

APPENDIX D – RELEVANT DEVELOPMENT CONTROL PLANS

The following development control plans are relevant to the assessment of the subject development application:

- *Byron Development Control Plan No. 18 – Becton Site and Adjoining Lands Byron Bay*; and
- *Byron Development Control Plan 2002.*

Development Control Plan No. 18 – Becton Site and Adjoining Land

DCP 18 became effective on 5 May 2005 and applies to the subject site.

Objectives of the Plan

The objectives of the plan are identified and addressed following:

- To promote and implement principles of sustainability as identified in Byron LEP 1988 Clause 2(3) in the planning, development and management of the site;*
- To define controls on location, form, character and density of permissible development on the site, in accordance with paragraph (c) of the Objectives of Zone No. 2(t) (Tourist Area Zone) in Byron Local Environmental Plan 1988;*
- To implement the Byron Biodiversity Conservation Strategy and Belongil Estuary Management Plan;*
- To define those parts of the site that require protection from development because of their inherent habitat or biodiversity values, visual characteristics, hazard characteristics, community values, coastal processes or other environmental values or characteristics;*
- To maintain, protect and enhance wildlife corridors to facilitate the movement and dispersal of species between Tyagarah Nature Reserve and significant areas of native vegetation on and beyond the site;*
- To define those parts of the site that should contain only limited forms, types or intensities of development and land uses because of their environmental values or characteristics; and to specify the limitations on the form, type and/ or intensity of development in those areas;*
- To define appropriate densities of tourist accommodation and building development on various parts of the site;*
- To define the remediation, environmental repair and ongoing management measures that are required in order to ensure appropriate environmental restoration and improvement of specific areas and characteristics of the site;*
- To establish a maximum quantum of accommodation on the site;*
- To limit the quantum of permanence building floor space on the site and to ensure the provision of adequate landscaped area;*
- To protect ground water and surface water quality and quantity;*
- To protect and enhance the visual and scenic quality of the site;*
- To protect the amenity and safety of the nearby residential area (Sunrise Beach) from inappropriate through traffic;*
- To ensure that the siting, scale and intensity of development protect and enhance Byron Bay's social and cultural qualities by;*
 - *Protecting areas and features of cultural significance;*
 - *Accounting for local and regional values, community needs and aspirations;*
 - *Reflecting Byron Bay's character and scale;*
 - *Ensuring that development of the site does not dominate or detract from the town centre;*
 - *Ensuring that site access does not compromise the amenity or safety of adjacent residential areas;*

Objectives 1.4.2, 1.4.4, 1.4.6, 1.4.7, 1.4.8, 1.4.9 and 1.4.10 all identify what the plan needs to do to achieve its intent and are not objectives that the application can be assessed against.

The proposal satisfies objective 1.4.1 as is addressed in the assessment of the application against Clause 2(3) in the LEP section of the report.

The proposal satisfactorily addresses the requirements of the Byron Biodiversity Conservation Strategy and Belongil Estuary Management Plan in the SIS, which has been assessed as satisfactory by the Department of Environment and Conservation.

The proposal provides for a satisfactory wildlife corridor adjacent to the beach, but does not to the south of the site due to the increased intensity of development in the southern portion of the site (compared to that identified in the DCP) and the retention of the existing cabin development on Lot 6 in DP 243218. In order to satisfactorily address objective 1.4.5 it is appropriate that the cabins on Lot 6 in DP 243218 be demolished and the area revegetated as a wildlife corridor.

A Water Cycle Management plan has been prepared that provides appropriate measures for the development in relation to minimisation of water use, water reuse and treatment of water quality, satisfying objective 1.4.11.

An assessment of the visual impact and siting, scale and intensity of the development by Architectus Sydney Pty Ltd has found the impact to be satisfactory (see Appendix H) subject to conditions and as such the proposal satisfies objectives 1.4.12 and 1.4.14.

Concerns in relation to impacts on residential amenity due to through traffic using the residential areas are to be addressed by the proposed General Terms of Agreement/conditions provided by Council's traffic engineer.

Desired Character and Intensity of Development (Part 2)

The plan defines a desired future character for the site as being a mix of native bushland, coastal dune systems, wetlands and low intensity, low-rise and low scale tourist accommodation and ancillary uses.

Management and revegetation of native bushland, coastal dune systems and wetlands is required, with such areas separated from development by vegetated buffers and APZs.

The development is to use appropriate textures, colours and design to complement the natural landscapes and buildings are to optimise energy and water efficiency.

