planning.nsw.gov.au

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enquiries refer
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in reply please quote
24/15471



14 March 2024

Executive Director
Housing and Economic Policy
Department of Planning, Housing and Infrastructure
GPO Box 39
Sydney, NSW, 2001

Dear Sir/Madam

Re: Submission: Discussion Paper – Short and Long-Term Rental Accommodation (Draft)

Thank you for the opportunity to comment on the *Discussion Paper on short- and long-term rental accommodation*. Council welcomes the Government's interest in addressing the impacts of short-term rental accommodation (STRA) on housing availability and affordability.

This submission should be taken as a draft. The submission will be considered by the elected Council its Ordinary meeting on 28 March 2024. The Council's endorsed submission will be provided to the Department's Housing and Economic Policy team by 5 April 2024.

By way of local context Council's draft Housing Strategy, currently on public exhibition, notes STRA as one of the pressures on local housing supply and includes actions to encourage increased development of purpose-built tourist accommodation in key locations, and to monitor STRA and identify options that limit non-hosted STRA in Ballina Shire.

The balance between housing supply and affordability and supporting tourism

Council recognises the importance of tourism to the local economy and the role that STRA plays in supporting tourism. As a coastal Shire, tourism is an important industry. However, other industries, such as health care and social assistance, construction and retail trade employ more people and add more value to the local and state economy ([Economic value | Ballina | economy.id](#)).

Council's draft Housing Strategy highlights the housing needs of workers in the top three employment sectors. Access to appropriate housing for these workers is essential for the Ballina Shire's vibrant economy, exemplary service industry and resilient emergency services.

It is essential that local economic development is considered in a holistic way, balancing the impacts and benefits of STRA with the needs of other industry sectors. The assumption expressed in the Discussion Paper that demand for local goods and services is significantly improved by the current levels of STRA is based on data that has not been compared to demand generated by long-term rentals and is therefore inconclusive.

The discussion paper appears to prioritise the importance of STRA to tourism, stating that, '*the NSW Government is determined to protect the positive economic contributions that STRA makes to local economies (P32)*'. Looking at STRA from a more holistic perspective, what research has been done to show the impact on the rest of the economy of not having available housing for workers in other industries?

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A key concern for local business growth is appropriate housing to attract talent with specific skill sets. Any improvements to the availability of appropriate housing will also deliver significant economic benefits by supporting local businesses to attract and keep suitably qualified staff, relieving bottle necks to economic growth in other sectors of the local economy. The Discussion Paper frames the desired housing outcomes of any policy initiatives against local economic activity, without considering or quantifying the economic benefits of more long-term rentals (residents and workers).

Council requests that the State Government takes a more strategic look at the economic impacts of the lack of available and affordable housing across industry sectors, not just the tourism sector. By taking a more strategic view, policy initiatives can be properly assessed by how they support local demand and employment growth, whilst also ensuring a tourism capability.

Support for tourism accommodation

Before hosted and non-hosted STRA, tourism development was planned for by local governments and development occurred in accordance with the provisions in LEPs and DCPs. This method of planning for tourism accommodation ensured accessible facilities, appropriate infrastructure, mitigation of amenity impacts for local communities and control of the supply of land like other commercial uses.

The rapid expansion of STRA has been supported by the 'light touch' regulatory approach of State Government and the view that STRA is generally a low impact activity that does not alter the otherwise residential characterisation of a dwelling.

It is highly likely that the 'light touch' regulatory approach towards STRA has had an impact on other tourism accommodation providers operating premises purpose built for tourism accommodation and subject to developer contributions and other taxes while STRA providers have been able to enter the market without having to meet the same requirements. There is also no recognition of the commercial nature of STRA (especially non-hosted) in relation to rating structures or impacts.

Council would be interested in any research or data the Economic and Policy team has on the impact of the rise of STRA on tourism accommodation providers and more broadly on local communities, including:

- The impact on other tourism accommodation providers and the industry in general,
- Business types that have benefited, and those that have not,
- The flow on effects for local communities. Do fees charged by online booking platforms make their way to local communities?

An understanding of these impacts would be helpful in supporting the local tourism industry.

Regulatory measures

1. Concentrated demand in specific locations or limiting STRA registrations

As noted in the discussion paper, the demand for STRA is localised around specific destinations. Some neighbourhoods within NSW local government areas would have a higher proportion of STRA properties than the average across an LGA reflected in the top 10. For example Ballina Shire may not have made the top ten list but the village of Lennox Head is likely to have a higher proportion of non-hosted STRA than some of the places on the top ten list. The impacts of STRA on housing availability and affordability is also localised.

More data on STRA operation overall and particularly the relationship between the STRA hotspots and housing availability and affordability would be useful to inform policy initiatives.

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In most places a uniform approach across the State won't be the best policy fit. Further, one policy setting for an entire LGA will not always be an appropriate fit for every locality within an LGA.

Due to the highly localised nature of demand for STRA as well as the impacts on housing availability and affordability, a localised geographical approach to designate areas where non-hosted STRA can occur without limits within each LGA would ensure the benefits of STRA continue to be provided in areas of high demand without impacting demand for long term housing in other areas. Local governments are best placed to identify areas for non-hosted STRA and the built form provisions appropriate to the location.

Allowing local governments to undertake this local planning enables them to ensure well located STRA that reflects positively on the location whilst limiting the speculative impacts of the potential of non-hosted STRA on housing availability and affordability across the whole local government area.

2. The planning pathway

Non-hosted STRA should be limited to specific locations subject to a DA where local amenity issues can be properly considered and the use subject to conditions.

Hosted STRA could be exempt development subject to meeting specific requirements. This approach will not unnecessarily clog up the DA system, whilst providing local government with a strong foundation for assessment of non-hosted STRA and its associated impacts.

3. Day caps

Day caps have been relied on as an effective way to limit the impacts of STRA on available local long-term housing stock. However, as noted by the IPC Report for Byron Bay the day cap needs to ensure the returns from non-hosted STRA are closer to those for long-term rental accommodation. This will be different in each local market.

60 days per year allows owners to make their dwelling available during peak times for STRA. However, this could impact long-term rentals during peak holiday periods and may result in more vacant dwellings at other times of the year.

As the Discussion Paper states, day caps may not result in more properties available for long-term rentals. Day caps also have enforcement challenges and can create confusion and conflict in local neighbourhoods. This is why Council's preference is for clear 'go' and 'no go' zones for non-hosted STRA instead of day caps alone.

4. The Short-Term Rental Accommodation Register

The Government's STRA Register has been a positive initiative to assist in quantifying the extent and details of how STRA is occurring in NSW. However, local governments do not have access to enough of the data, including combined data covering the multiple STRA platforms. Specifically, the number of booked days across the year is essential information for regulatory agencies and the community to have access to not only to assist with enforcement but to meaningfully participate in policy advocacy and development.

Revenue measures

Any initiatives that discourage appropriate housing sitting vacant are worth consideration particularly if they don't burden local governments with administration and compliance.

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1. Levies on non-hosted STRA

Levies imposed on non-hosted STRA could act as an incentive for owners to offer properties as long-term rentals. Income from levies should go towards supporting enforcement and regulation activities or contribute to housing delivery in the LGA in which the levies are collected.

Another option is to recognise non-hosted STRA as different to residential classification of property for the purpose of rating. This may provide for a better reflection of the commercial nature of the STRA use in the make up of rating income within each LGA and its community.

Once again, thank you for the opportunity to make a submission. If you have any enquiries regarding this matter, please contact Brigid Pearse on 1300 864 444.

Yours faithfully



Matthew Wood
Director
Planning and Environmental Health Division

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(REVIEW)
POLICY NAME: BUSKING
POLICY REF: B01
MEETING ADOPTED: 19 December 2019
 Resolution No. 191219/15
POLICY HISTORY: 270815/13; 240311/24; 220704/012



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1 OBJECTIVE

The objectives of this policy are:

- a) to encourage activities that contribute colour and life to the town centres and provide opportunities for public performances;
- b) to provide an equitable system of allocation of popular busking sites in the town centres among the buskers earning a living through their art form;

- c) to identify suitable locations for different busking types; and
- d) to minimise negative impacts of buskers operating in the Ballina Shire area.

2 POLICY

2.1 Obtaining a Busking Approval

- a) Any busker performing within Ballina Shire must have the approval of Council to do so. [Applications for Busking Approval](#) may be made, during business hours, at the Council's Customer Service Centre **or via email**.
 - i) Buskers performing acts **which involve** the use of [dangerous materials](#) or [dangerous implements](#) must obtain an approved **Special Busking Approval**.
 - ii) Buskers performing acts **which do not involve** the use of *dangerous materials* or *dangerous implements* must obtain an approved **Standard Busking Approval**.
- b) Applicants must agree to adhere to the conditions of holding a Busking Approval, provide all the information requested on the Busking Application form and pay the prescribed fee (identified in the [adopted Fees and Charges](#)). Approvals may be issued for either a 3 or 12 month period.
- c) The following information must be provided when applying for a **Standard Busking Approval**:
 - i) Passport photograph.
 - ii) One of the following forms of proof of identity:
 - (1) a current motor vehicle drivers licence;
 - (2) a student identity/Proof of Age Card; or
 - (3) a current passport.
 - iii) If under the age of 18 years, **your a** parent or guardian is required to complete **a the** consent form **within the application**.
- d) The following additional information must be provided when applying for a **Special Busking Approval**:
 - i) A current First Aid Certificate.
 - ii) Evidence of holding relevant licences/certificates, e.g. chainsaw operators certificate, ~~etc pyrotechnics certificate~~.
 - iii) Evidence of holding public liability insurance indemnifying Council to the value of ~~\$5 million~~. \$20 million, noting Ballina Shire Council as an interested party.
 - iv) **Sign a waiver/indemnity holding Council harmless to any incident.**

2.2 Public Liability

- a) ~~Busking is an activity that Council has inherently only a very limited ability to control. Accordingly, Council cannot accept liability for any acts or omissions of buskers, whether or not they hold an approval issued by Council. By issuing approvals to buskers, Council does not assume any responsibility for any public liability claims made against buskers, nor does the issue of an approval imply that the busker is independently insured for public liability. Council does not maintain insurance for the activities of buskers.~~ Council holds a public liability policy for buskers who hold valid a **Standard Busking Approval** and form part of Council's register. Activities covered under Council's policy, are those applied for through the application process and does not extend to activities outside of the applied for permit. Should Council's public liability policy change, Council will provide notice to a date the extension of cover will be deemed to be removed and no longer provide cover for the busker.
- b) Council requires holders of **Special Busking Approvals** for acts involving the use of *dangerous materials* or *dangerous implements* to hold public liability insurance ~~indemnifying Council to the value of \$5 million~~ \$20 million and noting Ballina Shire Council as an interested party on the policy. A copy of the current Certificate of Currency is required with the lodgement of a **Special Busking Application**.
- c) **Special Busking Applications** require the performer/s to sign a waiver holding Council harmless to any incident. The performer/s shall indemnify Council against claims in respect of personal injury or loss of, or damage to, any property arising out of or as a consequence of the carry out of a performance. The indemnity shall be reduced proportionally to the extent the act or omission of Council may have contributed to the injury, death, loss or damage.

2.3 Terms of Holding a Busking Approval

- a) Busking Approvals are valid for a period specified on the approval, and may remain valid for 3 or 12 months from the date of issue.
- b) Approvals are not transferable or refundable.
- c) Busking Approvals may be issued to individual buskers or groups. However, the name of each busker in a performance ~~troupe~~ **group** must be listed on the application form and all performers listed on the approval must be performing when the group is performing. Members of the ~~troupe~~ **group** cannot be ~~omitted or~~ substituted.
- d) The requirements of this policy relating to ~~the payment of the prescribed fee~~ **the applicable fee** and ~~presentation of~~ proof of identity are waived for persons under the age of 18 who are attending school. In such cases the busking activity is only to occur on weekends, and in public and school holiday periods. The remaining requirements and conditions of this policy still apply and such persons must still obtain a Busking Approval to busk.
- e) Details of buskers holding approvals to busk will be entered into a Register of Approvals granted by Council pursuant to section 113 of the *Local Government Act 1993*. Additionally, pursuant to sections 113(2) and 113(5) of the Act, the information recorded will include the name and address of the person or persons to whom the approval is granted, and this information will be available for public inspection without charge during ordinary office hours.

- f) Pursuant to sections 89, 109, 110 and 124 of the *Local Government Act 1993*, Council may revoke or modify approvals if the approval holder fails to comply with the requirements and conditions of approval. ~~Council rangers~~ **An authorised officer of Council** may confiscate approvals for non-compliance. Council may serve notice upon the person or persons holding a Busking Approval, giving reasons for the revocation or modification of the approval and providing the approval holder with the opportunity to show cause why the approval should not be revoked or modified.

2.4 General Busking Conditions

All buskers must adhere to the following conditions at all times:

- a) Buskers must display their **Standard Busking Approval** in a prominent, highly visible position in the busking site at all times during their [performances](#).
- b) Buskers must not interfere with pedestrian flow or public amenities or cause obstruction to traders or delivery or emergency vehicles, including by way of encouraging audience formation in such a manner as to cause such interference.

There must be a minimum two (2) metre pedestrian corridor. In maintaining this corridor the busker must take into consideration other obstructions on the footpath (eg outdoor dining areas, public seats, power poles) so that a continuous corridor is maintained at all times.

- c) Buskers must keep the site in use clean while they are working and ensure that their use of the site does not pose a threat to public safety.
- d) Buskers must not consume alcohol or perform under the influence of alcohol.
- e) Buskers should be aware of their responsibilities with regard to the [Work Health and Safety Act 2011](#) and the ~~Work Health and Safety Regulation 2011~~ [Work Health and Safety Regulation 2017](#).
- f) The distance between busking acts shall be a minimum of 30 metres.
- g) On any one day, buskers may perform for a total period of up to ~~three (3)~~ **two (2)** hours at the same spot. However, the performances must be of a maximum duration of one (1) hour, and there needs to be at least one (1) hour between performances.
- h) Buskers may receive voluntary donations from the audience, but may not [solicit funds](#). An exception to this applies for performers of [circle acts](#), who may invite donations at the conclusion of the performance.
- i) The only articles that may be sold by the busker are recordings consisting of the busker's own work. Buskers may not offer other goods and services for sale, display, demonstrate or advertise goods for sale or associate themselves with such advertising in conjunction with their performance.
- j) Buskers may not perform within five (5) metres of the entry to retail outlets without approval from affected shop or property owners.
- k) Buskers may not perform in front of, or beside bank automatic teller machines (ATMs), or within 10 metres of any public telephone.

- l) Buskers may not perform within 10 metres of any street intersection or pedestrian crossing.
- m) Buskers using amplification are restricted to battery-operated amplifiers. Amplified acts may only be performed between the hours of ~~10 am and 10 pm~~ 10am to 9pm.
- n) Council reserves the right to modify or revoke any Busking Approval if the performance results in offensive noise, within the terms of the *Protection of the Environment Operations Act 1997*. Further, ~~Council rangers~~ an authorised officer of Council and Police officers are empowered, under provisions of the *Local Government Act 1993* and the *Protection of the Environment Operations Act 1997*, to require the immediate cessation of any performance that results in excessive or offensive noise.
- o) Buskers may not perform during [special events](#), unless agreed by event organisers. Please check with Council to determine busking restrictions applicable during *special events*.
- p) Buskers must be mindful of, and respect the rights of patrons using public parks and reserves for recreation.
- q) Buskers may not sit or use public seating/benches while performing.
- r) Buskers may only use *dangerous materials* or *dangerous implements* if they hold a **Special Busking Approval** to do so.
- s) Buskers must comply with directions issued by officers of the NSW Police Service, Ambulance, Fire, [SafeWork NSW](#), an authorised officer of Council and any other Emergency Services.
- t) ~~Council rangers~~ An authorised officer of Council reserve the right to prohibit the use of any area while public works are in progress.
- u) ~~Council rangers~~ An authorised officer of Council may at any time request a busker to cease busking if the officer is of the opinion that the performance is causing public inconvenience, or is likely to cause harm to the public or property. The busker must immediately comply with such a request.
- v) Busking may include *pavement art* where it can be seen as a form of public entertainment under the guidelines of the Busking policy, with all the existing conditions applying and the following specific conditions:
 - i) *Pavement art*, for the purposes of this policy, is defined as renderings done on removable surfaces such as canvas or plastic, displayed on the pavement. Drawing directly on the pavement is prohibited.
 - ii) Individual renditions of the artist's work may not be [offered for sale](#), or sold to the public.
 - iii) Any proposed material to be used in carrying out *pavement art* must not be capable of leaving any mark or residue on the pavement.
 - iv) The positioning of the artwork must not be such as to be likely to cause a public hazard.

- w) Buskers must be aware and adhere to the restrictions placed on busking in certain places within the shire. These areas, termed *restricted areas*, are identified in the Appendix. Buskers performing in *restricted areas* must adhere to the restrictions identified in [Table 1 of the Appendix](#).
- x) *Circle acts* and acts which involve the use of percussion instruments (such as drums and cymbals) may only be performed in *designated sites* as identified in [Table 2 of the Appendix](#).

2.5 Special Busking Approval Conditions

Performers of acts which involve the use of *dangerous materials* or *dangerous implements* must obtain a **Special Busking Approval**. Holders must:

- a) ~~Not be younger than~~ Be 18 years old ~~or older~~.
- b) Comply with the General Conditions for Busking.
- c) Comply with the Special Conditions for Special Busking Approval holders.
- d) Hold public liability ~~insurance indemnifying Council to the value of \$5 million~~ of a minimum \$20 million and noting Ballina Shire Council as an interested party on the policy. A copy of the current Certificate of Currency is required with the lodgement of a Special Busking Application.

2.6 Special Conditions for Special Busking Approval Holders

Buskers holding a **Special Busking Approval**, when using *dangerous materials* or *dangerous implements* in their acts, must adhere to the following additional conditions in the interests of public safety, and their own. The Special Approval busker must, at all times:

- a) Only perform acts involving the use of *dangerous materials* or *dangerous implements* in the location identified by the symbol "S" on [Map 1 in the Appendix](#).
- b) Ensure the health and safety of the audience witnessing the performance.
- c) Ensure that public property is not damaged in the course of the performance.
- d) Define the performance space to be used by establishing a physical boundary of **at least two (2) metres** between ~~herself/himself~~ the performer/s and the audience, utilising one of the following options:
 - i) Roped or chained off area.
 - ii) Chalk line (if the surface to be drawn upon is not of a porous material such as granite and sandstone, and if the line drawn is water-soluble and removed once the busker has completed the act).
- e) If the performance utilises fire or flammable materials, include an ~~WorkCover~~ approved fire blanket and a dry chemical fire extinguisher in their performance kits **compliant with relevant Australian Standards**. These items are to be kept visible and accessible throughout the performance.
- f) Have a First Aid Kit and First Aid Officer present during the performance.

- g) In the case of the use of flammable liquids:
- i) Fuels that can be used are limited to kerosene, firewater or scented lamp oils (eg citronella) only. No other fuels will be approved.
 - ii) Store and transport any flammable liquids approved under the Code of Practice in accordance with section 7 of the *Australian Dangerous Goods Code 2022*, that is:
 - (1) Portable plastic containers of no greater than a 5 litre capacity.
 - (2) Containers conspicuously marked with the words:
 - (a) **HIGHLY FLAMMABLE**, in capital letters on both sides of container;
 - (b) "Class 3 Flammable Liquids"; and
 - (c) the name of the liquid in the container, e.g. kerosene, etc.
- h) Use an appropriate lidded container as a drip tray for flares or torches, or preferably use a pre-soaking method for the flares or torches. Council will not tolerate drip stains on ground surfaces that are not immediately removed or able to be removed by the busker after the act has been completed. It is recommended that performers carry a wipe-up towel that can be used to wipe away spills from concrete or when shaking off excess fuel from implements prior to performing (rather than shaking it onto the ground).
- i) If using *dangerous implements* in a performance, ~~as defined under the Dangerous Goods Act, clauses 14, 31, 230, 240, 242 and 248, Performers are required to covering the use and packaging of prohibited items,~~ all edges on metal implements must be blunted and rendered non-dangerous (including chainsaws and other mechanical devices). An implement is determined as blunt if it is incapable of piercing human skin when pressure is directly applied to its edge or point against human skin.
- j) Hold appropriate licences/certificates, e.g. chainsaw operators certificate, **etc.** ~~pyrotechnics certificate.~~

3 BACKGROUND

Ballina Shire Council recognises that:

- a) buskers make an important contribution to the cultural life of a town by reflecting styles, values and the issues of society at large;
- b) buskers provide entertainment and thought-provoking experiences to visitors and residents;
- c) busking is a valid means for people to make a living; and
- d) busking should not interfere with pedestrian traffic, the conduct of business, or impact on public safety.

4 DEFINITIONS

Busker: An entertainer who provides performances for the public by playing a musical instrument, dancing, singing, pavement art, clowning or juggling, or performing other acts of a similar nature in public places.

The following activities are **not** considered to be busking under the terms of this policy and, as such, approval will not be issued:

- a) tarot card and palm readers, fortune readers;
- b) artists selling their works (such as portrait artists);
- c) masseurs or masseuses;
- d) vendors of any kind;
- e) solicitors of money for any other purpose; or
- f) any like act or activity.

Circle acts: Structured performances requiring the audience to stop and watch or participate in the performance.

Council: Ballina Shire Council

Dangerous implements: Include knives, spears, swords, spikes, replica guns, bow and arrows, heavy or sharp implements of any kind that pose a threat of harm to the general public.

Dangerous materials: Include flammable materials and chemicals, fire, fireworks, smoke, flares, heated elements, or anything giving off a level of heat or toxicity that poses a threat of harm or damage to members of the public and public property.

Designated sites: Specified sites (identified in [Map 1](#) and [Map 2](#), [Map 3](#) and [Map 4](#)) where particular busking acts can only be performed (refer to [Table 2](#)).

Offering for sale: The display or demonstration of items, particularly multiples of items, with an implication that they are available for sale or otherwise in exchange for money.

Pavement art: Renderings done on removable surfaces such as canvas or plastic, displayed on the pavement.

Performance: Musical, dramatic or other entertainment substantially involving musical, theatrical or circus performance skills.

Restricted areas: Specified areas (identified in [Map 1](#) and [Map 2](#), [Map 3](#) and [Map 4](#)), ~~noting that have~~ additional conditions or restrictions placed on busking within them ~~(refer are referenced in to~~ [Table 1](#)~~).~~

<i>Soliciting of funds:</i>	The act of asking, begging or requesting money or goods from members of the public.
<i>Special event:</i>	A function or event open to the public or a section of the public and includes a ceremony, concert, cultural celebration, dance, exhibition, fair, festival, fete, gathering, market, open air theatre, parade, sporting event or street parade.
<i>Walk-by acts:</i>	Performances where the audience is not required to stop and watch.

5 SCOPE OF POLICY

This policy applies to community members.

6 RELATED DOCUMENTATION

Related documents, policies and legislation:

- a) [Commercial Use of Footpaths policy](#)
- b) *Local Government Act 1993.*

7 REVIEW

The Busking policy will be reviewed at least every four years.

APPENDIX 1 – RESTRICTED AREAS AND DESIGNATED SITES

The following special conditions apply to areas identified as *restricted areas* and *designated sites* in Maps 1 ~~and 2~~, 3 and 4:

- 1 Busking in *restricted areas*, as identified in [Map 1](#) and [Map 2](#), [Map 3](#) and [Map 4](#) is approved only in accordance with restrictions identified in [Table 1](#).
- ~~2 Percussion busking acts may only be performed at designated sites identified with the symbol "P" on [Map 1](#) and [Map 2](#), and defined in [Table 2](#).~~
- 3 [Circle acts](#) are only approved in designated Circle Act sites, identified with the symbol "C" on [Map 1](#) and [Map 2](#), and defined in [Table 2](#).
- 4 Acts involving the use of [dangerous materials](#) or [dangerous implements](#) are only approved in the site identified by the symbol "S" on [Map 1](#).

With reference to attached Maps 1 ~~and 2~~, 3 and 4 the following *restricted areas* are identified for the purpose of the Ballina Shire Busking policy:

TABLE 1 – RESTRICTED AREAS			
Symbol	Description of Area	Restriction to User/Usage	Refer to Map
R1	Fawcett Park and Fawcett Street, between Cherry Street and Riverwalk Arcade Ballina	Busking is approved only between the hours of 10 am and 10 pm 9pm	1
R2	Ballina Street Lennox Head, between Park Lane and Byron Street	Busking is approved only between the hours of 10 am and 10 pm 9pm	2
R3	Daley Street and Main Street, Alstonville	Busking is approved only between the hours of 10am and 9pm	3
R4	River Street between Cherry Street and Fawcett Lane, Ballina	Busking is approved only between the hours of 10am and 9pm	4

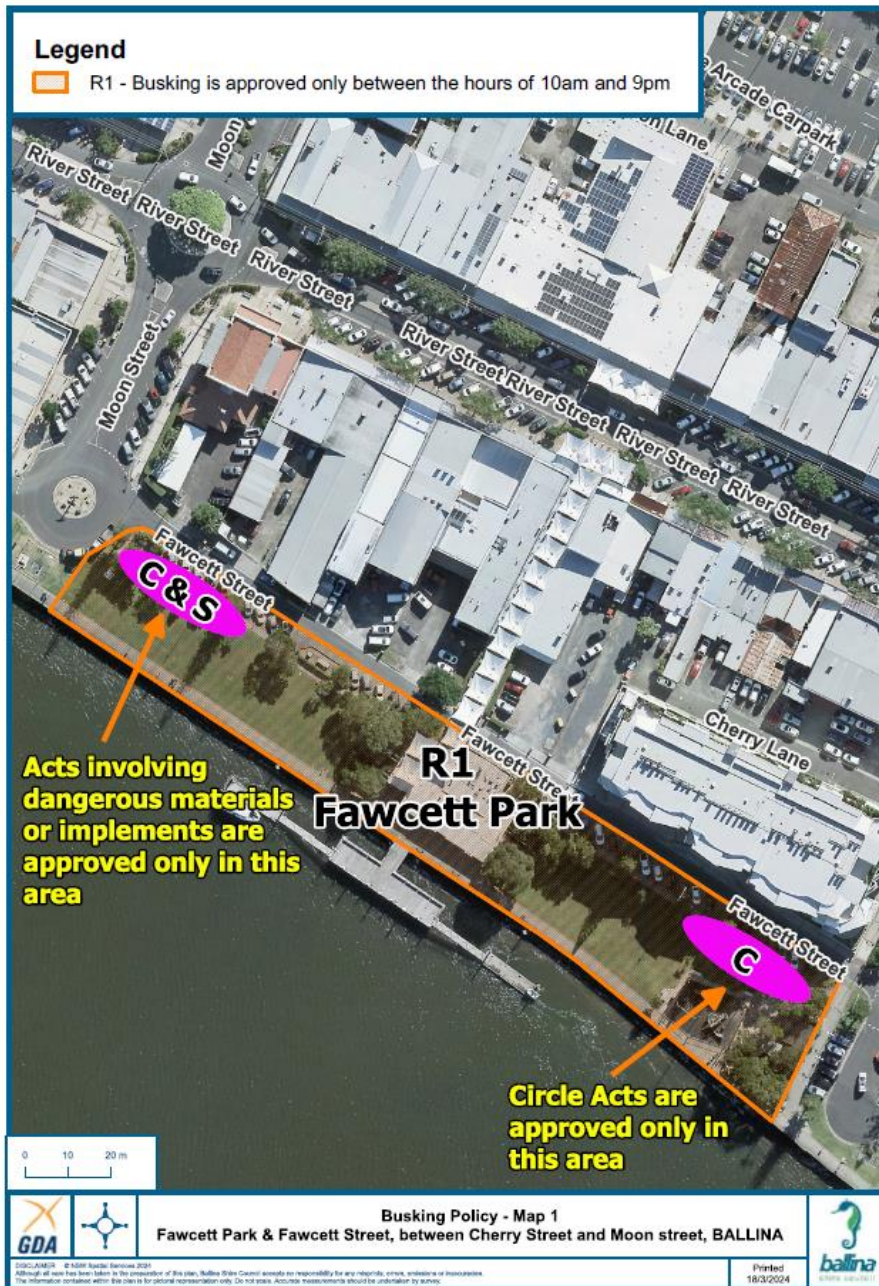
With reference to the attached Map 1, the following *designated sites* are identified for the purpose of the Ballina Shire Busking policy:

TABLE 2 – DESIGNATED SITES			
Symbol	Designation	Description of Area	Refer to Map
C	<i>Circle acts</i>	Fawcett Park – location shown on map	1
P	Percussion acts	No allocations made	N/A

TABLE 2 – DESIGNATED SITES			
Symbol	Designation	Description of Area	Refer to Map
S	Acts involving the use of <i>dangerous materials</i> or <i>dangerous implements</i>	Fawcett Park – location shown on map	1

NOTE: Buskers performing acts involving the use of *dangerous materials* or *dangerous implements* must obtain a **Special Busking Approval** to do so.

