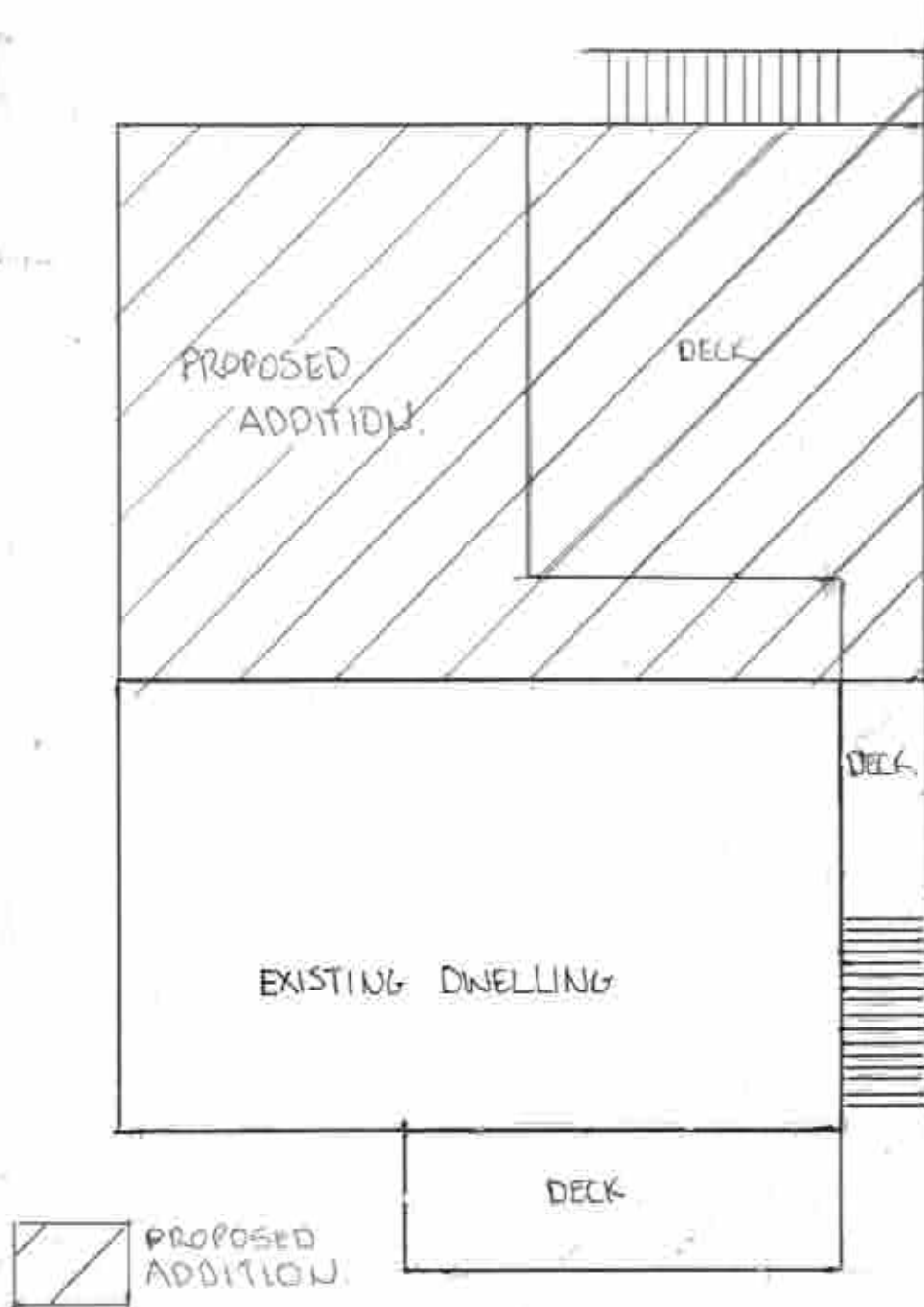


S LOOK ST. SITE MAP.