The ecologically sensitive wetlands, habitat and corridor areas, beaches and waterbodies, including an important habitat corridor along the railway (currently contains cabins on Lot 6 in DP 243218), are to be maintained in a natural vegetated undeveloped state and to be revegetated over time.

The dune area is to be limited to low impact environmental facilities, access, surf lifesaving facilities and environmental management.

The central area is to be a development area for low scale tourist accommodation and associated facilities in a grassland and waterway setting. The perimeter area is to be characterised by very low building densities, with only small tourist accommodation units and environmental facilities allowed in this area. The central area will contain a wide range of tourist accommodation forms, shops and related facilities.

Environmental protection work will be required, including revegetation of areas near sensitive habitats and systems. Dogs and cats will be prevented from entering the site. Areas subject to coastal processes are to be managed for long term landward migration. Public pedestrian access to the beach is to be provided to avoid shorebird nesting locations and a small public car park and cycle racks are to be provided for off site beach users.

The proposal identifies a series of environmental management works and revegetation and the DMP appropriately addresses management of the coastal processes, subject to appropriate conditioning. The proposed development is confined to the required precincts and the development in the central precinct satisfies the requirements of the desired future character.

The proposal provides for an appropriate public parking area and cycle racks, together with beach access, subject to the recommended conditions. Dogs and cats are to be prevented from entering the site by way of an appropriate clause in the Community Association Management Plan.

Subject to conditions, the design of the development is appropriate as is detailed in the assessment by Architectus Sydney Pty Ltd (see Appendix H).

The only areas of the proposal that are not fully consistent with the desired future character are the density and size of accommodation units within the southern area of the site and the retention of the cabins on Lot 6 in DP 243218 rather than the provision of a wildlife corridor.

For reasons detailed later in the assessment of the application against DCP 18, the density and size of accommodation units on the southern portion of the site is considered acceptable subject to the removal of the cabins on Lot 6 in DP 243218 and the revegetation of the area as a wildlife corridor. This is recommended as a condition of any consent to the development.

Planning Principles

Planning principles have been detailed for a number of components of development and are summarised following, together with an assessment of the proposal.

Transport Access and Parking

The principles require that additional impacts on existing parking, traffic congestion and access to local services be managed and minimised, with pedestrian, bicycle and alternative transport systems being utilised. Adequate access is to be provided for emergencies. A public road and parking area is to be provided on the site.

The provision of facilities on site within walking distance of the accommodation units encourages use of alternative methods of transport as does the proposed cycle link to the existing regional cycleway. A bus service is also proposed for users of the site. A public road is to be provided along the route of the existing Bayshore Drive, which is to be appropriately upgraded to provide for suitable access for emergencies (including access during flooding) and access to a parking area for use by the general public accessing the beach. Conditions of consent addressing the road and parking area are recommended for any consent.

Land Use

The principles require a mix of tourist, commercial, retail, community, recreational, environmental conservation and open space on the site, reflecting the character of Byron Bay. The design and arrangement is to discourage permanent residential occupation.

The proposal provides a suitable mix of the above uses with an emphasis on environmental conservation and tourist uses. The design appropriately reflects the character of Byron Bay (see assessment by Architectus Sydney Pty Ltd at Appendix R).

Whilst the design and arrangement of the accommodation suites do not necessarily discourage permanent residential occupation, to do so would be contrary to the requirement for the designs to be consistent with the requirements of the Residential Flat Design Code.

It would also be inconsistent with the permissible use of serviced apartments, which are intended to allow independent tourist accommodation, which necessarily is similar to the design of permanent residences. The mechanism utilised to ensure tourist use only is the management requirements contained in the Community Association Management Plan and appropriately addresses this issue.

A condition of consent is recommended requiring the manager to compile quarterly statistics on the length of occupation of each unit, which is to be available for perusal by Council on request. A condition is also recommended such that Council consent is required to alter the requirements within the Community Association Management Plan that require the use as a tourist facility, limit the days of occupation and require central management of lettings.

Tourist Development

The principles require that the tourist development reflect the environmental, social and economic impact of the site and Byron Bay, developing the more disturbed areas of the site and conserving the significant areas. Monitoring of impacts during construction and operation are required and practices are to be modified where necessary to achieve appropriate environmental, economic and social outcomes.

Development is to be low-rise and of village scale. Public access to the beach is to be provided and the village is to be publicly accessible including with appropriate wheelchair access. Opportunities are to be provided for use of the land for community events.