R1 MAP – FAWCETT PARK BALLINA



R2 MAP – LENNOX HEAD



R3 MAP – ALSTONVILLE



R4 MAP – RIVER STREET BALLINA



(REVIEW)
POLICY NAME: MANAGEMENT OF CONTAMINATED LAND
POLICY REF: C12
MEETING ADOPTED: Resolution No.
POLICY HISTORY: 270220/20; 280716/25; 260712/17; 280808/2



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8.4 Policy (Review) - Contaminated Land Management

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OBJECTIVE

This Contaminated Land Policy ("the Policy") outlines Council's approach to the management of Contaminated Land that is under the regulatory control of Local Government, as stipulated by the *Environmental Planning and Assessment Act 1979* ("EP&A Act") and *Managing Land Contamination Planning Guidelines SEPP 55 - Remediation of Land (1998)* ("the Planning Guidelines"). The aims of this Policy are to:

- ensure that the likelihood of land contamination is considered as early as possible in the planning and development process by Council, consultants, ~~and~~ developers ~~and any other stakeholders etc~~
- ensure that changes in land use will not increase the risk to health or the environment
- avoid inappropriate restrictions on land use arising from contamination
- provide information to support decision making and to inform the community
- ensure that site investigations and remediation works are carried out in a satisfactory manner, and where appropriate, are independently verified
- ensure that the Council exercises its functions relating to the development of contaminated land with a reasonable standard of care and diligence
- to assist the development of technical notes to guide contaminated land assessment activities.

POLICY

1.0 Introduction

1.1 What is contamination?

Contamination of land means the presence in, on or under the land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment Section 5(1) *Contaminated Land Management* ('CLM Act').

1.2 Assessing the risks of contamination

State Environmental Planning Policy (~~SEPP~~ 55 (Resilience and Hazards) 2021 ("Resilience and Hazards SEPP") together with Ministerial Direction 4.4 Remediation of Land (issued under section 9.1(2) of the EP&A Act), requires that a consent authority must not consent to the carrying out of any ~~planning proposal rezoning~~ or development of a site unless it has considered whether the site is contaminated, and, if it is contaminated, whether the site is suitable in its contaminated state or whether remediation is necessary for the purpose of the proposed development.

The need to consider whether the site is contaminated and whether ~~or not~~ a proposal is suitable with regard to contamination risk is also a requirement under Section ~~79C~~ 4.15 of the *Environmental Planning & Assessment* (EP&A) Act and Council's general environmental obligations under the *Local Government* (LG) Act.

It is recognised that many applications submitted to Council will have no contamination risks associated with them, however it must also be recognised that many sites in the Northern Rivers Region have the potential to be contaminated. Ultimately Council needs to be satisfied that a site is suitable for a proposed use or can and will be made suitable by remediation.

2.0 Council's decision making process

In determining all **planning proposal rezoning**, subdivision and development applications Council must consider the possibility of land contamination and the implications it has for any proposed or permissible future uses of the land.

A precautionary approach will be adopted to ensure that any land contamination issues are identified and dealt with early in the planning process.

2.1 Initial evaluation

Council will conduct an initial evaluation as part of the rezoning or development assessment process to determine whether contamination is an issue, and whether sufficient information is available for Council to carry out its planning functions in good faith. The initial evaluation will be based on readily available factual information **provided by the applicant** and information available to Council such as previous investigations about contamination on the land, previous zoning and uses of the subject land, and restrictions relating to possible contamination such as notices issued by the NSW Environment Protection Authority (EPA).

The initial evaluation must be carried out **regardless of the nature of the proposed use or the current use**. The onus is on the proponent to ensure that the information included in any **planning proposal rezoning**/development application is sufficient to enable Council to make a decision.

A brief checklist for conducting an initial evaluation is given below:

- Do Council records identify any previous investigations about contamination on the land?
- What were the results, including any previous initial evaluations?
- Do Council records identify an activity listed in **Schedule 1**, being an extract of Appendix "A" in the Managing Land Contamination Planning Guidelines SEPP 55-Remediation of Land Department of Urban Affairs and Planning (DUAP), as having occurred or having been approved on the subject land.
- Has the subject land ever been zoned for industrial, agricultural or defence purposes?
- Is the subject land currently used for an activity listed in **Schedule 1**?
- Do Council records show that the land was or is subject to regulation, through licensing or other mechanism, of an activity listed in **Schedule 1**?
- Are there any land use restrictions on the subject land relating to possible contamination such as notices issued by the NSW EPA or other regulatory authorities?
- Do Council records identify contamination issues on the land adjacent to the subject land which could affect the subject land?
- Does a site inspection suggest that the site may have been associated with activities listed in **Schedule 1**?

If, after carrying out an initial evaluation, none of the enquiries suggest that the land might be contaminated or that further enquiry is warranted, the planning process should proceed in the normal way. If however there are indications that contamination is, or maybe present and Council has insufficient information on which to make a planning decision (such as gaps in historical information or insufficient records) then the applicant will be required to conduct further investigations as described below.

2.2 Council procedures for planning proposals (ie rezoning applications)

The Ministerial Direction 4.4 – Remediation of Contaminated Land SEPP-66 requires Council to consider contamination issues in planning proposals, (including when Council is the

proponent of the planning proposal. Council will not include land in a zone that would permit a change of use of the land from the existing use unless:

- (a) council has considered whether the land is contaminated;
- (b) if the land is contaminated, Council is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all purposes for which land in the zone concerned is permitted to be used; and
- (c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, Council is satisfied that the land will be so remediated before the land is used for that purpose.

In accordance with **Ministerial Direction 4.4** ~~Clause 6(4) of SEPP 55~~ Council will require a preliminary investigation to be submitted with planning proposals where the land concerned is:

- (a) land that is within an investigation area **within the meaning of the CLM Act**;
- (b) land on which development for a purpose referred to in Appendix A to the contaminated land planning guidelines is being **(included as Schedule 1 herein), is being**, or is known to have been, carried out;
- (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital — land;
 - (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Appendix "A" to the contaminated land planning guidelines has been carried out; and
 - (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

NOTE: Appendix "A" in the Managing Land Contamination Planning Guidelines 1998, DUAP & NSW EPA which is reproduced in Schedule 1.

In addition to the requirements set out in **the ministerial direction 4.4 SEPP 55**, Council will also require a preliminary investigation to be submitted if Council has reasonable grounds to believe the land may be contaminated because of the lands history, condition or other information known to Council. **Should further investigations be required to assess if the land is, or can be made suitable, for all purposes permitted within the proposed zoning, Council may trigger investigations as outlined in Section 2.3.**

When Council receives a planning proposal that covers more than one property, or a very large property, it may be difficult for Council to be satisfied that every part of the land is suitable for the permissible use(s) at the planning proposal stage. In these circumstances Council will consider the findings of the preliminary investigation, and may include provisions in a Local Environment Plan (LEP) or Development Control Plan (DCP) to ensure that the potential for contamination and the suitability of the land for any proposed use is further addressed prior to the redevelopment of the land.

Council's procedure for considering land contamination issues for **planning proposals rezoning applications** is shown in **Figure 1**.

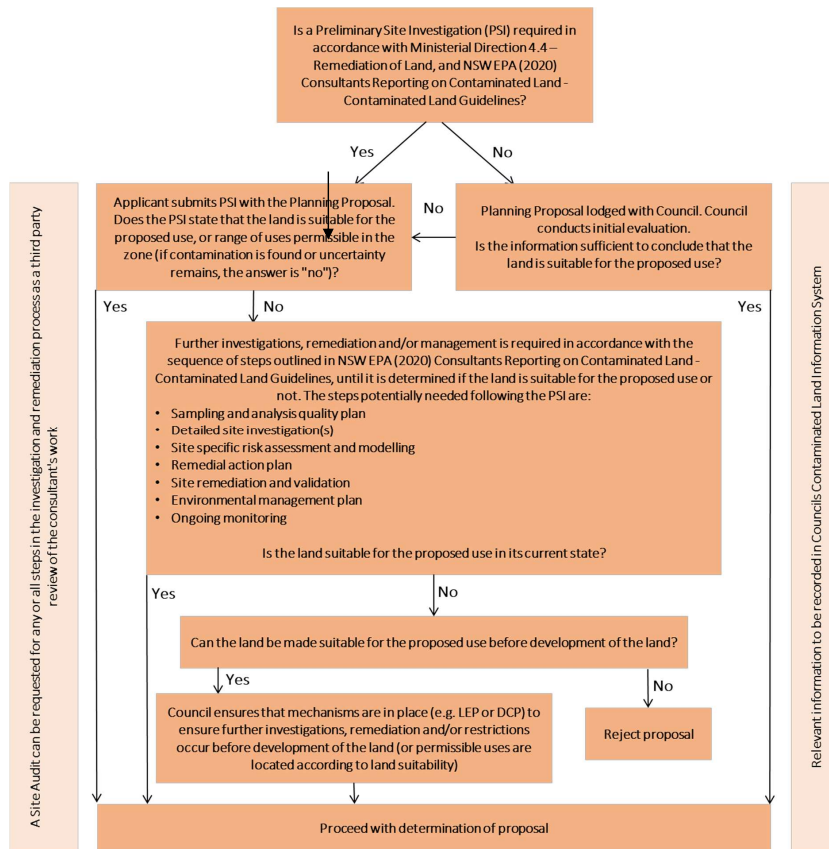


Figure 1: Council Procedure for Considering Land Contamination Issues for Planning Proposals
~~Relevant information to be recorded within Council's Contaminated Land Register.~~

~~2.2.2 Planning Proposals~~

~~When Council receives a planning proposal that covers more than one or a very large property it may be difficult for Council to be satisfied that every part of the land is suitable for the permissible use(s) at the planning proposal stage. In these circumstances Council will consider the findings of the preliminary investigation, and may include provisions in a Local Environment Plan (LEP) or Development Control Plan (DCP) to ensure that the potential for contamination and the suitability of the land for any proposed use is further addressed prior to the redevelopment of the land.~~

2.3 Council procedures for subdivision and development applications

~~Section 4.14 (c) of the EP&A Act From 1 July 1998 Section 79C(1) of the EP&A Act~~ 1979 requires Council to consider "...the suitability of the site for the development" when assessing development applications. The risk from contamination to health and the environment is included in this assessment. In accordance with ~~Clause 4.6 of the Resilience and Hazards SEPP 7(1) of SEPP 55~~, Council will not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated;
- (b) if the land is contaminated, Council is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out; and
- (c) if the land requires remediation to be made suitable for any purpose for which the development is proposed to be carried out, it is satisfied that the land will be so remediated before the land is used for that purpose.

~~The following subsections outline when Council will require information relating to site contamination issues to be submitted with subdivision and development applications. Council's procedure for considering land contamination issues for subdivision and development applications is shown in Figure 2.~~

This relates to where the land concerned is:

1. land that is within an investigation area within the meaning of the CLM Act;
2. land on which development for a purpose referred to in Appendix A to the Planning Guidelines (included as Schedule 1 herein) is being, or is known to have been, carried out;
3. to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital - land;
 - a. in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Appendix A (Schedule 1 herein) to the Planning Guidelines has been carried out; and
 - b. on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

Before determining an application for consent to carry out development that would involve a change of use on any of the land specified above, Council must consider a Preliminary Site Investigation of the land concerned. The applicant for development consent must carry out the Preliminary Site Investigation and must provide a report on it to Council. Council may require the applicant to carry out, and provide a report on, a Detailed Site Investigation if it considers that the findings of the preliminary investigation warrant such an investigation. More investigations and plans may be required in the contaminated land process to determine if the land is, or can be made suitable for the proposed land use prior to giving consent. The potential

steps of the contaminated land process, as outlined in NSW EPA (2020) Consultants reporting on contaminated land - Contaminated Land Guidelines, are:

- **Preliminary site investigation:** The objective of the preliminary site investigation is to assess whether contamination has the potential to exist on the site and whether further investigation is needed. This is done by collecting information on site history, site characteristics, details, and setting from desktop based searches, interviews, and site visits.
- **Sampling and analysis quality plan:** The objective of a sampling and analysis quality plan is to provide the context, justification and details of the selected sampling and analysis approach. This plan should be prepared and agreed to prior to undertaking sampling.
- **Detailed site investigation:** The objective of a detailed site investigation report is to provide more complete and definitive information on issues raised in the preliminary site investigation. The detailed site investigation report must be designed to provide information on the type, extent and level of contamination for the site.
- **Site specific risk assessment and modelling:** The objective of a site-specific risk assessment is to further assess potential for harm to human health and/or the environment from a specific site, where a detailed site investigation has identified contamination above generic criteria, but there is uncertainty as to the actual risks to human health and the environment.
- **Remedial action plan:** The objective of a remedial action plan is to set remediation objectives and document the process to remediate the contaminated site to make it suitable for its proposed land use.
- **Site remediation and validation:** The objective of the site remediation and validation is to demonstrate compliance with the remedial action plan for the site, and compliance with contaminated land guidelines and all other applicable regulatory requirements.
- **Environmental management plan:** The objective of an environmental management plan is to document mitigation measures and/or monitoring requirements, where full clean-up is not feasible, or on-site containment of the contamination is proposed.
- **Ongoing monitoring:** Sometimes ongoing monitoring of one or more media (on- and/or off-site) may be required. In these cases, a monitoring program must be documented detailing the proposed strategy, parameters to be monitored, locations, frequency, decision process for additional actions and for ending monitoring, and reporting requirements.
- **Site Audit Report:** A site audit is a third-party review by an NSW EPA accredited Auditor to provide more certainty in the process and outcomes. A Site Auditor is requested by Council, and costs are born by the proponent.

All investigations and plans are to be carried out in accordance with this Policy, the Planning Guidelines, the National Environmental Protection (Assessment of Site Contamination) Measure 1999 (April 2013), and all guidelines made or adopted by NSW EPA under the CLM Act (see <https://www.epa.nsw.gov.au/your-environment/contaminated-land/statutory-guidelines> and <https://www.epa.nsw.gov.au/your-environment/contaminated-land/non-statutory-guidance-documents>), in particular noting the checklists for the minimum requirements within each step outlined in NSW EPA (2020) Consultants reporting on contaminated land - Contaminated Land Guidelines, or any updates thereof. Unexpected finds protocols may be required during development to address any unknown contamination remaining on site.

The proponent is responsible for engaging a suitably qualified consultant to undertake investigations and prepare plans (Council may require a certified consultant in accordance with

Section 5 of this Policy). Reference should be made to Schedule 2 of this Policy for Council's requirements for consultants reporting on contaminated land. All contaminated land reports provided to Council are required to include a summary report synthesising key findings and recommendations as per Schedule 2.

The following subsections outline when Council will require information relating to site contamination issues to be submitted with subdivision and development applications.

Council's general procedure for considering land contamination issues for subdivision and development applications is shown in Figure 2.

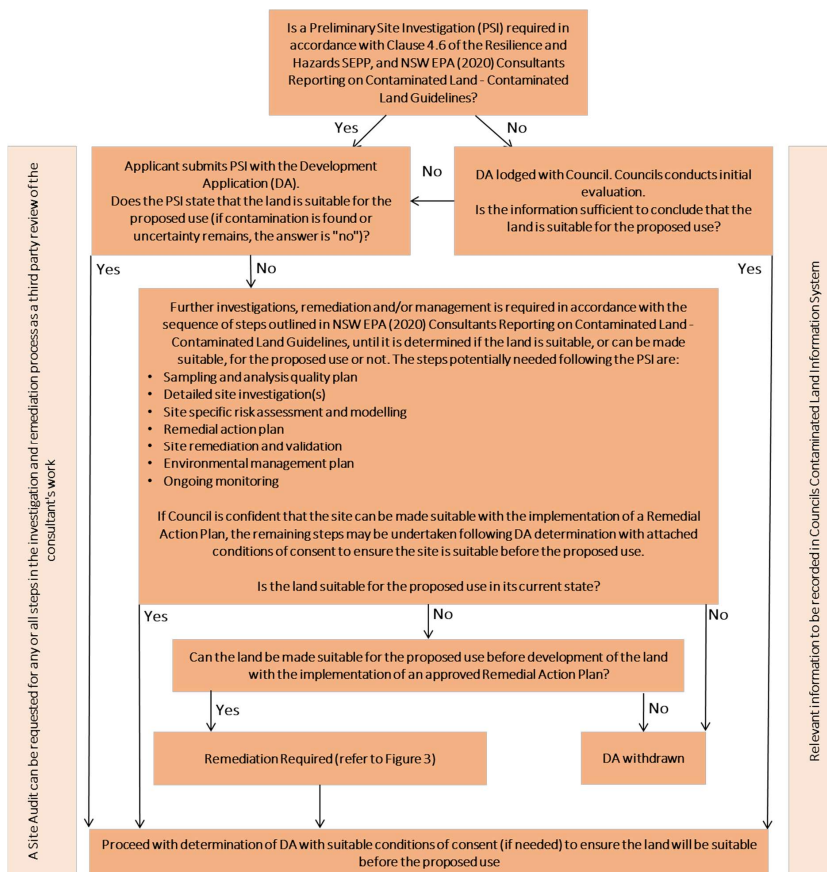


Figure 2: Council Procedure for Considering Land Contamination Issues for Subdivision and Development Applications

*Relevant information to be recorded within Council's Contaminated Land Register.
SOURCE: SSROC (1999) Model Policy on Contaminated Land*

2.3.1 Special considerations

Council has determined situations and types of historical uses or contamination types that requires special considerations. Those are

Large rural holdings

On a large rural holding it may be appropriate to assess only the area proposed for residential land use (i.e. the building envelope and curtilage). In these cases, the area to be used for residential purposes must be determined and an assessment of at least 2000m² must be undertaken using the minimum sampling densities (vertical and horizontal) specified in NSW EPA (2022) Sampling Design Part 1 – Application and Part 2 – Interpretation, and other relevant guidance made or approved by the NSW EPA. Where portion only of a site is investigated that portion needs to be identified accurately and be reproducible at any time in the future. Generally, this will require a land survey or an approved site plan.

On small parcels of ≤2000m² the sampling strategy should address the total site area as the site would be dominated by a residential use.

Pre-demolition under slab pesticides testing

Chemical treatment using organochlorine pesticides beneath structures as a barrier for termites was a method that was used extensively from prior to the 1960's until the use of such pesticides was banned around July 1995. Where chemical treatment involving the use of organochlorine termiticides to the soil material beneath the structure may have been carried out, requirements to assess the potential for contamination will form part of determining any development applications to demolish a structure and soil sampling may be required following demolition works to remove the slab.

Lead paint around residential buildings

When managing lead contamination in soil around a residential building, it is advisable to deal with the source (e.g. the paint on the building) first to avoid recontamination of the soil at a later stage.

Lead contamination can be assessed in accordance with the NSW EPA adopted guidelines for assessing contaminated land. However, it should also be noted that where lead from paint is the only contaminant of concern and soil is to be removed off a site, it is pre-classified in accordance with the NSW EPA (2014) Waste Classification Guidelines – Part 1: Classification of waste. The guideline provides a stepwise approach to classifying waste. Step 3 is to determine if the waste is pre-classified by the NSW EPA. Under this section, "waste contaminated with lead (including lead paint waste) from residential premises or educational or child care institutions" is pre-classified as 'general solid waste (non-putrescible)', unless the material has been classified special waste, liquid waste, hazardous waste, restricted solid waste or general solid waste (putrescible) for other reasons.

Radiation from mineral sand mining

Various land parcels within the Ballina Shire Council area have been the subject of historical sand mining activities. These activities may have led to the concentration of naturally occurring radioactive materials (NORM) in some areas. In these instances, investigation and possibly remediation is required before the land can be subdivided or developed.

The land owner must engage an environmental consultant specialising in radiation and contaminated land, to investigate the site (generally surface and depth levels). Where radiation levels exceed relevant criteria, the land shall be remediated and validated prior to development.

Council may require any site assessment, remediation action plan and site validation to be reviewed by an NSW EPA accredited site auditor. Any person who wishes to develop land which may have been the subject of sand mining will need to consider this issue.

Information and requirements relating to assessment, remediation and validation can be found on Council's factsheet.

NORM may exist in areas already developed. Such sites will require assessment and remediation if redeveloped, or if earthworks are undertaken (for example to install a swimming pool). If any material is moved from the Site, it must be done in accordance with waste classification guidelines, be appropriately tracked, and disposed of at a licenced facility.

Banana Plantations

Soil surveys in the Coffs Harbour region of New South Wales conducted by New South Wales Agriculture in 1991-1992 revealed potential contamination by residual pesticides, principally arsenic and dieldrin, in land that had been used for banana cultivation. For redevelopment of sites with a history of banana plantation, NSW EPA (1997) "Guidelines for assessing banana plantation sites" must be followed, as well as other relevant guidelines presented on the NSW EPA website.

Underground Petroleum Storage Systems

Underground Petroleum Storage Systems (UPSS) refers to the entire system of underground tanks, pipes, valves and other equipment designed to store and handle petroleum products. UPSS can leak and contaminate surrounding land and groundwater, creating risks to human health and the environment.

UPSS are most common at service stations but may be found where fuel is used, for example at marinas, work depots, airports, car dealerships, or government facilities. Operators of UPSS must have systems in place to prevent, report, and fix leaks if they happen. Council is the regulator for almost all UPSS in NSW.

In NSW, the Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019 describes how UPSS are managed and regulated. The NSW EPA website also presents several guidance documents and factsheets outlining how UPSS are to be decommissioned, installed, monitored and modified. The guidance documents include NSW EPA (2023) "Contamination assessment of service station sites - Minimum sampling requirements", which must be followed when assessing service station sites.

Cattle tick dips

Many cattle tick dip sites are contaminated due to past use of arsenic and DDT. Arsenic was used as the tickicide in the dip solution up until 1955 when the ticks became resistant to it. DDT, an organochlorine was then used until it too became ineffective in 1962. Since 1962 other much less persistent tickicides have been used to dip cattle. Although the use of DDT was banned in 1985, arsenic and DDT can still be found at high levels in the soil beside many dip baths today because they are very persistent compounds.

There are 1,648 dip sites scattered throughout the far North Coast of NSW. To assist in the recognition of these old dip sites, whether they remain standing, are dilapidated or have been destroyed, a register of known cattle dip sites in that region is maintained by the NSW Department of Primary Industries (DPI).

Cattle tick dips must be assessed in accordance with Guidelines for the Assessment and Cleanup of Cattle Tick Dips for Residential Purposes (1996), [which is available on Council's website COUNCILS CAN UPLOAD A PDF OF THE GUIDELINE ON THEIR WEBSITE IF CONSIDERED BENEFICIAL AS IT IS DIFFICULT TO ACCESS FROM OTHER SOURCES] and other relevant guidelines endorsed by the NSW EPA. The guidelines explain the layout of a dip site, the process typically followed at a dip site, what contamination may be present, and where contamination is likely to be found. The consultant and auditor (if needed) appointed must have experience in cattle tick dip assessment and remediation.

Situations that require a site audit

Some types of contamination and sources will always require a site audit (see further information on site audits in Section 5) within Ballina LGA. These are

- Cattle tick dip sites changing use to a sensitive land use (residential, child care etc)
- Sites with Underground Petroleum Storage Systems (UPSS)
- Sites where an ongoing environmental management plan will be in place following assessment and remediation.

Composite sampling

Composite sampling of soils involves mixing several discrete samples or sub-samples of soil to form one composite sample for analysis. As described in the NSW EPA (2022) Sampling design part 1 – application, composite samples should only be used in former orchards and market gardens as described in DEC (2005), Contaminated sites: Guidelines for assessing former orchards and market gardens.

Composite samples cannot be used for validation sampling purposes.

The maximum number of discrete samples that are allowed is four (ASC NEPM, 2013). To ensure they are representative of similar materials, samples must be collected from the same stratigraphic unit and from no further apart than 20 m. Subsamples for compositing should not be collected where there is spatial or temporal variability.

In principle, the concentration of the composite sample represents the average of the sub-samples. As a consequence, a sub-sample that contains a high concentration of contaminant can remain undetected due to the dilution effect of the compositing process if used inappropriately. Where composite sampling has been used, the relevant assessment level should be divided by the number of sub-samples in the composite and compared with the laboratory result (as described in schedule B2 of ASC NEPM, 2013). It is important to check that the assessment level, when divided by the number of samples, is higher than the laboratory limit of reporting (LOR) prior to using this sampling method.

Composite sampling also has the following limitations:

- It cannot be used to assess pH, or volatile or semi-volatile contaminants including Total Recoverable Hydrocarbons (TRH), Benzene, Toluene, Ethylbenzene, Xylene and Naphthalene (BTEXN), Organochlorine Pesticides (OCPs), Organophosphate Pesticides (OPP) and low molecular weight Polycyclic Aromatic Hydrocarbons (PAHs). As a result, a good understanding of the site history and the contaminants of potential concern (CoPC) are necessary for adopting a composite sampling approach
- Composite sampling is not suitable for clay or fine-grained soils, as subsamples are difficult to mix adequately.

2.3.2 When does Council require a Preliminary Site Contamination Investigation (PSI or Stage 1)?

~~The objectives of~~ A preliminary investigation ~~is~~ are to:

- identify any past or present potentially contaminating activities
- to provide a preliminary assessment of site contamination, **included in a Conceptual Site Model**
- identify potential contamination types
- assess **if the site is suitable for the proposed land use or if there is a need for further investigations** ~~the need for further detailed investigations.~~

~~Where contaminating activities (example – activities listed in Appendix “A” of the guidelines) are suspected to have or had the potential to impact upon the land, sampling and analysis is likely to be required to confirm and support any conclusion reached from the site history appraisal.~~

~~Note: On a large rural holding it may be appropriate to assess only the area proposed for residential land use (ie the building envelope and curtilage). In these cases the area to be used for residential purposes should be determined and an assessment of at least 2000m² should be undertaken using the minimum sampling densities specified in Table A of Contaminated Sites: Sampling Design Guidelines, EPA (1995), and other relevant guidance made or approved by the NSW EPA. Where portion only of a site is investigated that portion needs to be identified accurately and be reproducible at any time in the future. Generally this will require a land survey.~~

~~On small parcels of <=2000m² the sampling strategy should address the total site area as the site would be dominated by a residential use.~~

The required information sources to be used as a basis for the investigation are outlined in NSW EPA (2020) Consultants reporting on contaminated land - Contaminated Land Guidelines, which also refer to the NEPM toolkit “Site Characterisation” field checklist for the full list of information sources (available in an excel spreadsheet on the NEPM toolkit webpage). Applicants may also request Council perform a search of its records to identify previous developments approvals for the site.

Prior to commencing an investigation, refer to Section 2.3.1 of this policy for special considerations and requirements in certain scenarios (in particular for large rural holdings).

A Preliminary Site Investigation may include sampling and analysis if considered beneficial, for example to inform further investigations. However, the steps of the NSW EPA (2020) Consultants reporting on contaminated land - Contaminated Land Guidelines are to be followed to conclude if the site is suitable for the proposed land use. Hence, limited sampling as part of a Preliminary Site Investigation will not be accepted as a basis for conclusions regarding land use suitability where a Detailed Site Investigation should have been triggered in accordance with the guidelines.

~~In accordance with Clause 7(4) of SEPP 55 Council will require a preliminary investigation to be submitted with a subdivision or development application where the land concerned is:~~

- ~~(a) —land that is within an investigation area;~~
- ~~(b) —land on which development for a purpose referred to in Appendix “A” to the contaminated land planning guidelines is being, or is known to have been, carried out;~~

- ~~(c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital land;~~
- ~~(i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Appendix "A" to the contaminated land planning guidelines has been carried out; and~~
- ~~(ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge);~~

~~NOTE: Appendix "A" in the Managing Land Contamination Planning Guidelines 1998, Department of Urban Affairs and Planning & NSW Environment Protection Authority which is reproduced in Schedule 1 of this Policy.~~

In addition to the requirements outlined in Clause **4.6 of the Resilience and Hazards SEPP 7(4) of SEPP 55**, Council will also require a preliminary investigation to be submitted when:

1. Council has reasonable grounds to believe the land is contaminated because of the land's history, condition, or other information known to Council
2. The site has been investigated and/or remediated but there is insufficient information available about the nature and extent of contamination and/or remediation, or the circumstances have changed
3. There are restrictions on, or conditions attached to, the use of the site by a regulatory or planning authority that are, or may be, related to contamination, but there is insufficient information available about the nature and extent of contamination
4. Council records have demonstrated that the site is associated with pollution incidents or illegal dumping of wastes
5. The site is adjoining land that has been associated with activities that may cause contamination listed in Schedule 1 and it is likely that this may have contaminated the subject premises
6. The development works will disturb and/or expose soils (generally under slab) previously treated with organo-chlorines associated with termite management practices or potentially contaminated with asbestos.

