



# Byron Shire Council



## Agenda

### Ordinary (Planning) Meeting

Thursday, 19 March 2020

held at Council Chambers, Station Street, Mullumbimby  
commencing at 11.00am

***Public Access** relating to items on this Agenda can be made between 11.00am and 11.30am on the day of the Meeting. Requests for public access should be made to the General Manager or Mayor no later than 12.00 midday on the day prior to the Meeting.*

Mark Arnold  
General Manager

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## CONFLICT OF INTERESTS

**What is a “Conflict of Interests”** - A conflict of interests can be of two types:

**Pecuniary** - an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.

**Non-pecuniary** – a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the Code of Conduct for Councillors (eg. A friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

**Remoteness** – a person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to a matter or if the interest is of a kind specified in the Code of Conduct for Councillors.

**Who has a Pecuniary Interest?** - a person has a pecuniary interest in a matter if the pecuniary interest is the interest of the person, or another person with whom the person is associated (see below).

**Relatives, Partners** - a person is taken to have a pecuniary interest in a matter if:

- The person's spouse or de facto partner or a relative of the person has a pecuniary interest in the matter, or
- The person, or a nominee, partners or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

N.B. “Relative”, in relation to a person means any of the following:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person's spouse;
- (b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

**No Interest in the Matter** - however, a person is not taken to have a pecuniary interest in a matter:

- If the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative or company or other body, or
- Just because the person is a member of, or is employed by, the Council.
- Just because the person is a member of, or a delegate of the Council to, a company or other body that has a pecuniary interest in the matter provided that the person has no beneficial interest in any shares of the company or body.

### Disclosure and participation in meetings

- A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:
  - (a) at any time during which the matter is being considered or discussed by the Council or Committee, or
  - (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

**No Knowledge** - a person does not breach this Clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

**Non-pecuniary Interests** - Must be disclosed in meetings.

There are a broad range of options available for managing conflicts & the option chosen will depend on an assessment of the circumstances of the matter, the nature of the interest and the significance of the issue being dealt with. Non-pecuniary conflicts of interests must be dealt with in at least one of the following ways:

- It may be appropriate that no action be taken where the potential for conflict is minimal. However, Councillors should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (eg. Participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (eg. Relinquishing or divesting the personal interest that creates the conflict)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as of the provisions in the Code of Conduct (particularly if you have a significant non-pecuniary interest)

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## RECORDING OF VOTING ON PLANNING MATTERS

### Clause 375A of the Local Government Act 1993 – Recording of voting on planning matters

- (1) In this section, **planning decision** means a decision made in the exercise of a function of a council under the Environmental Planning and Assessment Act 1979:
  - (a) including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but
  - (b) not including the making of an order under that Act.
- (2) The general manager is required to keep a register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.
- (3) For the purpose of maintaining the register, a division is required to be called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- (4) Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations.
- (5) This section extends to a meeting that is closed to the public.

# BYRON SHIRE COUNCIL

## ORDINARY (PLANNING) MEETING

### **BUSINESS OF ORDINARY (PLANNING) MEETING**

1. PUBLIC ACCESS
2. APOLOGIES
3. REQUESTS FOR LEAVE OF ABSENCE
4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY
5. TABLING OF PECUNIARY INTEREST RETURNS (CL 4.9 CODE OF CONDUCT FOR COUNCILLORS)
6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS
  - 6.1 Ordinary (Planning) Meeting held on 20 February 2020
7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS
8. MAYORAL MINUTE
9. NOTICES OF MOTION  
Nil
10. PETITIONS
11. SUBMISSIONS AND GRANTS
12. DELEGATES' REPORTS
13. STAFF REPORTS

#### **Sustainable Environment and Economy**

- |       |   |    |
|-------|---|----|
| 13.1  | PLANNING - DA 10.2019.564.1 Boundary Adjustment - 196 & 220 Friday Hut Road, Possum Creek.....  | 4  |
| 13.2  | PLANNING - Development Application 10.2019.103.1 Restaurant and Planning Agreement for Upgrade of Public Road and Carpark at 784 Coolamon Scenic Drive Coorabell.....   | 18 |
| 13.3  | Koala Habitat Protection SEPP 2019 and its implications for Byron Shire .....   | 39 |
| 13.4  | PLANNING - Draft Local Strategic Planning Statement.....  | 45 |
| 13.5  | Sustainable Visitation Strategy - Public Exhibition .....   | 52 |
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| 13.7  | Draft Biodiversity Conservation Strategy .....  | 59 |
| 13.8  | PLANNING - Report of the February 2020 Planning Review Committee.....   | 68 |
| 13.9  | PLANNING - Further report following resolution 19-569 10.2019.301.1 demolition of existing dwelling house and construction of two (2) new dwellings and two (2) swimming pools to create dual occupancy at 16 Short Street Brunswick Heads..... | 71 |
| 13.10 | PLANNING - Resolution 19-553 Review of Council's Signage Policy .....   | 77 |

***Councillors are encouraged to ask questions regarding any item on the business paper to the appropriate Director prior to the meeting. Any suggested amendments to the recommendations should be provided to Councillor Support prior to the meeting to allow the changes to be typed and presented on the overhead projector at the meeting.***

**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.1      PLANNING - DA 10.2019.564.1 Boundary Adjustment - 196 & 220**

**Friday Hut Road, Possum Creek**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Patricia Docherty, Planner

**File No:** I2020/116

**Proposal:**

**DA No:** 10.2019.564.1

**Proposal description:** Boundary Adjustment Two (2) Lots

**Property description:** LOT: 5 DP: 612814, LOT: 5 DP: 800445  
196 Friday Hut Road; and 220 Friday Hut Road POSSUM CREEK

**Parcel No/s:** 25530, 25590

**Applicant:** Town Planning Studio Pty Ltd

**Owner:** Mr D Edwards

**Zoning:** RU2 Rural Landscape (LEP 2014) / 1(a) General Rural Zone LEP 1988

**Date received:** 23 October 2019

**Integrated / Designated Development:** ☒ Integrated      ☐ Designated      ☐ Not applicable

**Concurrence required** No

**Public notification or exhibition:**

- Level 0 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: nil
- Submissions received: nil

**Planning Review Committee:** Not applicable

**Variation request** ☐ Clause 4.6      ☒ SEPP 1      ☐ Not applicable

**Delegation to determine** Council

**Issues:**

- Variation to 40 Ha minimum lot size.

**Summary:**

This development application seeks consent for boundary adjustment between Lot 5 DP 612814, 196 Friday Hut Road, Possum Creek and Lot 5 DP 800445, 220 Friday Hut Road, Possum Creek, transferring approximately 1.42 ha of land from the larger property to the smaller parcel creating the following lots:

- Proposed Lot 1 – 18.17 ha
- Proposed Lot 2 - 8.076 ha

The subject land is partly zoned 1(a) general rural Zone under Byron LEP 1988 and RU2 rural landscapes under Byron LEP 2014. A SEPP 1 variation was submitted with the application and concurrence has been issued by the Secretary of Planning to vary the 40 Ha development standard. In this regard the proposal creates no additional dwelling entitlements or additional rural residential lots, whilst both lots are already undersized.

The proposed boundaries of the new lots is consistent with the environmental and rural features of the site. There are no expected adverse environmental impacts to the site or surrounding properties as a result of the proposed boundary adjustment, which is seen as a logical alignment of the boundaries to the land. The application is recommended for approval subject to conditions of consent.

**NOTE TO COUNCILLORS:**




In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

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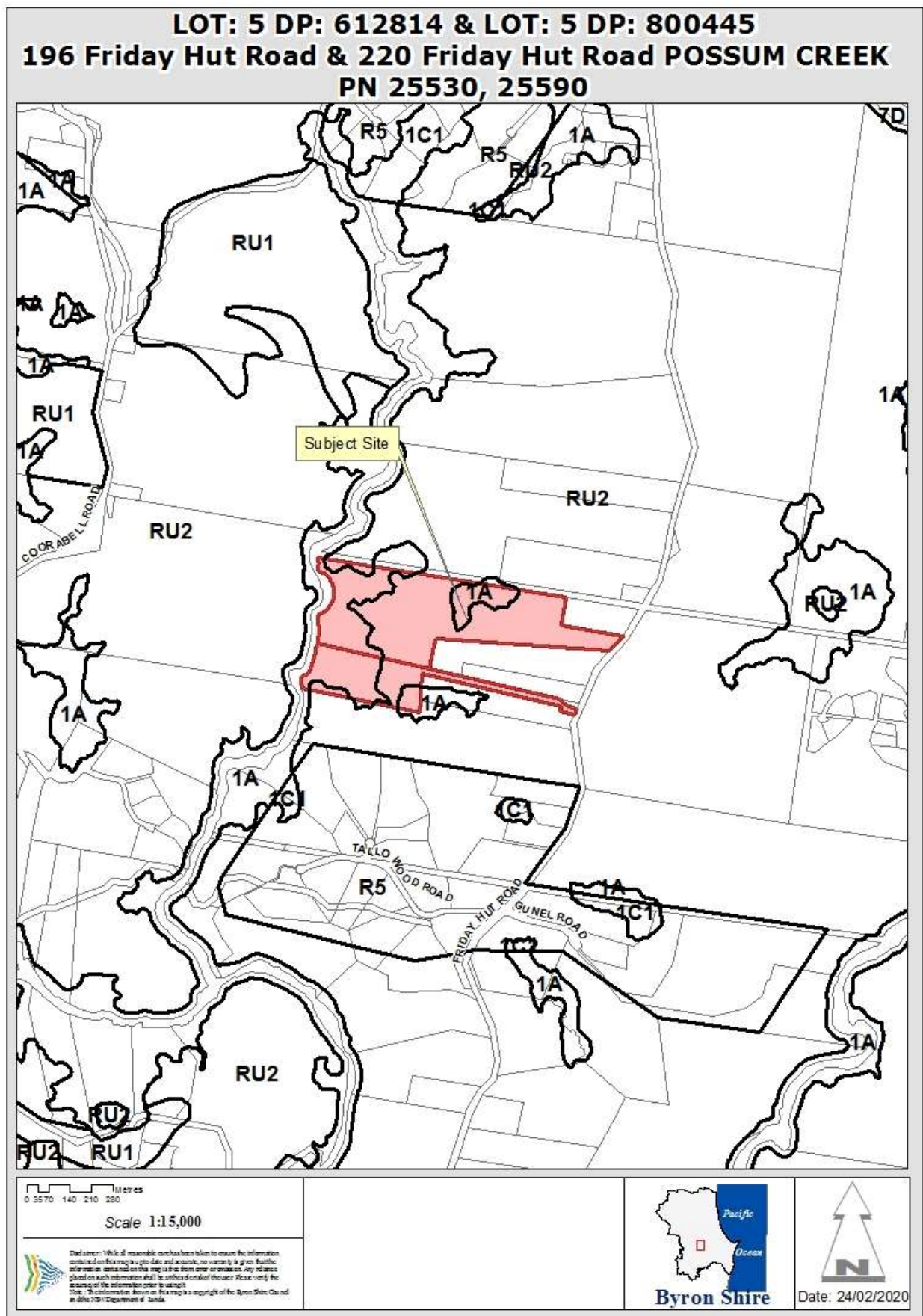
**RECOMMENDATION:**