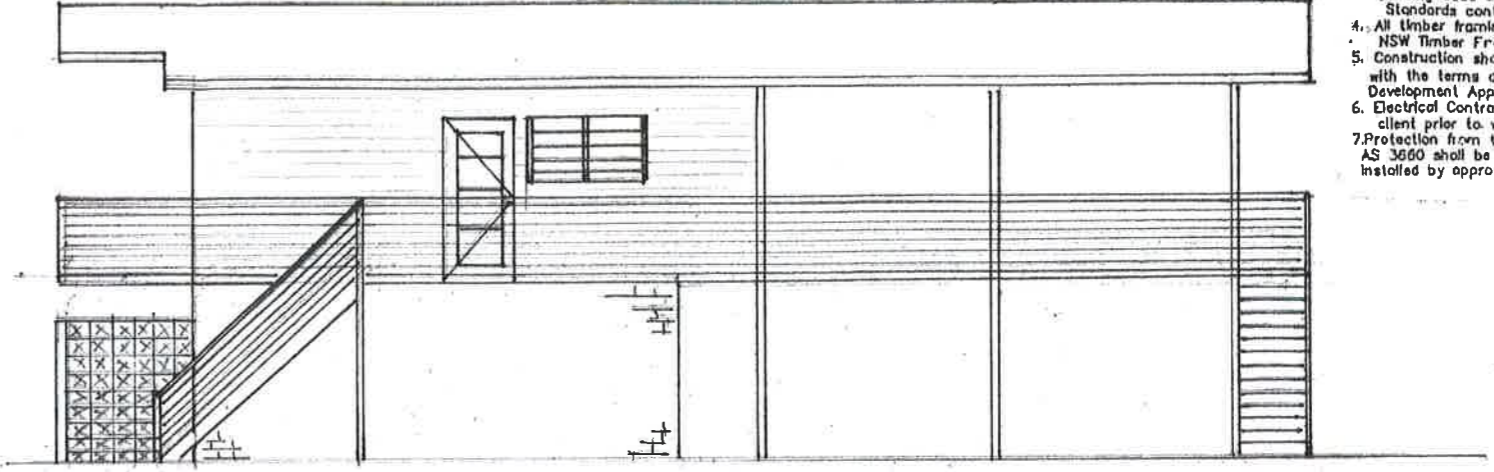
COOK ST.