~~The preliminary site contamination investigation shall be carried out in accordance with the requirements of the National Environmental Protection (Assessment of Site Contamination) Measure 1999 (April 2013) and relevant guidelines made or approved by NSW EPA in accordance with the CLM Act (www.environment.nsw.gov.au/clm/management). The proponent is responsible for engaging a suitably qualified consultant to undertake the preliminary site contamination investigation. Reference should be made to **Schedule 2** of this Policy for Council's requirements for Consultants reporting on contaminated land.~~

~~A list of information sources that may be useful in understanding the history of the site is included in **Schedule 3** of this Policy. Applicants may also request Council perform a search of its records to identify previous developments approvals for the site.~~

If Council is satisfied that the preliminary site contamination investigation justifiably concludes that the site is suitable for the proposed use, then Council will not require any further investigations to be conducted.

2.3.3 When does Council require a Detailed Site Contamination Investigation (DSI or Stage 2)?

~~The objectives of~~ A detailed site investigation **is** ~~are~~ to:

- Provide comprehensive information on the issues raised in the preliminary **site** investigation
- Fully characterise the type(s) and level(s) of contamination and the lateral and vertical extent both on and off site
- **Include a updated Conceptual Site Model**
- Assess the potential risk posed by contaminants to human health and the environment
- **Include a statement as to whether or not the site is suitable for the proposed land use, or can be made suitable with remediation**
- Obtain sufficient information for the development of a Remedial Action Plan (if necessary).

A Sampling and Analysis Quality Plan is to be agreed on prior to undertaking a Detailed Site Investigation.

Council will require a detailed site investigation to be undertaken when the results of the preliminary investigation demonstrate the potential for, or existence of contamination which may not be suitable for the proposed use of the land, or where Council is not satisfied with the content/completeness of the preliminary investigation. ~~In some cases Stage 1 and Stage 2 investigations may be combined where the land is known to contain or have contained a potentially contaminating activity.~~

Several investigations may be included at this stage of the process to determine if the site is or can be made suitable for the proposed land use. These can be (for example) Site Specific Risk Assessments, modelling, and delineation of identified contamination.

~~The detailed site contamination investigation shall be carried out in accordance with the requirements of the National Environmental Protection (Assessment of Site Contamination) Measure 1999 (April 2013) and relevant guidelines made or approved by NSW EPA in accordance with the CLM Act. The proponent is responsible for engaging a suitably qualified consultant to undertake the investigation, and for all costs associated with this engagement. Refer to Schedule 2 of this Policy for Council's requirements for consultants reporting on contaminated land.~~

~~The detailed site contamination investigation shall include a statement that describes whether the site is suitable for the proposed use, or if remediation is necessary to make the site suitable for the proposed use. If remediation is required, the report should list the feasible remediation options available to remediate the site.~~

2.3.4 When does Council require a Remedial Action Plan (RAP or Stage 3)?

~~The objectives of~~ A Remedial Action Plan (RAP) ~~is~~ **are** to:

- set remediation objectives
- **List feasible remediation options and determine the most appropriate remedial strategy**
- **Consider Sustainable Remediation in accordance with Australian Standard (AS ISO 18504:2022 Soil quality – sustainable remediation)**
- **Include pre -, and post - remediation Conceptual Site Models**
- **Include a statement as to whether or not the site can be made suitable for the proposed land use with the implementation of the Remedial Action Plan**
- ~~determine the most appropriate remedial strategy~~
- identify necessary approvals that need to be obtained from regulatory authorities.

The RAP should document the remedial works to be undertaken at the site and also contain an environmental management plan and occupational health and safety plan for the remedial works.

Prior to determining development applications, Council must be satisfied that remedial measures have been, or will be, undertaken in accordance with the submitted RAP, to make the site suitable for the proposed use.

If the remediation proposed is Category 1 (ie remediation work that requires Council development consent), Council may:

- Require the applicant to amend the Development Application (DA) (if already submitted), to include a RAP
- Require a new separate DA for the remediation works before final use of the site is approved.

If the proposed remediation is category 2 (ie remediation work that does not require consent), Council may:

- Impose conditions on the development consent for the use, requiring remediation to be carried out and validated either before works commence or before occupation of the site
- Issue a deferred commencement consent for the use of the site, and require remediation to be carried out and validated before the consent commences and other works can occur.

In accordance with clause 4.14 (c) of the Resilience and Hazards SEPP 47 of SEPP 55, all category 1 remediation work must be carried out in accordance with a RAP approved by Council and prepared in line with the CLM Act, any guidelines made or adopted by the NSW EPA and the planning guidelines.

~~Depending on the outcomes of remediation works Council may require a restriction to the title of the land under section 88B of the Conveyancing Act to require ongoing management or monitoring and to notify future owners.~~

2.3.5 When does Council require a **Stage 4 Validation and monitoring Report (Stage 4 Report)**?

~~The purpose of~~ A validation ~~and monitoring~~ report is to:

- demonstrate that the objectives of the RAP have been achieved, any conditions of development consent have been complied with or whether any further remediation work or restrictions on land use are required
- provide evidence confirming that all NSW EPA, WorkSafe and other regulatory authorities licence conditions and approvals have been met
- Identify the need for continued monitoring in situations where clean-up is not feasible or on-site containment of contamination has occurred
- **Include a post remediation Conceptual Site Model**
- ~~the provision of~~ **Include** a clear statement on the suitability **of the site** for the proposed ~~site~~ **land use and refer to any restrictions and management plans that may apply.**

Ideally, validation should be conducted by the same consultant that conducted the site investigation and remediation process. Validation must confirm statistically that the remediated site complies with the remediation objectives set for the site. Council will require a Validation ~~and monitoring~~ Report to be submitted after remediation works have been completed, and prior to the commencement of building construction works. This will normally be achieved by Council placing a condition on any consent granted, requiring the submission of a Validation Report prior to the issuing of a construction certificate. This would be the case for small scale development sites involving straight forward issues.

Alternatively, Council may issue deferred commencement consent for the proposed use, requiring that remediation and validation is undertaken prior to the consent commencing. In considering a deferred commencement consent Council would need to be satisfied that the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out.

If demolition is required prior to a detailed assessment or remediation being possible, approvals will be carefully conditioned to accommodate the staging of works and contamination assessment and remediation.

***Note:** Council will record all information gained through the investigation process via the Contaminated Land Register. This will be done even if reporting concludes contamination matters are not restrictive to the proposed land use.*

2.3.6 **Environmental management plan and monitoring**

Where full clean-up is not feasible and contamination remains on site, or on-site containment of the contamination is proposed, an ongoing Environmental Management Plan (OEMP) should be prepared. The OEMP should include any ongoing monitoring requirements and document mitigation measures and/or monitoring requirements in accordance with NSW EPA (2020) Consultants reporting on contaminated land - Contaminated Land Guidelines, and NSW EPA (2022) Preparing Environmental Management Plans for Contaminated Land.

The NSW EPA (2022) Preparing Environmental Management Plans for Contaminated Land, states that "An environmental management plan for contaminated land should not be finalised without identifying and considering – with input from affected stakeholders – the legal mechanism intended to make it enforceable." Some potential mechanisms to do so are identified in the NSW EPA (2022) document as follows:

1. **Conveyancing Act 1919 (Conveyancing Act) – restrictions or public positive covenants on land (which run with the land), which:**
 - a. can be imposed by a prescribed authority (including EPA and Council) on any land not vested in the authority, with landowner consent (section 88E)
 - b. may be created by deed of agreement between private parties owning land (section 88)
2. **CLM Act – ongoing maintenance orders (section 28)**
3. **EP&A Act – development consent conditions (section 4.17)**
4. **Work Health and Safety Regulation 2017 – asbestos management plan (Part 8.3, cl 429).**

The legal enforceability mechanisms for an OEMP must be discussed with Council.

Depending on the outcomes of remediation works, and type of restriction needed, Council may require a restriction to the title of the land under section 88B of the Conveyancing Act to enforce ongoing management or monitoring and to notify future owners.

Council may not agree to accept an OEMP that places undue costs or responsibility on it or on future site owners, occupiers or owners corporations. For example, Council may not agree to the OEMP specifying active management systems that will require future site owners, occupiers or owner's corporations to carry out substantial maintenance and monitoring.

2.3.7 Duty to report

The duty to report contamination to the NSW EPA is a requirement under the Contaminated Land Management Act 1997. The following people are required to report contamination as soon as practical after they become aware of any contamination that meets the triggers for the duty to report (outlined in NSW EPA (2015) Guidelines on the Duty to Report Contamination under the Contaminated Land Management Act 1997):

- Anyone whose activities have contaminated land
- An owner of land that has been contaminated.

It should be noted that although the above people have the duty to report contamination, anyone can at any time report suspected contamination to the NSW EPA. Where Council considers that contamination on a site triggers the duty to report contamination, and it is not clear if the polluter or site owner has reported the contamination, it may notify the EPA for possible action under the CLM Act.

3.0 Council's Requirements for Remediation Work

The Resilience and Hazards SEPP 65 specifies when consent is required, and when it is not required for remediation work. Remediation work that requires development consent is known as category 1 work. All remediation work not requiring development consent is known as category 2 work. The following section defines category 1 and category 2 remediation works and outlines the site management provisions for category 2 remediation work.

In accordance with Clause 4.8(f) of the Resilience and Hazards 9(f) of SEPP 55, remediation work that is not carried out in accordance with the site management provision contained in Section 4 3.2.4 of this policy is category 1 remediation work which requires Council consent.

Council's procedure for considering site remediation proposals is shown in Figure 3. Category 1 and category 2 remediation work must be:

8.4 Policy (Review) - Contaminated Land Management

- consistent with the Managing Land Contamination - Planning Guidelines
- carried out in accordance with guidelines made or approved by NSW EPA in accordance with the CLM Act.

Council's procedure for considering site remediation proposals is shown in Figure 3.

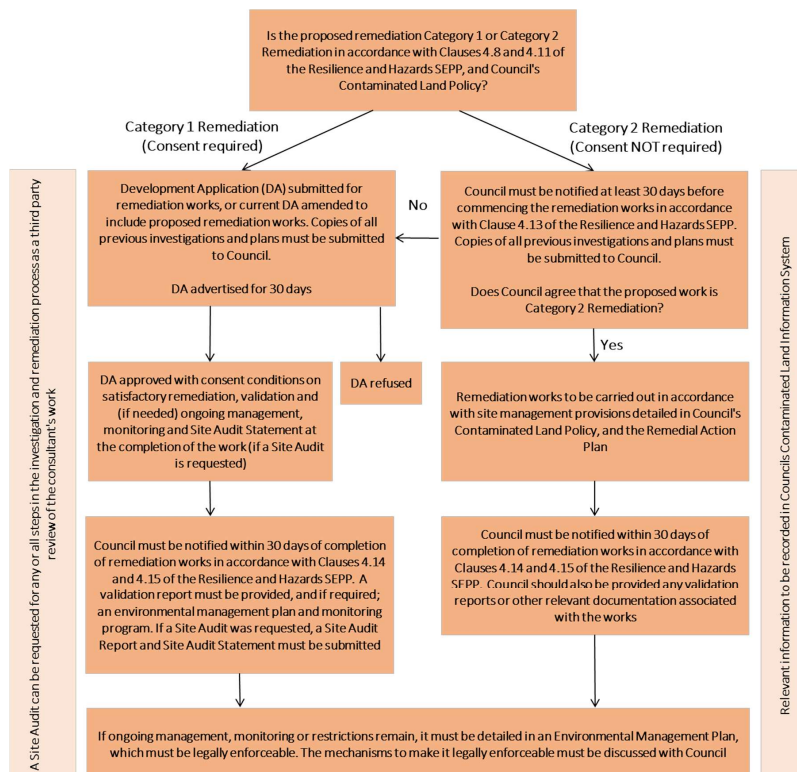


Figure 3. Council's Procedure for Considering Site Remediation Proposals (updated from SSROC (1999) Model Policy on Contaminated Land)

3.1 Category 1 Remediation Work

Category 1 remediation work, as defined in Clause 4.8 9 of the Resilience and Hazards SEPP 55, is work that requires Council consent. Category 1 remediation work is advertised development unless the remediation work is designated development or State Significant Development. All category 1 remediation work must be advertised for 30 days in accordance with the pursuant to Section 29A of the EP&A Act.

The exact definition of category 1 remediation work is complicated, and interested persons should refer to Clauses 9 4.8 and 14 4.10 of the Resilience and Hazards SEPP 55. In general, category 1 remediation work comprises remediation work that is:

- designated development

- carried out on critical habitat declared under the Threatened Species Conservation Act 1995 or the Fisheries Management Act 1994
- likely to have a significant effect on critical habitat or a threatened species, population or ecological community declared under those Acts
- carried out within any of the following zones under an Environmental Planning Instrument
 - coastal protection
 - conservation or heritage conservation
 - habitat area, habitat protection area, habitat or wildlife corridor
 - environment protection
 - escarpment, escarpment protection or escarpment preservation;
 - floodway
 - littoral rainforest
 - nature reserve
 - scenic area or scenic protection
 - wetland.
- the subject of a remediation order under the CLM Act 1997, and required to be commenced before the expiry of the usual appeal period for such an order
- carried out in a manner that is not consistent with this Policy.

Note: See section 5A of the EP&A Act for the factors to be considered in assessing whether there is likely to be a significant effect as referred to in paragraph (c) above. The terms used in that paragraph are defined in that Act by reference to both the Threatened Species Conservation Act 1995 and the Fisheries Management Act 1994.

If remedial works constitute category 1 remediation work, the applicant may either amend a current application to include a remediation proposal (if applicable) or lodge a new and separate development application for remediation works.

3.2 Category 2 remediation work

Category 2 remediation work is all remediation work that is not category 1 remediation work. In accordance with Clause 4.13 46 of the Resilience and Hazards SEPP 55, prior notice of category 2 remediation work to Council is required at least 30 days before commencement of works. In addition to the information that must be submitted to Council in Clause 4.13(3) 46(3) of the Resilience and Hazards SEPP 55, Council will require the following information to be submitted at least 14 days prior to the commencement of category 2 remediation works for its records, information and category classification:

- Copies of the Preliminary Investigation, Detailed Investigation and Remedial Action Plan for the subject site
- Contact details for the remediation contractor and party responsible for ensuring compliance of remediation work with all relevant regulatory requirements.

Remediation work that is not carried out in accordance with the site management provision contained in Section 4 of this policy is category 1 remediation work which requires Council consent.

Although consent is not generally required for category 2 remediation work, Council will need to be satisfied that the site is suitable for the proposed use when considering any subsequent development applications for the site. Therefore, it is recommended that comprehensive records are maintained during the remediation and validation works for all sites.

~~Figure 3: Council Procedure for Considering Site Remediation Proposals~~

8.4 Policy (Review) - Contaminated Land Management

Ballina Shire Council

(REVIEW) Management of Contaminated Land Policy

~~Relevant information is to be recorded within Council's Contaminated Land Register.
SOURCE: SSROC (1999) Model Policy on Contaminated Land~~

4.0 Site Management – Category 2 Remediation

Council has identified a number of site management provisions for any category 2 remediation works to ensure these works do not adversely impact on the environment or public amenity. These provisions are to be incorporated into the site Remedial Action Plan RAP. All category 2 works shall be conducted in accordance with the provisions listed below unless otherwise approved by Council in writing. These provisions apply to the entire Council Local Government Area.

Development applications lodged for category 1 remediation works should identify any areas of non-compliance with these provisions and identify any alternative site management measures to be implemented.

NOTE: It is the responsibility of those remediating a site to ensure compliance with all relevant environmental legislation and regulations. Compliance with the site management provisions outlined below does not imply that all relevant environmental legislation and regulations have been complied with. Proponents shall at all times comply with the provisions of the POEO Act 1997. Non-compliance with the relevant legislation (i.e. POEO Act or EP&A Act) will be managed in accordance with Council's Enforcement Policy and associated Compliance and Enforcement Guidelines.

~~Non-compliance with the relevant legislation i.e. POEO Act or EP&A Act may result in the issue of Penalty Infringement Notices (PINs) of up to \$9,000 for minor breaches, or court imposed penalties of up to \$1,000,000 for more serious breaches.~~

4.1 Site Management Provisions

4.1.1 Legislation and Guidelines

All remediation work must comply with the requirements of:

- The Contaminated Land Management Act 1997
- The Managing Land Contamination Planning Guideline 1998
- ~~SEPP 55 Remediation of Land~~ State Environmental Planning Policy (Resilience and Hazards) 2021
- The Protection of the Environment Operations Act 1997

4.1.2 Remediation Proposal

The remediation works shall be carried out in accordance with the Council approved RAP. Council shall be informed of any variations to the proposed remediation work.

4.1.3 Site Validation

Council must be provided with information regarding the validation of the site within one month of completion of the remediation works. This notification should take the form of a Validation Report in accordance with the Consultants reporting on contaminated land - contaminated land guidelines (NSW EPA 2020) and may address the following issues;

- Description and documentation of all works undertaken
- Include results of validation testing and monitoring
- Outline how all clean-up criteria and relevant legislation has been complied with
- Determine the suitability of the site for the current or proposed use of the site.

4.1.4 Discovery of additional information during remediation

Council must be notified of any new information that comes to light during remediation that has the potential to alter previous conclusions regarding site contamination.

Unexpected finds

It is always possible that contamination has been missed, and unexpected finds during site remediation are common. A RAP should therefore include an unexpected finds protocol that specifies what action should be taken when this occurs.

Where during works, unexpected contamination is discovered, all works in that area must stop and a contaminated land consultant advised of the find. Category 2 works may only recommence after the consultant has assessed the land and determined if it requires remediation, and if so, how it should be conducted.

Council should be notified within 2 days of unexpected finds that are category 1 works or if the RAP does not address the remediation of the category 2 unexpected find discovered. A development application must be lodged if the unexpected finds are identified as category 1 works with a revised RAP submitted to address the unexpected find.

Archaeology discovered during excavation

If any object of interest due to its age or association with the past is uncovered during the work:

- all work must stop immediately in that area, and
- the Environment, Energy and Science division of the Department of Planning, Industry and Environment must be advised of the discovery.

Note: Depending on the significance of the object uncovered, an archaeological assessment and excavation permit under the Heritage Act 1977 may be required before further work can continue.

Aboriginal objects discovered during excavation

If an Aboriginal object (including evidence of habitation or remains) is discovered during the work:

- all excavation or disturbance of the area must stop immediately, and
- the person making the discovery must advise the Chief Executive (within the meaning of the National Parks and Wildlife Act 1974) of the discovery in accordance with section 89A of that Act.

Note: If an Aboriginal object is discovered, an Aboriginal heritage impact permit may be required under the National Parks and Wildlife Act 1974.

4.1.5 Hours of Operation

All **noisy** remediation work (including the delivery/removal of materials or equipment) shall be conducted within the following hours:

Monday - Friday 7am - 6pm
Saturday 8am - 1pm

No noise generating activities are to take place on Sundays or Public Holidays

4.1.6 Services within the remediation area

Any drains, sewers or water services must be disconnected and sealed at the boundary of the remediation area by a licenced plumber, in accordance with the requirements of the relevant authority. For any underground excavation, a dial before you dig query must be submitted to

establish any underground utilities and services. Where dial before you dig does not extend into the site boundary a service locator should be engaged to identify any potential service locations within the remediation area.

4.1.7 Earthworks, retaining walls and structural support

Any excavation must be carried out in accordance with Excavation Work: Code of Practice (SafeWork NSW 2015), or subsequent revisions of that code.

Any excavation left open overnight or when the site is unattended must be individually fenced with barrier mesh.

4.1.8 Soil and Water Management

All remediation works shall be conducted in accordance with a site-specific soil and water management plan prepared in accordance with the requirements of the Managing Urban Stormwater – Soils and Construction, LANDCOM, March 2004. The plan should aim to segregate and manage both contaminated and non-contaminated areas in a manner that minimises the potential dispersal of contaminants and any cross-contamination of contaminated and non-contaminated materials.

In most cases standard erosion and sediment control requirements will be inadequate for managing contaminated soils and water. A copy of the RAP and the soil and water management plan shall be kept on-site and made available to Council Officers on request.

All erosion and sediment control measures must be maintained in a functional condition throughout the remediation works.

A summary of the soil and water management measures for category 2 remediation work in relation to stockpiles, site access, excavation pump out, landscaping/rehabilitation and bunding are discussed below.

Acid Sulfate Soils

Where remediation work involves the excavation of soil the proponent shall consult Council's LEP and provisions relating to acid sulfate soils and associated acid sulfate soils map to determine whether development consent is needed and assess whether a preliminary assessment of the potential for acid sulfate soil is required.

If acid sulfate soils are present it should be noted that there is potential for compounding effects through acid leachate mobilising heavy metals that may be present in the contaminated material and this should be addressed within a site specific **Acid Sulfate Soil & Water** Management Plan. A copy of the plan shall be kept on-site and made available to Council Officers on request.

Flooding

Where remediation work involves the excavation of soil the proponent shall consult Council's flood mapping. Where works are proposed to be undertaken within an area identified by Council as having the potential to be impacted by flood waters (inundation) such works shall only be undertaken where a site-specific Soil & Water Management Plan identifies the flooding risk and nominates responsive actions to such potential site inundation. A copy of the plan shall be kept on-site and made available to Council Officers on request.

Stockpiles

Stockpile management should ensure it does not cause any contamination of underlying soils. Stockpiles of potentially contaminated soil should be placed on hardstand or otherwise on polyethylene sheeting.

No stockpiles of soil or other materials shall be placed on footpaths or nature strips. All stockpiles of soil or other materials shall be placed away from drainage lines, gutters, storm water pits and inlets. All stockpiles of soil or other materials likely to generate dust or odours shall be covered. All stockpiles of contaminated soil shall be stored in a secure area and be covered if remaining more than 24 hours. Stockpiling of contaminated materials requires special measures to manage the generation of leachate, runoff, vapours, odours and air borne particulates (discussed below).

Stockpiles should be clearly labelled with a unique identification number and a record of the volume and origin of soil to enabling tracking of soils from excavation to final disposal or re-use on site.

Site Access

~~Vehicle access to the site shall be stabilised to prevent the tracking of sediment onto the roads and footpath. Soil, earth, mud or similar materials must be removed from the roadway by sweeping, shoveling, or a means other than washing, on a daily basis or as required. Soil washings from wheels shall be collected and disposed of in a manner that does not pollute waters. Measures for the collection, treatment and disposal of contaminated vehicle wash down waters are to be included in the site specific soil and water management plan.~~

Dewatering - Excavation / Groundwater Pump-Out

Water must not be allowed to accumulate in any excavation, but must be removed by pumping. Excavation pump-out water must be transported to an appropriately licenced facility for disposal or discharged to sewer under a trade waste agreement.

Only clean and unpolluted waters are to be discharged to Council's storm water system or any watercourse. Any discharge must satisfy the provisions of the POEO Act 1997. Prior to any dewatering commencing a Dewatering Management Plan shall be submitted to and approved by Council.

All pump-out water must be analysed for suspended solid concentrations, pH and any contaminants of concern identified during the detailed site investigation. The analytical results must comply with the relevant NSW EPA and ANZECC standards for water quality for discharge to storm water. If necessary, the water shall be treated prior to discharge. If the water quality does not comply with the identified criteria can not be discharged to storm water. Alternative arrangements for the disposal of water shall be provided if necessary ie off-site disposal by a licensed liquid waste transporter for treatment/disposal to an appropriate waste treatment/processing facility.

Dewatering may require a licence from the NSW Office of Water (at the time of document revision licences were required if the volume of dewatering exceed 3 mega litres).

Groundwater

Any contamination assessment, carried out in accordance with the requirements of the relevant Guidelines made or approved by NSW EPA in accordance with the CLM Act, shall address the potential for contamination of groundwater at the site.

Any work below the water table may require a licence from the Department of Primary Industries - Office of Water. These works include bores for water supply, testing and

monitoring, and any dewatering or extraction. If the groundwater at the site is found to be contaminated, Council, the Department of Primary Industries - Office of Water and the NSW EPA are to be notified.

Landscaping / Rehabilitation

All exposed areas shall be progressively stabilised and revegetated on the completion of remediation works. Large exposed areas will require the application of a sterile hydromulch, and repeat applications may be required if the seed does not germinate within 14 days.

Appropriate measures must be adopted to safeguard protected trees and generally protect vegetation during remedial works.

Where it is proposed to undertake works within the canopy drip line of a protected tree (being a tree that requires a permit or development consent for pruning or removal), then the advice of an arborist must be sought on suitable protection measures and those measures must be implemented.

Bunding

Any area used for the remediation of contaminated soils shall be banded to contain surface water runoff & run on and designed and constructed as to prevent the leaching of contaminants into the subsurface/groundwater. All surface water discharges from the banded areas to Council's storm water system shall not contain detectable levels of the contaminants of concern and must comply with the relevant NSW EPA and ANZECC standards for water quality. Any discharge must satisfy the provisions of the POEO Act 1997.

4.1.9 Noise and vibration

~~Remediation works shall comply with the NSW EPA's Industrial Noise Policy and Interim Construction Noise Guideline.~~

Remediation works must be carried out in such a way as to minimise disturbance to neighbours and other members of the public. In any event noise levels, should be maintained below the maximum levels specified in Australian Standard AS 2436 - Guide to noise and vibration control on construction, demolition and maintenance sites, the Protection of the Environment Operations (Noise Control) Regulation 2017 and the EPA's Interim Construction Noise Guideline 2009.

All equipment and machinery shall be operated in an efficient manner to minimise the emission of noise on adjoining properties. The use of any plant and/or machinery shall not cause vibrations in excess of the relevant NSW EPA guidelines and Australian Standards, on any premises.

4.1.10 Air Quality

Dust Control

Dust emissions shall be appropriately controlled. The following dust control procedures may be employed to comply with this requirement:

- Work must be programmed to minimise the exposed soil surface at any time.
- The erection of dust screens around the perimeter of the site and any material handling areas
- Stockpiles should not exceed the height of the fencing to reduce dust and odours spreading to the surrounding environment.

- Securely covering all loads entering or exiting the site
- Use of water sprays across the site to suppress dust, particularly on haulage roads and high-volume non-tarmac areas.
- Covering of all stockpiles of contaminated soil remaining more than 24 hours
- Keeping excavation surfaces & stockpiles moist.
- Operators must monitor the dust conditions within the site along the site boundary during works likely to generate dust and ensure on-site work is not causing off-site impacts.
- Work must be delayed or limited during periods of high wind to prevent materials becoming airborne.

- ~~The erection of dust screens around the perimeter of the site and any material handling areas~~
- ~~Securely covering all loads entering or exiting the site~~
- ~~Use of water sprays across the site to suppress dust~~
- ~~Covering of all stockpiles of contaminated soil remaining more than 24 hours~~
- ~~Keeping excavation surfaces & stockpiles moist.~~

Odour / Vapour Control

Remedial activities must be controlled such that all equipment used, and all facilities constructed are designed and operated to control the emission of smoke, fumes and vapour into the atmosphere, and emissions from odorous soils and liquids in excavations and stockpiles in minimised.

Control measures may include:

- Construction equipment being properly maintained so that exhaust emissions comply with the Clean Air Regulations issued under the *Protection of the Environment Act Operations 1997*; and
- Use of appropriate covering techniques such as the use of plastic sheeting to cover excavation faces or stockpiles
- The spraying or misting of odour suppressants on exposed soil surfaces, stockpiles and at the site boundary.
- Use of a hydrocarbon mitigating agent on the impacted areas/materials.

When odour is an issue, site activities should be planned and carried out based on forecast and observed odour-significant weather conditions.