The development proposal is appropriately low-rise and village like in nature, occupying the more disturbed areas of the site and protecting the environmentally significant areas. A condition of consent is recommended requiring monitoring of environmental impacts during construction (ie water quality, acid sulfate soils, noise, dust, etc) with ongoing water quality monitoring required during operation of the site after completion. Further, the condition will require modifications to the construction methodology and operation/maintenance of the water quality devices if they fail to meet acceptable standards.

Public access is proposed to the beach and the village is to be publicly accessible, with identified areas for future community events, subject to separate development applications.

The design of the development with regard to accessibility has been addressed in relation to the Urban Design objectives previously.

Conservation and Habitat Protection

The principles require sensitive areas to be protected and enhanced and secured for conservation in perpetuity, with areas of low ecological value to be used for tourism. Impacts on sensitive areas are to be minimised and opportunities are to be provided for local community groups to be involved in the rehabilitation process. The proposal is

consistent with the above requirements (see comments by the Department of Environment and Conservation).

Coastal Processes and Environmental Hazards

The principles require structures and facilities to be designed to account for climate change and flood events. Areas subject to coastal processes are not to be used for tourism facilities and the topography and physical features of the dune system are to be protected/managed.

Subject to conditions seeking changes to the DMP, the proposal identified as Stage 1 is satisfactory in relation to the above principles. As has been discussed previously, the Future Stages are not appropriate with regard to coastal erosion mapping and are recommended for exclusion from the determination.

Services and Infrastructure

The principles require that the disposal or reuse of effluent does not affect the quality of groundwater and that the site be connected to existing reticulated services. The proposal satisfies these requirements.

Site Mapping

The proposed tourist development is appropriately located within Precincts 1 and 2 as mapped, with the proposed APZ and buffer areas and the area for conservation being generally consistent with the mapping.

The following principles are intended to achieve the Desired Future Character:

- a) *Ecologically sensitive habitat areas must be protected from development. The environmental characteristics and qualities of those habitat areas will be enhanced in conjunction with development on the site.*
- b) *Environmentally sensitive coastal and natural hazard areas will be protected from development. The environmental attributes of those areas will be enhanced in conjunction with development on the site.*
- c) *Development for purposes that are permissible only with Development Consent within Zone 2(t)(Tourist Area Zone) under Byron Local Environmental Plan 1988 may be carried out only in areas defined by the Map as Precinct 1 or Precinct 2.*
- d) *Development for purposes of drainage, environmental facilities, recreational areas or roads may be undertaken within other Precincts and/ or buffer areas provided that development:*
- e) *Will promote the achievement of the Element Objectives for the Precinct in which that development is located as defined in Chapter 3 or 4; or*
- f) *Is necessary to support the achievement of the Element Objectives for any other Precinct and will not detract from achievement of the Element Objectives for the Precinct in which that development is located*
- g) *The density and type of development in Precinct 1 will be restricted to ensure compatibility with the adjoining ecologically sensitive areas.*
- h) *A higher density of development and a wider range of land uses will be permitted in Precinct 2 compared to Precinct 1.*
- i) *The form, character and design of development that is permitted on the site must be for Tourist Facilities or other permissible development only, and must not facilitate uses that are prohibited under Byron LEP 1988.*

The proposal appropriately protects sensitive habitat areas and utilises the less sensitive areas for development, appropriately addresses the coastal and natural hazards of the site and proposes tourist uses only within Precincts 1 and 2, satisfying principles 2.2.1, 2.2.2 and 2.2.3.

The only works proposed in Stage 1 in the other precincts are necessary to achieve the tourist development or to ensure the protection of the environment and satisfy principle 2.2.4. As has been discussed previously the Future Lands stage is not supported and is recommended for refusal of consent.

The density and land uses in Precinct 1 are more restricted than in Precinct 2 and none of the uses are prohibited, satisfying principles 2.2.5, 2.2.6 and 2.2.7.

Element – Development Applications and Site Concept Plan

This element contains no performance criteria and the prescriptive measures require the development to be consistent with and not jeopardise the achievement of the Objectives, Desired Future Character, Principles and relevant Elements of the plan.

This is not a prescriptive measure and is simply a repetition of the objectives of the element. The prescriptive measures continue to require SEE's to address the Objectives, Desired Future Character, Principles and relevant Elements of the plan. Further for applications involving a significant proportion of the site, supporting management plans are required for vegetation management, landscaping, coastal dunes, control of introduced animals, revegetation of Precinct D if development is relocated, water cycle management and an environmental education strategy for visitors.