5 COOK ST YAMBA, LOT 20, DP 239831. FOR MING NOMCHONG.
DRAFT GLEN RICHMOND. 10.2.21. SCALE 1:100

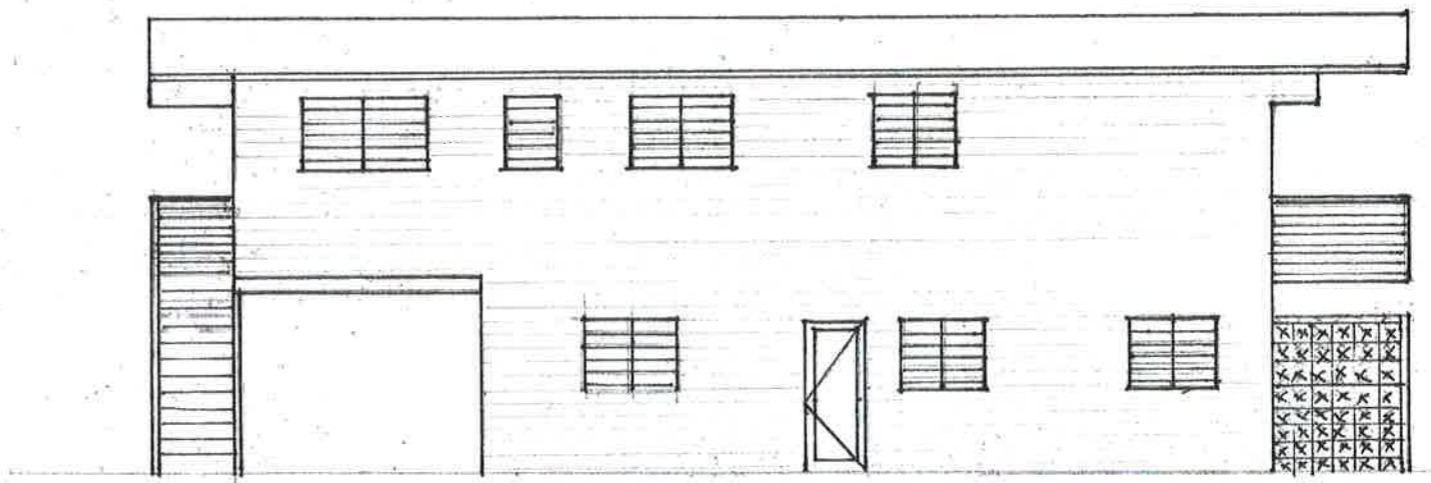


- ARCHITECTURAL NOTES.
1. Check and verify all dimensions prior to construction commencing.
 2. This drawing shall be read in conjunction with :-
A. Engineering drawing
B. Domestic Specification 2005
 3. All construction shall be in accordance with the Building Code of Australia & the Australian Standards contained therein.
 4. All timber framing shall be in accordance with the NSW Timber Framing Code & AS 1684 & AS 1721.
 5. Construction shall be carried out in accordance with the terms and conditions of Council's Development Approval.
 6. Electrical Contractor shall discuss layout with client prior to wiring commencing.
 7. Protection from termite in accordance with AS 3660 shall be included in building contract and installed by approved licenced contractor.



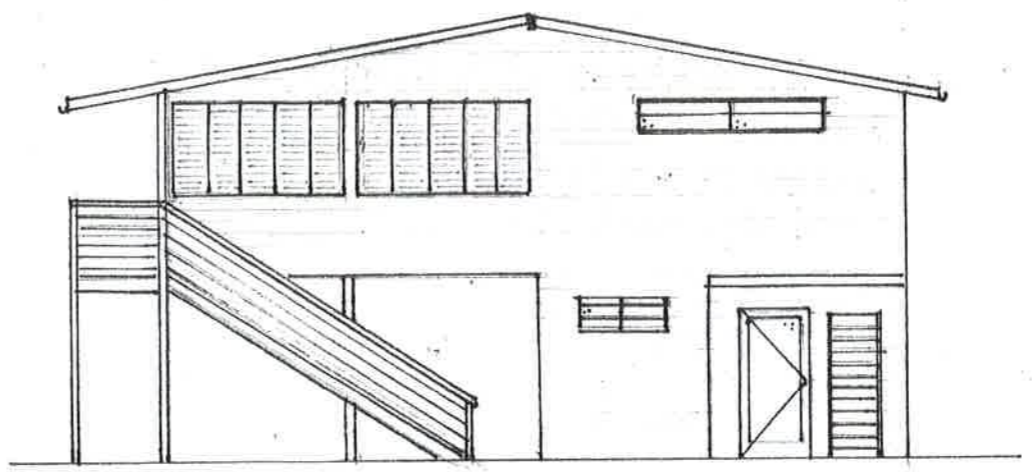
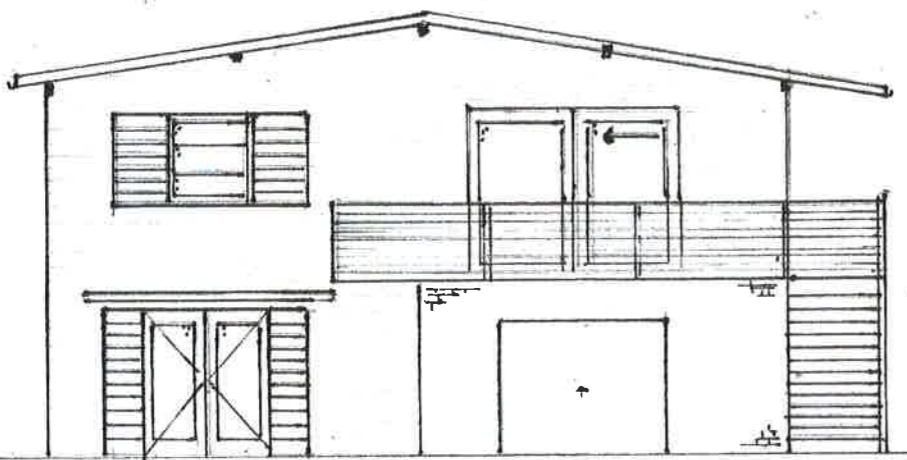
NORTH ELEVATION

10



SOUTH ELEVATION

6000



Date: 5th March 2021

The General Manager

Clarence Valley Council

Re: DA 2021/0107 – 5 Cook Street, Yamba, NSW

I wish to bring to the attention the matter of an unapproved build in an Air B&B adjoining our property.