Some examples of products that include volatile or semi-volatile compounds (VOCs and SVOCs) are many pesticides, oil-based products, phthalates (in plastics) and fire retardants. VOCs and SVOCs that could generate odours include monocyclic aromatic hydrocarbons (styrene, benzene, toluene, xylene, ethyl benzene butyl benzene), polycyclic aromatic hydrocarbons (PAH's), hydrogen sulphide, hydrogen cyanide, pesticides, PCB's, anilines, solvents, phenols and herbicides.

~~Offensive odours shall be appropriately controlled. The following procedures may be employed to comply with this requirement:~~

- ~~Use of appropriate covering techniques such as the use of plastic sheeting to cover excavation faces or stockpiles~~
- ~~Use of fine mist sprays~~

- ~~• Use of a hydrocarbon mitigating agent on the impacted areas/materials~~
- ~~• Adequate maintenance of equipment and machinery to minimise exhaust emissions.~~

~~Volatile or semi-volatile compounds that could generate odours include monocyclic aromatic hydrocarbons (styrene, benzene, toluene, xylene, ethyl benzene butyl benzene), polycyclic aromatic hydrocarbons (PAH's), hydrogen sulphide, hydrogen cyanide, pesticides, PCB's, solvents, phenols and herbicides.~~

~~4.1.9 Groundwater~~

~~Any contamination assessment, carried out in accordance with the requirements of the relevant Guidelines made or approved by NSW EPA in accordance with the CLM Act, shall address the potential for contamination of groundwater at the site.~~

~~Any work below the water table may require a licence from the Department of Primary Industries Office of Water. These works include bores for water supply, testing and monitoring, and any dewatering or extraction. If the groundwater at the site is found to be contaminated, Council, the Department of Primary Industries Office of Water and the NSW EPA are to be notified.~~

4.1.12 Transport

All haulage routes for trucks transporting soil, materials, equipment or machinery to and from the site shall be selected to meet the following objectives:

- comply with all road rules
- minimise noise, vibration and odour to adjacent premises
- utilise State Roads and minimise use of local roads.

Category 2 Remediation work shall ensure that all site vehicles:

- Securely cover all loads to prevent dust or odour emissions during transport
- Exit the site in a forward direction
- Do not track soil, mud or sediment onto the road
- Conduct deliveries of soil, materials, equipment or machinery during the hours of remediation work identified above under *Hours of Operation*.

Vehicle entry and exit points must be stabilised with suitable aggregate to prevent erosion and tracking of sediment onto roads and footpaths. An appropriate system such as a wheel-wash station and sediment controls must be installed at the exit point to prevent the tracking of soil, sediments, and other materials onto public roads and into stormwater drains.

4.1.13 Hazardous Materials

Hazardous and/or industrial wastes arising from the remediation work shall be removed and disposed of in accordance with the requirements of the NSW EPA and ~~Work-Safe~~ **Work NSW Authority**, together with the relevant regulations.

Under the POEO Act 1997 the transportation of Schedule 1 Hazardous Waste is a scheduled activity and must be carried out by a transporter licensed by the NSW EPA. There are also specific requirements in relation to the transport and tracking of asbestos waste. All receipts for waste disposal shall be retained and supplied to Council upon request.

Note: Some contaminants may not obtain approval for off-site disposal.

Note: Some contaminants may not obtain approval for off-site disposal.

4.1.14 Asbestos management

Asbestos contamination of soils is a pervasive problem in contaminated land management. Given the widespread use of asbestos-containing materials (ACM) in construction materials and in industry throughout NSW, asbestos contamination must be anticipated during the assessment or remediation of any potentially contaminated land, even when it has not been identified as a primary contaminant of concern on the basis of the site history and other inputs to a preliminary investigation.

If ACM or soil containing asbestos is encountered during remedial work, it must be removed from the site as asbestos waste or appropriately managed on site.

A site-specific asbestos management plan must be prepared to ensure compliance with the regulations and protection of the site and members of the public. SafeWork NSW must be consulted regarding the need for asbestos monitoring at the site boundary.

Note: The regulatory framework is set out in the (or any updates to the framework following the publication of this policy):

- Work Health and Safety Act 2011
- Work Health and Safety Regulation 2017 – Chapter 8
- Protection of the Environment (Waste) Regulation 2014

Essential guidance is provided in:

- Managing Asbestos Waste in or on Soil (WorkCover 2014)
- National Environment Protection (Assessment of Site Contamination) Measure 1999, as revised 2013 (ASC NEPM)
- How to manage and control asbestos in the workplace: Code of Practice (SafeWork 2016)
- How to safely remove asbestos: Code of Practice (SafeWork 2016)
- Code of Practice for the Management and Control of Asbestos in Workplaces (NOHSC: 2018 (2005))
- Code of Practice for the Safe Removal of Asbestos, 2nd edition (NOHSC: 2002 (2005))

Key elements of the regulatory regime are that:

- Asbestos assessment and management on contaminated land must be carried out by a competent person. A competent person in the context of asbestos and the ASC NEPM (and also the NSW regulation) is a person who has acquired, through training or experience and qualification, the knowledge and skills to identify, investigate and assess asbestos in the context of an environmental site assessment. This includes identifying the potential for asbestos contamination from site history information.
- Removal (including removal from contaminated land) of:
 - more than 10 m² of non-friable asbestos or ACM
 - Asbestos containing debris associated with the removal of more than 10 m² of non-friable asbestos or ACM
- Must be carried out by a person who holds either a Class A or a Class B asbestos removal licence (Work Health and Safety Regulation 2011 Clause 487)

- Removal of friable asbestos (including from contaminated land) must be carried out by a person who holds a Class A asbestos removal licence (Work Health and Safety Regulation 2011 Clause 485)
- A person disposing of asbestos waste off the site at which it is generated must do so at a landfill site that can lawfully receive the waste (Protection of the Environment (Waste) Regulation 2014 Clause 80)
- There are also strict requirements regarding the transport of asbestos waste (Protection of the Environment (Waste) Regulation 2014 clauses 77 to 79).

4.1.15 Waste management and disposal of contaminated soil

Any soil or other solid material excavated during remediation that is not suitable for re-use on site or is surplus to site requirements must be removed from the site as waste. Prior to removal from the site waste must be classified in accordance with the Waste Classification Guidelines (EPA 2014), or resource recovery orders and resource recovery exemptions (in force for commonly recovered and reused wastes) if reuse is an option. All waste must be taken to a suitable waste disposal facility that can lawfully accept the waste types and disposal docket kept and attached to the Notice of Completion.

Applicants shall consult with Council's Waste Management Section to determine the capability of Council's Waste Management Facility to accept contaminated waste. All receipts for waste disposal shall be retained and supplied to Council upon request.

Note: If contaminated soil or other waste is transported to a site unlawfully, the owner of the waste, the transporter and the owner of the land receiving the waste are all guilty of an offence.

4.1.16 Containment / capping of contaminated soil

No contaminated soil shall be encapsulated or capped on the site that contains concentrations of contaminants that are above the soil investigation levels for development sites in NSW for the range of land uses permissible on the subject site. The on-site containment of contaminated soil is a Category 1 activity under this policy and requires development consent from Council. The soil investigation levels for urban redevelopment in NSW are contained in National Environment Protection (Assessment of Site Contamination) Measure 1999 (April 2013), and other relevant guidance where needed.

4.1.17 Ongoing environmental management plans

Where the proposed remediation involves leaving contaminated soil or groundwater onsite, an ongoing environmental management plan (OEMP) is needed. [Sites with OEMPs are Category 1 activities under this policy and require development consent from Council.]

OEMPs are to be prepared in accordance with NSW EPA (2022) practice note: Preparing environmental management plans for contaminated land.

The obligations in an OEMP must be legally enforceable. Common legal mechanisms for achieving this in NSW are provided under:

- Conveyancing Act 1919 (Conveyancing Act) – restrictions or public positive covenants on land (which run with the land), which
 - can be imposed by a prescribed authority (including EPA and Council) on any land not vested in the authority, with landowner consent (section 88E)
 - may be created by deed of agreement between private parties owning land (section 88)
- CLM Act – ongoing maintenance orders by the NSW EPA (section 28)

- EP&A Act – development consent conditions (section 4.17)
- Work Health and Safety Regulation 2017 – asbestos management plan (Part 8.3, cl 429).

An OEMP should not be finalised without identifying and considering the legal mechanism intended to make it enforceable, with input from affected stakeholders. These mechanisms must be discussed with Council.

Note: Where Council is required to be involved, it may not agree to accept an OEMP that places undue costs or responsibility on it or on future site owners, occupiers' or owners' corporations. For example, Council may not agree to an OEMP specifying active management systems that will require future site owners, occupiers or owner's corporations to carry out substantial maintenance and monitoring.

4.1.18 Vertical mixing

The NSW EPA has confirmed that the 'Guidelines for the Vertical Mixing of Soil on Former Broad-Acre Agricultural Land' relate to the remediation of large agriculture properties with low levels but broad spread contamination. They are not designed or suitable for use in the remediation of contamination, including lead contamination, on small allotments. Therefore, Council will not support RAPs relying on this methodology, and an alternative remediation methodology shall be used on any other sites than those classified as former broad-acre agricultural land.

4.1.19 Importation of fill

Material imported for use as backfill must be:

- virgin excavated natural material (VENM) classified as such in accordance with the Waste Classification Guidelines, Part 1: Classifying Waste (EPA 2014), or
- excavated natural material (ENM) meeting the requirements of the Excavated Natural Material Exemption 2014, and
- compatible with the existing soil characteristics of the site.

Council may require details of the appropriate validation of imported fill material to be submitted with any application for future development of the site.

4.1.20 Site signage and contact numbers

Signage, explaining the purpose of the work and displaying site manager, contractor and consultant details and contact numbers should be erected near the entrance to the remediation area. The signage must remain displayed throughout the duration of the works.

4.1.21 Community consultation

Owners and/or occupants of premises immediately adjoining, and across the road from the site shall be notified by the proponent at least seven days prior to the commencement of category 2 remediation works. The notification shall be in writing and shall detail works occurring, the expected duration of the works and provide contact details for enquiries or complaints.

4.1.22 Site security

The site shall be secured to ensure against unauthorised access using appropriate fencing. A temporary hoarding or temporary construction site fence must be erected between the remediation site and adjoining lands before the works commence and must be kept in place until after completion of the work.

Access must be restricted solely to authorised staff and contractors who have appropriate site safety induction and any personal protective equipment required for the remediation works. The site supervisor must control site access and induct authorised visitors on an 'as needed' basis.

4.1.23 Work health and safety

It is the employer's responsibility to ensure that all site remediation works shall comply with all work health and safety requirements of the SafeWork NSW.

4.1.24 Decommissioning and Removal of underground petroleum storage tanks

Decommissioning, assessment, removal (UPSS and any associated contaminated material) and remediation validation of UPSS must follow the requirements of SafeWork NSW, as set out in the Code of Practice - Demolition Work (September 2016) and the Excavation Work Code of Practice (July 2015). It must also follow the Protection of the Environment Operations (Underground petroleum Storage Systems) Regulation 2019, and associated guidelines under the UPSS regulation, CLM Act, and relevant Australian standards such as AS 4976-2008: The removal and disposal of underground petroleum storage tanks.

Any contained fluids must be removed, and the tank degassed prior to removal from the ground. Contained fluids must be consigned to a liquid waste disposal facility that may lawfully receive them. For further information see the EPAs UPSS Technical Note: Decommissioning, Abandonment and Removal of UPSS.

Note that SafeWork NSW is responsible for regulating worker safety relating to 'abandoned' underground tanks or systems at a workplace.

Note: The Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019 requires that the person responsible for the storage system must notify the relevant local authority of the decommissioning no later than 30 days before the system is decommissioned or removed and also requires a report to be prepared following decommissioning of underground petroleum storage systems.

4.1.12 Disposal of contaminated soil

~~The disposal of contaminated soils shall have regard to the provision of the POEO Act and Regulations and any relevant NSW EPA guidelines such as the NSW EPA publication Waste Classification Guidelines Part 1: Classifying Wastes (2014)~~

~~Applicants shall consult with Council's Waste Management Section to determine the capability of Council's Waste Management Facility to accept contaminated waste. All receipts for waste disposal shall be retained and supplied to Council upon request.~~

~~Note: If contaminated soil or other waste is transported to a site unlawfully, the owner of the waste, the transporter and the owner of the land receiving the waste are all guilty of an offence.~~

4.1.13 Containment / capping of contaminated soil

~~No contaminated soil shall be encapsulated or capped on the site that contains concentrations of contaminants that are above the soil investigation levels for urban development sites in NSW for the range of land uses permissible on the subject site. The on site containment of contaminated soil is a Category 1 activity under this policy and requires development consent of Council.~~

~~The soil investigation levels for urban redevelopment in NSW are contained in National Environment Protection (Assessment of Site Contamination) Measure 1999 (April 2013).~~

~~It should be noted that where the proposed remediation involves onsite containment of contaminated material, the need for a continuing monitoring program should be assessed by both the proponent's consultants and Council. To ensure that future owners of the site are aware of the contaminated material and any ongoing maintenance and/or monitoring, Council may impose a consent condition on any subsequent development application for the subject site, requiring a covenant to be registered on the title of the land, giving notice of the existence of onsite containment of the contaminated soil. The covenant may also bind the owners or any future owners to the responsibility of ongoing monitoring/maintenance, and any future remediation works required.~~

~~4.1.14 Vertical mixing~~

~~The NSW EPA has confirmed that the 'Guidelines for the Vertical Mixing of Soil on Former Broad Acre Agricultural Land' relate to the remediation of large agriculture properties with low levels but broad spread contamination. They are not designed or suitable for use in the remediation of contamination, including lead contamination, on small allotments. Therefore Council will not support RAPs relying on this methodology and an alternative remediation methodology shall be used for small allotments.~~

~~4.1.15 Importation of Fill~~

~~All fill imported to the site shall be validated to ensure the fill is suitable for the proposed land use from a contamination perspective and shall also be compatible with the existing soil characteristics for site drainage purposes.~~

~~Council may require details of the appropriate validation of imported fill material to be submitted with any application for future development of the site. Hence all fill imported onto the site should be validated by either one or both of the following methods during remediation works:~~

- ~~imported fill should be accompanied by documentation from the supplier which certifies that the material is not contaminated based upon analyses of the material or the known past history of the site where the material is obtained~~
- ~~sampling and analysis of the fill material should be conducted in accordance with the NSW EPA Sampling Design Guidelines (1995) to ensure that the material is not contaminated~~
- ~~fill should be imported and exported in accordance with the provision of Virgin Excavated Natural Material exemption or a NSW Resource Recovery Order and Exemption.~~

~~4.1.16 Site signage and contact numbers~~

~~A sign legible from the adjoining public space displaying the contact details of the remediation contractor (and site manager if different to remediation contractor) shall be displayed on the site adjacent to the site access, for the duration of remediation works.~~

~~4.1.17 Community consultation~~

~~Owners and/or occupants of premises immediately adjoining, and across the road from the site shall be notified by the proponent at least seven days prior to the commencement of category 2 remediation works. The notification shall be in writing and shall detail works occurring, the expected duration of the works and provide contact details for enquiries or complaints.~~

~~(13) Site security~~

~~The site shall be secured to ensure against unauthorised access using appropriate fencing.~~

~~(14) Work health and safety~~

~~It is the employer's responsibility to ensure that all site remediation works shall comply with all work health and safety requirements of the NSW WorkSafe Authority.~~

~~(15) Removal of underground petroleum storage tanks~~

~~The removal of underground storage tanks shall be in accordance with the Australian Institute of Petroleum's Code of Practice "The Removal & Disposal of Underground Petroleum Storage Tanks (AIP CP22 1994)" and NSW EPA and WorkSafe requirements. In the event of conflict between the Code of Practice and NSW WorkSafe requirements the latter shall prevail. The relevant Australian Standards shall also be complied with, including AS 2601 — 1997 "Demolition of Structures" and AS 1940 — 2004 "Storage and Handling of Flammable and Combustible Liquids".~~

~~Following the removal of underground storage tanks containing fuel, the site area, which includes bowser lines and fuel lines, shall be assessed, remediated if need be, and validated in accordance with the requirements of the relevant guidelines made or approved by NSW EPA in accordance with the CLM Act.~~

5.0 Accredited consultants and contaminated site audits

5.1 Accredited consultants

Contaminated site assessments are inherently complex and usually present a wide range of issues. Engaging professionals who have the relevant qualifications, competencies and experience is important when investigating and managing contaminated sites. For this purpose, Contaminated Land Consultant certification schemes was developed to ensure those Consultants dealing with contaminated sites have the necessary competencies to carry out the work. Certification under a recognised scheme should be interpreted as the Consultant meeting at least an acceptable minimum standard of competency. Currently, the certification schemes recognised by NSW EPA and the Council are:

- Environment Institute of Australia and New Zealand's (EIANZ) Contaminated Land Specialist Certified Environmental Practitioner (Site Contamination Specialist CEnvP) scheme
- Soil Science Australia (SSA) Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) certification.

Council may require that a contaminated land report is to be prepared, or reviewed and approved by an appropriately qualified and certified Environmental Consultant, under one of the approved schemes.

5.2 Contaminated sites audits

The NSW site auditor scheme provides a pool of accredited site auditors who can be engaged to review investigation, remediation, and validation work done by contaminated land consultants.

The scheme is administered by NSW EPA under Part 4 of the CLM Act. It improves public access to competent technical advice and provides increased certainty in the sign-off of

contaminated land assessments and remediation. As a general principle, a site audit will only be necessary when Council:

1. Believes on reasonable grounds that the information provided by the proponent is incorrect or incomplete
2. Wishes to verify whether the information provided by the proponent has adhered to appropriate standards, procedures and guidelines
3. Does not have the internal resources to conduct its own technical review.

However, a statutory site audit will be required for all works undertaken at high risk sites as defined in Section 2.

All costs associated with providing a Site Audit are to be borne by the Proponent.

Where Council (or the NSW EPA) uses its legal powers to require the carrying out of a site audit, for example through conditions of consent or requests of information for a development application, the site owner or developer must commission a Site Auditor accredited under the CLM Act to perform this task. This is known as a 'statutory' audit. The CLM Act requires that an auditor must notify the EPA when they have been commissioned by anyone other than the EPA to perform a statutory site audit. The auditor is also required to send Council and the NSW EPA a copy of the completed SAS and must give a copy of the SAR to Council / the consent authority and/or the NSW EPA on request.

In some cases, the site owner or developer may wish to have a site audit undertaken although it is not a legal requirement. The audit is termed 'non-statutory'. If their intention is to obtain a SAS, they must commission a Site Auditor accredited under the CLM Act to perform this task. This is because only a site auditor so accredited can issue a site audit statement, and they are obliged to issue one at the end of any site audit. For non-statutory audits, the Site Auditor must give a copy of the SAR to the EPA on request.

The requirements that site auditors must follow in conducting site audits and preparing site audit statements and site audit reports are outlined in NSW EPA (2017) Guidelines for the NSW Site Auditor Scheme (3rd edition). The outcomes of a site audit are a site audit statement (SAS) that outlines the conclusions of a site audit, and a site audit report (SAR) that summarises the information reviewed by the auditor. For statutory site audits, a site auditor must provide a copy of the SAS to the NSW EPA and the local council.

Note: A Site Audit has a range of pre-determined purposes. Council is to define one or more of those purposes when requesting a statutory Site Audit. The purposes are:

A1 To determine land use suitability (define intended land use(s))

A2 To determine land use suitability subject to compliance with either an active or passive environmental management plan (define intended land use(s))

OR

B1 To determine the nature and extent of contamination

B2 To determine the appropriateness of an investigation plan, a remediation plan, and / or a management plan

B3 To determine the appropriateness of a site testing plan to determine if groundwater is safe and suitable for its intended use as required by the Temporary Water Restrictions Order for the Botany Sands Groundwater Resource 2017

B4 To determine the compliance with an approved voluntary management proposal, or, management order under the Contaminated Land Management Act 1997

B5 To determine if the land can be made suitable for a particular use (or uses) if the site is remediated or managed in accordance with a specified plan.

6.0 Council records and community information

Council has an important role in supplying the community with information regarding land use history, land contamination and remediation. Council also has a statutory responsibility under Section 59 of the CLM Act 1997 to include information provided to Council by either the NSW EPA or Accredited Site Auditors on certificates issued for the purposes of Section 10.7 of the EP&A Act 1979.

6.1 How Council's information is managed

Part 5 of the Planning Guidelines emphasises the importance of Local Government information systems in ensuring that adequate information is available to Council staff and the community in relation to actual and potential land contamination. Council's records regarding contamination issues are dynamic and will change over time as land is investigated, remediated and validated. Unfortunately, a comprehensive knowledge of site contamination issues on all lands is impossible to have. To assist with this Council has a Contaminated Land Information System for contaminated and potentially contaminated lands, which will be used in conjunction with this Policy. The Contaminated Land Information System was primarily prepared to assist Council to address the issue of land contamination in land use planning and development matters and in providing information to the public, specifically through the provision of certificates under Section 10.7 of the EP&A Act.

Council's Contaminated Land Information System should be accessed each time Council performs a planning function.

6.1.1 Basis for inclusion of properties in the Contaminated Land Information System

As Council becomes aware of contamination through notification, incidents, development application or other means, the information is entered into the Contaminated Land Register/Information System. This includes results of investigations in relation to current or former land uses. Development of the Contaminated Land Information System involved consideration of the schedule of "Activities that may cause Contamination" in Appendix A of the Planning Guidelines (Schedule 1 herein) and consultation with current and former staff of the Council. Council has also consulted with Government Departments, including the NSW EPA and Department of Primary Industries.

The list of sites in the Contaminated Land Information System has been prepared in good faith in the interests of responsible planning and will be used as a first point of reference by Council. However, the Contaminated Land Information System is neither comprehensive nor definitive and does not claim to deal thoroughly with the issue of contamination of properties listed or properties adjacent to those listed. It should therefore be viewed as one starting point for more detailed investigations and will necessarily evolve as more information comes to hand from third parties or from investigations of particular sites - for example, in connection with a specific development applications.

Likewise, inclusion of a property on the list does not necessarily imply the actual existence of contamination on the property. This can only be determined as a result of an investigation, sampling and analysis program carried out in accordance with requirements of the relevant guidelines made or approved by NSW EPA in accordance with the CLM Act.

To assist Council in the management of land contamination issues and to satisfy the statutory responsibility under the CLM Act, the following information (if available) will be recorded for individual parcels of land:

1. Site contamination reports submitted to Council (e.g. Preliminary Site Investigation, Detailed Investigation, Remedial Action Plans, etc)
2. Site Audit Statements received by Council
3. NSW EPA declarations and orders issued under the CLM Act (including voluntary investigation and remediation proposals agreed by the NSW EPA)
4. Prior notification of Category 2 remediation works
5. Notification of completion of Category 1 and Category 2 remediation work
6. Information of which Council is aware in relation to current or former land uses or other contaminating activities such as illegal dumping or uncontrolled site filling.
7. Relevant development application and assessment references.

6.2 Supply of information and notification of restrictions

Information about land contamination held within the Council's records/Contaminated Land Information System is to be supplied to the public only by the following means:

1. By issuing Planning Certificates upon application and subject to payment of the prescribed fee
2. By making the following documents identified on the Planning Certificates and held by the Council available for inspection upon written request to Council and approval by Council's Public Officer (a prescribed fee may be nominated)
 - a. Site investigation reports (including Preliminary Site Investigation reports, Detailed Site Investigation reports, Remedial Action Plans, Validation and Site Monitoring reports) or any other contamination assessment reports prepared by consultants
 - b. Site Audit Reports and Site Audit Statements
3. By providing access to documents in accordance with the LG Act 1993 & the Government Information (Public Access) (GIPA) Act 2009.

6.3 Planning certificates - prescribed information

This clause applies to the provision of information on planning certificates under Section 10.7 of the EP&A Act, as prescribed by Schedule 2 Section 10 of the EP&A Regulation 2021 and Section 59(2) of the CLM Act 1997. Council is to provide the following prescribed information:

1. A statement that Council has by resolution adopted a policy to restrict development of the land because of the likelihood of the land being contaminated - if it is considered to be contaminated or potentially contaminated

NOTE: This disclosure relates to the matter "Whether any of the land is affected by an adopted policy that restricts the development of the land because of the likelihood of land slip, bush fire, tidal inundation, subsidence, acid sulfate soils, contamination, aircraft noise, salinity, coastal hazards, sea level rise or another risk, other than flooding." (Item 10(1) of Schedule 2, EP&A Regulation 2021)

2. A statement that the land to which the certificate relates is:
 - a. Significantly contaminated land within the meaning of the CLM Act - if the land (or part of the land) is significantly contaminated land at the date when the certificate is issued
 - b. Subject to a management order within the meaning of the CLM Act - if it is subject to such an order at the date that the certificate is issued

- c. Subject of an approved voluntary management proposal within the meaning of the CLM Act - if it is subject of such an approved proposal at the date that the certificate is issued
- d. Is subject to an ongoing maintenance order within the meaning of the CLM Act - if it is subject to such an order at the date when the certificate is issued

NOTE: Information above provided only to the extent that the Council has been informed by the NSW EPA

- e. A statement that the land to which the certificate relates is the subject of a Site Audit Statement within the meaning of the CLM Act - if a copy of such a statement has been provided at any time to the Council.

6.4 Planning certificates - additional information

This clause applies to the provision of additional information on planning certificates under Section 10.7(5) of the EP&A Act. Where the applicant for a Planning Certificate has requested (and paid for) additional information under Section 149(5), Council may disclose information additional to that supplied under Section 10.7(2).

NOTE: It is the aim of the Council to record available information relating to contaminated and potentially contaminated sites on the property information system and Section 10.7 certificates, however; since information sources may be incomplete, guidance may change, and new contaminants of concern emerge, the lack of reference to contamination should not be taken as an assurance that the site is not contaminated.

5.0 Independent Auditing

As a general principle, a site audit will only be necessary when Council:

- believes on reasonable grounds that the information provided by the proponent is incorrect or incomplete
- wishes to verify whether the information provided by the proponent has adhered to appropriate standards, procedures and guidelines
- does not have the internal resources to conduct its own technical review.

However a statutory site audit will be required for all works undertaken at high risk sites such as those containing or having contained underground fuel storage tanks.

See "Definitions" at the end of this document for the definition of a "Site Audit" and a "Statutory Site Audit".

Appropriately qualified contaminated land consultants may provide an independent review of another consultants work only where the audit is **not** a "statutory site audit". A statutory site audit may only be carried out by a site auditor accredited under Part 4 of the CLM Act.

The requirements that site auditors must follow in conducting site audits and preparing site audit statements and site audit reports are outlined in Department of Environment and Conservation guideline — *Contaminated Sites: Guidelines for the NSW Site Auditor Scheme (2nd Edition) 2006*.

Note: A site audit carried out in order to secure compliance with ... a requirement" only refers to the situation where there is a specific requirement to have the site audit carried out, not where a site audit is used simply to demonstrate that there has been compliance with some other requirement.