The SEE lodged with the application contains all of the information required in the prescriptive measures, with the exception of the revegetation of Precinct D. As has been discussed before, a deferred commencement condition of consent is recommended in relation to Precinct D. An assessment of the application against the Objectives, Desired Future Character, Principles and relevant Elements of the plan is provided previously.

Conservation Areas and Corridors

The objectives, performance criteria and prescriptive measures of Precincts A-E and S are addressed by the revegetation strategies proposed, the DMP and the SIS. Subject to conditions the works proposed in those precincts have been assessed as being satisfactory by the Department of Environment and Conservation, and consistent with the objectives for each precinct, despite some variations to the prescriptive measures.

Buffers and Hazards

Bushfire

The objectives of this element seek to ensure appropriate APZs for any development and to provide buffers from the development and APZs to protect adjoining native vegetation, revegetation and habitat areas. The performance criterion requires compliance with the document entitled Planning for Bushfire Protection (2001). The prescriptive measures require an Outer Protection Area (OPA) of 20m as shown on Map 2.

The application has been assessed against the requirements of this document by the Rural Fire Services who have provided General Terms of Approval (GTAs) for the development, including requirements for larger APZs than required by the DCP.

Water Body Buffers

The objectives of this element seek to provide revegetated buffers around waterbodies with appropriate species, to reduce cane toad impact and provide cover refuge for water fowl and improved habitat and water quality. The performance criteria require buffers to be provided in accordance with 'A Fisheries Assessment of Buffer Proposals for North Beach Byron' with dense plantings of local sedges and rushes around the edges of

water bodies. Landscape plans and a Vegetation Management Plan are required as prescriptive measures.

The proposal provides for buffers in accordance with the specified document and the proposal provides landscaped plans and a Vegetation Management Plan that have been assessed as acceptable by the Department of Environment and Conservation.

Mosquito Management

The objectives of this element seek to manage the risks from mosquito borne diseases and there are no performance criteria. The prescriptive measures require the submission of a report addressing the objectives prepared by a suitably qualified person, identifying risk levels and management measures.

Such a report has been lodged with the application that recommends management of fresh water breeding mosquitos in the Melaleuca forest habitat, constructed drains and north western parts of the site. The report indicates the risks from mosquito and biting midge are low and that a mosquito management plan should be prepared. A condition of consent to this effect is recommended for any approval granted.

The Developable Area (Part 5)

Low Density Perimeter (Precinct 1)

The objectives of this element seek to allow tourist accommodation on land adjoining conservation areas and habitat corridors at a density and in a form that ensures the conservation values of the adjoining land are not compromised. The performance criteria require development to be of small tourist accommodation units at very low densities within a landscaped area of grasses and local native species.

The prescriptive measures indicate that only tourist accommodation units and environmental facilities will be permitted in this area. A maximum density of 14 bedrooms per hectare (equating to 91 bedrooms) and maximum FSR of 1:14 is provided for the area, calculated in relation to the total area of the precinct (i.e. 6.5 hectares). It is identified that no single tourist unit is to have a GFA or more than 80m² or more than 3 bedrooms. No building is to have a GFA of more than 300m² (this control has a note indicating it is to facilitate small duplexes and as such it is assumed accommodation units in a duplex can have a floor area of 150m²).

Finally, it is identified that additional development may be approved in the precinct as an incentive for removal of the development from Precinct D (i.e Lot 6 in DP 243218) and rehabilitation of the area as a habitat corridor.

The FSR control is not written in accordance with convention and as such has no meaning. If it is written in reverse, the FSR of 14:1 would be excessive and this clearly cannot be the meaning. If written in the correct order and the figure is divided by the higher number (hence producing a ratio in accordance with convention) a FSR control of 0.071:1 would apply, which would equate to a floor space of 4,643m².

With regard to the density based on bedrooms a maximum of 91 bedrooms would be permissible. Given the maximum size an accommodation unit can be is 150m², if part of a duplex, then 30 x 3 bedroom accommodation units could have a floor space of 4,500m² and as such maybe the second interpretation of the FSR control is the correct one. However, were all the units 2 bedroom units, they could also be 150m², if part of a duplex, and a floor space of 6,750m² would be achieved.