On the 26th of February we received a letter from CVC advising us that the applicant at 5 Cook Street, Yamba was requesting approval for a deck on the first floor of this building. All well and good, but the build had been ongoing for about a fortnight and was already pushing towards completion.

This begs several questions:

- How was this able to happen, given that it was started a couple of weeks prior to the council sending letters to the adjoining properties.
- Concrete footings poured without approval, no structural engineer, no council inspection, and no oversight at all.
- Property owner was told by the applicant that he was told it was fine to go ahead and build the deck despite none of the adjoining properties being informed as yet. Who in council gave this permission before any of us received our letters and plans?
- There is considerable anger and distress in nearby households as we all see that, in this matter, we have been stripped of any of our rights as permanent residents and ratepayers. There has been an utter arrogant disregard for the community in general. It appears that commercial interests from Byron Shire can come down and trample on us with impunity.
- The deck will create significant noise issues despite the louvers in the wall. Sound will funnel out towards the neighbours to the North, significantly affecting their amenity. There has often been noise issues from this property when rented out.
- The deck appears to be bigger than what is shown on the plans. Not sure, but would be worth checking.
- More living space is to be built adjoining the deck. As this is not a family home or a permanent rental, I have serious objections to increasing the number of people in this house given that the bottom floor can be rented also and the backyard often has tents and vans as extra accommodation.
- Our privacy and that of our neighbours will be significantly affected by the deck. Parties on the grass will now take place on the deck creating more noise over a greater area.

We have been give almost no time to object to this development. They are building as I write this. The fact that the developer began to build before anyone knew of plans speaks to a cynical manipulation of the community and the council. Should anyone now object on significant grounds then the applicant would argue that it's already built and who's going to make them take it down? So in effect they have sought to get their own way by circumventing the process knowing that they will not be penalized. This could be the way in Byron Shire, I don't know. What I know is that it shouldn't be the way here, and we rely on our

elected representatives to stand up for the interests of the permanent residents against the self-interests of those who see Yamba as a cash cow and have no regard for community needs. It's a Byron mindset, and look how that has turned out for the residents who are trying to live and work there. Is this what council intends for Yamba?

Given that the deck is pretty much built and assuming that it won't be ordered to come down pending approval, I strenuously object to the rest of the proposed extension, ie, the extra bedroom and enlarged kitchen. This will increase occupancy potential, but will not be enough to prevent the tents and the vans. Further to this there have been frequent incidents of people urinating on our fence and lighting fires in the loosely defined area on the ground adjacent to our fence on rental weekends and all through summer without permits and during times of fire danger. There have also been instances of the fire being stoked up and left unattended for several hours while the occupants went out. The owner has been informed of the fire and has agreed in principle to remove the stones that define the area on the ground.

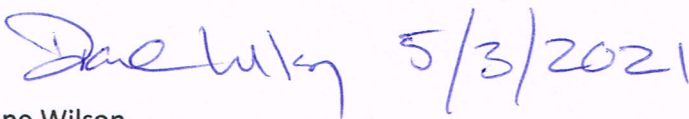
As you can appreciate, it's very difficult to separate the building alone from its usage as an Air B&B. This would be the crux of the matter.

It appears that we are stuck with the unapproved deck, but strenuously object to the extra rooms. If possible please request a separate DA for this part of the build and require the applicant to not build it before approval as he done in this instance.