~~The requirement will not have to use the precise words "statutory site audit" or "site audit" in order for it to trigger a statutory site audit, as long as the words used have essentially the same meaning as "site audit" does under the CLM Act.~~

~~For example, the requirement might state that "an independent review must be conducted to determine whether the site is suitable for residential use". Provided the requirement was made by or under an Act or agreed voluntary investigation or remediation proposal, this would fall within the definition of a "statutory site audit".~~

~~On the other hand, if the requirement simply says that "the site must be suitable for residential use", then a site audit conducted to demonstrate that the site is in fact suitable for this use would not be a "statutory site audit", because there was no direct obligation imposed for the conduct of a site audit.~~

~~It follows that it will only be a statutory site audit where there is an explicit instruction for a site audit to be carried out.~~

~~Independent reviews by non accredited auditors are to be undertaken only by individuals who can **clearly demonstrate** that they satisfy the necessary requirements (as applicable to the works) of Schedule 2 – Council's Requirements for Consultants Reporting on Contaminated Land for the nominated review activity.~~

~~The proponent will be informed through a statutory process or otherwise by Council if an independent review is required.~~

~~The proponent is responsible for engaging an appropriately qualified consultant for the independent review and the costs associated.~~

5.0 – Council records and community information

~~Council has an important role in supplying the community with information regarding land use history, land contamination and remediation. Council also has a statutory responsibility under Section 59 of the CLM Act 1997 to include information provided to Council by either the NSW EPA or Accredited Auditors on certificates issued for the purposes of Section 149 of the EP&A Act 1979.~~

5.1 – How Council's information is managed

~~Part 5 of the Planning Guidelines emphasises the importance of Local Government information systems in ensuring that adequate information is available to Council staff and the community in relation to actual and potential land contamination. Council's records regarding contamination issues are dynamic and will change over time as land is investigated, remediated and validated. Unfortunately a comprehensive knowledge of site contamination issues on all lands is impossible to have.~~

~~To assist with this Council has developed a register for contaminated and potentially contaminated lands, which will be used in conjunction with this Policy. The register has been prepared to assist Council to address the issue of land contamination in land use planning and development matters and in providing information to the public, specifically through the provision of certificates under Section 149 of the EP&A Act.~~

~~**Council's Contaminated Land Register should be accessed each time Council performs a planning function.**~~

5.1.1 Basis for inclusion of properties in the register

~~The majority of the properties in the register have not been specifically assessed to determine the actual existence of contamination, but where, as a result of investigation in relation to current or former land uses information about contamination has become available it is intended that the information or reference to the information be recorded.~~

~~Development of the register has involved consideration of the schedule of "Activities that may cause Contamination" in Appendix "A" of the Planning Guidelines and consultation with current and former staff of the Council. Council has also consulted with Government Departments, including the Department of Health, the NSW EPA and Department of Primary Industries.~~

~~The list of sites in the register has been prepared in good faith in the interests of responsible planning and will be used as a first point of reference by Council. However, the register is neither comprehensive nor definitive and does not claim to deal thoroughly with the issue of contamination of properties listed or properties adjacent to those listed. It should therefore be viewed as one starting point for more detailed investigations and will necessarily evolve as more information comes to hand from third parties or from detailed investigations of particular sites – for example, in connection with a specific development applications. Likewise, inclusion of a property on the list does not necessarily imply the actual existence of contamination on the property. This can only be determined as a result of an investigation, sampling and analysis program carried out in accordance with requirements of the relevant guidelines made or approved by NSW EPA in accordance with the CLM Act.~~

~~To assist Council in the management of land contamination issues and to satisfy the statutory responsibility under the CLM Act the following information (if available) will be recorded for individual parcels of land:~~

- ~~• Site contamination reports submitted to Council (i.e. Preliminary Investigation, Detailed Investigation, Remedial Action Plans, Validation and Monitoring Reports)~~
- ~~• Site Audit Statements received by Council~~
- ~~• NSW EPA declarations and orders issued under the CLM Act (including voluntary investigation & remediation proposals agreed by the NSW EPA)~~
- ~~• prior notification of Category 2 remediation works~~
- ~~• notification of completion of Category 1 and Category 2 remediation work~~
- ~~• information of which Council is aware in relation to current or former land uses or other contaminating activities such as illegal dumping or uncontrolled site filling.~~

5.2 – Supply of information and notification of restrictions

~~Information about land contamination held within the Council's records/register is to be supplied to the public only by the following means:~~

- ~~• by issuing Planning Certificates upon application and subject to payment of the prescribed fee~~
- ~~• by making the following documents identified on the Planning Certificates and held by the Council available for inspection upon written request to Council and approval by Council's Public Officer (a prescribed fee may be nominated)~~
 - ~~— site investigation reports (including preliminary investigation reports, detailed investigation reports, remedial action plans, validation and site monitoring reports) or any other contamination assessment reports prepared by consultants~~
 - ~~— site audit reports~~
 - ~~— site audit statements~~

- ~~by providing access to documents in accordance with the LG Act 1993 & the Government Information (Public Access) (GIPA) Act 2009.~~

~~5.3 Planning Certificates – prescribed information~~

~~This clause applies to the provision of information on planning certificates under Section 149(2) of the EP&A Act, as prescribed by Schedule 4 of the EP&A Regulation 2000 and Section 59(2) of the CLM Act 1997.~~

~~Council is to provide the following prescribed information:~~

- ~~a statement that Council has by resolution adopted a policy to restrict development of the land because of the likelihood of the land being contaminated – if it is considered to be contaminated or potentially contaminated~~

~~*NOTE:—This disclosure relates to the matter “whether or not the council has adopted a policy to restrict the development of the land because of the likelihood of land slip, bushfire, flooding, tidal inundation, subsidence, acid sulfate soils or any other risk” (Item 7 of Schedule 4, EP&A Regulation 2000)*~~

- ~~a statement that the land to which the certificate relates is~~
 - ~~— significantly contaminated land within the meaning of the CLM Act – if the land (or part of the land) is significantly contaminated land at the date when the certificate is issued~~
 - ~~— subject to a management order within the meaning of the CLM Act – if it is subject to such an order at the date that the certificate is issued~~
 - ~~— subject of an approved voluntary management proposal within the meaning of the CLM Act – if it is subject of such an approved proposal at the date that the certificate is issued~~
 - ~~— is subject to an ongoing maintenance order within the meaning of the CLM Act – if it is subject to such an order at the date when the certificate is issued~~

~~**NOTE: Information provided only to the extent that the Council has been informed by the NSW EPA*~~

- ~~A statement that the land to which the certificate relates is the subject of a site audit statement within the meaning of the CLM Act – if a copy of such a statement has been provided at any time to the Council.~~

~~5.4 Planning Certificates – additional information~~

~~This clause applies to the provision of additional information on planning certificates under Section 149(5) of the EP&A Act. Where the applicant for a Planning Certificate has requested (and paid for) additional information under Section 149(5), Council may disclose information additional to that supplied under Section 149(2).~~

~~*NOTE: It is the aim of the Council to record contaminated sites on the property information system and Section 149 certificates, however this is a very time consuming process which requires continual updating and review as land is subdivided and new potentially contaminating activities are commenced and discovered. Therefore, the lack of reference to contamination should not be taken as an assurance that the site is not contaminated.*~~

7.0 Reference material **Key Legislative Instruments, Regulations, Policies & Guidelines**

Contaminated Land Management Act 1997	Sets out the role of the EPA and the rights and responsibilities of parties it might direct to manage land where contamination is significant enough to warrant regulation
Contaminated Land Management Regulation 2022	Sets out the recovery of administrative costs for the EPA relating to regulated sites and the auditor system. It also sets out timeframes for administrative matters under the <i>CLM Act</i>
Statutory and non-statutory guidelines under the Contaminated Land Management Act	The EPA can make or approve guidelines under section 105 of the Contaminated Land Management Act 1997 for the purposes connected with the objects of the Act. The current guidelines are available on the NSW EPA website
Environmental Planning & Assessment Act 1979	Provides the overarching structure for regulation of planning and development in NSW together with the <i>Environmental Planning and Assessment Regulation 2000</i>
Environmental Planning and Assessment Regulation 2021	Provide the overarching structure for the regulation of planning and development in NSW together with the <i>Environmental Planning and Assessment Act 1979</i>
NSW Managing Land Contamination Planning Guidelines – SEPP 55 Remediation of Land (1998)	The Planning Guidelines support SEPP55 and address the policy framework, identification and investigation of contamination, the decision-making process, management of contaminated sites and remediation, information management, and principles for proactively preventing future contamination
State Environmental Planning Policy (Resilience and Hazards) 2021	Ensures planning decisions take into account possible land contamination, and promotes remediation to reduce risk of harm
National Environment Protection (Assessment of Site Contamination) Measure 1999 (as amended 2013)	Establishes a nationally consistent approach to the assessment of site contamination to ensure sound environmental management practices by the community which includes regulators, site assessors, site auditors, landowners, developers and industry

~~ANZECC/NHMRC (1992) Australian and New Zealand Guidelines for the Management of Contaminated Sites. Australian and New Zealand Environment Conservation Council/National Health Medical Research Council.~~

~~Department of Urban Affairs and Planning & NSW EPA (1998) Managing Land Contamination: Planning Guidelines SEPP 55 Remediation of Land. DUAP, Sydney.~~

~~National Environment Protection Council (NEPC) (1999) National Environment Protection (Assessment of Site Contamination) Measure (NEPM) (Available online: http://www.ephc.gov.au/nepms/cs/con_sites.html) (as revised in 2013)~~

~~NSW Environment Protection Authority (1995) Contaminated Sites: Guidelines for the Vertical Mixing of Soil on Former Broad Acre Agricultural Land. NSW Environment Protection Authority.~~

~~NSW Environment Protection Authority (2006) Contaminated Sites: Guidelines for the NSW Site Auditor Scheme (2nd Edition).~~

~~NSW Office of Environment and Heritage (2011) Contaminated Sites: Guidelines for Consultants Reporting on Contaminated Sites.~~

~~NSW Environment Protection Authority (2015) Guidelines on the Duty to Report Contamination Under the Contaminated Land Management Act 1997.~~

~~NSW Environment Protection Authority (2014) Waste Classification Guidelines: Part 1 Classifying Waste.~~

~~Note: NSW EPA Guidelines available at www.epa.nsw.gov.au/guidelines.htm~~

~~NSW Government (1998) State Environmental Planning Policy No.55—Remediation of Land. NSW Government Gazette 126 of 28 August 1998.~~

~~Southern Sydney Regional Organisation of Councils (1999) Model Policy on Contaminated Land.~~

~~Department of Environment and Conservation June 2004 Environmental Noise Management Noise Guide for Local Government.~~

~~In the development of this policy reference has been made to SSROC (1999) "Model Policy on Contaminated Land", Bankstown City Council Policy for the Management of Contaminated Land, Coffs Harbour City Council Draft Policy for the Management of Contaminated Land 2004, Armidale Dumaresq Council Contaminated Land Policy and the City of Newcastle Technical Manual—Contaminated land management.~~

BACKGROUND

Contamination can cause harm to human health, the environment, and the community. It can restrict development or certain land uses, and has economic, legal and planning implications for the community, and for Council as a regulatory authority through the planning and development process. It is therefore important for councils to appropriately manage contaminated land, and this policy outlines Council's approach to do so. The policy supports Council, landowners, developers, consultants, and the community to understand and identify where potential risks are, avoid inappropriate land uses, and costly delays or restrictions on a development site due to unexpected contamination.

A review of contaminated land matters was undertaken on a regional scale in 2005/2006 to assist in the development of a policy that would provide a consistent approach to planning decisions involving matters of contaminated land within the Northern Rivers (Ballina, Byron, Kyogle, Lismore, Richmond Valley and Tweed Councils). As part of the review process, a draft policy for the region was developed through a working party of the North Coast Public and Environmental Health Task Force. The regional policy was reviewed and updated in 2023 through the Council Regional Capacity Building (CRCB) Program, which is funded by the New South Wales (NSW) Government through the NSW Environment Protection Authority (EPA's) Contaminated Land Management Program. The update was undertaken by the CRCB project officer and Council representatives from each of the participating Council in the Northern River Region.

The regulatory framework for contaminated land in NSW can be divided into two tiers:

- If contamination that is significant enough to warrant regulation given the site's current or approved use, the NSW EPA is the regulatory authority under the Contaminated Land Management Act 1997 (CLM Act).
- If contaminated land does not pose an unacceptable risk to human health or the environment under the current land use, councils (and other planning authorities) are the regulators through the planning and development process under the Environmental Planning & Assessment Act 1979 (EP&A Act).

As the regulatory authority through the planning and development process, councils must consider contamination when making rezoning and development decisions, and when providing information to the community requested through Section 10.7 certificates. Council also controls remediation works through the Resilience and Hazards SEPP.

In accordance with Clause 2 of Schedule 6 of the EP&A Act, Council as a planning authority is exempt from liability associated with contaminated land for anything done or omitted to be done in "good faith", which is defined as to act substantially in accordance with the Managing

Land Contamination Planning Guidelines – SEPP 55 Remediation of Land 1998 (“the Planning Guidelines”, which still remains in place after SEPP 55 was consolidated with other SEPPs into the Resilience and Hazards SEPP as there were no policy changes during the consolidation). The Planning Guidelines strongly recommend that “each local council develop and adopt a formal policy for managing land contamination to provide a local context for decision making” and that “the policy should be consistent with the Guidelines and either adopt or be based on them, with variations based on local conditions and procedure”.

This Policy is made under the Planning Guidelines and the Resilience and Hazards SEPP in order to implement a contaminated land management framework within the planning and development process of Council.

~~In 1997 the NSW Government introduced a package of reforms to provide a comprehensive, consistent and whole of government approach to land contamination and remediation. The CLM Act 1997, SEPP 55 – Remediation of Land and Managing Land Contamination – Planning Guidelines, represented complementary parts of that package.~~

~~A review of contaminated land matters was undertaken on a regional scale in 2005/2006 to assist in the development of a policy that would provide a consistent approach to planning decisions involving matters of contaminated land within the Northern Rivers. As part of the review process, a draft policy for the region was developed through a working party of the North Coast Public and Environmental Health Task Force. The draft regional policy has been utilised as the basis for this Policy.~~

~~This Policy is made under the “Managing Land Contamination: Planning Guidelines” (Contaminated Land Planning Guidelines) and SEPP 55 in order to implement a contaminated land management framework within the planning and development process of Council.~~

~~The NSW EPA intervention in relation to contaminated land is triggered when land is significantly contaminated (meaning land described in a notice having effect under Section 11 of the CLM Act 1997. Generally, sites not significantly contaminated will be dealt with by Council under the provisions of the EP&A Act 1979, in accordance with Managing Land Contamination Planning Guidelines, SEPP 55 and this policy.~~

~~Councils who act substantially in accordance with these guidelines when carrying out specific planning functions are taken to have acted in good faith and receive statutory protection under Section 145B and Section 145C of the EP&A Act. This means that before an authority can be found negligent of an act or omission related to a particular planning function, it must be shown that the authority did not substantially comply with the guidelines.~~

~~This Policy is substantially adapted from a document developed on a regional basis in 2007 by representatives from Ballina, Byron, Kyogle, Lismore, Richmond Valley and Tweed Councils.~~

DEFINITIONS**Glossary of Terms/Abbreviations**

ASC NEPM	National Environment Protection (Assessment of Site Contamination) Measure
BTEXN	Benzene, Toluene, Ethylbenzene, Xylene and Naphthalene
Category 1 Remediation	Remediation works requiring Development Consent
Category 2 Remediation	Remediation works that do not require Development Consent (but must be notified to Council)
CLM Act	<i>Contaminated Land Management Act 1997 (NSW)</i>
Contamination	The condition of land or water where any chemical substance or waste has been added as a direct or indirect result of human activity at above background level and represents, or potentially represents, an adverse health or environmental impact
CoPC	Contaminants of Potential Concern
Detailed Site Investigation (DSI)	An investigation with the objective to define the nature, extent and degree of contamination; assess potential risk posed by contaminants to health and the environment; and obtain sufficient information to develop a Remedial Action Plan (if needed)
Development Application	A Development Application is a formal request for consent to carry out development and is considered under Part IV of the <i>Environmental Planning & Assessment Act 1979</i>
Development Consent	Formal approval from Local councils to proceed with a development. Development Consent is required prior to commencement of any works associated with development governed by Part IV of the <i>Environmental Planning & Assessment Act 1979</i>
Duty to Report	The duty to report significant contamination to the NSW EPA is a requirement under the <i>Contaminated Land Management Act 1997</i> , with updates provided in the <i>Contaminated Land Management Amendment Act 2008</i> . The triggers for reporting are presented in the "Guidelines on the Duty to Report Contamination under the <i>Contaminated Land Management Act 1997</i> " (2015)
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
Initial Evaluation	An evaluation undertaken by Council to determine whether contamination is likely to be an issue, and to assess whether further information is required for it to conduct its planning functions in good faith
Land Contamination	Land contamination may be the result of past or current uses. The land may be contaminated by a current or historical land use activity directly on that site or through migration of contamination from adjacent sites. See also definition of "contamination"
LEP	Local Environmental Plan. An LEP guides planning decisions for Local Government Areas through zoning and development controls, which provide a framework for the way land can be used. LEPs are Planning Instruments from the <i>Environmental Planning & Assessment Act 1979</i>
LGA	Local Government Area
LOR	Limit of Reporting is the lowest concentration that can be reported for a contaminant when analysing at a laboratory
NSW DPI	New South Wales Department of Primary Industries
NSW EPA	New South Wales Environment Protection Authority

8.4 Policy (Review) - Contaminated Land Management

Ballina Shire Council

(REVIEW) Management of Contaminated Land Policy

OCP	Organochlorine Pesticides
OPP	Organophosphate Pesticides
Ongoing Environmental Management Plan (OEMP)	A plan outlining monitoring and management requirements where contamination remains on site, and there is uncertainty as to its potential to migrate; and / or the effectiveness of the management measures implemented to contain the contamination following remediation and validation; and / or monitoring and ongoing management forms part of the remediation strategy
PAH	Polycyclic Aromatic Hydrocarbons
Planning Application	A Development Application or Planning Proposal made to Council in accordance with the <i>Environmental Planning and Assessment Act 1979</i> (NSW)
Planning Guidelines	NSW Managing Land Contamination Planning Guidelines – SEPP 55 Remediation of Land (1998)
Planning Proposal	A formal application submitted to Council that proposes to rezone land
POEO Act	<i>Protection of the Environment Operations Act 1997</i> (NSW)
Preliminary Site Investigation (PSI)	An investigation to identify any past or present potentially contaminating activities, to provide a preliminary assessment of any site contamination, and if required, to provide a basis for a more detailed investigation
Remedial Action Plan (RAP)	A plan that sets objectives, and documents the process, for remediating a contaminated site
s10.7 Certificate	Planning Certificate under Section 10.7 of the <i>Environmental Planning and Assessment Act 1979</i> (NSW)
Resilience and Hazards SEPP	State Environmental Planning Policy (Resilience and Hazards) 2021
Significantly Contaminated Land	A site is declared Significantly Contaminated Land by the EPA where contamination is considered significant enough to warrant regulation under the <i>Contaminated Land Management Act 1997</i> (with changes made through the <i>Contaminated Land Management Amendment Act 2008</i>) given the site's current or approved use
Site Audit	An independent review by a Contaminated Land Auditor, accredited by the NSW EPA, of any or all stages of the site investigation process, conducted in accordance with the requirements of the <i>Contaminated Land Management Act 1997</i>
Site Audit Report (SAR)	A report which summarises the report(s) audited and provides the Auditor's opinion and conclusions. A Site Audit Report must be accompanied by a Site Audit Statement
Site Audit Statement (SAS)	A statement which outlines the conclusions of a site audit. A Site Audit Statement must be accompanied by a Site Audit Report
Table 1 of the Planning Guidelines	List of Potentially Contaminating Activities included in Table 1 of the "NSW Managing Land Contamination Planning Guidelines" (1998)
TRH	Total Recoverable Hydrocarbons
Validation	The objective of the validation stage of the contaminated land process is to demonstrate whether or not the objectives stated in the Remedial Action Plan have been achieved

Contamination: Means the presence in, or under the land, of a substance above the concentration at which the substance is normally present in, or under (respectively) the land in the same locality, being a presence that presents a risk of harm to human health or any other

~~aspect of the environment. (Contaminated Land Management Act Section 5) See also Subsections 2, 3 and 4.~~

~~**Contaminated Land Planning Guidelines:** Guidelines notified in accordance with Section 145C of the Environmental Planning and Assessment Act 1979. (Department of Urban Affairs and Planning & NSW EPA 1998)~~

~~**Council:** Ballina Shire Council~~

~~**Detailed Site Investigation:** An investigation to define the extent and degree of contamination, to assess potential risk posed by contaminants to health and the environment, and to obtain sufficient information for the development of a remedial action plan if required. Reporting requirements for a detailed site investigation are as outlined in *National Environmental Protection (Assessment of Site Contamination) Measure (1999, amended 2013)* and the NSW OEH (2011) *Contaminated Sites: Guidelines for Consultants Reporting on Contaminated Sites*, and refer also to Schedule 2.~~

~~**DUAP:** The NSW Department of Urban Affairs and Planning (operates now as the Department of Planning and Infrastructure).~~

~~**EP&A Act:** The Environmental Planning and Assessment Act 1979.~~

~~**Independent Review:** A review of the work of a primary consultant for all types of contaminated sites by a person(s) who have demonstrated satisfying the requirements of Schedule 2.~~

~~**Initial Evaluation:** An assessment of readily available factual information to determine whether contamination is an issue requiring further investigation prior to the preparation of a local environmental plan, development control plan or plan of management for community land; or the determination of a development application or Council activity assessed under Part 5 of the EP&A Act.~~

~~**Investigation area:** means land declared to be an investigation area by a declaration in force under Division 2 of Part 3 of the *Contaminated Land Management Act 1997*.~~

~~**NEPC:** National Environment Protection Council (now under the Council of Australian Governments (COAG) Standing Council on Environment and Water).~~

~~**NEPM:** National Environment Protection (Assessment of Site Contamination) Measure 1999 (amended 2013), as prepared by the NEPC (refer above).~~

~~**NSW EPA:** NSW Environment Protection Authority.~~

~~**Planning Certificate:** A certificate issued under section 149 of the EP&A Act providing information about planning and other matters relating to a specific parcel of land. Planning Certificates are of two types:~~

- ~~• a 'basic certificate' contains matters prescribed under SECTION 149(2) (that is matters referred to in Schedule 4 of the Environmental Planning and Assessment Regulation 1994 and Section 59(2) of the Contaminated Land Management Act 1997)~~
- ~~• a 'full certificate' containing additional information provided under section 149(5) as well as the matters referred to above.~~

~~**Planning Proposal:** A document that explains the intended effect of a proposed Local Environment Plan (LEP) and sets out the justification for making that plan. Some planning proposals were formally referred to as 'rezoning applications'.~~

~~**Preliminary Site Investigation:** An investigation to identify any past or present potentially contaminating activities and to provide a preliminary assessment of site contamination, and if required, provide a basis for a detailed investigation. Reporting requirements for a preliminary investigation as outlined in *National Environmental Protection (Assessment of Site Contamination) Measure* (1999, amended 2013) and the NSW OEH (2011) *Contaminated Sites: Guidelines for Consultants Reporting on Contaminated Sites*, refer also to Schedule 2.~~

~~**Remedial Action Plan:** A plan that sets out remediation goals and documents the process by which it is proposed to remediate a site. Reporting requirements for a preliminary investigation as outlined in NSW OEH (2011) *Contaminated Sites: Guidelines for Consultants Reporting on Contaminated Sites*, refer also to Schedule 2.~~

~~**Remediation:** (of contaminated land) includes:~~

- ~~a) preparing a long term management plan (if any) for the land;~~
- ~~b) removing, dispersing, destroying, reducing mitigating or containing the contamination of the land; and~~
- ~~c) eliminating or reducing any hazard arising from the contamination of the land (including by preventing the entry of persons or animals on the land).~~

~~**Site Audit:** Means a review:~~

- ~~a) that relates to management of the actual or possible contamination of land; and~~
- ~~b) that is conducted for the purposes of determining and one or more of the following matters:
 - ~~(i) the nature and extent of any contamination of the land;~~
 - ~~(ii) the nature and extent of any management of actual or possible contamination of the land;~~
 - ~~(iii) whether the land is suitable for any specified use or range of uses;~~
 - ~~(iv) what management remains necessary before the land is suitable for any specified use or range of uses;~~
 - ~~(v) the suitability and appropriateness of a plan of management, long term management plan or a voluntary management proposal (Contaminated Land Management Act Section 4).~~~~

~~**Site Audit (Statutory):** As Per Section 47 of the Contaminated Land Management Act:~~

~~A site audit carried out in order to secure compliance with one or more of the following:~~

- ~~a) a requirement under the *Contaminated Land Management Act 1997*;~~
- ~~b) an approved voluntary management proposal;~~
- ~~c) a requirement imposed by *State Environmental Planning Policy No 55 Remediation of Land* or by any other planning instrument made under the *Environmental Planning and Assessment Act 1979* or by any development consent or approval given under that Act;~~
- ~~d) any other requirement imposed by or under an Act~~

~~Unless it is carried out only in order to secure compliance with a legal obligation arising from an agreement or arising in such other circumstances as the regulations may prescribe.~~

~~**Soil & Water Management Plan:** Plans or other documents that describe the measures to be undertaken at development sites that, if carried out, should mitigate soil erosion and control discharge of sediment, nutrients and other pollutants to lands and/or waters during works.~~

~~**Validation:** The process of determining whether the objectives for remediation and any conditions of development consent have been achieved. Reporting requirements for a preliminary investigation are as outlined in NSW OEH (2011) *Contaminated Sites: Guidelines for Consultants Reporting on Contaminated Sites*, and refer also to Schedule 2.~~

~~**Virgin Excavated Natural Material (VENM):** (eg clay, gravel, sand, soil and rock) that is not mixed with any other waste and which has been excavated from areas of land that are not contaminated with human-made chemicals as a result of industrial, commercial, mining or agricultural activities and which do not contain sulfidic ores or soils (acid sulfate soils).~~

SCOPE OF POLICY

- Council employees
- Councillors
- Community members
- Council owned-businesses
 - Gap Road Nursery
 - Caravan Parks
- Committees of Council
- Consultants/Contractors.

RELATED DOCUMENTATION

- ~~Contaminated Land Management Act 1997~~
- ~~Environmental Planning and Assessment Act 1979~~
- ~~Managing Land Contamination: Planning Guidelines 1998 (Contaminated Land Planning Guidelines)~~
- ~~State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)~~
- ~~Local Government Act 1993~~
- ~~Protection of the Environment Operations Act 1997.~~

KEY LEGISLATIVE INSTRUMENTS, REGULATIONS, POLICIES & GUIDELINES

Contaminated Land Management Act 1997	Sets out the role of the EPA and the rights and responsibilities of parties it might direct to manage land where contamination is significant enough to warrant regulation
Contaminated Land Management Regulation 2022	Sets out the recovery of administrative costs for the EPA relating to regulated sites and the auditor system. It also sets out timeframes for administrative matters under the <i>CLM Act</i>
Statutory and non-statutory guidelines under the Contaminated Land Management Act	The EPA can make or approve guidelines under section 105 of the Contaminated Land Management Act 1997 for the purposes connected with the objects of the Act. The current guidelines are available on the NSW EPA website
Environmental Planning & Assessment Act 1979	Provides the overarching structure for regulation of planning and development in NSW together with the <i>Environmental Planning and Assessment Regulation 2000</i>

8.4 Policy (Review) - Contaminated Land Management

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(REVIEW) Management of Contaminated Land Policy

Environmental Planning and Assessment Regulation 2021	Provide the overarching structure for the regulation of planning and development in NSW together with the <i>Environmental Planning and Assessment Act 1979</i>
NSW Managing Land Contamination Planning Guidelines – SEPP 55 Remediation of Land (1998)	The Planning Guidelines support SEPP55 and address the policy framework, identification and investigation of contamination, the decision-making process, management of contaminated sites and remediation, information management, and principles for proactively preventing future contamination
State Environmental Planning Policy (Resilience and Hazards) 2021	Ensures planning decisions take into account possible land contamination, and promotes remediation to reduce risk of harm
National Environment Protection (Assessment of Site Contamination) Measure 1999 (as amended 2013)	Establishes a nationally consistent approach to the assessment of site contamination to ensure sound environmental management practices by the community which includes regulators, site assessors, site auditors, landowners, developers and industry

REVIEW

This Policy is to be reviewed every four years or as required due to changed legislation State Environmental Planning Policy or Guidelines.

SCHEDULE 1: SOME POTENTIALLY CONTAMINATING ACTIVITIES AND MAIN POTENTIAL CONTAMINANTS

Note: It is not sufficient to rely solely on the contents of the above table to determine whether a site is likely to be contaminated or not. The table is only a guide. A conclusive status can only be determined after a review of the site history and, if necessary, sampling and analysis.

Source: Based on Appendix A - Department of Urban Affairs & Planning and Environmental Protection Authority (1998) Managing Land Contamination: Planning Guidelines, DUAP, Sydney 1998.