Therefore, the FSR control is unclear, appears to contradict other controls depending on how it is interpreted, and cannot be enforced with any degree of certainty. Reliance on satisfying the objectives of the element is the appropriate method of assessment in such a case.

The definition of floor plan area (used to calculate gross floor area) is also unclear as it means "the area contained within the outer face of the external enclosing walls of a storey, including the area of balconies". However in this case the balconies are not contained within the outer face of the external enclosing walls, other than for one ground floor deck of building type D and 2 ground floor decks of building type E. As such the other balconies cannot be counted as floor plan area. It would appear from the wording of the definition that only balconies recessed within or between the external walls would be included.

The proposal seeks to provide 60 accommodation units with 156 bedrooms within this precinct and as such breaches the bedroom density by 66 bedrooms. The accommodation units have a floor space of 9,422m², which would equate to a FSR of 0.145:1.

It is considered that the DCP did not anticipate the style of accommodation to be provided on the site and appears to underestimate the need for larger 3 bedroom tourist accommodation to appeal to the higher end of the tourism market.

Subject to the deletion of the identified units, the density of Precinct 1 is considered to be of a very low density overall (but is higher at the southern portion of the precinct). Such a density would not have an unacceptable impact on surrounding sensitive land and wildlife subject to the removal of the cabins on Lot 6 in DP 243218 and the revegetation of that site for wildlife corridor. It is noted that the DCP recognises the importance of this and identifies that additional development may occur in Precinct 1 as an incentive. For this reason, and given the assessment of flora and fauna it is recommended that the cabins on Lot 6 in DP 243218 be demolished and the area revegetated appropriately.

Central Development Area (Precinct 2)

The objectives of this element seek to allow a range of tourist accommodation and associated facilities and to promote flexibility and innovation in design.

The performance criteria indicate all permissible development types can occur in the precinct and that facilities and services that provide for recreational, cultural and social needs of tourists and residents are encouraged.

A maximum density of 28 bedrooms per hectare (equating to 137.2 bedrooms) and maximum FSR of 1:6 is provided for the area, calculated in relation to the total area of the precinct (i.e. 4.9 hectares).

Finally, it is identified that additional development may be approved in the precinct as an incentive for removal of the development from Precinct D (i.e. Lot 6 in DP 243218) and rehabilitation of the area as a habitat corridor.

Given the interpretation of the FSR control provided in relation to Precinct 1, a FSR control of 0.167:1 may apply, which would equate to a floor space of 8,167m². Though it is again noted that the FSR control is unclear and cannot be enforced with any degree of certainty.

The proposal seeks to provide 62 accommodation units with 143 bedrooms and as such breaches the bedroom density by 6 bedrooms. The accommodation units have a floor

space of 7,963m², which would equate to a FSR of 0.163:1. Further the tourist facilities proposed have a floor space of 840m², giving a total FSR of 0.18:1.

The breach of controls within Precinct 2 is minor and acceptable, still achieving the objectives of innovation in design, providing a range of facilities and satisfying the desired future character.

Commercial, Retail and Community Activities

The objectives require the location of commercial, retail and community activities to maximise convenience to users and minimise impacts on the amenity of the accommodation units. The performance criteria require such uses to be clustered together at a focal point. There are no prescriptive measures.

The village centre is the location of all such uses and it is conveniently located roughly near the centre of the development on the public road (proposed). The accommodation units, with the exception of the hotel, are located well away from the centre, ensuring appropriate amenity. The design of the hotel is such that the units are orientated away from the village centre and the noise sensitive areas (ie bedrooms) of the closest units are protected by less sensitive uses.

Built Form

The objectives are to ensure the development achieves acceptable levels of daylight, ventilation, visual and acoustic amenity and provides for visual amenity by avoiding monotonous and excessively uniform design.

The performance criteria require variety in the size, density and height of the development with lower density around the perimeter. The design is to have regard to the North Coast Design Guidelines and Coastal Design Guidelines.

Building is to have regard to the requirements of DCP 2002 (see assessment under Appendix D) and be designed to optimise energy efficiency.

Drainage and Water Cycle Management

The objectives are to ensure that the development is consistent with the principles of Integrated Water Cycle management and Water Sensitive Urban Design and to protect the environment.

The performance criteria require stormwater source control, stormwater and wastewater reuse, potable water demand reduction, utilisation of natural flow paths and drainage measures with pervious surfaces. System maintenance must be addressed and excavations are to be above the water table. Pollutant loads are to be limited to the specified criteria and the prescriptive measures require an assessment of contaminants in the ground waters.