Air B&B's and similar are becoming a huge problem. Many communities have been gutted by the proliferation of ungoverned and out of control letting. May I respectfully suggest that council should consider time limits, but also zones where such short term letting is appropriate? These areas are not quite residential streets. In Yamba the area East of the Augourie Road round-a-bout that is already full of holiday properties, and possibly Yamba Road as well. Please leave quite residential areas for residents. Long term renters and owner occupiers should all have the rights that are currently being eroded significantly. As voters and ratepayers we expect respect and the right to live our lives and raise our families in a strong and united community.

I thank the Council for the opportunity to make a submission with regard to this application.

Yours faithfully



Diane Wilson

10 Golding Street, Yamba, NSW, 2464

From: Annette Burns
Sent: Thu, 4 Mar 2021 09:12:12 +1100
To: Council Email
Subject: Development DA2021/0107
Importance: Normal

Attention:- Deborah Novak

Dear Ms. Novak,

With reference to a letter we received from Clarence Valley Council on 26th February 2021, regarding Alterations and Additions to a property in 5 Cook Street, Yamba, a property directly behind, and overlooking our property at 12 Golding Street, Yamba.

The letter in question is stating any submissions regarding this development being given to Council before the 10th March, 2021,

This development in question has been underway for over three weeks, and is continuing being built at this present time. The Council has previously been advised of this but it seems to have been put in the too hard basket. The property is an Air B&B and we have had numerous problems with noise, fire smoke in our homes, bright lights at night, and the back yard sometimes looks like a camping ground with tents etc., these extensions will allow more bodies inside the building, plus the campers in the backyard, it could become a mini backpackers hotel. We have no objections to the owners doing renovations for themselves, but they don't have to live with the problems, that the residents have to put up with, we would appreciate someone from the council to look into this matter.

Yours sincerely
Stephen & Jean Annette Burns

Date: 5th March 2021

RE: DA – 2021 – 0107 – 5 Cook Street - Yamba

The General Manager

Clarence Valley Council

In relation to the **DA 2021/0107 – 5 Cook Street, Yamba**, I object to the development application based on the following:

- a) I note that this house is run as an Air B&B, and as such there is often a large number of people staying at the house. After talking to the owner, they have advised that they are unsure if they will ever live permanently at this house.
- b) This leads to a situation where there are often large groups of people gathering in the back yard, which faces our backyard, meaning there is quite a large amount of noise created.
- c) The proposed plans indicate an extra bedroom and larger Kitchen area. While, if the house was for permanent residential use, this would not be a problem, however I feel that because the house is an Air B&B, this increases the potential for more patrons to occupy the house, and this increases the potential for noise for the back yard.
- d) There is also a large deck proposed for the upper level. This again adds to an increased level of noise that can be generated by the Air B&B occupants of the house. Again, this would not normally be an issue, however, as it is used as an Air B&B, it is of great concern that an elevated noise level will emanate from the large deck proposed under this application. This deck faces our house, and while the plans seem to indicate a wall on the outer edge of the deck facing our house, it does have large opening shutters that face our house and we would assume that these will be open to allow a breeze to flow through the deck area, thus minimizing the effect of the wall.
- e) There is also a fire pit located close to our back fence that during winter, and sometimes in summer, is lit, causing large smoke plumes which fill our house and cause us to have to shut all our doors and windows facing the back yard. We live in a double story house that catches the smoke easily. I understand that it is illegal to have an open fire in a residential yard. We feel that an increased bedroom capacity in the proposed house will attract more people to stay at this Air B&B and thus a greater possibility for fires to be lit in the back yard. I have spoken to the owner about the fire pit and he has advised that he will consider removing the fire pit. However, this has not happened as yet.
- f) Of large concern, is that the construction of the works has commenced, approximately 2 weeks ago (around 8th and 9th Feb). We received a letter in the post from Council on Friday 26th Feb (dated 24th Feb). The owner advised me that he was advised that it would be ok to construct the deck and wait for permission to construct the rest of the additions. We find this extremely alarming. Footings have been poured for the deck posts and 50% of the deck is now constructed (by Fri 5th March). Who inspected the footings and is checking on the structural integrity of the timberwork that has been completed?