Industry	Type of Chemical	Associated Chemicals
Agricultural/ Horticultural activities (including banana agic.)		See Fertiliser, Pesticides, Fungicides and Herbicides under 'Chemicals: manufacture and use'
Airports	Hydrocarbon Metals	Aviation fuels Particularly aluminium, magnesium, chromium
Asbestos production and disposal		Asbestos (in various forms)
Battery manufacture and recycling	Metals Acids	Lead, manganese, zinc, cadmium, nickel, cobalt, mercury, silver, antimony Sulfuric acid
Breweries/distilleries	Alcohol	Ethanol, methanol, esters
Chemicals: manufacture and use	Acid/alkali use and manufacture Adhesives/resins Dyes	Mercury (chlor/alkali), sulfuric, hydrochloric and nitric acids, sodium and calcium hydroxides Polyvinyl acetate, phenols, formaldehyde, acrylates, phthalates Chromium, titanium, cobalt, sulfur and nitrogen organic compounds, sulfates, solvents
	Explosives	Acetone, nitric acid, ammonium nitrate, sodium hydroxide, pentachlorophenol, ammonia, sulfuric acid, nitroglycerine, calcium cyanamide, lead, ethylene glycol, methanol, copper, aluminium, bis(2-ethylhexyl) adipate, dibutyl phthalate, mercury, silver
	Fertiliser	Calcium phosphate, calcium sulfate, nitrates, ammonium sulfate, carbonates, potassium, copper, magnesium, molybdenum, boron, cadmium
	Flocculants	Aluminium
	Foam Production	Urethane, formaldehyde, styrene
	Fungicides	Carbamates, copper sulphate, copper chloride, sulfur, chromium, zinc
	Herbicides	Ammonium thiocyanate, carbamates, arsenic, organochlorines, organophosphates, mercury, triazines
	Paints -heavy metals -solvents	Arsenic, barium, cadmium, chromium, cobalt, lead, manganese, mercury, titanium, selenium, zinc Toluene oils either natural (eg. pine oil) or synthetic
	Pesticides -active ingredients -solvents	Arsenic, lead, organochlorines, organophosphates, sodium tetraborate, carbamates, sulfur, synthetic pyrethroids Xylene, kerosene, methyl isobutyl ketone, amyl acetate, chlorinated solvents
	Pharmaceutical -solvents	Acetone, cyclohexane, methylene, chloride, ethyl acetate, butyl acetate, methanol, ethanol, isopropanol, butanol, pyridine methyl ethyl ketone, methyl isobutyl ketone, tetrahydrofuran
	Photography	Hydroquinone, sodium carbonate, sodium sulfite, potassium bromide, monomethyl para-aminophenol sulfate, ferricyanide compounds, silver, thiocyanate, ammonium compounds, sulphur compounds, phosphate, phenylene diamine, ethyl alcohol, thiosulfates, formaldehyde
	Plastics	Sulphates, carbonates, cadmium, solvents, acrylates, phthalates, styrene
	Rubber	Carbon black
	Soap/detergent -general -acids -oils	Potassium compounds, phosphates, ammonia, alcohols, esters, sodium hydroxide, surfactants (sodium lauryl sulfate) silicate compounds Sulfuric acid and stearic acid Palm, coconut, pine, teatree

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	Solvents -general -hydrocarbons -chlorinated organics	Ammonia Eg. BTEX (benzene, toluene, ethylbenzene, xylenes) Eg. trichloroethane, carbon tetrachloride, methylene chloride
Defence works		See Explosives 'Chemical manufacture and use'; also 'Foundries', 'Engine works' and 'Service stations'
Drum reconditioning		See 'Chemical manufacture and use'
Industry	Type of Chemical	Associated Chemicals
Dry cleaning		Trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, perchlorethylene
Electrical		PCBs (transformers & capacitors), solvents, tin, lead, copper, mercury
Engine works	Hydrocarbons, Metals Solvents, Acids/alkalis Refrigerants Antifreeze	Chlorofluorocarbons, hydrochlorofluorocarbons, Hydrofluorocarbons Ethylene glycol, nitrates, phosphates, silicates
Foundries	Metals Acids	Aluminium, manganese, iron, copper, nickel, chromium, zinc, cadmium and lead and oxides, chlorides, fluorides, and sulphates of these metals Sulphuric and phosphoric, phenolics and amines coke/graphite dust
Gas works	Inorganics Organics	Ammonia, cyanide, nitrate, sulphide, thiocyanate, aluminium, antimony, arsenic, barium, cadmium, copper, chromium, iron, lead, manganese, mercury, nickel, selenium, silver, vanadium, zinc BTEX, phenolics, PAHs, coke
Iron and steel works		BTEX, phenolics, PAHs, metals, and oxides of iron, nickel, copper, chromium, magnesium, manganese, and graphite
Landfill sites		Alkanes and ammonia, sulphides, heavy metals, organic acids
Marinas	Antifouling paints	See 'Engine works' and Electroplating under 'Metal treatments' Copper, tributyltin (TBT)
Metal treatments	Electroplating -metals -acids -general Liquid carburizing baths	Nickel, chromium, zinc, aluminium, copper, lead, cadmium, tin Sulphuric, hydrochloric, nitric, phosphoric Sodium hydroxide, trichloroethane, toluene, cyanide compounds tetrachloroethylene, ethylene glycol, Sodium, cyanide, barium, chloride, sodium chloride, potassium chloride, sodium carbonate, sodium cyanate
Mining and extractive industries		Arsenic, mercury, cyanides and also Explosives under 'Chemicals manufacture and use' Aluminium, arsenic, copper, chromium, cobalt, lead, manganese, nickel, selenium, zinc and radionuclides. The list of heavy metals should be decided according to the composition of the deposit and known impurities
Power stations		Asbestos, PCBs, fly ash metals, water treatment chemicals
Printing shops		Acids, alkalis, solvents, chromium See also Photography 'Chemicals manufacture and use'
Railway yards		Hydrocarbons, arsenic, phenols (creosote), heavy metals, nitrates, ammonia
Scrap yards		Hydrocarbons, metals, solvents
Service stations & fuel storage facilities		Aliphatic hydrocarbons BTEX, PAHs, phenols, lead
Sheep and cattle dips		Arsenic, organochlorines, organophosphates, carbamates, synthetic pyrethroids
Smelting and refining	Metals	Fluorides, chlorides, and oxides of copper, tin, silver, gold, selenium, lead, and aluminium
Tanning and similar trades	Metals General	Chromium, manganese, aluminium Ammonium sulfate, ammonia, ammonium nitrate, arsenic, phenolics, formaldehyde, sulfide, tannic acid
Water and sewage treatment plants	Metals	Aluminium, arsenic, cadmium, chromium, cobalt, lead, nickel, fluoride, lime, zinc
Wood preservation	Metals	Chromium, copper, arsenic, naphthalene, ammonia, pentachlorophenol, dibenzofuran, anthracene, biphenyl,

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		ammonium sulfate, quinoline, boron, creosote, organochlorine pesticides
Other activities/land uses that the Council considers being a potentially contaminating		

~~**Note:** It is not sufficient to rely solely on the contents of the above table to determine whether a site is likely to be contaminated or not. The table is only a guide. A conclusive status can only be determined after a review of the site history and, if necessary, sampling and analysis.~~

~~**Source:** Based on Appendix A – Department of Urban Affairs & Planning and Environmental Protection Authority (1998) Managing Land Contamination: Planning Guidelines, DUAP, Sydney 1998.~~

SCHEDULE 2: COUNCIL'S REQUIREMENTS FOR CONSULTANTS REPORTING ON CONTAMINATED LAND

Depending on the complexity of the site and contamination, Council may ask for a certified consultant and / or a site auditor in accordance with Section 5 of this policy. For any other work, the minimum requirements for a consultant undertaking the work are outlined below. Work must comply with Consultants reporting on contaminated land – contaminated land guidelines (NSW EPA 2020), this policy, and any other relevant guidelines made or approved by the NSW EPA.

Consultants undertaking any investigations and associated reporting on potentially-contaminated land shall be able to clearly demonstrate and provide the following, as an annexure to reports:

1. That they have relevant qualifications and demonstrated experience and expertise in the following:
 - Contaminated land assessment
 - Soil sampling, Design and methodology
 - Groundwater sampling, design and methodology
 - Interpretation of analytical data
 - Quality control/assurance procedures and
 - Assessment of contaminant exposure pathways and risks.
2. That they have a good understanding of the impact of contaminated land on the environment, public and worker health and safety.
3. That they have a good understanding of the NSW legislation relating to contaminated sites and environmental protection.
4. That they have a good understanding of NSW EPA and Department of Planning Guidelines regarding contaminated sites and this policy.
5. That they have access to expertise and resources in the following areas:
 - Geotechnical/ hydrogeology
 - Environmental chemistry
 - Soil science
 - Ecotoxicology
 - Contaminant transport and exposure assessment
 - Sampling and analysis
 - Risk evaluation
 - Remedial technologies and associated requirements.
6. That they are able to conduct an investigation in a logical fashion and be able to critically review information and compile reports to a high scientific/engineering standard for contaminated land assessments.
7. Evidence of current insurance for professional indemnity and public liability.

~~Information shall be provided by consultants in accordance with the "Guidelines for Consultants Reporting on Contaminated Sites", NSW EPA (1995).~~

SCHEDULE 3: SOURCES OF SITE HISTORY INFORMATION FOR PRELIMINARY SITE INVESTIGATIONS

- Past aerial photographs
- Council records - planning, development and environmental services building applications, complaints, pollution incident reports
- Other State instrumentalities
- Previous site examinations
- Local historical publications and organisations
- Current and previous site owners
- Current and previous site workers
- Long-term residents
- Past and present telephone books
- Noxious Trades Act register of Noxious Trades
- NSW Environment Protection Authority Section 35 Notices, past and present scheduled premises, unhealthy building land
- Other Government Departments: Agriculture, Minerals and Resources, Land Titles etc
- Council Trade Waste Agreements
- WorkSafe Authority Dangerous Goods branch
- Country Energy sites containing present and past electrical substations.

Source: SSROC (1999) Model Policy on Contaminated Land

SCHEDULE 4: SUMMARY TABLE

Each report is to contain a summary table in the format outlined below.

8.4 Policy (Review) - Contaminated Land Management

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Property description and address	Page no.
e.g. Lot and DP, map of entire site as well as the investigation area(s)	
Conceptual Site Model	
e.g. Contamination sources, receptors and exposure pathways between sources and receptors	
Sampling and Analysis Quality Plan (SAQP)	
Justification for the sampling design (how will the data be representative and relevant)	
Frequency and pattern of sampling	
Justification for analytical plan (especially if the project uses composite samples)	
Data quality objectives	
Sampling Methodology	
Description of sample methodology	
Description of media sampled and sample depth interval (e.g. borehole logs, or soil description)	
Notable contaminant concentrations e.g. maximum specific concentrations and validation results	
Soil and groundwater concentrations and comparison against appropriate EIL, HIL, HSL and GILs etc.	
Discussion on QA/QC	
Statistical analysis	
Nature of works carried out	
e.g. soil investigation, ground water investigation, excavation, on-site remediation, removal of soil, validation sampling, backfilled with imported soil with ENM classification	
Nature and extent of residual contamination	
Contamination identified in investigation, contamination unable to be remediated within the scope of the work, or areas not assessed	
Waste removed	
During remediation (details of classification and disposal)	
Remediation Summary	
What was removed or treated? Was it successful, is residual contamination remaining? Is there a need for an ongoing Environmental Management Plan?	
Appropriately experienced and qualified practitioners	
Practitioner is appropriately experienced and qualified with adequate professional indemnity (PI) insurance for the work undertaken	
Statement of suitability	
The land is considered suitable for [residential, residential with limited soil access, open space, industrial/commercial] land use, other (describe).	
Report details	
Report title: [insert report title]	
Produced by: [insert company name]	ABN: [insert ABN]
Provided to [insert name] Council on: [insert date]	
I [insert name] of [insert company name] state that I have undertaken this assessment in accordance with the guidelines made and approved by the NSW Environment Protection Authority.	
Name: [report contact]	Signature:
Contact details: [insert email address]	[insert contact phone number]

(REVIEW)
POLICY NAME: LIQUOR LICENCE APPLICATION
POLICY REF: L01
MEETING ADOPTED: XX XXXXXXXX 2024
 Resolution No.
 XXXXXX/XX
POLICY HISTORY: 270220/19; 260712/4



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OBJECTIVES

To provide clear guidelines for the processing of a notification of a liquor licence application within Ballina Shire.

The objective of this policy is to establish a framework for the consideration of a notification of a liquor licence application when exercising Council's powers, functions and duties under the *Liquor Act 2007* (NSW).

This policy applies to all notifications to Council of liquor licence applications that have been submitted to the *Independent Liquor and Gaming NSW Authority* for a transfer, amendment, extension, or grant of a new liquor licence within Ballina Shire.

This policy:

- Provides an administrative framework to assist Council in processing notifications of liquor licence applications.
- Provides information to applicants, licensees and other interested parties about Council's role and policy when dealing with notifications of liquor licence applications.
- Outlines how the liquor laws can be used to achieve positive outcomes for the community.

POLICY

The policy seeks to establish criteria for considering all notifications of applications relating to two broad categories:

1. *Facilities Premises* on Council *owned or managed* land, whether the land is *in under owned by* Council ownership, or, Council is the Trust Manager of a Crown Reserve or, Council is the Manager of land within the ownership of the State Government *and or*.
2. Premises on private *property land*, including but not limited to hotels, clubs, cafes or restaurants.

Council's Role and Criteria for Processing Notifications of Liquor Licence Applications

The following criteria will assist Council's processing of notifications of liquor licensing applications.

- All notifications of liquor licence applications within the Ballina Shire will be coordinated by Council's Compliance Section, Planning and Environmental Health Division in line with Council's internal Liquor Licence Procedure.
- It is not Council's role to undertake social impact assessments of the underlying development once a liquor licence has been submitted to Council, as this assessment has already been done at the development application stage and/or within a *Community Impact Statement (CIS)*, if required.
- Any further technical advice will be sought from other sections within Council, if required.

Planning Requirements

When processing a notification of a liquor licence *application*, Council will consider the land use and there are generally three types of a development consent status that will be looked at and ~~These are as~~ defined within the *Liquor Act 2007* (NSW) *are as*:

- Development consent is required and in place.

- Development consent is required but not in place.
- Development consent is not required to permit the proposed activity.

Council will generally support an application if development consent is required and is in place and the application is consistent with the conditions of consent, such as hours of operation.

If development consent is required but not in place, then Council may not support the this application and will inform the Liquor and Gaming NSW Authority that the applicant does not have the required consent.

In some cases, development consent is not required to permit the proposed activity and Council may support these applications based on merit. For example, the use of a Council owned building located on a sporting field being used in conjunction with a Sporting Club under a licence.

Other factors that may be considered by Council include but are not limited to:

- The size, location and nature of the premises;
- Whether the proposal will involve extended trading hours (beyond the standard trading period) or an overall increase in the maximum capacity of the premises;
- Whether other planning or environmental approvals are required to operate the proposed licensed premises;
- The current approved use of the premises and any relevant consent, lease and/or licence conditions;
- If there is a potential for undue disturbance to the neighbourhood of the proposed licensed premises caused by the operation of the premises and/or the conduct of patrons;
- Increased social and recreational opportunities;
- Increased employment and economic activity;
- Advice on alcohol-related anti-social behaviour or crime as provided by the NSW Police;
- Increases in pedestrian and motor traffic numbers;
- Litter and other pollution associated with the operation of the premises;
- Appropriateness of the liquor licence application and that the function dates correlate with Club activities (i.e., application for dates when hosting home games or finals);
- ~~Correlation between the proposed liquor licence function and the Club' sporting activity.~~

Additional criteria for assessing applications relating to land owned or managed by Council

- Leases or Licences issued by Ballina Shire Council and the Crown specify that the permitted Liquor Licence Applications must be consistent with these premises lease and/or licence conditions.
- If a Lease or Licence is not held by the organisation, they are required to liaise with Council prior to lodging a liquor licence application.
- All applicants applications relating to a sporting club within Ballina Shire are to register their club with the Good Sports Program.
- All Liquor Licence applications that are proposed on land owned or managed by Ballina Shire Council will be referred to Council's Open Spaces and Reserves Manager and Council's Strategic and Customer Services Group for comments and then will be assessed for inclusion in any submission to the Liquor and Gaming NSW Authority.

Licence Conditions and Trading Hours Table 3.2.1

All liquor licences must comply with the requirements set by the *Liquor Act 2007 NSW*).

Every liquor licence in NSW is subject to licence conditions. Some conditions are imposed automatically by the NSW liquor laws, others can be imposed by the Secretary of the Department of Customer Service or the Liquor and Gaming NSW or, from a stakeholder submission.

Conditions may be added to a licence either when it is granted or after a serious complaint or incident involving the venue.

Please refer to the Liquor and Gaming NSW website for a list of licence conditions that may be appropriate conditions for each liquor licence type listed, subject to any alternative conditions that may be imposed specific to a venue's location, business model and/or following consideration of submissions from the Applicant or other stakeholders.

Type of Licence	Ballina Shire Council Licence Conditions	Liquor Act 2007 (NSW) Standard Hours
Hotel (including a general bar licence)	Trading hours are to comply with any Development Consent issued by Ballina Shire Council. Where no trading hours have been regulated by the terms and conditions of development consent, the Council will check that the proposed hours are suitable given the particular circumstances of each application having regard to maintaining appropriate local amenity and will not exceed the Standard trading hours as set by the <i>Liquor Act 2007 (NSW)</i> and any factors within the CIS. If a liquor licence, as applied, is within a public footway and considered to be Alfresco Dining or a Footway restaurant then the appropriate approval must be obtained in line with Council's Commercial Use of Footpath Policy.	<i>Standard hotel trading hours are 5am to midnight Monday to Saturday, and 10am to 10pm on Sunday.</i> <i>Trading restrictions apply between midnight Sunday and 5am Monday, and on Good Friday and Christmas Day.</i>
Producer/wholesaler	Trading hours are to comply with any Development Consent issued by Ballina Shire Council. Where no trading hours have been regulated by the terms and conditions of development consent, the Council will check that the proposed hours are suitable given the particular circumstances of each application having regard to maintaining appropriate local amenity and will not exceed the Standard trading hours as set by the <i>Liquor Act 2007 (NSW)</i> .	<i>Tastings of the 'licensee's product' can be conducted at any time.</i> <i>Retail takeaway sales of the 'licensee's product' can be made to the public during the following hours:</i> <i>Monday – Saturday 5am – midnight Sunday – 10am – 10pm.</i>

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(REVIEW) Liquor Licence Application

Club	<p>Trading hours are to comply with any Development Consent issued by Ballina Shire Council.</p> <p>Where no trading hours have been regulated by the terms and conditions of development consent, the Council will check that the proposed hours are suitable given the particular circumstances of each application having regard to maintaining appropriate local amenity and will not exceed the Standard trading hours as set by the <i>Liquor Act 2007</i> (NSW) and any factors within the CIS.</p> <p>If a liquor licence, as applied, is within a public footway and considered to be Alfresco Dining or a Footway restaurant then the appropriate approval must be obtained in line with Council's <i>Commercial Use of Footpath Policy</i>.</p>	<p>Newly licensed registered clubs are subject to the standard trading period 5am to midnight Monday to Saturday, and 10am to 10pm on Sunday.</p>
On-Premises	<p>Trading hours are to comply with any Development Consent issued by Ballina Shire Council.</p> <p>Where no trading hours have been regulated by the terms and conditions of development consent, the Council will check that the proposed hours are suitable given the particular circumstances of each application having regard to maintaining appropriate local amenity and will not exceed the Standard trading hours as set by the <i>Liquor Act 2007</i> (NSW) and any factors within the CIS.</p> <p>If a liquor licence, as applied for, is within a public footway and considered to be Alfresco Dining or a Footway restaurant then the appropriate approval must be obtained in line with Council's <i>Commercial Use of Footpath Policy</i>.</p>	<p>Most on-premises licences are subject to the standard trading period 5am to midnight Monday to Saturday, and 10am to 10pm on Sunday.</p>
Packaged-Liquor	<p>Trading hours are to comply with any Development Consent issued by Ballina Shire Council.</p> <p>Where no trading hours have been regulated by the terms and conditions of development consent, the Council will check that the proposed hours are suitable given the particular circumstances of each application having regard to maintaining appropriate local amenity and will not exceed the Standard trading hours as set by the <i>Liquor Act 2007</i> (NSW) and any factors within the CIS.</p>	<p>Standard liquor store trading hours are 5am to 10pm Monday to Saturday, and 10am to 10pm on Sunday.</p> <p>Applications for extended trading hours on a Sunday are subject to a Community Impact Statement.</p> <p>Takeaway sales are not permitted on Good Friday and Christmas Day.</p> <p>Packaged liquor licences cannot trade between midnight and 5am on any day.</p>

<p>Limited – Multi-Function or Single-Function (General)</p>	<p>Trading hours are to comply with any Development Consent issued by Ballina Shire Council.</p> <p>Where no trading hours have been regulated by the terms and conditions of development consent, the Council will check that the proposed hours are suitable given the particular circumstances of each application having regard to maintaining appropriate local amenity and will not exceed the Standard trading hours as set by the <i>Liquor Act 2007</i> (NSW).</p> <p>If a liquor licence, as applied for, is within a public footway and considered to be Alfresco Dining or a Footway restaurant then the appropriate approval must be obtained in line with Council's <i>Commercial Use of Footpath Policy</i>.</p>	<p>Trading hours for a limited licence are determined by the Authority and will generally reflect the duration and nature of each function. Trading is not permitted between 3am-6am.</p> <p>In the case of Surf life saving clubs – club social functions, Liquor must not be made available at the function at any time before 12 noon or after 10 pm on the day on which the function is held and liquor must not be made available at the function for a period of more than 4 hours</p>
<p>Limited – Multi-Function or Single-Function – Sporting Clubs on Public Reserves</p>	<p>Trading hours are to comply with any Development Consent issued by Ballina Shire Council.</p> <p>Trading hours are to comply with any Development Consent issued by Ballina Shire Council or if in the case that no Development Consent is in place and/or is not required or no trading hours are specified within the Development Consent then trading under any licence is to cease by 9pm unless a submission on the preferred trading hours has been made to the Authority by the Council having regard for the circumstances of each case.</p> <p>In relation to sporting club match day events, all nominated days must be held on Club Game days only (including match final games) and approval can be sought for liquor to be sold at up to 52 functions in a 12 month period only.</p> <p>Any function that is not held on a Game day will need to be specified on the application with all of the function details including hours of trading or be submitted on a separate application to the Authority and be included in the 52 Functions.</p> <p>These additional functions will be considered individually on their merit and submissions may be made to the Authority by the Council detailing matters of local concern.</p>	<p>Trading hours for a limited licence are determined by the Authority and will generally reflect the duration and nature of each function. Trading is not permitted between 3am-6am.</p>

~~**General Note:**~~
~~All liquor licences must comply with the requirements set by the *Liquor Act 2007* (NSW).~~
~~**Notes:**~~
~~For existing licences:~~

- ~~• Council acknowledges that many existing licences may be entitled to trade for longer than the above hours.~~
- ~~• If no trading hours are specified within the Development Consent and the applicant is requesting to extend their trading hours outside their current Liquor Licence conditions, then a Development Application may need to be submitted to Council.~~

Complaints Made Against Licensed Premises

Licensees have certain obligations to make sure any negative impact on local residents or businesses in their community is minimised. They must also ensure that their licensed premises contributes to and does not detract from the comfort of the community.

It is reasonable to expect some level of noise or activity from licensed venues due to people arriving and leaving, or in the general operation of the venue.

A disturbance is likely to be one two of things, or both:

1. excessive noise – from activities inside the venue or people leaving the venue
2. anti-social behaviour from people leaving the venue – littering, damage to property, or alcohol- related violence.

Action can be taken against licensed premises that have a negative impact on a neighbourhood. The Secretary of the NSW Department of Customer Service has the authority and a range of enforcement options to deal with disturbance complaints against licensed premises.

You can lodge a formal complaint with the Secretary, NSW Department of Customer Service, via the Liquor and Gaming NSW website.

Who can make a formal disturbance complaint

1. Three or more local residents working together, or a third party authorised by three or more local residents.
2. Police.
3. A local council.
4. A person who satisfies the Secretary that the licensed premises is affecting their business interests – financial or otherwise.

How Liquor and Gaming NSW handle disturbance complaints

After receiving a formal complaint, the Secretary considers the best way to deal with the issue. This could include:

- encouraging the complainant and the licensee to resolve the issues between themselves
- mediation between the complainant and the licensee
- seeking voluntary actions by the licensee
- using legal powers to impose conditions on the licence
- using legal powers to issue directions to the licensee or staff
- dealing with the complaint based on the evidence and submissions from the licensee
- arranging a meeting to get more information from the complainant and giving the licensee a chance to respond.
- referring the complaint to another agency more suited to deal with the complaint.

Others, such as police and local council representatives, may also provide information, give their view, and offer advice on how to deal with the issue.

Actions Liquor and Gaming NSW can take in response to a complaint

The Secretary can use different legal tools to resolve a disturbance complaint. This can lead to a range of outcomes, which are adapted to the particular circumstances of the complaint.

Where Liquor and Gaming NSW reach a conclusion under the disturbance complaint rules of the *Liquor Act*, the Secretary can:

- impose a condition on the liquor licence
- vary or revoke an existing condition on the liquor licensee
- adjourn a complaint conference so the licensee can solve the issue
- give the licensee a warning
- take no further action.

The types of conditions Liquor and Gaming NSW can impose on a liquor licence include:

- noise emission restrictions
- trading restrictions including lockouts or curfews
- restrictions on the sale and supply of liquor
- putting security, or additional patrols, in and around a licensed venue
- insisting that a licensee join a local liquor accord.

Issues considered

The Secretary will take a range of information into account before making a decision, including:

- Information from police, the local council, residents, and the licensee helps to reveal the level of disturbance and what's necessary to deal with it
- The order of occupancy between you and the licensed premises – i.e. who was there first? However, order of occupancy rules don't apply to complaints made by police or a local council.
- Any changes, including structural changes, that you or the licensed venue operators have made to your respective properties.
- Any changes in activities at the licensed premises over time, such as its pattern of trading hours.

Timeframe to resolving the complaint

There is no set timeframe to resolving a complaint. It depends on how many issues and people are involved in the complaint. The legal options available to the Secretary means action can be taken quickly, if it is necessary.

Review of the decision

Depending on how the Secretary resolves a complaint, you can request a review by ~~the Independent Liquor & Gaming NSW Authority Board (ILGA)~~.

Make a formal complaint:

1. Complete the 'Disturbance complaint' form on the Liquor and Gaming NSW website.
2. The form will need to be endorsed by three or more local residents.
3. The complaint must be supported by a statutory declaration.

~~Under the *Liquor Act 2007* (NSW), a disturbance complaint can be made by Councils, Police or three or more residents to the Director General of The New South Wales Department of Trade and Investment (NSW Trade & Investment), Regional Infrastructure and Services where the quiet and good order of a neighbourhood is unduly disturbed by the:~~

- ~~Manner in which the business of the licensed premises is conducted; and/or~~

- ~~• The behaviour of patrons after leaving the licensed premises (such anti social behaviour and alcohol related violence).~~

~~A disturbance complaint must be supported by a statutory declaration which is available from the Liquor and Gaming NSW website.~~

~~After receiving a complaint, the Director General will consider the best way of addressing the issues raised by the complainant.~~

~~Where a complaint is determined under the disturbance complaint provisions of the *Liquor Act 2007* (NSW), the Director General can:~~

- ~~• Impose a condition on the liquor licence~~
- ~~• Vary or revoke an existing condition on the liquor licensee~~
- ~~• Adjourn a complaint conference (if held) to enable the licensee to implement any undertakings given to the Director General to address the complainant's concerns and to enable the effectiveness of those undertakings to be reviewed.~~
- ~~• Issue a warning~~
- ~~• Take no further action.~~
- ~~• The types of conditions that can be imposed on a liquor licence include but are not limited to:~~
 - ~~• Noise emission restrictions~~
 - ~~• Trading restrictions including lockouts/curfews~~
 - ~~• Restrictions on the sale/supply of liquor~~
 - ~~• Requiring security, or additional security patrols, in and around a licensed premises venue~~
 - ~~• Requiring a licensee to participate in a local liquor accord.~~

~~In the event of a complaint from a member of the public relating to licensed premises within the Ballina Shire, these matters will be recorded to Richmond Local Area Command, Licensing Police.~~

Liquor Accord

~~In NSW Liquor Accords are voluntary industry based partnerships working in local communities to introduce practical solutions to liquor related problems. They reach agreements on ways to improve the operation of licensed venues so that entertainment venues and precincts are safe and enjoyable.~~

Liquor Accords are partnerships among licensed venues, community members, local businesses, local councils, police, government departments and other community groups.

Liquor Accords aim to reduce alcohol-related violence, antisocial behaviours and other alcohol related harm in their local communities.

All new applicants will be encouraged to join the Ballina Shire Liquor Accord.

BACKGROUND

Legislative Requirements

This policy will assist in determining the likely requirements that will need to be met under the planning laws, *Environmental Planning and Assessment Act 1979* (NSW) and the *Liquor Act 2007* (NSW) for liquor licensing proposals.

Applications for Liquor licences are made to the Independent Liquor and Gaming Authority (Authority). The Liquor and Gaming NSW Authority determines liquor licence applications and disciplinary outcomes in NSW. There is a legal requirement for the applicant to also provide a copy of the application to the local Council and the NSW Police. The subsequent and ongoing enforcement and policing of a liquor licence is the responsibility of the NSW Police.