**That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.564.1 for boundary adjustment two (2) Lots, be granted consent subject to the conditions of approval in Attachment 3 (E2020/12498).**

**Attachments:**

- 1 Proposed Plan of Subdivision Boundary Adjustment - 196 & 220 Friday Hut Road, Possum Creek\_PAN-4468 (2).pdf, E2020/12431 
- 2 Byron - SEPP 1 - 196 & 220 Friday Hut Rd, Possum Creek\_A-2528, E2020/12201 
- 3 Recommended Conditions of Consent 10.2019.564.1, E2020/12498 





**Assessment:**

**1. INTRODUCTION**

**1.1. History/Background**

Parcel 25530 DA history:

005.1992.00000261.001	Development Applications	Miscellaneous	Approved Delegation	27/08/1992
005.1997.00000276.001	Development Applications	Tree Removal - Tree removal	Approved Delegation	06/09/1997
006.1999.00000243.001	Building Applications	Garage Extensions	Finalised	03/08/1999
006.1992.000002497.001	Building Applications	Addition/Alteration Dwelling	Approved Delegation	29/10/1992
010.2017.00000099.001	Development Application	Swimming Pool and Deck	Approved	29/05/2017

Parcel 25590 DA history:

005.1996.00000346.001	Development Applications	Tree Removal - TREE REMOVAL	Approved Delegation	20/11/1996
005.1997.00000543.001	Development Applications	Dwelling additions	Approved Delegation	02/03/1998
006.1997.000002799.001	Building Applications	Addition/Alteration Dwelling	Approved Delegation	16/03/1998
010.2017.000000315.001	Development Application	Swimming Pool	Approved	17/08/2017
010.2017.00000484.001	Development Application	Secondary Dwelling	Approved	05/02/2018
010.2017.00000484.002	Development Application	S96 for to Delete Incorrect Conditions applied by Council and impose	Approved	05/03/2018

**1.2. Description of the proposed development**

This application seeks approval for Boundary Adjustment Two (2) Lots:

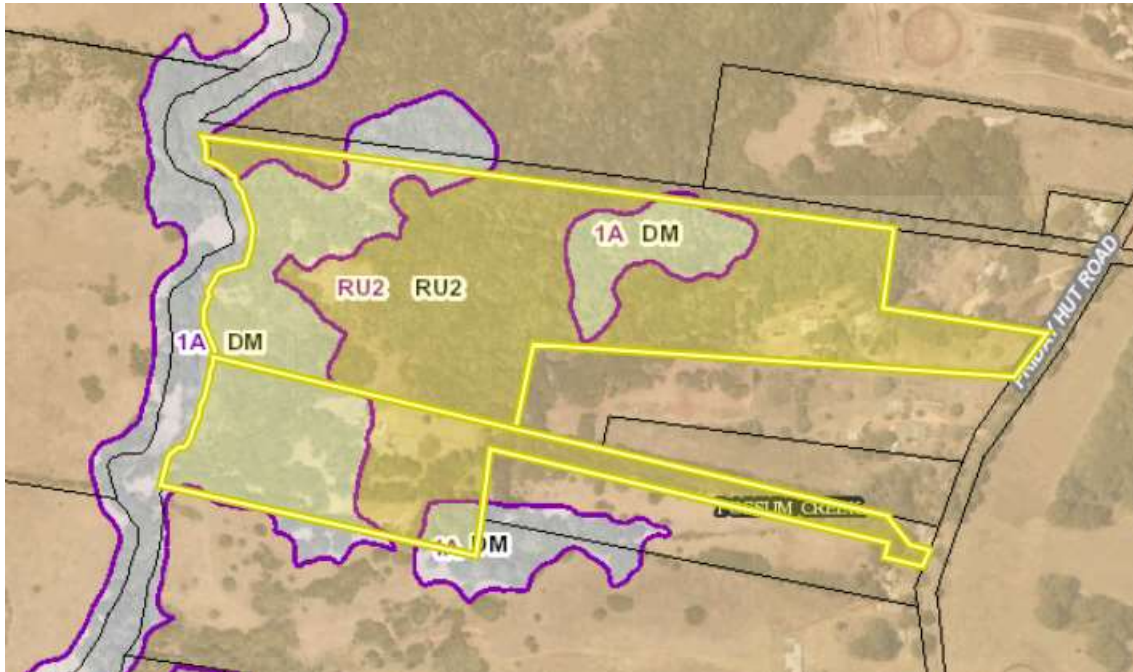
Plan No. DA01 - Proposed Boundary Adjustment - 6 September 2019  
220 & 196 Friday Hut Road, Possum Creek - Lot 5 DP 612814 & Lot 5 DP 800445  
Prepared by: Joe Davidson Source: NSW LPI Subject to Final Survey



**1.3. Description of the site**

The properties are bound by Coorabell Creek to the west and Friday Hut Road to the East. The land contains high environmental value Lowland Rainforest vegetation.





*Lot boundaries and Zoning*

Land is legally described as:	LOT: 5 DP: 612814, LOT: 5 DP: 800445	
Property address is:	196 Friday Hut Road POSSUM CREEK, 220 Friday Hut Road POSSUM CREEK	
Land is zoned:	RU2 Rural Landscape / 1(a) General Rural	
Land area is:	(Lot 5 DP 612814 19.59 Ha) LOT: 5 DP: 800445 (6.656Ha)	
Property is constrained by:	Bushfire prone land High Environmental Value Coorabell Creek Riparian Area Cattle Dip Buffer	
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

- 5 The land is mapped on the Biodiversity Values Map. The only potential impact of boundary adjustment on this land is if the owners sought to use the provisions within the Local Land Services Act to clear mapped vegetation for new boundary fencing.

- 10 A condition of consent is recommended to switch off these provisions for the purposes of biodiversity conservation in accordance with the EP&A Act. Refer to Section 2.

## **2. SUMMARY OF REFERRALS**

<b>Referral</b>	<b>Issue</b>
Development Engineer	No objections subject to conditions of consent.
Systems Planning Engineer	No objections subject to conditions of consent.
Ecologist	No objections subject to conditions of consent.



Referral	Issue
Department of Planning & Environment	<p>No objections subject to conditions. Refer to Doc #E2020/12201 and Attachment to this report.</p> <p><i>Following consideration of the application, concurrence has been granted to vary the 40 hectare minimum lot size development standard for land in Zone 1(a) General Rural under the Byron Local Environmental Plan 1988 to enable a boundary adjustment between Lot 5 DP 612814, 196 Friday Hut Road, Possum Creek and Lot 5 DP 800445, 220 Friday Hut Road, Possum Creek. Concurrence has been granted in this instance for the following reasons:</i></p> <ul style="list-style-type: none"> <li><i>the proposal will not result in additional lots or opportunities for additional dwellings;</i></li> <li><i>the proposal is not likely to affect the rural character, environmental heritage or scenic quality of the land.</i></li> <li><i>both existing lots are significantly less than the 40 hectare minimum lot size; and</i></li> <li><i>there is no public benefit in maintaining the development standard in this instance.</i></li> </ul> <p><i>...in relation to that part of the land in Zone RU2 Rural Landscape. In this instance, clause 4.1C of the Byron Local Environmental Plan 2014 provides for Council to vary the minimum subdivision lot size for a boundary adjustment.</i></p>

\* Conditions provided in the above referral are included in the Recommendation of this Report below

### **3. SECTION 100B of the Rural Fires Act 1997**

The site is bush fire prone land. The development application was referred to the NSW Rural Fire Service, which provided general terms of approval under Section 100B of the Rural Fires Act 1997, which are reflected in the recommended conditions of consent.

### **4. SECTION 4.15C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES**

Having regard to the matters for consideration detailed in Section 4.15(1) of the Environmental Planning & Assessment Act 1979 (EP&A Act), the following is a summary of the evaluation of the issues.