The drainage system proposed provides for stormwater reuse with 4.5KL rainwater tanks provided with first flush devices for non-potable use. Infiltration trenches are proposed for rainwater tank overflow and will provide initial treatment of stormwater prior to entering the surface drainage system.

The use of pervious surfaces is maximised with most car parks and driveways constructed of cellular gravel backfill or porous pavement. Only public car parks and roads are to be impervious and are to be connected to surface drainage systems.

Buffer strips are to be provided next to drainage lines for removal of coarse to medium sized suspended solids and grass swales are to be provided to decrease velocity of flow and allow heavier suspended solids to settle and allow for some infiltration.

The drainage is to follow the natural drainage lines onsite (open swales) until it needs to cross a road and then it will be channeled through a 100 yr ARI culvert. The existing ponds and wetlands will "polish" the water prior to discharge into Belongil Estuary. The system is predicted to significantly reduce pollutant loads.

Maintenance requirements have been specified and a condition of any consent would require the maintenance to be detailed in a plan for incorporation into the Community Association Management Plan.

Testing of ground and surface water has found trace metal contamination of water across the site to be extremely low.

Landscape

The objectives seek to ensure the development is landscaped with endemic species and protects the sensitive character of the setting. The performance criteria require precincts A, B, C, D, E and S to be rehabilitated and managed and for the landscaping of the developed areas to reinforce, protect and enhance the spread of indigenous tree canopy, with environmental weed species not used.

The proposal contains a Landscape Report and Dune Management Plan (DMP) that identifies the treatment of the site. In general Precinct A falls under the DMP and will be progressively weeded and revegetated. Wetland Complex/Moist Forest vegetation is to be replanted in the golf course. The APZ is to be planted and managed to achieve a 5% coverage of canopy species and understorey with grass groundcovers. Lake edges are to be planted with a 5m wide strip of sedges and rushes. The landscaping, revegetation and management proposals have been assessed as being generally satisfactory subject to conditions that would be contained in any consent.

Habitat Corridor Credit

The objectives are to recognise that the establishment of the South Western Wildlife Corridor in Precinct D will need the removal of the existing cabins on Lot 6 in DP 243218 and to provide an incentive. The performance criteria indicate that any additional development is to be consistent with the element provisions of the precinct and must not jeopardise the environmental character of adjoining ecologically sensitive areas.

The prescriptive measures indicate that to achieve the credits a proposal must include a revegetation and restoration plan. Further, the additional tourist accommodation to be provided in Precincts 1 and 2 is to have the equivalent area and density of the existing approved floor space and bedrooms in Precinct D that are to be removed.

Whilst the objectives of this element are appropriate, the prescriptive measures which seek to provide a credit at a ratio of 1:1 for the accommodation units demolished is unrealistic and will not achieve the objective as it provides a financial disincentive to achieve the objectives. The replacement accommodation units need to be provided with a greater floor space and number of bedrooms to financially justify the removal of the development from Lot 6 in DP 243218 and to finance the revegetation work required.

The additional accommodation units provided within Precinct 1 in this proposal (subject to the condition of deleting 4 of the buildings) are appropriate in the context of the site and will not result in unacceptable impacts upon adjoining sensitive lands. This assessment is subject to the removal of the cabins and revegetation of Lot 6 in DP

243218 as a wildlife corridor in order to achieve the objectives of this element and the Plan. For these reasons it is recommended that the higher density proposed within Precinct 1 be supported subject to the above mentioned works occurring on Lot 6 in DP 243218. Such a requirement would necessarily need to occur by way of a deferred commencement condition, given the need for the preparation of a plan of demolition and a revegetation and restoration plan for Lot 6 in DP 243218.

Tourism Management

The objectives are to ensure the development will be operated and managed as tourist accommodation and the performance criteria require that robust and automatic internal controls ensure that this occurs.

The Community Association Management statement identifies such controls, requiring all letting to occur through the one site agent and setting maximum periods of stay. A condition of consent requiring ongoing maintenance of records of separate occupation of each accommodation unit (to be available for inspection by Council) is also recommended (to be included in the Community Association Management statement).