- g) In general, we are extremely unhappy with the proliferation of Air B&B properties in Yamba as a whole, and in particular, in quite residential sections of the urban area. We are currently surrounded by 5 Air B&B's (or the like), which have a serious effect on the amenity of the local urban area. Often the Air B&B's are occupied by more than a single household, ie 2-3 families at a time. Cars parked all over the street, noisy parties etc, which, if they were regular houses, would only happen every now and again, but this is the situation most weekends.
- h) Often there are a number of tents and vans parked in the backyard of 5 Cook Street. We are unsure that the owners even know this. Patrons urinate against our back fence and, as mentioned previously, start fires in the fire pit provided. Not to mention the increased noise level from the back yard, which we can hear quite clearly from our back deck.
- i) The increased size of the property (increased number of bedrooms and a new large upper level deck) will mean increased occupants and increased loss of amenity to us and our neighbours.
- j) Overall, this proposal can't be viewed as separate from the Air B&B issue, as the house is used as an Air B&B, therefore it must be considered by Council as a tourist facility, because that is what it is and will be into the foreseeable future.
- k) The Air B&B issue urgently needs addressing by Council and the elected Councilors. This is a Council election year, and the local community in Yamba are, to say the least, up in arms about the Air B&B issue. Councilors need to address this issue as a matter of urgency.

Our immediate concern is that the construction works need to be halted until the Council fully considers all the submissions made regarding this application and make a determination for or against approval.

I thank the Council for the opportunity to make a submission with regard to this application.

Yours faithfully



Michael Bald
Register Architect (NSW)
10 Golding Street, Yamba, NSW, 2464

SECTION 4.15 EVALUATION FOR DA2021/0107
- Lot 20 DP 239831
- 5 Cook Street YAMBA NSW 2464

Proposal: Development Application DA2021/0107 was lodged on 23 February 2021 for alterations and additions to an existing dwelling. The proposed additions include additional internal floor area on both the ground and first floor and a first floor deck off the western side of the dwelling. Part of the works has already been commenced prior to the application being lodged and a building information certificate is therefore required.

(1) Matters for consideration – General

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

(i) any environmental planning instrument, and

State Environmental Planning Policy 55 – Remediation of Land

Clause 7 of the SEPP states that a consent authority must not consent to the carrying out of any development in land unless:

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

The previous known use of the land is residential as the land contains an existing dwelling and has historically been used for residential purposes. It is unlikely to be contaminated and is suitable for continued residential use, as this use is not one of the potentially contaminated land uses listed in Table 1 of the Contaminated Land Planning Guidelines.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The SEPP requires new residential development, as well as alterations and additions to existing residential development valued at over \$50,000, to meet water and energy efficiency targets. A valid BASIX certificate was submitted with the development application. All commitments listed in the BASIX certificate are required to be completed/ satisfied prior to the issue of the Occupation Certificate.

State Environmental Planning Policy (Coastal Management) 2018

The subject land is mapped as being within both the Coastal Environment Area and Coastal Use Area under the provisions of the recently adopted State Environmental Planning Policy (Coastal Management) 2018. Each of the affected areas are discussed below.

13 - Development on land within the coastal environment area

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

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the [Marine Estate Management Act 2014](#)), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) Aboriginal cultural heritage, practices and places,*
- (g) the use of the surf zone.*

The proposed development is unlikely to have any adverse impact on coastal processes and the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment is not likely to be adversely impacted from the temporary use of land. The development has been sited and will be managed to avoid any adverse impact on the coastal environment area in accordance with Clause 13(2) of the SEPP.

14 - Development on land within the coastal use area

Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

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

The development being temporary in nature, is not likely to cause an adverse impact on the visual amenity and scenic qualities of the coast and there is no existing public access available to the foreshore area.

Clarence Valley Local Environmental Plan 2011

The subject land is zoned R2 Low Density Residential under the provisions of the *Clarence Valley Local Environmental Plan 2011* (herein referred to as "the LEP"). The proposed alterations and additions are permissible with consent in the zone.

The proposed development is considered to be consistent with the objectives of the zone:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal provides for the housing needs of the community and is consistent with the character of medium density residential development.