#### **4.1 State Environmental Planning Instruments**

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 1—Development Standards	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: The application was referred to NSW Dept of Planning and Environment and the Secretary of Planning's concurrence has been granted to vary the 40 ha development standard under Clause 11 of BLEP 1988. The following comments were made:</p> <p><i>Following consideration of the application, concurrence has been granted to vary the 40 hectare minimum lot size development standard for land in Zone 1(a) General Rural under the Byron Local Environmental Plan 1988 to enable a boundary adjustment between Lot 5 DP 612814, 196 Friday Hut Road, Possum Creek and Lot 5 DP 800445, 220 Friday Hut Road, Possum Creek. Concurrence has been granted in this instance for the following reasons:</i></p> <ul style="list-style-type: none"> <li><i>the proposal will not result in additional lots or opportunities for additional dwellings;</i></li> </ul>		

	<b>Satisfactory</b>	<b>Unsatisfactory</b>
<ul style="list-style-type: none"> <li><i>the proposal is not likely to affect the rural character, environmental heritage or scenic quality of the land.</i></li> <li><i>both existing lots are significantly less than the 40 hectare minimum lot size; and</i></li> <li><i>there is no public benefit in maintaining the development standard in this instance.</i></li> </ul> <p>Note. SEPP 1 was repealed and replaced by Clause 64A in BLEP 1988 1 February 2020. SEPP 1 continues to apply under Savings Provisions in Clause 7 of the Concurrences and Consents SEPP (See below).</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
State Environmental Planning Policy No 44—Koala Habitat Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The land contains preferred habitat vegetation. The removal of significant vegetation will be development prevented by condition of consent is recommended to switch off the Local Land Services Act provisions for the purposes of biodiversity conservation in accordance with the EP&A Act.		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The northern property (Lot 5 in DP612814) is partially affected by a dip site buffer. The proposed subdivision – boundary adjustment will not involve any works that are likely to be affected by the Friday Hut Road dip site. There is no change in sensitivity of land use and no disturbance of soils proposed.		
No further investigation for the proposed development is considered warranted.		
State Environmental Planning Policy (Concurrences and Consents) 2018	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: SEPP 1 continues to apply to this DA under the savings provisions: <i>Savings provision—SEPP 1 continues to apply to existing applications</i> <i>State Environmental Planning Policy No 1—Development Standards, as in force immediately before its repeal, continues to apply to an application made under clause 6 of that Policy if the application was made, but not finally determined, before that repeal.</i>		
<i>Note. Section 30(2)(d) of the Interpretation Act 1987 provides that the repeal of a statutory rule does not affect the operation of any savings or transitional provision contained in the statutory rule. Section 5(6) of that Act provides that section 30 also applies to an environmental planning instrument. This means that the above provision continues to have effect despite the repeal of this Policy.</i>		
State Environmental Planning Policy (Primary Production and Rural Development) 2019	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposed boundary adjustment is not considered to be inconsistent with the aims of the SEPP as follows: <i>(a) to facilitate the orderly economic use and development of lands for primary production,</i> <i>(b) to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,</i> <i>(c) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,</i> <i>(d) to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,</i> <i>(e) to encourage sustainable agriculture, including sustainable aquaculture,</i> <i>(f) to require consideration of the effects of all proposed development in the State on oyster aquaculture,</i>		

<b>Satisfactory</b>	<b>Unsatisfactory</b>
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*(g) to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environment risks associated with site and operational factors.*

#### **4.2A Byron Local Environmental Plan 2014 (LEP 2014)**

LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development. The following comments on the LEP are made

In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:

- (a) The proposed development is defined in the EP&A Act (s.6.2) as Subdivision;
- (b) Part of the land is within the RU2 Rural Landscape zones according to the Land Zoning Map;
- (c) The proposed development is permitted with consent (Cl.2.6); and
- (d) Regard is had for the Zone Objectives as follows:

<b>Zone Objectives (Zone RU2)</b>	<b>Consideration</b>
• To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.	The proposed boundary adjustment will not adversely impact the natural resource base.
• To maintain the rural landscape character of the land.	The proposed boundary adjustment is considered to maintain the rural landscape character of the land.
• To provide for a range of compatible land uses, including extensive agriculture.	The proposed boundary adjustment will not restrict the land uses potential within the lots or on adjoining lots.
• To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality.	The proposed boundary adjustment is not incompatible with the objective, certain types of tourist accommodation will continue to be permissible and the proposal is compatible with the rural landscape values and character of the locality.
• To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.	The proposed subdivision will result in a realignment of lot boundaries. This is consistent with and will protect the scenic quality of the locality. The impact of further development or associated clearing on significant scenic landscapes will be limited by conditions of consent.

#### **Clause 4.1C Minimum subdivision lot size for boundary adjustments in certain rural and residential zones**

The subject site contains parts of Zone RU2 – Rural Landscape zoned land, and therefore this clause applies. The clause permits rural boundary adjustment, where the resulting lots are below the minimum subdivision lot size. Both of the existing lots subject to the proposal are already well below the minimum lot size.

The boundary adjustment does not result in any additional lots or opportunities for dwellings. The proposal does not result in the fragmentation of the land and is unlikely to result in land use conflicts. The subdivision is compatible with the rural character and scenic quality of the land.



**Clause 5.16 Subdivision of, or dwellings on, land in certain rural, residential or environment protection zones**

The objective of this clause is to minimise potential land use conflict between existing and proposed development on land in the rural, residential or environment protection zones concerned (particularly between residential land uses and other rural land uses).

The following matters have been taken into account and are considered to meet the objectives of this clause:

- the proposal is not incompatible with the existing uses and approved uses of land in the vicinity of the development,
- the proposal does not change any use and is not likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development.

The proposal raises no other issues under BLEP 2014.

**4.2B Byron Local Environmental Plan 1988 (LEP 1988)**

The remainder of both lots are zoned 1(a) under Byron LEP 1988 and is therefore an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development.

In accordance with LEP 1988 clauses 5, 8 and 9:

- (a) The proposed development is defined in the EP&A Act (s.6.2) as Subdivision;
- (b) Part of the land is within the 1(a) General Rural Zone according to the map under LEP 1988;
- (c) The proposed development is permitted with consent (Cl.10); and
- (d) The proposed development is consistent with the relevant objectives of the Zone for the following reasons:

<b>Zone Objective</b>	<b>Consideration</b>
(a) to encourage and permit a range of uses creating a pattern of settlement, at a scale and character that maintains or enhances the natural, economic, cultural, social and scenic amenity of the rural environment of the Shire of Byron,	The proposed subdivision does not result in a change of use.
(b) to encourage and permit a pattern of settlement which does not adversely affect the quality of life of residents and visitors and maintains the rural character,	The proposed subdivision does not result in additional dwelling entitlements.
(c) to ensure development only occurs on land which is suitable for and economically capable of that development and so as not to create conflicting uses,	The proposed subdivision is not likely to result in a land use conflict.
(d) to allow the use of land within the zone for agricultural purposes and for a range of other appropriate purposes whilst avoiding conflict between other uses and intensive agriculture,	The proposed subdivision will result in a realignment of lot boundaries and is consistent with the scenic rural values of the land and will not conflict with other uses in the surrounding area.
(e) to identify lands (shown hatched on the map) which in the opinion of the council possess a limited capability for more intensive uses or development,	Not applicable.
(f) to restrict the establishment of inappropriate traffic generating uses along main road frontages other than in road side service areas,	Not applicable.

(g) to ensure sound management of land which has an extractive or mining industry potential and to ensure that development does not adversely affect the potential of any existing or future extractive industry,	Not applicable.
(h) to enable the provision of rural tourist accommodation and facilities only where such facilities are compatible with the form and density of the nature of the locality, and	The existing approved use is compatible with the nature of the locality and nothing in the proposal limits the potential provision of rural tourist accommodation.
(i) to permit the development of limited light industries which do not pose any adverse environmental impact, (e.g. software manufacture and film processing), and	Not applicable.
(j) to ensure that the development and use of land shown cross-hatched on the map adjacent to areas of significant vegetation and wildlife habitat do not result in any degradation of that significant vegetation and wildlife habitat, and that any development conserves and protects and enhances the value of the fauna and flora.	The boundary alignment will not impact the value of fauna and flora and their habitats.
What clause does the development not comply with and what is the nature of the non-compliance?	Further consideration, including whether the development application is recommended for approval or refusal accordingly.
<b>Clause 11 Subdivision in rural areas for agriculture etc.</b> Both the proposed lots are less than the minimum lot size of 40 ha prescribed for Zone 1(a) land.	As noted above, the application included a SEPP 1 Objection request. The Secretary of the Department of Planning & Environment has provided concurrence for the variation to the development standard for the reasons detailed below.

**Clause 11 Subdivision in rural areas for agriculture etc.**

5 Clause 11 states that Council shall not consent to the subdivision of land unless the area of each of the allotments to be created is not less than the minimum area for the zone of the subject land and, *“in the opinion of the council, each allotment is of satisfactory shape and has a satisfactory frontage”*.

10 Both the current and proposed lots are less than the minimum lot size of 40 ha prescribed for Zone 1(a) land and therefore do not meet the minimum lot size requirement. The DA is supported by an objection pursuant to SEPP 1. The identified requirements needed in order to uphold a SEPP 1 objection, are addressed in the circumstances of this particular case as follows (*Wehbe v Pittwater Council* [2007] NSWLEC 827).

15 ***Is the requirement a development standard?***

The minimum subdivision lot size requirement is a development standard as defined by section 1.4 of the EP&A Act 1979, because it is a provision of an environmental planning instrument in relation to the carrying out of development, being a provision by or under which requirements are specified and standards are fixed in respect of the area of any land.

20

***Is the objection in writing, is it an objection “that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case” and does it specify “the grounds of the objection”?***

25

The development application is accompanied by an objection in writing. It is an objection that compliance with the development standard is unwarranted in the circumstances of the case and specifies the grounds provided in Section 4.1 of this report above.

***Is “the objection well founded” and will “granting of consent to the development application be consistent with the aims of SEPP 1 as set out in clause 3”?***

An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in one of a variety of ways (according to the above mentioned judgment). These are:

- 1 *Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*
- 2 *The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
- 3 *The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
- 4 *The development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unreasonable and unnecessary.*
- 5 *The zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and compliance with the standard in that case would also be unreasonable or unnecessary.*

For the current development application, compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. Clause 11 does not provide any stated objectives. However, compliance with the development standard is unreasonable and unnecessary because the underlying objectives of the development standard are achieved for the following reasons:

- *the proposal will not result in additional lots or opportunities for additional dwellings and will provide increased opportunities for the improved environmental management of the land;*
- *The areas of the existing lots are already significantly less than the 40 hectare minimum lot size development standard; and*
- *There is no public benefit in maintaining the development standard in this instance.*

The SEPP 1 objection is well founded, concurrence of the Secretary has been granted and it is recommended it be supported.