Community Impact Statement

A Community Impact Statement (CIS) is prepared by a potential applicant for certain liquor licences or licence-related authorisations. It and is the first opportunity for the community to influence the outcome of a liquor licensing proposal.

The CIS is prepared before the liquor licensing application is made. The intention of the CIS is to enable the Liquor and Gaming NSW Authority to consider the likely impact of the proposed licence or authorisation on the local community and gauge the level of community support for the proposal.

The liquor laws require potential applicants to consult with local Councils as part of the CIS process. Applicants must provide a notice to the Council for this purpose. See table 2.3.1 for types of licences that require a CIS.

Liquor Licence Applications

Local Councils and the NSW Police are required to be notified by the applicant within two working days of an application being lodged.

The notification of an application provides Council with an opportunity to comment on a liquor licensing proposal.

Submissions can be made by the Council (and any other person) to the Liquor and Gaming NSW Authority on these applications within 30 days of the application being lodged or 14 days in the case of an application for a limited licence.

Any submissions that are made must be taken into account by the Liquor and Gaming NSW Authority.

Types of Liquor Licences

Understanding and selecting what licence a business or event needs can be a complex and difficult process to navigate. Please refer to the Liquor and Gaming NSW website and use the licence selector tool to help find the most appropriate liquor licence type for a business or event.

The business type and the activities offered in a venue may make an applicant eligible to apply for more than one liquor licence type. For example, a tapas restaurant could consider applying for an on-premises, small bar or, general bar liquor licence.

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There are six categories of liquor licences. These are shown in table 2.3.1 below.

Table 2.3.1

8.5 Policy (Review) - Liquor Licence Application

Ballina Shire Council

(REVIEW) Liquor Licence Application

Type of Licence	Type of Activity	Community Impact Statement (CIS) required
Hotel (including a general bar licence)	Hotel, bar, tavern	Yes
Club	A registered club selling liquor to members and their guests	Yes
On-Premises	Can be tailored for one or more types of business activities including a restaurant, public entertainment venue, motel, function centre and other venues where liquor is consumed on the premises	Yes, but only where the premises licence relates to a public entertainment venue (other than a cinema or theatre), or an application is made for a primary service authorisation for an on-premises licence
Packaged Liquor	Liquor stores, internet operators selling liquor to the public	Yes
Producer/Wholesaler	Brewer, distiller, winemaker, wholesaler	No
Limited	Functions held by non-profit organisations, as well as special events and trade fairs	No

RELATED DOCUMENTATION

Related documents, policies and legislation:

- *Liquor Act 2007* (NSW) and subordinate regulations.
- *Gaming and Liquor Administration Act 2007* and subordinate regulations.
- *Environmental Planning and Assessment Act 1979* (NSW) and subordinate regulations.
- *Local Government Act 1993* (NSW) and subordinate regulations.
- *Crown Lands Management Act 2016* (NSW) and subordinate regulations.
- *Roads Act 1993* (NSW) and subordinate regulations.
- ~~*A Guide to the liquor Laws for local Councils – Office of Liquor, Gaming and Racing (2009).*~~
- *Ballina Shire Council Alcohol Regulation on Public Land Policy.*
- *Ballina Shire Council Commercial Use of Footpaths Policy.*
- *Ballina Shire Council Liquor Licence Application Policy Procedure.*

SCOPE OF POLICY

This policy applies to:

- Council employees
- Community members
- Sporting organisations
- Commercial operators

DEFINITIONS

The following defined terms are used in the policy:

Alfresco Dining	Has the same meaning as Outdoor Dining. Means the The use of an outdoor area for the service and consumption of food and drink.
Applicant	In relation to a liquor licence, an applicant is the one who applies for or requests something under the <i>Liquor Act 2007</i> (NSW). An applicant can be an individual, company or corporation.
Authority	Independent Liquor and Gaming Authority means the Independent Liquor and Gaming Authority constituted under the <i>Gaming and Liquor Administration Act 2007</i>
CIS	Means Community Impact Statement
Council	Means Ballina Shire Council
Council Land	See Public Land definition All land vested in Council except roads or lands to which the Crown Lands Act 1989 applies.
Crown Land	Land vested in the Crown that is dedicated for public purpose. Each of the following is Crown Land as defined in the Crown Land Management Act 2016 — (a) land that was Crown land as defined in the Crown Lands Act 1989 immediately before the Act's repeal,

	(b) land that becomes Crown land because of the operation of a provision of the <i>Crown Land Management Act 2016</i> or a declaration made under section 4.4,
	(c) land vested, on and from the repeal of the <i>Crown Lands Act 1989</i> , in the Crown (including when it is vested in the name of the State).
	Note—
	<i>Crown Land Management Act 2016</i> Clause 6 of Schedule 7 provides for certain land under Acts repealed by Schedule 8 to become Crown land under the <i>Crown Land Management Act 2016</i> . Section 1.10 then provides for this land to be vested in the Crown.
	Land that will become Crown land under the <i>Crown Land Management Act 2016</i> includes land vested in the Crown that is dedicated for a public purpose. This land was previously excluded from the definition of Crown Land in the <i>Crown Lands Act 1989</i> .
EP&A	Means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Footway	Means that part of a road as is set aside or formed as a path or way for pedestrian traffic (whether or not it may also be used by bicycle traffic)-
Footway Restaurant	Alfresco dining establishment on a public road for which approval is required under Section 125 of the Roads Act 1993 (NSW).
Functions	Means any dinner, ball, convention, seminar, sporting event, race meeting, exhibition, performance, trade fair or other fair, fete or carnival, or any other event or activity, that is conducted for public amusement or entertainment or to raise funds for any charitable or other purpose and, in relation to a surf life saving club, includes any gathering of members of the club (and their guests) organised by the club for social purposes
	Any dinner, ball, convention, seminar, sporting event, race meeting, exhibition, performance, trade fair or other fair, fete or carnival, or any other event or activity, that is conducted for public amusement or entertainment or to raise funds for any charitable purpose
Licence	Means a licence under the <i>Liquor Act 2007</i> (NSW)
Licence Type:	Means the type of Liquor Licence and includes
	(a) hotel licence,
	(b) club licence,
	(c) small bar licence,
	(d) on premises licence,
	(e) packaged liquor licence,
	(f) producer/wholesaler licence,
	(g) limited licence.

	Means the following types of licences that may be granted and held under the <i>Liquor Act 2007</i> (NSW) –
	(a) hotel licence
	(b) club licence
	(b1) small bar licence
	(c) on-premises licence
	(d) packaged liquor licence
	(e) producer/wholesaler licence
	(f) limited licence
	(g) any other type of licence that is prescribed by the regulations
Licensed Premises	Means the premises to which a licence relates
Licensee	Means the holder of a licence under the <i>Liquor Act 2007</i> (NSW)
Local Liquor Accord	Means a local liquor accord, precinct liquor accord or community event liquor accord
Local Consent Authority	Means Ballina Shire Council
Outdoor Dining	Has the same meaning as Alfresco Dining. Means the use of an outdoor area for the service and consumption of food and drink
Premises	includes—
	(a) a building or structure, or
	(b) land or a place (whether enclosed or built on or not), or
	(c) a vehicle, vessel or aircraft.
Public Land	means any land (including a public reserve) vested in or under the control of the council, but does not include—
	(a) a public road, or
	(b) land to which the <i>Crown Land Management Act 2016</i> applies, or
	(c) a common, or
	(d) a regional park under the <i>National Parks and Wildlife Act 1974</i> .
Public Road	Means:
	(a) any road that is opened or dedicated as a public road, whether under this <i>the Roads Act 1993</i> (NSW) or any other Act or law, and
	(b) any road that is declared to be a public road for the purposes of this Act <i>the Roads Act 1993</i> (NSW).

REVIEW

The Policy is to be reviewed every four years.

(REVIEW)
POLICY NAME: PRIVATE STRUCTURES WITHIN
COUNCIL OWNED WATERWAYS

POLICY REF: P02

MEETING ADOPTED: Resolution No.

POLICY HISTORY: 250620/3: 280716/31



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OBJECTIVES

The objectives of this policy are to

- Enable the use and occupation of Council owned waterways for private boating structures,
- Address adequately Council's liability in relation to private structures within waterways under Council's ownership,
- Provide transparency and clarity in relation to the approval and licencing requirements for private waterway structures on Council owned land,
- Establish guidelines and parameters in relation to the installation, **maintenance** and construction requirements for waterway structures,
- Maintain the function and public accessibility of Council owned waterways, and,
- Recognise the private occupation of public land in Council owned waterways.

POLICY

Council recognises the benefits provided to adjoining landowners through the provision of waterway structures that provide access to the greater Richmond River estuary system. Council also acknowledges that the placement of waterway structures is consistent with the purpose of the subject waterways.

This policy has been established to define and clarify Council's requirements for the placement of private waterway structures within a Council owned waterway. Council agrees in principle to the occupation of Council owned waterways for waterway structures subject to the benefiting landowner complying with the following requirements.

1. General requirements applicable to all waterway structures

- 1.1 The construction, installation and maintenance of waterway structures within Council owned waterways is to be undertaken in accordance with the provisions of this policy and relevant provisions of the Australian Standards for *Guidelines for the Design of Maritime Structures 2005* or other relevant superseding guidelines.
- 1.2 Landholders are to satisfy themselves that appropriate approvals have been obtained where required from the Road and Maritime Service under the provisions of the *Management of Waters and Waterside Lands Regulation*-NSW where such structures are located within 'navigable waters' under the terms of the Regulation.
- 1.3 When directed, waterway structures are to be removed (at no cost to Council) to permit maintenance activities within the waterway, or for any other reason.
- 1.4 It is the responsibility of the benefiting landowner (licensee) to maintain the waterway structure in a safe and tidy condition at all times.
- 1.5 It is the responsibility of the benefiting landowner (licensee) to undertake any minor excavation necessary to allow and to maintain pontoon flotation. No such excavation within the canal is permitted without the prior consent of Council.

- 1.6 A waterway structure must not be modified, extended or changed without the prior approval of Council.
- 1.7 Any alterations and/or additions to an existing authorised waterway structure must obtain the relevant approvals in accordance with the requirements of section 2 of this policy.
- 1.8 1.6Provision is to be made for the access of Council and its servants or contractors across any structure erected/installed within the Council owned waterway.
- 1.9 The benefiting landowner is required to pay the annual licence fee (and application and transfer fees if applicable) for private waterway structures as determined by Council.
- 1.10 A licence issued by Council for a waterway structure may be cancelled at any time with notice in writing to the benefiting landowner in circumstances where:
- a) the structure in the opinion of Council has become unsafe or presents a danger to boating or other property or to the general public,
 - b) the benefiting landowner (licensee) does not hold the insurance coverage requirements as specified in this policy,
 - c) failure to pay the annual licence fee, or
 - d) the Council considers it necessary for any other reason.
- 1.11 The benefiting landowner must maintain a public liability policy of insurance in respect of any one occurrence of not less than \$20,000,000.00 in relation to liability for loss or damage to property and death of or injury to any person in any way connected to Council owned land the subject of the licence agreement. The insurance Product Disclosure Statement (PDS) and Certificate of Currency is to:-
- a) be provided to Council with the signed Licence Agreement,
 - b) be maintained yearly and provided to Council upon request.
- 1.12 Private waterway structures are not to be used for the permanent mooring of houseboats (or involve the residential occupation of boating vessels).
- 1.13 Private waterway structures are not to be used for commercial purposes, other than as approved in accordance with Council's Commercial Activities on Public Land Policy.
- 2. Requirements for installation of new waterway structures (including alterations and additions to existing structures)**
- 2.1 Proposals for any new waterway structures or any alterations and additions to existing structures over or within Council owned land must satisfy the following requirements prior to construction or installation works commencing:
- a) All waterways' structures require~~ment~~ Development Consent and a Construction Certificate (CC) to be issued prior to the commencement of works.
 - b) Any waterways structures, which potentially affect or disturb any sea grass beds may require referral to the NSW Department of Primary Industries (DPI) for their comment/concurrence. In these instances, the proposal is regarded as Integrated Development under the Environmental Planning and Assessment Act (EPA) 1979 as amended. An integrated referral attracts additional NSW Government referral ~~and Council-administration~~ fees.

c) The design and application documents for any proposed waterway structure are to comply with the requirements of Council's **Development Control Plan**, Boat Ramp Standard Design and/or Pontoon Design Guideline.

2.2 Following the **development** approval requirements in clause 2.1 and prior to the **issue of a Construction Certificate** ~~commencement of construction or installation works~~ for any new, altered or additional structures within or over Council owned waterways, the benefiting landowner is to enter into a licence agreement with Council for the occupation of Council owned land.

3. Existing waterway structures with approval

3.1 Upon request by Council, adjoining landowners with existing waterway structures having development consent issued in accordance with the *Environmental Planning & Assessment Act 1979* or another appropriate approval from Council will be required to enter into a licence agreement for the occupation of Council owned land.

Written evidence of approval documentation is required.

4. Transfer of licences

4.1 Any licence agreement issued by Council for private waterway structures under sections 2 or 3 of this policy may be transferred to a new adjoining landowner upon written request to Council.

4.2 A request for transfer of licence agreement in clause 4.1 must be made in writing to Council and shall be accompanied by the required transfer fee.

5. Compliance

5.1 Failure to have structures appropriately approved and licence issued may result in Council undertaking compliance actions to have the structure removed, with any costs associated with such actions borne by the landholder.

BACKGROUND

Council owns the freehold title to the following water bodies:

- Ballina Quays Canals (Lot 63 DP 263861 & Lot 132 DP 775228)
- Banyanda Lake (Lot 50 DP 259593)
- Endeavour Lake (Lot 72 DP 778628)

The bed (and, in the case of Endeavour Lake, the shoreline) of these waterways is owned by Council and classified as operational land in accordance with the *Local Government Act 1993*. One of the functions of these waterways is to enable adjoining properties to benefit from direct waterway access. Among these benefits are the options for adjoining owners to place private structures such as boat ramps, jetties and pontoons within the waterway.

The purpose of this policy is to establish and clarify the Council's regulatory framework where waterway structures occupy or are placed over Council owned land.

The waters to which this policy applies are navigable waterways for the purpose of the *Marine Safety Act 1998*. Consequently, the navigation of these waterways is subject to relevant State and Federal legislation governing the registration and operation of marine vessels.

DEFINITIONS

Adjoining landowner	means the owner of the private land which directly adjoins a Council owned waterway (e.g. the owner of a waterfront property).
Benefiting landowner	means an adjoining landowner who benefits from an approval and authorisation by Council to place private waterway structures within a Council owned waterway.
Boat ramp	means an inclined ramp structure constructed for the purpose of accessing the waterway and extending into the waterway from an adjoining property.
Council owned waterway	means, for the purposes of this policy, the land comprising the bed and foreshore area (where applicable) of the Ballina Quays Canals (Lot 63 DP 263861 and Lot 132 DP 775228), Banyanda Lake (Lot 50 DP 259593) and Endeavour Lake (Lot 72 DP 778628).
Jetty	means a structure extending into the waterway generally perpendicular to the shoreline to enable access to boats and other water vessels.
Pontoon	means a floating platform structure connected to the shore by a gangway or ramp for the primary purpose of accessing boats and other water vessels.
Slipway	means a structure, generally in the form of two supported parallel rails, on which a wheeled cradle is run to draw a vessel out of the water by means of a manual or powered winch, a block and tackle or the like.
Waterway structure	means a boat ramp, jetty, pontoon, slipway or permanent mooring for private use, occupation and benefit.

Note: Retaining walls within the canal profile and located fully within the adjoining private property are not waterway structures for the purposes of this policy.

SCOPE OF POLICY

This policy applies to:

- Council employees
- Community members
- Corporate entities

LAND TO WHICH THIS POLICY APPLIES

This policy applies to Council owned waterways.

RELATED DOCUMENTATION

Related documents, policies and legislation:

- *Environmental Planning and Assessment Act 1979*
- *Local Government Act 1993*
- **Ballina Shire Development Control Plan 2012, Chapter 2, Part 3.23 Waterway Structures**

9.7 Policy (Review) - Private Structures within Council Owned Waterways

Ballina Shire Council

(REVIEW) Private Structures within Council Owned Waterways Policy

- Licence Application Form – Installation/Transfer of Private Waterway Structures
- Streamlined Assessment Procedures for Retaining Walls, Boat Ramps and Pontoons in the Ballina Quays and Banyanda Estates
- Engineering Standards and Guidelines for Maritime Structures (NSW Maritime 2005).
- Boat Ramp Standard Design – Ballina Shire Council
- Pontoon Design Guideline

REVIEW

The Private Structures within Council Owned Waterways Policy is to be reviewed every four years or as required.

Note: Review of this policy is to include a direct notification to landholders that have frontage to the Ballina Quays Canals, Banyanda Lake and Endeavour Lake to advise of the review process and provide the landholders with an opportunity to provide feedback in relation to the policy review.

Survey Responses
 20 October 2023 - 17 November 2023

Feedback Form - River Street Lane Duplication (eastbound Kerr Street to Grant Street)

Your Say Ballina

Project: River Street Lane Duplication (eastbound Kerr Street to Grant Street)



VISITORS 27					
CONTRIBUTORS 9			RESPONSES 9		
9 Registered	0 Unverified	0 Anonymous	9 Registered	0 Unverified	0 Anonymous

10.1 River Street/Kerr Street, Ballina Intersection - Public Exhibition



Respondent No: 1
Login: Registered

Responded At: Oct 25, 2023 18:33:13 pm
Last Seen: Oct 25, 2023 07:28:25 am

- Q1. **Are you a business owner in this locality or a motorist?** I regularly drive along this section of River Street (between Kerr and Grant Streets)
-
- Q2. **Do you support the proposal to duplicate the outer eastbound lane of River Street, between Kerr and Grant Streets?** Yes
-
- Q3. **Please provide a reason for your objection to the lane duplication**
not answered
-
- Q4. **Please provide a reason for your support of the lane duplication**
not answered
-
- Q5. **Please provide any further feedback you have about the proposed duplication of the eastbound lane of River Street (between Kerr and Grant Streets) and associated parking changes.**

Ban the right turn into Kerr Street from River St eastbound. The right turn seems unnecessary now there is now the traffic signals upstream that provide a right turn given the impediment the right turn causes to vehicles travelling straight. Even with the additional lane, there is still likely to be weaving upstream and downstream of the intersection should a vehicle be waiting to turn right along with vehicles potentially feeling pressured to take gaps that may not be appropriate when turning right potentially presenting a safety concern for both vehicles and potentially pedestrians crossing. There is also the roundabout at Grant Street that allows for U-turns and larger vehicles can turn left onto Grant St, left onto Tamar St and then left onto Kerr St before continuing straight onto Kerr St.
-
- Q6. **If you would like your submission to be confidential, please provide a reason for confidentiality** not answered
-
- Q7. **I have read and agree with Council's Privacy Policy** Yes
-

10.1 River Street/Kerr Street, Ballina Intersection - Public Exhibition




Respondent No: 2
Login: Registered

Responded At: Oct 30, 2023 22:52:52 pm
Last Seen: Oct 30, 2023 11:47:43 am

- Q1. **Are you a business owner in this locality or a motorist?** I regularly drive along this section of River Street (between Kerr and Grant Streets)
-
- Q2. **Do you support the proposal to duplicate the outer eastbound lane of River Street, between Kerr and Grant Streets?** Yes
-
- Q3. **Please provide a reason for your objection to the lane duplication**
not answered
-
- Q4. **Please provide a reason for your support of the lane duplication**
Only if it is landscaped with a central island... with a pedestrian crossing.
-
- Q5. **Please provide any further feedback you have about the proposed duplication of the eastbound lane of River Street (between Kerr and Grant Streets) and associated parking changes.**

Please landscape the duplication from Kerr st to Grant Street the same as you done from Grant Street onwards with trees with a central island. Kerr street is the gateway to the Ballina Shopping district, and us coming from the west should have the same experience as those from the East ... you spend a fortune updating Lennox Heads ... we should have the respect showing by the council.
-
- Q6. **If you would like your submission to be confidential, please provide a reason for confidentiality** not answered
-
- Q7. **I have read and agree with Council's Privacy Policy** Yes
-

	Respondent No: 3	Responded At: Nov 09, 2023 10:19:43 am
	Login: Registered	Last Seen: Nov 08, 2023 23:05:36 pm

- Q1. **Are you a business owner in this locality or a motorist?** **Other (please specify)**
No longer drive but have a mobility scooter.
-
- Q2. **Do you support the proposal to duplicate the outer eastbound lane of River Street, between Kerr and Grant Streets?** Yes
-
- Q3. **Please provide a reason for your objection to the lane duplication**
not answered
-
- Q4. **Please provide a reason for your support of the lane duplication**
Should ease traffic flow
-
- Q5. **Please provide any further feedback you have about the proposed duplication of the eastbound lane of River Street (between Kerr and Grant Streets) and associated parking changes.**

Please make sure pedestrians and those with mobility issues can cross road safely. When double lanes are involved it's difficult to get across and there is a lot of traffic using RSL too. Consider what type of crossing gives equal access to all. I understand that there will potentially be more building work in that area fairly soon. If there needs to be a controlled sensor press on a pole please make sure that a driver of a scooter/ wheelchair may access without needing the person to struggle to reach as happens in other instances around town. Until you are in this position you never give this a thought!
-
- Q6. **If you would like your submission to be confidential, please provide a reason for confidentiality** not answered
-
- Q7. **I have read and agree with Council's Privacy Policy** Yes
-

10.1 River Street/Kerr Street, Ballina Intersection - Public Exhibition



Respondent No: 4
Login: Registered

Responded At: Nov 14, 2023 08:00:34 am
Last Seen: Nov 13, 2023 20:39:53 pm

- Q1. **Are you a business owner in this locality or a motorist?** I regularly drive along this section of River Street (between Kerr and Grant Streets)
-
- Q2. **Do you support the proposal to duplicate the outer eastbound lane of River Street, between Kerr and Grant Streets?** Yes
-
- Q3. **Please provide a reason for your objection to the lane duplication**
not answered
-
- Q4. **Please provide a reason for your support of the lane duplication**
Frequent issues merging back to one lane eastbound before Grant St RAB and about every second month you see a car drive on the left shoulder due to another driver failing to let them merge right into the roundabout at the start of morning peak time.
-
- Q5. **Please provide any further feedback you have about the proposed duplication of the eastbound lane of River Street (between Kerr and Grant Streets) and associated parking changes.**
Ensure the dedicated left turn lane from River into Grant street can facilitate at least a 12.5m vehicle (bus) staying in lane. Eastbound edge line narrows adjacent to parallel parking bays opposite the bus zone , ensure consistent minimum width of this shoulder between the parked cars and through lane.
-
- Q6. **If you would like your submission to be confidential, please provide a reason for confidentiality** not answered
-
- Q7. **I have read and agree with Council's Privacy Policy** Yes
-


10.1 River Street/Kerr Street, Ballina Intersection - Public Exhibition



Respondent No: 5
Login: Registered

Responded At: Nov 15, 2023 15:09:47 pm
Last Seen: Nov 15, 2023 03:36:07 am

- Q1. **Are you a business owner in this locality or a motorist?** I regularly drive along this section of River Street (between Kerr and Grant Streets)
-
- Q2. **Do you support the proposal to duplicate the outer eastbound lane of River Street, between Kerr and Grant Streets?** No
-
- Q3. **Please provide a reason for your objection to the lane duplication**
The duplication will remove much needed car parks from the northern side of river street having a major impact on the businesses and moving the congestion from the kerr street intersection to the grant street intersection.
-
- Q4. **Please provide a reason for your support of the lane duplication**
not answered
-
- Q5. **Please provide any further feedback you have about the proposed duplication of the eastbound lane of River Street (between Kerr and Grant Streets) and associated parking changes.**
not answered
-
- Q6. **If you would like your submission to be confidential, please provide a reason for confidentiality** not answered
-
- Q7. **I have read and agree with Council's Privacy Policy** Yes
-

	Respondent No: 6 Login: Registered	Responded At: Nov 15, 2023 15:35:53 pm Last Seen: Nov 14, 2023 23:59:31 pm
---	---	---

Q1. **Are you a business owner in this locality or a motorist?** I own a business in this section of River Street (between Kerr and Grant Streets)

Q2. **Do you support the proposal to duplicate the outer eastbound lane of River Street, between Kerr and Grant Streets?** No

Q3. **Please provide a reason for your objection to the lane duplication**

The changing of parking to the areas out the front of our shops is going to cripple our business. We already You have stated loss of parking that is actually far lower than the loss. In the area out the front of our shops, Hooked on brewing, TCA and Dominos you have an indication of 3 parks. Yesterday (15/11/2023) we had 6 cars parked in this area and yet the statement says we will only lose 10 parks in the whole area? On top of this, in another statement you have released, you specify that there are 53 parks in this area, yet in the direct statement to stores, you have stated 31 parks. I also point out the vagueness in terms 'carparking spaces (from around 31 to 21 spaces)'. Based on all the counting of cars parked we have done recently, this is either an 'educated guess' or is an actual bend of the truth. If we are losing 50% of the spaces just at the front of our stores, how can this be true for the rest of the street. Data compiled regarding usage in the area Contrary to your parking studies, we are constantly having issues with customers trying to get parks out the front of our store. Customers are always complaining about having to carry heavy items down as far as the pawn brokers and further as they couldn't park out the front of our store. We regularly trolley items well down the street to customers cars. Occupancy Data Collected 2022 21st, 23rd and 25th February 2022 As we are all aware, this was the lead up to the most devastating weather event in our history. We had 600mm of rain with the lion's share of this being at the end of the month. This was not only when we were all preparing for a flood and sandbagging our stores but also when you were collecting your data. 15th, 24th and 27th of June June is one of the quietest months on the retail calendar. EOFY see retail sales slow as tax returns are prepared and waiting for spending July which sees a spike in sales. Couple this with being only 3 months after our town going under water, sales were terrible and so parking data would not be accurate. November 29th The last two weeks of November and the first week of December are THE WORST retail trading days on the calendar. This is the lead up to Christmas and retail starts taking off around the 12th to 15th of December. To collect data for traffic or parking in this period is a complete waste of time to formulate parking needs or restrictions. This is unless you are trying to show that parking is low in a given area! As you can see from above, if you are trying to see low numbers in your data, then you couldn't have picked better times to show this. Is your data accurate, yes, it is based on the times taken. Does this data reflect the actual usage and time of parking out the front of our stores, the simple answer is no. This data could not be more incorrect or skewed towards the agenda to change this area. All of your data has been collected at a very inappropriate time that does not reflect current use of this area, today.

[Redacted text block]

Taking all of the data supplied above, once again you can see that the data you have collected regarding usage and times for parking in this area is very inaccurate due to the circumstances surrounding its collection and times the data was collected. I trust that all figures stated above will not be shown outside of council walls nor made public, at all.

Q4. **Please provide a reason for your support of the lane duplication**

not answered

Q5. **Please provide any further feedback you have about the proposed duplication of the eastbound lane of River Street (between Kerr and Grant Streets) and associated parking changes.**

Usage and times needs to reassessed to reflect business now, not in the worst year of Ballina's history! Your completed data is corrupt and surely cannot be referenced to make decisions of this magnitude. Not only are you taking 50+% of our retail parking you are making even harder for people to park. In past meetings, we were told that parallel parking is far safer. I again ask you, like I did in the last meeting we had regarding this, why would you transform the whole inner CBD area to 45° parking if it isn't safe? This is not to mention how dangerous it will be with two lanes extending right through to the roundabout and cars racing to beat each other to go straight ahead. This should remain as it is and council should be looking at putting a crossing in to get from Tamar St side of River St to the Ballina RSL side as this is heavily used in the roundabout area and is very dangerous for pedestrians. This will make the waterside areas like the Ballina RSL jetty and surrounding water edges a lot safer to get to for tourists and locals, fishing walking and enjoying these parts of town.