Clause 4.3 Height of Buildings

A maximum building height of 9m applies to the land. The proposed development complies with the maximum building height having a maximum height of 6 metres and does not propose to increase the existing height of the dwelling.

Clause 7.1: Acid Sulfate Soils

The subject site contains potential Class 2 acid sulfate soils. It is not considered that acid sulfate soils will be affected by this proposal as piers have already been constructed. It is considered that potential acid sulfate soils may be disturbed as a result of the proposed development and an appropriate condition will be included.

Clause 7.2: Earthworks:

There are no significant earthworks proposed as a result of this proposal. Sediment control fences will be required on-site to minimise the transport of sediment off-site and onto adjoining land for the duration of works. It is considered that the proposal is consistent with the objectives of the zone.

Clause 7.3: Flood Planning:

The subject site is affected by flooding. No structures are proposed that are considered to adversely impact flood behavior or the flood hazard and is not considered to result in unnecessary risk to human life or property. It will be necessary for the proposal to comply with the relevant flood height requirements for construction below 2.9m AHD. The proposed development is considered to be generally consistent with the clause.

Clause 7.8: Essential Services:

The subject site has access to reticulated water, electricity and sewer. Storm water will be discharged into Council's drainage system. The site has access to Cook Street, a Council maintained road.

- (ii) **any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and**

N/A.

- (iii) **any development control plan, and**

The proposed development is subject to consideration under the Residential Zones DCP (“the DCP”).

A2. Aims of the plan

The aim of the DCP is to support and complement the *Clarence Valley Local Environmental Plan 2011* (CVLEP 2011) and to encourage well designed, high quality development within residential zones in the Clarence Valley. The proposed development is considered to be consistent with the aims of the DCP.

Clause	Control	Complies
C.4: Streetscape Requirements	Presentation to the street, setbacks, building height, roofing, fences and walls, landscaping.	Yes – It is considered to not dominate the streetscape. The setbacks comply with DCP controls.
C5: Building Design Requirements	Siting, cut and fill, energy efficiency, materials and colours, carports and garages, privacy.	Yes - The development siting has been designed to present to the rear and address constraints of the site. A BASIX certificate has been submitted to address water and energy efficiency. The exterior of the building is a cladding which is consistent with dwellings in the locality. Privacy of adjoining dwellings is considered to not be compromised as a result of the development due to the proposed screening.
C.8 Types of residential development	R2 Medium Density Residential	Yes – a dwelling house is permitted in the zone.
C.9 Minimum site area for dwelling houses	Minimum site area of 400m ²	Yes – the site area is 505.90m ² .
C.16 Setbacks	Front setback of 6m, rear and side setback of 900mm and a setback of 1.5m from services	The setbacks to the proposal will retain existing setbacks which comply with the required 1.5m. The proposed development is suitably setback from services on-site.
C.19 Landscaped Area Requirements	Minimum of 45%	Yes – the proposed landscaped area is in excess of 45%
C.20 Private Open Space Requirements	An area of 50m ² in one parcel with a dimension of 4.5m minimum.	Yes the proposed development will retain a suitable area.
C.24 Provision of Services	Access to sewer, electricity, water and	Yes - the lot has access to water, sewer,

Clause	Control	Complies
	Council road. Also storm water management	telecommunications, electricity and stormwater management. The lot has frontage to a Council maintained road.
C.29 Waste Management	Dispose of waste suitably	A waste management plan is to be provided prior to issue of the CC and will be conditioned to be, additionally, during the occupation phase of the dwelling the site will be serviced by Council's waste service.
Part D floodplain management controls	Not adversely impact flood behavior or the flood hazard	Refer to comments under LEP.
Part H Sustainable water controls	Maintain water quality and efficient use of water	Not applicable to single dwelling houses as is covered by BASIX requirements.
I.2 Erosion and sediment controls	Prevent land degradation and soil erosion	Yes - the submitted erosion and sediment control plan is deemed to be acceptable and has been conditioned as such.

- (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, and**

N/A.

- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,**

The proposed development is generally consistent with the prescribed matters, any demolition will need to comply with the relevant Australia Standard.

- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.**

The proposed development includes an additional room and alterations to the rear of the existing dwelling. The proposal is not considered to impact on the streetscape and is not likely to have adverse impacts on adjoining properties in terms of overshadowing, loss of views or privacy. Socially and economically the proposed redevelopment will create some employment opportunities during the construction phase. Conditions have been imposed to ensure compliance with sediment and erosion control and stormwater management

requirements to minimise any potential impacts on neighbouring properties and the environment.

(c) the suitability of the site for the development,

The proposal is considered to be in accordance with development in the surrounding area and is providing housing to meet the needs of the community. It is deliberated that the subject site is considered to be suitable for the proposed additions and alterations to the existing dwelling subject to appropriate conditions.

(d) any submissions made in accordance with this Act or the regulations,

The proposed development was notified in accordance with the community participation plan, three submissions were received during the exhibition period. The main issues are discussed below:

1. Use of Dwelling for Short Term Rental Accommodation

In all submission received and prior to the Development Application being received by Council, complaints were received by Council regarding the use of the subject property for short term rental accommodation (STRA) through Airbnb. Issues raised regarding the use as STRA include noise until late at night, extensive numbers of vehicles, parties and anti-social behaviour.

Upon receiving the complaints, Council staff wrote to the owner advising of the nature of the complaints received and the use could be considered to be prohibited. The Applicant has advised that the property is not available for use as an STRA through Airbnb. A search of the Airbnb website however shows the dwelling is still active however cannot be booked at the current time.

Council staff also wrote to those that had made complaints and advised of the current Council position on STRA within the Clarence Valley, refer to the March 2018 Council resolution (Item No 13.010/18). The resolution is as follows:

1. *Pending the New South Wales State Government adopting a policy position on the issue and/or approval of a planning proposal, commence a program of community education for a period of 3 months focusing on the canal area of Yamba.*
2. *Investigate and, where substantiated, take enforcement action for properties let for short term holiday letting where serious community impacts including neighbour disputes or conflicts (party houses) are alleged, as outlined in the Dobrohotoff v Bennic court case (summarised in this report and the confidential legal advice in the attachment).*
3. *Note that evidence collection alone will cost around \$5,000 and any individual court case a minimum of \$30,000.*

Attached to correspondence to those that had made alleged complaints was a log book to record any impacts that were observed during a 2 to 3 week period before returning the log to Council. At the time of writing the report, no log books have been received. The

purpose of the log book is to gain corroborating evidence to substantiate the claims made prior to taking further action as Council staff cannot always be present.

The NSW State Government has now announced the new regulatory and planning framework that will come into effect as of the 1 November 2021 whereby all owners or letting agents will need to ensure that properties used for STRA are registered and comply with the relevant requirements.

2. Impact on Amenity

A further matter that has been raised in the submissions received is the additions proposed including extra living area and a rear deck will enable more occupants, consequently having a greater impact on the amenity neighbourhood through noise and parties. These concerns primarily revolve around the issue of the STRA use of the dwelling. Plans submitted by the Applicant show that the western portion of the deck, towards those that have made a submission, will be screened with louvres. This will limit noise and light directed to the west and reduce the overall impact on the neighbourhood.

3. Commencement of Building works

For information purposes and full transparency, it was brought to Council's attention that the works proposed under this application were commenced without approval. This work did not meet the criteria for exempt development (i.e. development that does not require Council approval) listed in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. Therefore, prior development approval should have been obtained. Council staff do not condone unauthorised works and as such, attend the site and advised the Applicant verbally to discontinue work immediately, to date no further work has been undertaken since staff attended the site.

It should be noted that during the assessment of this application, Council staff identified that the ground floor on the southern side has been enclosed without prior Council approval in approximately March 2008 based on a Google Street view image. This work was undertaken by the previous owners of the property and is to be authorised as part of this Development Application.

(e) the public interest.

The public interest is maintained by the proposal as it is considered to be generally consistent with the relevant policies adopted by Council.

Officer: James Hamilton, Development Planner

Date: 11/05/2021