**Clause 38 Development within Zone No 1 (a) shown hatched on the map**

The proposal has considered environmental hazards, including flooding, landslip, bushfire, soil erosion and other environmental impacts.

**Clause 52 Tree preservation**

The proposal does not require the removal of any native vegetation.

The proposal raises no other issues under BLEP 1988.

**4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority**

The site does not form part of any Planning Proposal to amend Byron LEP 2014 or any other proposed Instrument that has been the subject of public consultation and has notified to the consent authority.



**4.4A Byron Shire Development Control Plan 2014 (DCP 2014)**

Chapters B3, B4 and C2 have been considered in terms of Servicing, access/traffic and flooding aspects of the proposal by Council's engineer who has no objections to the development subject to conditions.

**B6 - Buffers and Minimising Land Use Conflict**

The proposed subdivision is not likely to result in actual or potential land use conflict as no new neighbours or land uses will be created by the subdivision. .

**D6 - Subdivision**

The proposed boundary adjustment has considered the site in terms of landform, topography, soils, vegetation, drainage, watercourses and aspect.

What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Objectives of this Section? Address.	Does the proposed development comply with the Performance Criteria of this Section? Address.
<b>D6.3.1 Lot Size, Shape and Configuration</b> The proposed lots are less than the minimum area specified in Byron LEP 2014 on the lot size map contrary to Prescriptive Measure 1.	Yes The proposed lots will: <ul style="list-style-type: none"> <li>• Not prevent the orderly and economic use and development of the land.</li> <li>• Retain the use of the lots for the approved rural purposes.</li> <li>• Ensure adequate access is retained that will not create a new hatchet shaped lot or extensive works associated with vehicle access.</li> </ul>	Yes The proposed boundary adjustment will not be located in the dip site buffer area and is consistent with the buffer recommended by Chapter B6. This application does not propose new dwelling entitlements

The proposed development raises no other issues under Byron DCP 2014.

**4.4B Byron Shire Development Control Plan 2010 (DCP 2010)**

**Part B4 Subdivision**

What Section and prescriptive measure does the development not meet?	Does the proposed development meet the Element Objectives of this Section? Address.	Does the proposed development meet the Performance Criteria of this Section? Address.
<b>B4.1 Element – Lot Size and Shape</b> The lots will both remain less than 40 ha (the minimum area specified in Byron LEP 1988 for zone 1(a) land – clause 11).	Yes. The proposed lots are largely consistent with defined planning objectives but for the minimum area requirement (see comments above). Adequate access to the lots is maintained.	Yes. The proposed boundary adjustment has considered: Protection from noise, dust, odours, spraying, etc, considering wind direction and topography in relation to nearby agricultural uses. Ridgelines, vegetation and distance can provide effective buffers Avoidance of interference with own and neighbouring access for fire protection, flood or stock movement.

The proposal raises no other issues under the DCP 2010.

**4.5 Environmental Planning & Assessment Regulation 2000 Considerations**

The proposal raises no matters under the Regulations.

**4.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

<b>Impact on:</b>	<b>Likely significant impact/s?</b>
<b>Natural environment</b>	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
<b>Built environment</b>	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
<b>Social Environment</b>	No. The proposal will not have a significant social impact on the locality.
<b>Economic impact</b>	No. The proposal will not have a significant economic impact on the locality.

**4.7 The suitability of the site for the development**

The site is a serviced, unconstrained property and is suitable for the proposed development.

**4.8 Submissions made in accordance with this Act or the regulations**

The development application was not publicly notified. No submissions were received.

**4.9 Public interest**

The proposed development is unlikely to prejudice or compromise the public interest or create an undesirable precedent.

**5. DEVELOPER CONTRIBUTIONS**

There is no nexus to levy contributions for the boundary adjustment.

**6. CONCLUSION**

The DA proposes Boundary Adjustment between two (2) lots. The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development. The application appropriately addresses the relevant constraints applying to the site, and is recommended for approval subject to the conditions listed in the Recommendation of this Report below.

**7. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED**

*Note: From July 1 2018, Council's are required to give and publicly notify reasons for a range of planning decisions where they are deciding if development should proceed to help community members to see how their views have been taken into account and improve accountability to stakeholders. A statement of reasons for the determination of this application is provided below.*

**Statement of Reasons**

The proposed development complies with the provisions of Byron Local Environmental Plan 1988.
The proposed development complies with the provisions of Byron Local Environmental Plan 2014.
The proposed development complies with relevant State Environmental Planning Policies
The proposed development complies with relevant provisions of Development Control Plan 2014
The proposed development complies with relevant provisions of Development Control Plan 2010
The proposed development complies with Environmental Planning & Assessment Regulation 2000

considerations.
The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The proposed development is unlikely to prejudice or compromise the public interest.

<b>How community views were addressed</b>
The DA did not require advertising or notification as per Development Control Plan 2014.



# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.2

**Report No. 13.2** **PLANNING - Development Application 10.2019.103.1 Restaurant and Planning Agreement for Upgrade of Public Road and Carpark at 784 Coolamon Scenic Drive Coorabell**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Nancy Tarlao, Planner

**File No:** I2020/132

### Proposal:

<b>DA No:</b>	10.2019.103.1		
<b>Proposal description:</b>	Restaurant and Planning Agreement for Upgrade of Public Road and Carpark		
<b>Property description:</b>	LOT: 384 DP: 727453 784 Coolamon Scenic Drive COORABELL And Adjoining Council Road Reserve known as Scarrabelottis Lookout		
<b>Parcel No/s:</b>	13110		
<b>Applicant:</b>	Newton Denny Chapelle		
<b>Owner:</b>	Mr P S Grenquist & Ms Y Shibasaki		
<b>Zoning:</b>	7 (d) Scenic Escarpment Zone under BLEP 1988		
<b>Date received:</b>	27 February 2019		
<b>Integrated / Designated Development:</b>	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input checked="" type="checkbox"/> Not applicable
<b>Concurrence required</b>	No		
<b>Public notification or exhibition:</b>	– Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications – Exhibition period: 21/3/19 to 3/4/19 – Submissions received: 24 submissions received		
<b>Variation request</b>	<input type="checkbox"/> Clause 4.6	<input type="checkbox"/> SEPP 1	<input checked="" type="checkbox"/> Not applicable
<b>Issues:</b>	➤ Planning Agreement for vehicle access and upgrading the area at Scarrabelottis Lookout; ➤ Associated issues due to unauthorised camping at Scarrabelottis Lookout; ➤ Topography and Visual Prominence of the site ➤ Amenity impacts associated with restaurant operations		

### Summary:

Development consent is sought for a 40 seat restaurant on land adjacent to Scarrabelottis Lookout at Coolamon Scenic Drive, Coorabell. The subject site property is long and narrow located along the prominent part of the ridgeline in this area with the land zoned 7(d) Scenic Escarpment. The subject site adjoins Scarrabelottis Lookout which is the highest point in the immediate area and contains majestic 180 degree views from Byron Lighthouse, Pacific Ocean and around towards Mount Chincogan. The proposed restaurant adjoining Scarrabelottis Lookout is proposed to be open Wednesday to Sunday as follows:

- Wednesday, Thursday and Friday: 10.30 -2.30 pm
- Saturday – Sunday: 7.30-2.30 pm

The proposed building has a large butterfly roof and expensive glazed glass facing the north and east towards the Pacific Ocean with a raised private deck facing away from the Lookout. Overall the building has a height varying from approximately 3.1 metres to 8.05 due to the design and sloping nature of the site. The building has been designed to be self-sufficient as no water or sewer connections are available on-site. This serves to limit the capacity of the restaurant to a maximum of 40 occupants.

Visually the proposal is considered acceptable being located downslope from the Scarrabelottis Lookout with fencing and landscaping along the boundary proposed and a modest footprint of 216m<sup>2</sup> based on roof area and an internal floor area to further limit its visual impact. Similar sized buildings including sheds and dwellings are also located along Coolamon Scenic Drive Ridgeline.

As part of this DA a Planning Agreement (PA) has been lodged and seeks approval to upgrade the access road into Scarrabelottis Lookout construct a two-way entrance road at the Lookout and provide 8 sealed car parking spaces at the Lookout and continue the road to create a new entrance into the proposed restaurant. The PA is considered satisfactory.

In recent years the Scarrabelottis Lookout has become a hotspot for unauthorised camping and associated noise and litter complaints. Access and parking is in a poor state. Further there has been evidence of campers entering the subject property to use it as a toilet and to dump rubbish.

It is considered that the construction of the restaurant adjacent to the Lookout will provide a degree of casual surveillance, whilst also providing separation between public and private domain to discourage trespass. It is considered the proposed works will enhance the infrastructure of the Lookout and create a safer environment for all locals to enjoy with ease of access and new turning lanes to enter the Lookout parking area.

On balance the proposed restaurant and upgrade to the access and parking to Scarrabelottis Lookout is considered to have merit and is recommended for approval subject to conditions.