Q6. **If you would like your submission to be confidential, please provide a reason for confidentiality**

not answered

Q7. **I have read and agree with Council's Privacy Policy**

Yes


10.1 River Street/Kerr Street, Ballina Intersection - Public Exhibition



Respondent No: 7
Login: Registered

Responded At: Nov 16, 2023 10:09:34 am
Last Seen: Nov 15, 2023 23:06:20 pm

- Q1. **Are you a business owner in this locality or a motorist?** I regularly drive along this section of River Street (between Kerr and Grant Streets)
-
- Q2. **Do you support the proposal to duplicate the outer eastbound lane of River Street, between Kerr and Grant Streets?** No
-
- Q3. **Please provide a reason for your objection to the lane duplication**
Not needed
-
- Q4. **Please provide a reason for your support of the lane duplication**
not answered
-
- Q5. **Please provide any further feedback you have about the proposed duplication of the eastbound lane of River Street (between Kerr and Grant Streets) and associated parking changes.**
not answered
-
- Q6. **If you would like your submission to be confidential, please provide a reason for confidentiality** not answered
-
- Q7. **I have read and agree with Council's Privacy Policy** Yes
-

	Respondent No: 8	Responded At: Nov 17, 2023 10:25:32 am
	Login: Registered	Last Seen: Nov 15, 2023 23:09:17 pm

Q1. Are you a business owner in this locality or a motorist? I own a business in this section of River Street (between Kerr and Grant Streets)

Q2. Do you support the proposal to duplicate the outer eastbound lane of River Street, between Kerr and Grant Streets? No

Q3. Please provide a reason for your objection to the lane duplication
Access/ availability for our customers


Q4. Please provide a reason for your support of the lane duplication
not answered

Q5. Please provide any further feedback you have about the proposed duplication of the eastbound lane of River Street (between Kerr and Grant Streets) and associated parking changes.

We have been a long-standing Ballina Shire business down this end of River Street since 1995, in this time we have seen many changes around us but this one I can NOT happily except. Yes, I understand that things need to change but as a small group of hard-working local families trying to make a living in a very hard economic time, this proposal is not going to help. The area that is going to be highly effected is from ABC Pawnbrokers to Hooked on Brewing, yes as you have stated you have done a survey & yes there may have only been 13,15,18 or 22 cars at times but they were guaranteed not all the way to Grant Street but the majority being in front of this small group of businesses that I have mentioned, We are in fact going to be highly impacted by your decision. No way is a person going to feel comfortable reverse parking into a spot at peak times when people are going past at 60km let alone get young children or goods out of the back of their vehicle's. Our business and others require people to be coming and going with large or bulky items, some requiring 2 people to carry. Have you checked what some of these businesses do? Next to Dominos we have a Martial Arts Centre going in doing group classes, where are these people going to park? The family's grabbing a pizza after school sports, where are they going to park? There is a DA for 30 units to be built next to the Ballina Hotel, most people have two cars, where are they going to park? A little further down we have a student's dance studio with another 20 cars. More parking required. let's hope that many of these situations don't crossover! And then there are the little shops in between trying to keep their heads above water, In our business we have large number of customers with mobility issues/ disabilities which are going to make this new parking situation very difficult and stressful for them. Also, with the parking time changes that you are also proposing we feel that people are going to use the few parking spots that you have given us (should your plan go ahead) by shoppers wishing to go further into the main street where there is only going to be 30min parking limit (not even enough time to grab a coffee & go to the bank) leaving us high and dry with no parking available So, we are asking that you reconsider this proposal plan and leave our amount of parking as it is & hopefully, we can be here for another 20yrs. Paul & Toni Curtis ABC Pawnbrokers 267 River Street Ballina N.S.W

Q6. If you would like your submission to be confidential, please provide a reason for confidentiality not answered

Q7. I have read and agree with Council's Privacy Policy Yes

	Respondent No: 9	Responded At: Nov 17, 2023 14:27:11 pm
	Login: Registered	Last Seen: Nov 17, 2023 02:57:16 am

Q1. Are you a business owner in this locality or a motorist? I own a business in this section of River Street (between Kerr and Grant Streets)

Q2. Do you support the proposal to duplicate the outer eastbound lane of River Street, between Kerr and Grant Streets? No

Q3. Please provide a reason for your objection to the lane duplication

In it's current form, alongside the parking limits changes recommended. If both of these pass in their current form it will severely damage our business' ability to serve customers quickly and conveniently I understand that the needs of the town are ultimately greater than the needs of our half dozen business' along this stretch. However; we must plead for assistance and common sense to allow for more parks at greater frequency as we will be dropping far more than the estimated value on the documents.

Q4. Please provide a reason for your support of the lane duplication

not answered

Q5. Please provide any further feedback you have about the proposed duplication of the eastbound lane of River Street (between Kerr and Grant Streets) and associated parking changes.

I submitted a request to maintain the 2P zone in our other submission form; If at all possible it would be fantastic if there was an ability or option to include two 15 minute parks out the front at the Shell / Kerr end. This I believe would greatly assist Hooked on, who has cars + boat trailers pull up out front frequently to get bait and leave quickly. It would also greatly benefit us (Domino's) for customers who have ordered ahead and are picking up there order and will be on their way quickly as well. Having this ability is crucial for us to remove barriers to our customers. Ultimately I see the lane duplication going through; but please consider the needs of our business' to offer convenient and relevant parking closeby. As such if the changes go through having only 9 parks (with no time restriction) available for: Hooked on, Domino's, the Karate/Gym, Pawnbrokers, and two other currently vacant shops than it will permanently and irreparably damage our business Thanks for your consideration, Amor

Q6. If you would like your submission to be confidential, please provide a reason for confidentiality N/A

Q7. I have read and agree with Council's Privacy Policy Yes

(REVIEW) POLICY NAME:	STREET LIGHT SHIELDING
POLICY REF:	S01
MEETING ADOPTED:	Resolution No.
POLICY HISTORY:	260320/18; 290916/31; 221112/29



OBJECTIVE

To provide Council's process in shielding obtrusive street lighting in residential areas.

POLICY

1. Application Assessment and Approval Process

Upon receiving application for street light shielding Council will conduct an assessment and approval process. The assessment process will include a risk assessment and will cover the following elements:

- Category of road
- Vehicle and pedestrian usage of the road
- Location of the street light on the road segment
- Proximity of the street light to the residence in question
- Existence of previous complaints about the light
- Consideration of the neighbouring properties
- Ability to shield the fitting to cut off spill light at the property boundary or just beyond without impacting on the road lighting.

If Council **approves the installation of a shield**, Council will notify the applicant and arrange for the installation.

Where Council **does not approve the installation** of a shield, an applicant will be notified in writing. The applicant may seek a review of the decision by writing to the General Manager. Alternatively, the applicant may, at their own expense, employ a qualified lighting engineer to certify that a shield will not impact the light level required on the roadway under the Australian Standard AS1158. Upon receipt of a copy of the certified design and Council's acceptance of the design, Council will arrange for the installation of the shield.

2. Shield Installation Costs

In all circumstances where Council has approved the application the applicant will be responsible for all costs incurred in installing a street light shield, except when obtrusive lighting has been caused by one of the following:

- A previously installed shield has been removed or damaged.
- Council has installed a new light fitting on an existing or new pole where previously there has been no street light.

Where street light shielding has been approved by Council the type of shielding will be selected by Council from the range of standard shielding options provided by Essential Energy for the particular street light fitting that best suits the conditions.

BACKGROUND

Public street lighting is provided to assist the safe movement of motor vehicles and pedestrians at night and discourage illegal and anti-social behaviour. While a majority of street lights installed in residential areas are accepted for their purpose, complaints have been received about obtrusive light shining into residential properties.

Reasons for new obtrusive lighting complaints may be due to, including but not limited to, the change of ownership of the property, modifications to the residence, replacement of the light fitting and the construction of a new home or units on the site. Since 2001 Council's response has been based on a Council resolution passed in November 2001 that; *"where lighting has been installed to Australian Standards no shading will be put in place to bring the brightness of that light below the Australian Standard"*. Council's 2001 resolution was based primarily on the risk associated with reducing road lighting levels below the requirements of the Australian Standards.

~~During 2011/2012~~ Council has been retrofitting energy efficient street lighting, this has improved lighting levels in some areas and the light level of the new lamps do not degrade over time. Obtrusive light complaints have been received due to the existing shields being removed during the retrofit and not being replaced based on the 2001 resolution.

DEFINITIONS

Obtrusive light	Light entering the residential property causing a nuisance to the resident's lifestyle.
Back spill lighting	The light emanating from the rear of the street light that illuminates areas not intended.
Shielding	A section of steel/aluminium provided by the light fitting manufacturer or purpose made for the fitting, fitted to the rear of the light fitting to prevent light spilling from the rear of the fitting.
Segment	The section of road pertaining to the street light in question.

SCOPE OF POLICY

This policy applies to:

- Community members
- Consultants/Contractors

RELATED DOCUMENTATION

Related documents, policies and legislation:

- Australian Standard AS1158 'Lighting for roads and public spaces'
- NSW Public Lighting Code

REVIEW

This policy is to be reviewed every four years.

(REVIEW)
POLICY NAME: BUILDING OVER OR ADJACENT TO COUNCIL ASSETS
POLICY REF: B06
MEETING ADOPTED: 26 March 2020
 Resolution No. 260320/19
POLICY HISTORY: 260516/28; 260412/4; 220508/27



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OBJECTIVE

This policy document has been prepared as a guideline for construction over or adjacent to Council's gravity sewer mains, sewerage rising mains, water mains, stormwater pipes or other Council asset. The implementation of this policy will ensure that Council's assets are protected.

POLICY

1. Applications for development or works over or adjacent to Council assets

When an application is made to build a new structure or extend and/or alter an existing structure, an assessment is made of the effect the proposal may have on any nearby Council assets. All applications should show the position of any Council assets in relation to the property and existing or proposed structures. Plans are required at a suitable scale to enable assessment by Council.

It is advisable to undertake a Dial Before You Dig (DBYD) search at the planning stage of any proposed works. If clarification is required contact Council to ascertain the general location of any asset/pipelines and whether special designs will be required for the proposed structure before submitting plans.

If any part of the structure or works is proposed to be located over or adjacent to the asset/pipeline, within the easement or, where an easement does not exist, within specified distances of the asset/pipeline then the application will **be refused**. In this case the applicant will be requested to redesign the structure so that it does not encroach on the Council assets. Section 5 provides options where variations to this policy may be applicable and may be considered by Council.

A structure that is to be built close to an easement may require an accredited Structural Engineer's assessment to ensure that it does not place additional loading within the "zone of influence" of the sewer gravity main, sewerage rising main, water main, storm water pipeline or any other Council assets. Before plans are submitted to Council for assessment, the applicant should have a surveyor locate the asset/pipeline and an engineer to ensure that footing designs are adequate for the proposed structure. This may be required where Council's records do not confirm the asset location.

2. How close can you build to a Water Main or Sewerage Rising Main?

These **pressure** mains are usually located in footpaths or roadways and are sited well away from most structures. However, occasionally pressure mains are located through private property and in these cases special advice should be obtained from Council before commencing design work. A burst pressure main may quickly cause severe damage to an adjacent structure or landform.

Under no circumstances will approval be given for any structure to be built over a pressure water main, sewerage rising main or within their easements.

Where an easement has not been provided, a corridor at least 3m wide plus the outer diameter of the pipe or asset and centred on the pipeline is used to determine the offset distance in which a structure cannot be located. Refer to Section 4 for details on the zone of influence for underground assets.

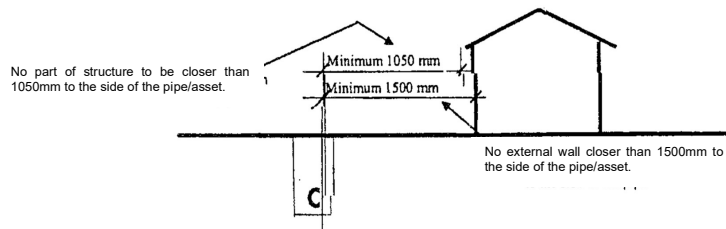
3. How close can you build to an Underground Asset?

3.1 Where an easement has not been provided the following dimensions shall apply.

The closest distance that the external edge of a structure can be located to the outside edge of an asset is:

- 1050mm from the outside edge of an overhang such as an eave or gutter. and
- 1500mm from an external wall or footing (where the depth of the main is 1500mm or less), and
- The depth of the pipeline from the invert level to finished surface level (where the depth of the main is greater than 1500mm) in accordance with the requirements of Section 4 - zone of influence.
- A corner of a structure may be allowed up to 1000mm from an asset/pipeline if the corner is cantilevered and any pier or foundation must extend below the zone of influence to the invert level of the pipeline. Matters such as easement width, site access, location of other services etc, need to be adequate if this corner concession is allowed.

Note – these distances are measured horizontally between the proposed structure and a line drawn vertically from the side of the asset as shown in the following diagram:



Minimum Distances from the side of assets (Diag.1.)

3.2 Proposed Structures of 2 or more Storeys

An allowance may be made for 2 or more storey structures where the overhang is greater than 3000mm above the ground level. In these cases an individual assessment will be made. This assessment will consider the distance from the pipe to the external wall of the structure, the distance from the lowest point of the overhang to the ground level, the depth of the asset/pipe and the difficulty of access for machinery.

3.3 Easements

Where an easement **has** been provided the following conditions will apply. (The easement is defined on the Deposited Plan or registered dealing for each lot and its width can vary.)

- No structure or part thereof can be built within an easement (unless otherwise approved by Council within the scope of this policy)

- An overhang is permitted within an easement. Where a structure is to be built up to the easement the maximum eave overhang would be 450mm. Where the overhang is greater than 3000mm above the ground level, an individual assessment will be made. This assessment will consider the distance from the pipe to the external wall of the structure, the distance from the lowest point of the overhang to the ground level, the depth of the asset/pipe and the difficulty of access for machinery.
- A corner of a structure may be allowed up to 1000mm from the edge of an asset/pipeline if the structure corner is cantilevered and any pier or foundation must extend below the zone of influence to the invert level of the pipeline. Sufficient access along the easement and the location of other services etc, need to be adequate if this corner concession is allowed.
- It cannot be assumed that the easement will always cover the entire zone of influence of the asset/pipeline (section 4). Where an easement does not cover the zone of influence of the asset/pipeline it will be necessary that any adjacent structures be designed to ensure that their integrity is not affected by the asset/pipeline nor the structure does not affect the Council asset. In these cases the external wall of the structure can be built up to the edge of the easement however the footings must be a pier footing or similar design with the load bearing component of the footing being at or below the level of the invert of the adjacent asset/pipeline.

4. **Zone of Influence for Underground Assets**

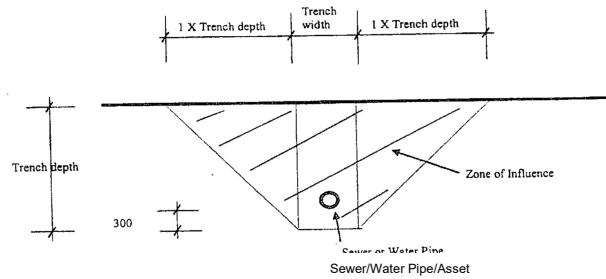
The "Zone of Influence" is located within the soils surrounding an asset and is that part of the soils that will be affected by any damage occurring to the asset or during excavation of a trench. For example, should an asset break or a joint leak, subsidence may occur within the "Zone of Influence". The size of the zone is determined by the **depth of the asset/pipeline**, the **type of soil** and the **slope of the site**. Structures will generally not be approved within the zone of influence of an underground asset.

How the "Zone of Influence" is calculated:

- 4.1 The asset depth and its position in relation to the proposed building site is found. (These details are taken from Council's records, by inspection of the site, or by having a survey done to locate assets).
- 4.2 The **depth** of the trench containing the asset/pipe work is calculated by adding 300mm to the asset/pipe depth
- 4.3 The **width** of the trench depends on the asset/pipe diameter. As a guide, pipes up to 225mm diameter will have a trench width of 600mm whilst pipes over 225mm diameter will have a trench width of 1000mm. In the case of large diameter pipes and / or deep trenches the trench width may be larger than the preceding values. In these cases an individual assessment will be made.
- 4.4 The zone is calculated using the depth of the trench and half the trench width each side of the asset. This calculation is affected by the type of soil (see diagrams 2 & 3)

10.4 Policy (Review) - Building Over or Adjacent to Council Assets

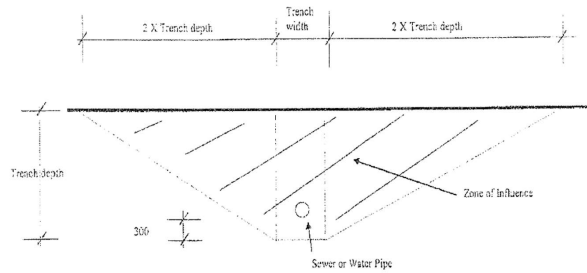
Red Clay Soils (diag. 2)



The "Zone of Influence" extends out from the edge of the asset/pipe trench the same distance as the depth of the trench (The ratio used is 1:1). For clay soils the zone will extend the same distance as the depth plus half the width of the trench each side of the asset:

For example: For a pipe line of 150mm diameter and a depth of 1500mm.
Trench depth is 1800mm deep (i.e. 1500 + 300).
The zone extends 2100mm from the asset/pipe centre line. Being the trench depth plus ½ trench width e.g.: 1800 + 300)

Sand, Filled Ground, Loam etc (diag. 3).



The "Zone of Influence" extends out from the edge of the asset/pipe trench twice the distance as the depth of the trench. (The ratio used is 2:1). For sand, filled ground (including controlled fill), loam, etc, the zone will extend **twice** the depth of the trench plus half the width of the trench – each side of the asset.

For example: For a pipe line of 375mm diameter and a depth of 2500mm:
The trench depth is 2800mm deep (e.g.: 2500 + 300)
The zone extends 6100mm from the pipe centre line (i.e. trench depth x 2 + ½ trench width (2800 x 2) + 500).

10.4 Policy (Review) - Building Over or Adjacent to Council Assets

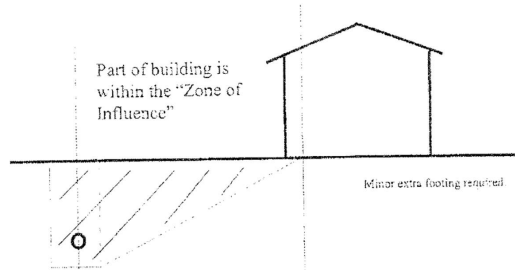
Ballina Shire Council

(REVIEW) Building Over Council Assets

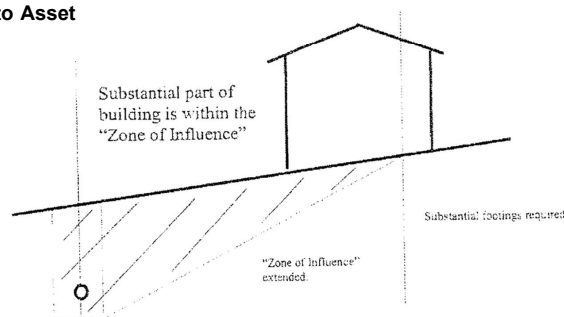
The zone of influence may be affected by the topography of the site. If the proposed building is to be located on a slope above the pipe then the zone may be substantially extended. Alternatively, if the proposed building is to be located on a slope below the pipe then the zone may be substantially reduced. On steep blocks substantial footings may be required to overcome the effect of the zone of influence.

See diagrams 4a, 4b & 4c.

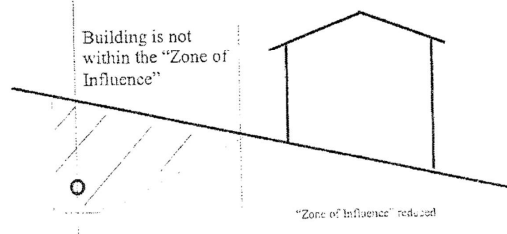
Flat Ground (Diag 4a)



Slope Down to Asset (Diag 4b)



Slope Up to Asset (Diag 4c)



5. Variations for Structures or works over or adjacent to Council Assets

Where this policy unreasonably restricts the ability to develop in an appropriate manner for that area, then proposals will be investigated on an individual basis in line with the objectives of this policy.

Only in exceptional circumstances will Council consider a variation to this policy.

Applicants dissatisfied with a decision of a Council officer made under this section, may appeal, in writing to the General Manager. In response, the General Manager will complete a review, and where practical, be advised by a different officer to the person who completed the initial assessment. The General Manager's decision represents the Council's final consideration of the appeal.

6. Swimming Pools (In Ground) adjacent to Council Assets

A proposed inground swimming pool is to be positioned outside an easement and outside the zone of influence of the asset. Should Council consider an inground swimming pool be constructed within the zone of influence of a Council asset, the pool must be designed and constructed as a self supporting structure that will not load the asset in any way and be at least 1.5m from the edge of the asset.

The design must ensure that the structural integrity of the pool will be maintained in the event that adjoining soils are excavated to provide access to the adjacent pipeline/asset for maintenance/reconstruction works and the asset is protected during pool construction.

7. Fences and Retaining Walls over or adjacent to Council Assets

Timber or light weight construction fences (e.g. sheet metal or aluminium) may be used on boundaries near pipelines. If the structure is within the zone of influence, any pier or foundation must extend below the zone of influence to the invert level of the pipeline.

Brick, stone, masonry or similar materials for fences/retaining walls/piers/foundations must be located outside the zone of influence of the pipeline. If the structure is proposed within the zone of influence, the structure must not be closer than 1.5m to the pipeline or manhole/pit and any pier or foundation must extend below the zone of influence to the invert level of the pipeline.

Where a fence or wall crosses the Council asset, the strip footings shall be constructed to bridge the main and be supported on approved piers at least 1.0m from the sides of the main.

Fences or retaining walls are not permitted to be built over a Council manhole or pit.

8. Land forming or Site filling over or adjacent to Council Assets

Minor site filling of up 500mm is permissible over underground pipelines where no manholes or pits are located.

Any site filling over an underground pipe (that increases the depth of the Council asset to more than 2.5m) will require approval by Council.

No fill is to be placed over any manhole, pit, grate or shaft and, if filling is approved, any manholes, pits, grates or shafts are to be raised in conjunction with any site filling. The raising of any structure shall only be carried out by Council or with Council approval.

No site filling, excavation or ground reshaping is permitted over any overland flow path, whether the flow path is designated within an easement or not, without approval by Council.

9. Rainwater and Storage Tanks over or adjacent to Council Assets

Rainwater or storage tanks are load-bearing structures and must be located outside the zone of influence or easement for the asset.

10. Vegetation Planting over or adjacent to Council Assets

Tree roots can penetrate into sewer pipes through joints or damaged sections of pipe causing blockages and subsequent over flows. As a result, certain species are not to be planted near sewer or stormwater mains. A list of the high risk species is provided in Appendix 1.

When planting trees on private property, careful consideration of the species, soil type and root control measures is required.

Where private property vegetation is constantly penetration Council's sewer or stormwater pipes, the property owner will be required to remove the vegetation at their cost. If this request is refused, the cost of any future maintenance or emergency works resulting from the vegetation will be charged to the property owner.

11. Miscellaneous Structures (on private land) over or adjacent to Council Assets

There are structures on private land that generally do not require specific works to protect Council assets. These structures include residential driveways, paved areas and lightweight fences (e.g. timber or metal). Care must be taken to ensure drainage paths and/or overland flow paths are not affected.

If these structures require altering the ground surface such that minimum depth requirements for the asset may be compromised, please seek advice from Council.

Council does not allow 'demountable' structures (e.g. pergolas, carports, garden sheds, decks etc) over or adjacent to assets unless they have been approved in accordance with this policy.

12. Existing Structures over or adjacent to Council Assets

Any structures built under the exempt and complying development codes shall not be erected over or adjacent to any Council assets in accordance with this policy.

Where structures have been built over a Council asset without Council approval, then Council may require that the structure be demolished, moved or substantially modified so that it complies with this policy. All works are at no cost to Council.

Where it is necessary to access an underground asset for maintenance or repair work Council will not be held liable for the cost of dismantling, moving, restoring or replacing any illegal

structures and the property owner may be charged for extra work required to be undertaken because of the illegal structure.

Where a structure has been given permission, previously by Council, to be built over an asset then no further extensions, additions or reconstructions will be allowed. Council recognises that the existing structure presents a risk to both the building and Council's liability. Therefore Council will not be prepared to increase this risk by approving further structures or additions and alterations.

13. Application Requirements

All Development and Construction Certificate applications where the structure is to be built adjacent to a Council asset will be required to have footing details that show how the proposed structure will be designed to accommodate the zone of influence from these adjacent pipelines. These details may need to be designed and certified by an accredited Structural Engineer. Plans are required at a suitable scale to enable assessment by Council.

BACKGROUND

This statement may include descriptions of the following where relevant:

- need for Policy e.g.: legislative or business requirements;
- context in which policy has arisen and what it will resolve;
- benefits of having the policy.

DEFINITIONS

Asset	Any pipe, pit, main, shaft, drainage flowpath or structure owned by Council.
Council	Ballina Shire Council
Easement	An easement is a right annexed to land. Not all lots have easements and not all underground lines or overland flow paths are located in easements. If a lot has an easement it will be noted on the certificate of title for the property and will refer to a deposited plan or dealing that describes the easement.
Junction	This is the point where household pipes connect to the Council's sewer line.
Inspection Shafts	This is the pipe rising to ground level that is the connection point between the owner's pipes and Council's pipes. It is usually a PVC pipe, either 100 mm or 150 mm in diameter and finished 100 mm above ground level with a concrete surround. The inspection shaft is used to access both the owner's pipes and Council's pipes when there is a blockage etc.
Inter-allotment Drainage Lines	These pipes usually PVC or concrete and take roof water and ground runoff from properties where it is not possible to drain to the street.

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Manhole	Used to provide direct access to the sewers for maintenance and clearing blockages. Located where sewers change direction or about every 100 metres on long lines. They are usually concrete, about 600mm in diameter and flush with the ground.
Sewer Pipes	These pipes take waste water from dwellings, shops and industrial premises. The drains from kitchen sinks, laundry tubs, showers, baths, hand basins, toilets, etc, are connected to the sewer line.
Sewerage Rising Mains	These pipelines take wastewater from sewerage pumping stations to the treatment plant.
Stormwater Pipelines	These pipes, pits or box culverts collect and transport roof water or surface water from properties and streets and discharge it to nearby waterways or detention basins.
Water Mains	These pipelines provide drinking and recycled water to dwellings, shops and industrial premises. Pipes for recycled water are coloured lilac.

SCOPE OF POLICY

This policy applies to (add or delete where necessary):

- Council employees
- Developers/Builders
- Council Consultants/Contractors

RELATED DOCUMENTATION

Nil.

APPLICATION OF POLICY

This policy applies to the construction of all buildings, dwellings, carports, garages, driveways, sheds, swimming pools, pergolas, decking, retaining walls and permanent structures within Council's area that are to be built over or near water mains, sewers and sewerage rising mains, stormwater pipes or other Council assets.

REVIEW

The Building over or adjacent to Council Assets Policy will be reviewed every four years or as deemed necessary.

**Appendix 1
Table of species not recommended to be planted near sewer mains**

Botanical Name	Common Name	Damage Rating
Cinnamomum camphora	Camphor Laurel	Extreme
Ficus species	Fig Trees and Rubber Plants	Extreme
Brachychiton populneus	Kurrajong	Extreme
Populus species	Poplars	Extreme
Salix species	Willows	Extreme
Melia azedarach	Australian White Cedar	Very High
Lauris noblis	Bay Laurel	Very High
Casuarina species	Casuarinas	Very High
Erythrina species	Coral Trees	Very High
Ulmus species	Elms	Very High
Robinia pseudoacacia	Golden Robinia	Very High
Eucalyptus species	Gum Trees	Very High
Brachychiton acerifolius	Illawarra Flame Tree	Very High
Jacaranda mimosifolia	Jacaranda	Very High
Liquidambar styraciflua	Liquidambar	Very High
Araucaria species	Norfolk Island and Bunya Pines	Very High
Schinus molle	Pepper Tree	Very High
Pinus species	Pine Trees	Very High
Platanus acerifolia	Plane Tree	Very High
Acer pseudoplatanus	Sycamore	Very High
Phyllostachys species	Bamboo	High
Bougainvillea species	Bougainvilleas	High
Lophostemon confertus	Brush Box, Tristania	High
Phoenix canariensis	Canary Island Date Palm	High
Fraxinus ornus	Claret Ash, Manna Ash	High
Callistemon citron's	Crimson Bottlebrush	High
Ilex species	Hollies	High
Magnolia species	Magnolias	High
Lagunaria patersonii	Norfolk Island Hibiscus	High
Nerium oleander	Oleander	High
Cortaderia species	Pampas Grass	High
Ligustrum species	Privets	High
Toxicodendron species	Rhus Trees	High
Grevillea robusta	Silky Oak	High
Wisteria species	Wisteria	High