Environmental Management and Repair (Part 6)

Beach Access

The objective is to provide legal access to the beach and to limit human impacts on shorebird nesting, dunes, Aboriginal sites, vegetation and adjacent reserves. The prescriptive measures require the provision of a public access road, pedestrian path and cycle path, providing access to the beach from the Sunrise Beach neighbourhood. Signage is to be provided to give people information related to avoiding shorebird nesting areas and turtle nesting sites and advising of the location of the Tyagarah Nature Reserve and Cape Byron Marine Park with details provided of restrictions on activities.

The proposal provides for the required road, pedestrian and cycle paths in appropriate locations and conditions of consent related to these and the required signage are recommended for any approval issued.

Environmental Management Plans

The objectives require the preparation of a Vegetation Management Plan, a Seabird and Shorebird Management Plan and a Dune Management Plan (DMP).

The prescriptive measures require the Plans to be developed in consultation with the Department of infrastructure, Planning and Natural Resources (now the Department of Planning), the Department of Environment and Conservation, the Marine Parks Authority, the Department of Lands and Byron Shire Council.

A DMP has been prepared and subject to conditions is considered to be acceptable.

The suitability of the VMP is addressed in section 5.2 of the report and a Shorebird Management Plan is required by condition to be included in the Community Management Statement.

Byron Development Control Plan 2002

Subdivision

Contamination

Part B1 requires the submission of information in relation to contamination of land with an application for subdivision. A contamination assessment report has been lodged with the application and has been addressed in Appendices A and D with regard to Acid Sulfate Soils and groundwater respectively. Soil contamination has been address in

Appendix B under the assessment of SEPP 55 and as such the requirements of Part B1 have been satisfied by the proposal.

Design

Part B2 requires subdivision to have adequate regard to climate control, landform, aspect and views, geology and soil, drainage and vegetation in its design.

The proposed subdivision is a community title (thence strata title) subdivision of a proposed tourist facility that has been appropriately designed with regard to the above.

Development Guidelines

The development guidelines within Part B3 related to road width, pavement and hierarchy generally relate to residential subdivision, however where applicable the proposal is generally consistent with the controls and achieves an appropriate road layout, subject to the recommended changes identified in the Urban Design Assessment (see Appendix R).

The lot size and frontage sections of DCP 2002 are more relevant to residential subdivision than to the proposed tourist facility subdivision.

The stormwater guidelines contained within this section are general in nature and more comprehensive requirements are contained in DCP 18, an assessment of which is contained at Appendix D.

Residential Development

This part of DCP 2002 indicates that tourist facilities are residential development for the purposes of this part and as such it applies to the proposal.

General Provisions

Buffer Areas

A minimum separation distance is provided for residential development from developments that may cause impacts upon amenity. The proposal satisfies the separation distances with the exception that part of the site is located within 400m of a sewage treatment plant. However, no buildings are located within 400m of the plant and as such the proposal is acceptable.

Building Height Plane

The building height plane seeks to ensure the amenity of adjoining residential properties is maintained. The site is not adjoining by any residential properties and the buildings are sufficiently setback from the boundaries such that they will not impact on the amenity of any adjoining land.

Setbacks

The applicable setback for the development is 6.5m from a local road (ie the extension of Bayshore Drive). Residential buildings and car spaces are setback at least 6.5m in compliance with this requirement.

Earthworks

A maximum of 1m of cut or fill is allowed and this is generally satisfied, with the variations from the standard being acceptable.

Screening of Under Floor Areas

This provision requires under floor areas to be screened and the landscaping proposed around the buildings satisfies this requirement.

Design Principles

This section provides guidance on design to achieve a suitable visual impact. The design is considered to be suitable in this regard as has been addressed in the Urban Design assessment prepared by Architectus Sydney Pty Ltd (see Appendix H).

A minimum site area and street frontage of 1200m² and 25m respectively apply for tourist facilities and hotels and the proposal easily complies with both.

Tourism Development

The density and design criteria referred to in this clause is overridden by the controls of DCP 18, where inconsistent, and the assessment against that instrument is contained in Appendix D.

Parking

Part G requires parking to be provided at the following rates:

- 1.5 spaces per unit >30m²; plus
- 1.5 spaces per 10m² or 1/3 seats for restaurants/function room (which ever is greater) – but this may be reduced if mainly for onsite guests; plus
- 1 space per 20m² for retail; plus
- 1 for every 2 employees.

The controls require 1-2% of parking spaces to be suitable for access by disabled persons. Service vehicle parking spaces are to be provided at a rate of 1 per 50 units up to the first 200 units.