**NOTE TO COUNCILLORS:**

In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

**RECOMMENDATION:**

- 1. That Council agree to enter into the Planning Agreement as per Attachment 2 (E2020/14763).**
- 2. That, pursuant to Section 4.16 of the *Environmental Planning & Assessment Act 1979*, Development Application 10.2019.103.1 for restaurant and associated works be approved subject to conditions of consent in Attachment 3 (E2020/13302).**

**Attachments:**

- 1 Proposed Plans 10.2019.103.1, E2020/14733 
- 2 Planning Agreement 10.2019.103.1, E2020/14763 
- 3 Conditions of consent 10.2019.103.1, E2020/13302 
- 4 Confidential - submissions 10.2019.103.1, E2020/13665

**REPORT**

**1. INTRODUCTION**

**1.1. History/Background**

**10.2017.189.1** Dual Occupancy Approved 23/10/2017

**1.2. Description of the proposed development**

This application seeks approval for a Restaurant and Planning Agreement to upgrade the public road and associated carpark at Scarrabelottis Lookout. The applicant describes the restaurant as:

*“An intimate ‘high-end’, full service establishment with sittings primarily by reservation only. Patrons will consume several courses whilst enjoying the spectacular views to Byron Bay and beyond”*

The works are divided into two parts:

**Part 1: Restaurant:**

- 40 seat occupancy (including any outdoor seating);
- Hours of operation proposed:
  - Saturday – Sunday: 7.30-2.30 pm
  - Wednesday, Thursday and Friday: 10.30 -2.30 pm
  - Monday – Tuesday: Closed
- 11 x Car parking proposed onsite (including 1 x disabled space)
- 1 x loading dock
- Stone clad wall and fence adjacent to car park area/ driveway and wraps around the loading dock, containing retaining walls;
- Landscaping
- Veranda Terrace and entrance of approximately 70m<sup>2</sup> s
- Waste water area located north of the subject area

The works to the proposed restaurant have various self –sustaining attributes including water harvesting from the roof into three 60,000 tanks located under the restaurant, solar power and battery storage and onsite effluent disposal.

The floor level of the restaurant sits at approximately 215.75 m AHD for ground level.

Liquor licensing will be sought but is subject to separate approval from Liquor and Gaming NSW should the restaurant be granted approval by Council.

**Part 2: Construction and upgrading of infrastructure associated with Scarrabelottis Lookout (VPA)**

Scarrabelottis Lookout is a Council owned asset (listed as a Road Reserve) and the applicant has lodged a Planning Agreement (PA) under section 7.4 of the Environmental Planning and Assessment Act 1979.

The applicant is proposing to undertake works in Council’s road reserve to provide a material public benefit. There will also be a private benefit to the developer.

As part of this, it is proposed to upgrade the Lookout to:

- a) Seal and widen the driveway to provide 2 way traffic flow; and

- b) Formalise eight (8) car parking spaces. Of these, four (4) will be attributable to the proposed restaurant. These works are illustrated on Plan DA02.

The applicant has provided a cost estimate of the works be in excess of \$200,000. At present the access is not particularly safe, whilst the car parking area is not sealed, line marked or signed. It is acknowledged that the developer gains a benefit from this in gaining access to their site whilst any overflow parking generated by the restaurant will be able to utilise Lookout parking area.

The original PA provided only five car parking spaces, however the applicant has amended the PA to provide a total of 8 spaces. This should ensure there is adequate parking available at the Lookout.

### **Changes to the plans**

Following exhibition and Council's review of the proposal, the plans were amended. In addition to the changes to the PA, the setback of the restaurant from the boundary with the Lookout was increased from 8.7 m to 15m and the ground floor of the restaurant was further lowered by 1.5 metres from 217.00 m AHD to 215.75 m AHD.

### **1.3. Description of the site**

Land is legally described as	LOT: 384 DP: 727453
Property address is	784 Coolamon Scenic Drive COORABELL
Land is zoned:	7 (d) Scenic Escarpment Zone under BLEP 1988
Land area is:	4.476 hectares
Property is constrained by:	Bushfire prone land      High Conservation Value

The property is located at 784 Coolamon Scenic Drive, Coorabell and is an elongated narrow parcel that follows the road alignment in a general north south direction. At its narrowest point the property is only 30 metres wide. The site is described as being in two parts: the northern knoll and the southern knoll . The northern knoll contained two dwellings approved by Council under 10.2017.189.1 and these have been constructed. Access between the two knolls is limited due to topography and vegetation. The southern knoll is vacant land and contains an existing farm gate with access to Scarrabelottis Lookout.

The property also has frontage to Mango Lane along its eastern boundary. The majority of the property is extremely steep with approximately half the property being beyond 50% in terms of gradient according to topographic mapping. The two knolls are the only areas suitable for building upon with the northern knoll already developed for residential purposes.

According to the submitted survey the area proposed for the Restaurant has a proposed Australian Height Datum (AHD) level of 217-213. Scarrabelottis Lookout has an AHD level of 219.50 m- to the Lookout shelter floor. Coolamon Scenic Drive has a maximum height of AHD 215.11 at its highest point and where the driveway access to the Lookout intersects with the road.

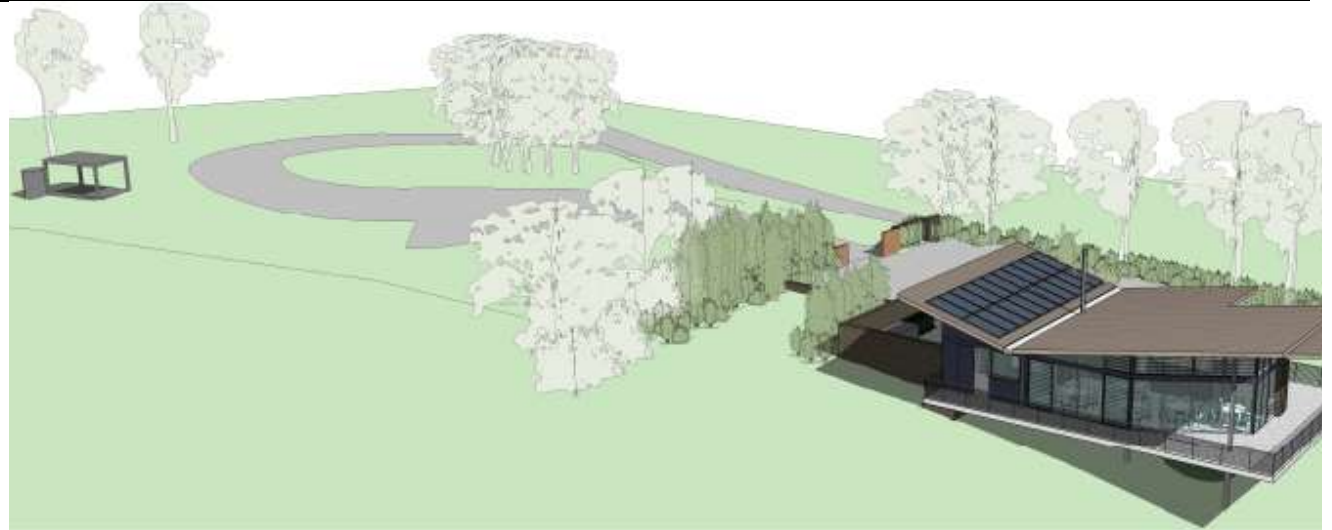
### **Scarrabelottis Lookout:**

According to the Council database the Scarrabelottis Lookout is listed as being part of the Road Reserve. The Lookout previously Lot 10 of DP 42404 was declared as a road on 14 January 1981 by the then Department of Lands.

The ongoing issues at the Scarrabelottis Lookout include rubbish disposal, unauthorised camping, associated noise, lack of toilet facilities and disturbance to adjoining neighbours.



Image 1: Aerial of Subject property.



③ Restaurant & Lookout Site View

Image 2: Architectural projection of the restaurant relative to the Lookout.





Image 3: View of the proposed restaurant from the North, Lookout shelter outline to the left of restaurant.

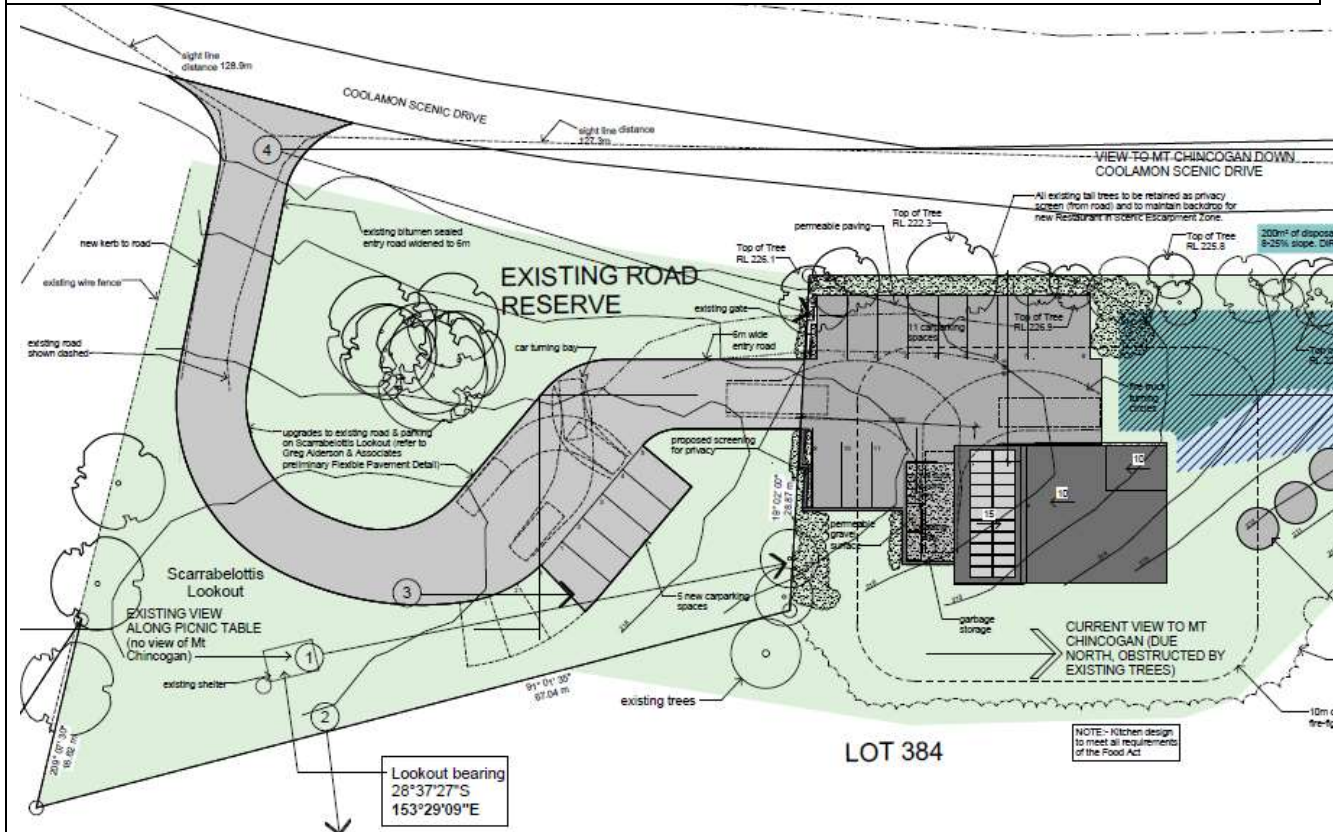








Image 4: Shows the proposed works including the works proposed under the VPA at the Lookout.



	
<p>Image 5: Scarrabelottis Lookout view to east from Shelter</p>	<p>Image 6: View to the east from proposed restaurant</p>
	
<p>Image 7: Taken from the boundary of the Lookout back to the car park and shelter</p>	<p>Image 8: Existing shelter with art and graffiti</p>
	
<p>Image 9: View to the north from Shelter – vegetation retained to screen restaurant.</p>	<p>Image 10: Existing gravel parking area at Lookout</p>

It is noted a small vegetable garden has been planted at the Lookout.



Image 11 – Vegetable Garden

## 2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
S94 / Contributions Officer	No objections subject to conditions. See comments below
Ecologist	No objections subject to conditions.

### S94 / Contributions Officer

- The applicant has submitted a Planning Agreement (PA) with the development application. The agreement is made under section 7.4 of the Environmental Planning and Assessment Act 1979. A Planning Agreement is an agreement under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.
- In this case the applicant is proposing to undertake works in Council's road reserve to provide a material public benefit. There will also be a private benefit to the developer. The application proposes the erection of a restaurant on the south west corner of Lot 384 DP 727453 adjoining land known as Scarrabelottis Lookout. As part of this, it is proposed to upgrade the Lookout to:
- Seal and widen the driveway to provide 2 way traffic flow; and
  - Formalise five (5) carparking spaces. Of these, four (4) will be attributable to the proposed restaurant. These works are illustrated on Plan DA02.
- Staff requested that this proposal be done as a Planning Agreement (PA) to ensure transparency and accountability in allowing the restaurant to utilise this road reserve for the purposes of car parking. Development Control Plan 2010 applies to the site. Development Control Plan 2014, which does not apply to the site, contains a provision on the provision of street parking by developers. It is reasonable to apply this principal to this locality but because the DCP does not apply and Council is receiving a benefit from the developer a transparent process via a planning agreement is required.

The relevant provision from DCP 2014 used to guide the development of the Planning Agreement is set out as follows:

- 5        *Council will consider proposals to increase on street parking capacity for the provision of some or all customer car parking spaces by increasing on street parking capacity where there is a material public benefit, and where:*
- 10        a)     *The net increase in formalised (ie paved &/or linemarked) on street parking is 25% greater than the number otherwise required on site;*
- b)     *The resulting streetscape conforms with the principles of good urban design;*
- c)     *The level of pedestrian, cycle and traffic amenity on the street is maintained; and*
- d)     *The proposal is not detrimental to utility services.*
- 15        Scarrabelottis Lookout is contained within the road reserve of Coolamon Scenic Drive. Under the Planning Agreement there will be a significant increase in the amount of formalised public car parking at the Lookout (more than 25% than that demanded by the restaurant). The construction of an access driveway and the road works will improve the safety of the access to the Lookout.
- 20        In determining if it should enter into the Planning Agreement Council should be satisfied that the public benefit that accrues from the Planning Agreement is sufficient to allow the use of public land for parking for the restaurant.
- 25        In the negotiation of this Planning Agreement by staff and the developer staff were endeavouring to achieve a win-win for the community and the developer. The Lookout has no formalised parking area and is currently used for unauthorised camping. Formalisation of the parking would allow for enforcement of the unauthorised camping on the site.
- 30        Following negotiations with the applicant the Planning Agreement was amended to include the construction of three additional car spaces over and above the notional requirements of DCP 2014. This is to ensure that there is adequate parking available at the Lookout. In this regard a total of 8 sealed spaces will be provided at the Lookout. The cost of these additional spaces will be offset against the developer contributions.
- 35        It is acknowledged that the developer gains a benefit from this expenditure in gaining access to their site and having access to the Lookout parking area in the event the internal car park is full. The applicant has provided a cost estimate of the works at \$201,344. This results in a significant saving to Council in not having to expend this money to upgrade the access and parking to this Lookout.
- 40        The development is subject to the provisions of the Part B of the Byron Developer Contributions Plan 2012 (Amendment 4) that applies the 1% fixed levy to all non residential development. A condition of consent is recommended to require the payment of this levy subject to offsetting up to the cost provision of the three additional car spaces.
- 45

### **3. SECTION 4.14 – BUSH FIRE PRONE LAND**

- 50        Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document 'Planning for Bush Fire Protection 2006'. The site is bush fire prone land. The development application is accompanied by a Report by Bushfire Certifiers dated 12 October 2018 which was referred to the NSW RFS for comment. The RFS have raised no objection to the development subject to conditions of consent.
- 55

**4. SECTION 4.15C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES**

Having regard to the matters for consideration detailed in Section 4.15(1) of the Environmental Planning & Assessment Act 1979 (EP&A Act), the following is a summary of the evaluation of the issues.

**4.1 State Environmental Planning Instruments**

	<b>Satisfactory</b>	<b>Unsatisfactory</b>
State Environmental Planning Policy No 44—Koala Habitat Protection	X	<input type="checkbox"/>
Consideration: No issues identified as the proposal does not involve the loss of koala food trees.		
State Environmental Planning Policy No 55—Remediation of Land	X	<input type="checkbox"/>
Consideration: Council's Environmental Officer has assessed the proposal having regard to SEPP 55 requirements and the subject site is considered to suitable for the proposed works without need for remediation works.		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	X	<input type="checkbox"/>
Consideration: BASIX and ABSA certificates are not required for commercial building works		
State Environmental Planning Policy (Infrastructure) 2007	X	<input type="checkbox"/>
Consideration: No issues identified.		
State Environmental Planning Policy (Rural Lands) 2008	X	<input type="checkbox"/>
Consideration: Consideration of matters in Clause 10, no issues identified as the works do not relate to a dwelling house/s or subdivision.		
State Environmental Planning Policy (Vegetation) 2017	X	<input type="checkbox"/>
Consideration: No issues identified. Assessment of the proposal by Council's Ecologist has not raised any issues that can not be addressed		

**4.2A Byron Local Environmental Plan 2014 (LEP 2014)**

LEP 2014 is not applicable to the subject site as it is zoned 7(d) Scenic/Escarpment Zone under Byron LEP 1988.

**4.2B Byron Local Environmental Plan 1988 (LEP 1988)**

In accordance with LEP 1988 clauses 5, 8 and 9:

- (a) The proposed development is defined in the LEP 1988 Dictionary as Restaurant;
- (b) The land is within the 7(d) Scenic / Escarpment Zone according to the map under LEP 1988;
- (c) The proposed development is permitted with consent; and
- (d) The proposed development is consistent with the relevant objectives of the Zone for the following reasons:

<b>7(d) Zone Objectives</b>	<b>Consideration</b>
(a) <i>to protect and enhance the scenic qualities of the Shire of Byron which enhance the visual amenity by controlling the choice and colour of building materials, position and bulk of buildings, access roads and</i>	<p>The subject site is a long narrow lot located along the ridgeline at Coorabell. The lot adjoins Scarrabelottis Lookout which is the highest point in the immediate area.</p> <p>The proposed restaurant will be screened from the</p>



<p><i>landscaping,</i></p> <p>(b) <i>to prohibit development within the zone that is likely to have a visually disruptive effect on the scenic quality and visual amenity of the Shire,</i></p> <p>(c) <i>to enable development for certain purposes where such development would not have a detrimental effect on the scenic quality and visual amenity of the Shire,</i></p> <p>(d) <i>to minimise soil erosion from escarpment areas and prevent development in geologically hazardous zones, and</i></p> <p>(e) <i>to enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem.</i></p>	<p>adjoining road and this will be reinforced by the recommendation to include additional screening plants to protect the nature of the rural environment.</p> <p>The proposed Restaurant is considered to enhance the Scenic /Escarpment Zone and will also enhance the infrastructure and associated usability of the Scarrabelottis Lookout area. The current situation of the Scarrabelottis Lookout is poor and visually distracts from the beauty of the views experienced when located at the Scarrabelottis Lookout.</p> <p>The proposal seeks to erect a restaurant in one of only two areas cleared of vegetation on this subject site. The proposed building is single storey, with a maximum height of 8.3 m (due to steep topography).</p> <p>The proposed development will be visible from various points due to its position on the escarpment. However, this is true for all houses/structures located along the ridge on Coolamon Scenic Drive.</p> <p>The size of the building with the butterfly roof design will provide self-sustaining measure: via water collection, the overall architectural design is self sufficient in terms of waste water treatment and therefore is small in scale to service a maximum of 40 guests.</p> <p>Currently the Lookout has no formalised parking area and is currently used for unauthorised camping. Formalisation of the parking spaces and associated signage would allow for enforcement of the camping on the site.</p> <p>Overall the proposed restaurant is considered to be an improvement to the Lookout and subject site area (southern knoll). The formalisation of a safe driveway access, increased car parking and the casual surveillance of the Lookout from the restaurant will deter anti-social behaviour that is frequency in this isolated location.</p> <p>The restaurant owners have also expressed via the Social Impact Assessment that they will be removing litter from the Lookout and this will enhance the overall qualities of the space for public enjoyment.</p>
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**Land Use Permissibility:**

The land use is defined under LEP 1988 as *restaurant*, which is permitted with development consent in the 7 (d) Scenic Escarpment Zone. Having regard to the matters discussed under clause 30 and 31 and in the above table, it is considered the proposal satisfies the objectives of the zone.