As such the development proposal would require a total provision of 176 spaces for use by occupants of the accommodation units, 44 spaces for the café (132 seats) and 8 spaces for the retail uses (165m²). A total of 16 employees are proposed and as such 8 employee parking spaces would be required.

The proposal provides a total of 9 parking spaces next to the bus stop and 24 spaces under the hotel suites (of which 18 would be required for the hotel suites, leaving a surplus of 6 spaces). Each of the remaining 105 units is provided with a paved parking area and one adjoining reinforced turf space. This approach to the remaining units is appropriate, with the paved space being permeable and the less often used extra space not being paved, but being treated in a way suitable for the frequency of use. An additional large reinforced turf area is provided for use during festivals and the like and such an approach is considered appropriate, given the infrequency of use.

It is considered that the retail uses and café will primarily be used by occupants of the accommodation units, however may also be used by the general public visiting the beach. As such, it is considered that minimal additional parking spaces are required to be provided for use at the café/shops above that provided for use by the general public accessing the beach. The surplus parking spaces under the hotel are adequate for staff parking.

Landscaping

Part H deals with landscaping and several elements are addressed as follows.

Overall Theme

The objective of this element is to integrate the natural environment, proposed development and proposed landscaping, with the performance criteria requiring landscaping to complement the structures and help define and enhance the outdoor living and recreation areas.

The landscape design appropriately integrates with the natural environment and the proposed development, providing for privacy and shade to the proposed units and more open communal areas.

Recreation Areas

The prescriptive measures require 50% of the main open space area to be provided with outdoor furniture and equipment for seating, recreation and child play areas. The main open space area is to be located close to the units but separated from internal roads.

The proposal makes no provision for a child play area, however the requirement to provide one could be conditioned. The most appropriate location would be near the village centre to allow children to use the equipment whilst their parents were shopping or at the café. The site is too large and the units too spread out to provide it near the units. This location would be away from internal roads.

Cycleways, Pedestrian Routes, Drainage and Watercourses

Cycleways and Pedestrian Routes

The prescriptive measures require that landscaping comprise of clear trunk trees and shrubs to a height of 1m and ground covers to ensure maximum visibility and surveillance.

The proposed pathways and cycleways are generally consistent with this requirement.

Drainage and Watercourses

The prescriptive measures require watercourses to be landscaped along the edges with native endemic species to allow the movement of flora and fauna and the use of swales are encouraged in drainage of larger sites.

The proposal incorporates a 5m wide strip of native endemic planting adjacent to all existing natural and man-made watercourses to provide for the movement of flora. Grass swales are used for overland flow, with culverts provided where the swales cross the proposed road. As such the proposal is consistent with this element of DCP 2002.

Street Trees

The prescriptive measures of this element require street trees to be a minimum of 45L in size at planting. The performance criteria require the use of native street trees with non-invasive roots, 10m height, be attractive and low maintenance, with good canopy spread for shade and suitable for the site conditions.

The proposed street trees are Hoop Pines and are endemic alternative to the Norfolk Island Pines used in Ewingsdale Road. They are to be planted in 200L size, with 1.2m clear trunks. The proposed street trees are considered appropriate.

Landscape Design

Landscape design should seek to achieve a suitable microclimate on the site by use of windbreaks, shade planting to the western side of buildings and planting to allow solar access in winter. The development is to be designed to provide for the retention of native vegetation. The use of palms is to be integrated into other landscaping and not used as the dominant landscape planting. Specified minimum sizes at planting are 45L for street trees and feature trees, 300mm for trees, 200mm for tall shrubs and 140mm for others. Plant density is to achieve 5m centres for trees, 2m for taller shrubs and 0.5-1m for ground covers. A recommended plant species list is provided.

The landscape plans shows that suitable planing is provided to ensure an appropriate micro-climate is created around the accommodation units. Palms do not feature dominantly in the proposed planting scheme. Specified planting sizes are provided that are determined on the basis of the best practice for the type of planting and are considered appropriate.

Coastal Erosion Lands

Part J addresses the types of buildings and structures that may be erected forward of the 100 year erosion line. The proposal does not seek to erect any buildings in this area and will demolish the Bayshore Building, which is under imminent danger from erosion.

Flood Liable Lands

This section deals with development on flood liable land and sets criteria for such development. This has been dealt with in detail in Appendix B addressing LEP 1988 and the development is acceptable in this regard.

Stormwater Management

This section deals with stormwater management and sets criteria for development. This has been dealt with in detail in Appendix D addressing DCP 18 and the development is acceptable in this regard.