**Clause 27 Building lines along arterial roads**

The provisions state:

- (1) *A person shall not, on an allotment of land which is within Zone No 1 (a), 1 (b1), 1 (b2), 1 (c1), 1 (c2), 7 (a), 7 (c), 7 (d) or 7 (f1), and which has a frontage to an arterial road as designated on the map, erect a building for any purpose closer than 55 metres from the boundary of the road.*
- (2) *Notwithstanding subclause (1), a person may, with the consent of the council, erect a building closer than 55 metres from the boundary of an arterial road as designated on the map, provided the council is satisfied that—*
  - (a) *the allotment of land is totally contained within 55 metres of the boundary of the road, or*
  - (b) *there is no alternative suitable building site due to levels, steepness, instability, flooding or other physical barrier, or*
  - (c) *the amenity of the immediate environment would be adversely affected by requiring the 55 metre setback to be maintained.*

The applicant is seeking a variation to the 55m setback based on Clause 27 (2) a-c). It is submitted that based on the site constraints and characteristics of the land that there is no alternative location for the restaurant to be setback 55m from the main arterial road. This is due entirely to the physical site constraints and steep topography. Further the applicant will be required to upgrade the access into the Lookout by way of widening the driveway intersection making it safer for not only patrons of the restaurant but visitors to the public.

A variation to the 55m setback is supported in this instance.

**Clause 30 Development within Zone No 7 (d) (Scenic)**

The provisions state

- (1) *This clause applies to all land within Zone No 7 (d).*
- (2) *In this clause:*
  - external surfaces, in relation to a building or work, includes the external walls and cladding (if any) thereon, external doors, external door and window frames, columns, roofs, fences and any surface of that building or work visible from the exterior of that building or work.*
  - prescribed materials, means dark tones or dark coloured materials of low reflective quality or materials which are painted or similarly treated with dark toned or dark coloured paint or pigment of low reflective quality.*
- (3) *Before giving its consent to the erection of a building on land to which this clause applies, the council shall make an assessment as to whether it should impose conditions relating to:*
  - (a) *the use on the external surfaces of the building of prescribed materials,*
  - (b) *the number, type and location of existing trees and shrubs which are to be retained and the extent of landscaping to be carried out on the site, and*
  - (c) *the siting of the proposed buildings.*

Coolamon Scenic Drive runs in a north south direction generally following the ridgeline (along Coolamon Scenic Drive) of this location. Other than two (2) moderately level platforms, the site is steeply sloping with grades greater than 50% falls.

The subject site is fringed by trees growing within the road reserve and along the fence line, these are proposed to be retained. The ecologist referral has recommended various native species be planted to enhance the natural qualities of this rural location.



The vegetation screening along the property boundary means that the location of the proposed Restaurant may not be visible from the public road. However parts of the new building will be visible from the Lookout.

5 The following figures may provide some clarification:

- The existing shelter located at Scarrabelottis Lookout has a RL of 219.550 m AHD
- The proposed top of roof pitch on the restaurant has a RL of 221.150 m AHD
- The proposed ground floor level of the restaurant has an RL of 215.750 m AHD
- 10 • The overall height of the restaurant is 5.4 m (not including the protruding deck area)
- Majority of the building bulk sits below the height of the adjacent Scarrabelottis Lookout.

15 Essentially when standing at Scarrabelottis Lookout the proposed restaurant has a roof which is 1.6 m higher than ground level at the Lookout. However the main view from the Lookout is to the East and the Pacific Ocean, whilst the view to the north is considered secondary. From various inspections of the Lookout, visitors vehicles are orientated as such.



Image 12 Campervan orientated to take in view to the east

20 Existing vegetation to the western boundary along Coolamon Scenic Drive forms a 'backdrop' to the subject site when viewed from the east and will screen the building when viewed from the west. Conditions of consent are recommended to ensure the proposed materials and finishes are sympathetic to the surrounding environment and do not impact adjoining or distance properties.

25 Darker colours as noted on the plans are useful in retreating the building into the bush setting and reducing the overall appearance.

### Clause 31 Development on ridgetops

The provisions state:

- 30 *The council shall not consent to the erection of a building or the carrying out of other development on or near any ridgeline on land to which this plan applies unless no alternative location for the building or other development is available, in which case the following objectives to lessen the impact are to be considered before consent is granted:*
- 35 (a) *whether there will be adequate existing or proposed landscaping, trees or other vegetation which assist or are likely to assist in mitigating visual impact, and*
- (b) *whether the proposed building design elements, materials of construction and proposed colours will mitigate potential adverse visual impact, including the reflectivity of materials to be used.*

The proposal seeks to erect a restaurant building in one of only two areas cleared of vegetation and moderate slope on the site. The proposed position of the building is below the height of existing trees, as per the submitted survey. The figures provided above detail the exact heights of the restaurant relative to the existing heights at the Lookout.

An alternative position for the development has been located by the applicant, this position is adjacent to the approved dual occupancy (northern knoll of the site) and it does not fit due to site topography and car parking, waste water constraints and is located closer to a variety of residential dwellings.

The applicant has suitably demonstrated that there is no alternative location on this subject site to locate the proposed Restaurant and associated waste water system. The site is physically constrained due to the steep topography and narrow width of the site on the escarpment. As discussed the building will be screened from the west by existing vegetation along the road boundary, which will also form a back drop to the building when viewed from the east. This will be further embellished by additional plantings whilst the colour scheme of dark colours will further assist in mitigating any visual impacts.

It is considered the proposal meets the requirement of the Clause 31.

#### **Clause 45 – Provision of Services**

The development can be serviced in relation to water, effluent disposal and stormwater management. Conditions to apply

The proposal raises no other issues under the LEP.

#### **4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority**

No Draft EPIs apply

#### **4.4B Byron Shire Development Control Plan 2010 (DCP 2010)**

As the subject land is zoned under BLEP 1988, DCP 2010 is the applicable development control plan for this development. The main controls relate to car parking which are discussed as follows. As there are specific controls in DCP 2014 for rural restaurants although not strictly applicable, these are also discussed below

#### **Chapter 1 Part A – Crime Prevention**

This section of the DCP on crime prevention contains four principles for consideration:

- i. Surveillance
- ii. Access Control
- iii. Territorial Enforcement
- iv. Space Management:

The location of the proposed restaurant immediately adjacent to the Lookout will provide an element of casual surveillance when open and also when closed, through security patrols.

The access and parking area once constructed and line marked will also provide better opportunities to sign post and enforce unauthorised camping.

The space will have more regulated use and surveillance through security cameras and lighting.

The proposed development is considered to satisfy the relevant provisions of Byron DCP 2010

**DCP Chapter 1 Part G -2010**

**5 Vehicle Circulation and Parking**

The following table specifies the car parking requirements for the site.

<b>Commercial - Table G2.3 Type of development</b>	<b>Minimum car parking spaces</b>	<b>Special Requirements</b>	<b>Bicycle Parking</b>
<b>Restaurant/Refreshment room</b> (including open outdoor eating areas) / Conference Centre.	1 per 7.5 m <sup>2</sup> gross floor area <sup>(D)</sup> or 1 per 3 seats, whichever is the greater.	If operating outside business hours 9am to 5pm, 1 per 15 m <sup>2</sup> gross floor area <sup>(D)</sup> or 1 per 6 seats, whichever is greater.	1/ 25 m <sup>2</sup> of gross floor area for staff and 2 for customers

10 Parking Assessment  
 Restaurant – 112m<sup>2</sup>GFA  
 Parking Rate – 1 space per 7.5m<sup>2</sup>GFA  
 Total Parking required = 15 parking spaces required

15 The development originally proposed 16 parking spaces including 1 dedicated as accessible parking inside the development lot and 5 parking spaces inside Council's road reserve at the Lookout. However, the Planning Agreement was amended to provide for a total of 8 spaces at the Lookout. The construction of an access driveway and the road works will improve the safety of the access to the Lookout. It is recommended that a left and right hand turning lane off Coolamon Scenic Drive also be constructed to improve the safety of the intersection having regard to the speed environment and topography of the road. Appropriate conditions of consent are recommended.

25 The proposed development is considered to satisfy the relevant provisions of Byron DCP 2010.

**Byron DCP 2014**

**Chapter B8 of Byron DCP 2014**

30 Architectural Design Plan DA 03 illustrates the proposed location of up to 2 x 3000L Skip Bins and 4 x Wheelie Bins within the service bay enclosure. This plan also illustrates turning circles for waste collection vehicles to enter and leave the site in a forward direction.

35 The development has been designed with the kitchen opening directly to the service bay to provide for ready transfer of waste to the nominated waste receptacles. Waste will be sorted by restaurant staff, with general waste and recyclables stored separately prior to collection by a private waste service.

With respect to the quantity of waste generated, Appendix B8.2 of Chapter B8 of the Byron DCP indicates that waste generation rates for a restaurant are 10L / 1.5m<sup>2</sup> of Floor Area / Day.

40 The current proposal involves a restaurant floor area of 112.m<sup>2</sup> equalling approximately 750L /day or 3,750L per 5 day week. As outlined in the submitted Statement of Environmental Effects and as illustrated on Plan DA03, waste will be managed via the placement of up to 2 x 3000L Skip Bins as well up to 4 x 240L Wheelie Bins in the loading bay. This provides for up to a capacity of up to 6970L. The bins are proposed to be collected twice weekly via a private waste contractor. Waste generated will be monitored by restaurant management and collection services adjusted as required. A particular focus of this will be ensuring that the waste storage areas be maintained in a

visually acceptable, sanitary and vermin free state. It is considered that waste can be managed appropriately as per the DCP.

**Chapter D4.2.9 Restaurants/ Cafes in Rural Areas- DCP 2014**

Section D4.2.9 deals with restaurants and cafes in rural areas and is addressed below.

**Objectives**

1. *To enable restaurant or café development that preserves the rural amenity, character and environment of the locality;*
2. *To mitigate and manage any land use conflicts;*
3. *To limit the impacts of a restaurant or café on the broader environment; and*
4. *To provide an avenue for supplementary income on rural holdings.*

**Prescriptive measures:**

In relation to the prescriptive measures the following has been undertaken in this DA:

- The proposed restaurant is for 40 seats based on the maximum suitable on-site sewage management system
- The development is benefited from an existing road, which will be extended under the VPA in agreement with Council and upgrade the existing infrastructure and parking of the Lookout
- Proposal has been designed to take advantage of the surrounding hinterland and Pacific Ocean views
- The proposed restaurant did not seek operation hours beyond 2.30 pm in the afternoon for 5 days of the week
- A Noise Impact Assessment has been undertaken by the applicants and this has been assessed by the Council's Environmental Health Officer;
- All-weather car-parking is proposed to be provided on both the subject site and on the Lookout;
- Planting and screening is existing around the site and the Council's Ecologist has recommended conditions of consent that ensure adequate screening from the public road is provided under this DA;
- Detailed plans and information has been submitted in relation to the on-site sewage management system for the subject site. Strict compliance is necessary to ensure capacity control for the restaurant. The Environmental Health Officer has provided various conditions of consent to ensure this system is compliant, monitored and maintained.

It is considered the proposal is acceptable in terms of these DCP controls. Conditions of consent to apply in terms of patron numbers and hours of operation.

**Chapter B4 Traffic & Parking - DCP 2014**

Chapter B4 provides guideline as to how to consider additional parking being provided in the public domain where it can be provided onsite. The provisions state:

*Council will consider proposals to increase on street parking capacity for the provision of some or all customer car parking spaces by increasing on street parking capacity where there is a material public benefit, and where:*

- a) *The net increase in formalised (i.e. paved &/or linemarked) on street parking is 25% greater than the number otherwise required on site;*
- b) *The resulting streetscape conforms with the principles of good urban design;*
- c) *The level of pedestrian, cycle and traffic amenity on the street is maintained; and*
- d) *The proposal is not detrimental to utility services.*

Under the planning agreement there will be a significant increase in the amount of formalised public car parking (8 spaces) at the Lookout (more than 25% than that demanded by the restaurant). The construction of an access driveway and the road works will improve the safety of the access to the Lookout. It is considered the proposal is satisfactory under this section of the DCP based on the Planning Agreement.

**4.5 Any Planning Agreement or Draft Planning Agreement?**

	<b>Yes</b>	<b>No</b>
Is there any applicable planning agreement or draft planning agreement?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Yes- the applicant has lodged a Volunteer Planning Agreement to upgrade the driveway and car parking into the Lookout.		

**4.6 Environmental Planning & Assessment Regulation 2000 Considerations**

The proposal raises no issues for consideration under the regulations

**4.7 Any Coastal Management Plan**

Not applicable

**4.8 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

<b>Impact on:</b>	<b>Likely significant impact/s?</b>
<b>Natural environment</b>	The proposal is located on cleared land and will not have a significantly adverse impact on the natural environment of the locality. Further comments provided below on waste water management and potential impacts on a well.
<b>Built environment</b>	The proposal will not have a significantly adverse impact on the built environment of the locality.
<b>Social Environment</b>	The proposal will not have a significant social impact on the locality.
<b>Economic impact</b>	It is considered the proposal will have some positive economic impacts during the construction phase and further long term impacts with the employment of staff and associated multiplier effects through the local economy once the restaurant opens.

Wastewater management

Greg Alderson and Associates have lodged a Waste Water Management System which includes the following:

- Water efficient bathroom amenities
- Grease trap to remove fat, oil and grease from wastewater
- Primary treatment for kitchen wastewater to allow water reuse in toilets
- Tertiary treatment of all wastewater to allow water re-use
- Effluent disposal area by way of subsurface irrigation disposal field with native plantings to promote evapotranspiration



**Image 13 Existing well located on Mango Lane to the east of the restaurant**

- 5 Concerns were raised regarding the potential for effluent disposal to contaminate a well located down slope from the restaurant. Council has no specific records for this well but the majority of the well is located in the Mango Lane Road Reserve and the remainder in the restaurant property. The well apparently provides water source to 2 properties on Mango Lane and is situated some 173 metres from the effluent disposal area.
- 10 On review of information submitted by the applicant which examined the depth of the well, the source of the ground water it was tapping, it is considered a buffer of approximately 40 metres would be required, a distance 4 times that is being provided. Following further inspections by staff, it is considered that there is adequate buffer from the effluent disposal area to the well, and that the
- 15 system has been designed to cater for wastewater generated by the proposed development.

### Social Impact Assessment

- 20 The DA included a detailed Social Impact Assessment that recommended the following occur:
- Upgrade road access via Planning Agreement;
  - Landowner to assist in removing litter left at Scarrabelottis Lookout;
  - Install smart security lighting at the property entrance to deter people camping at the Lookout at night;
  - 25 • Implement recommendations from the Noise Management Plan and Social Impact Assessment refer to Section 6.2 – subsection 6
  - The restaurant to be constructed in materials that limit the reverberation of noise (i.e. limit hard surfaces)
  - Garbage and recycling bins to be emptied between 7 am and 6 pm only;
  - 30 • The kitchen extraction fan to operate between 7 am and 6 pm only;
  - Rubber isolation dampeners or similar are installed to the restaurant closing doors;
  - All car parking and access way surfaces (including Lookout) to be constructed with a smooth hot mix surface

### Noise Impacts

The proposed development has limited its hours of operation to daytime hours with a focus on breakfast and lunch. A noise impact assessment was submitted with the application and is considered appropriate. Conditions of consent to apply



**4.9 The suitability of the site for the development**

The site is considered suitable for the proposed development.

**4.10 Submissions made in accordance with this Act or the regulations**

The development application was publicly exhibited. There were 24 submissions made:

- 3 x submissions supported the DA; and
- 21 x submissions against the DA.

Issues Raised in Submission	Staff Response
<p>Use of Public Land to gain access and carparking for the proposed Restaurant</p> <ul style="list-style-type: none"> <li>• Will be turned into a hospitality venue</li> <li>• Destruction of natural ambience</li> <li>• Commercialisation of the Lookout</li> </ul>	<p>Council considers that the proposed development will have a positive outcome on the site for the following reasons:</p> <ul style="list-style-type: none"> <li>• Increase surveillance;</li> <li>• Formalise use and car parking;</li> <li>• Enhance the visual appearance;</li> <li>• Increase usability of the site;</li> <li>• Deter anti-social behaviour.</li> </ul> <p>The existing car park is considered road reserve and is not nominated as community or public lands.</p>
<p>Proposed Car parking calculations should be based on the 1988 BLEP and DCP 2010, not the BLEP 2014 and DCP 2014.</p>	<p>The Planning Agreement provides for 8 spaces within the Lookout car park providing a clear public benefit to the community.</p>
<p>Illegal camping “gypsy camp” and associated use of the site as a toilet</p>	<p>This development will provide for use and passive surveillance to the area and this should deter unauthorised camping or other anti-social behaviour on the site.</p>
<p>Rubbish bin collection</p>	<p>Under this DA there are no bins proposed to be located on the Lookout.</p> <p>The proposed arrangements under this DA state that the users of the restaurant will clean the Lookout if required and they have the commercial rubbish removal service operating from the site.</p> <p>The driveway entrance to the restaurant will need to be cleaned by the management of the restaurant, as per a condition of consent (in the Plan of Management)</p>
<p>Increase circulation and usability of the Lookout will result in more camping opportunities, security issues and anti social behaviour</p>	<p>As per previous comments new signage site will enable patrols and enforcement of unauthorised camping.</p>
<p>Security of the Lookout</p>	<p>As per previous comments the proposed restaurant is to be fitted with security cameras and lighting.</p>
<p>Lookout part of donated land</p>	<p>From a search of Council records the</p>

	Lookout has always been dedicated as Road Reserve.
<p>Compliance with Clause 30, 31 of the LEP</p> <ul style="list-style-type: none"> <li>• Escarpment /Ridgetop development</li> <li>• Objectives of the 7(d) Scenic Zone objectives</li> </ul>	It is considered the proposal satisfies Clause 30 and 31 of the LEP.
<p>Deferred Matter – pending outcomes on the E Zones</p> <ul style="list-style-type: none"> <li>• Zoning identification is not formalised and Council should not proceed until it is</li> </ul>	<p>The subject site is legally defined as being under LEP 1998.</p> <p>The site is zoned 7(d).</p>
Existing water well and pump located down hill and may be contaminated	An adequate buffer to the well has been provided as discussed in the report to prevent contamination.
<p>Scarrabelottis Lookout and their family previously maintained this Lookout</p> <p>Paving the Lookout to a parking lot is not appropriate</p>	The predominant use of the Lookout has been by cars and vehicles. Provision of a designated parking area is considered an appropriate management response given the isolated location.
Increased traffic movement on local roads, and increase issues on the 'straight'. (Straight part of Coolamon Scenic with increased and faster traffic movements)	<p>The restaurant is small in scale. The maximum number of patrons is limited to 40 people.</p> <p>To ensure safe traffic movements, the road entrance is proposed to be upgraded to ensure a safe turning area is provided for both sides of the road.</p>
Development does not align with rural nature of the area;	The proposal is permissible with consent in the zone and has been designed to fit in with the rural amenity of the locality being of size similar to a rural dwelling. .
Suggestion to close the Lookout at sunset to prevent illegal camping issues	Enforcement staff will continue to patrol and monitor the use of the Lookout area as per the compliance priorities program.
Anticipated that extra tourism uses and extra hours will be added to the Consent if this facility is approved.	Any further extension in terms of patron numbers or hours of operation would be subject to separate application and approval.
Council's Compliance section has demonstrated an inability to cope with regulation of the Lookout	Enforcement staff will continue to patrol and monitor the use of the Lookout area as per the compliance priorities program.
Alienating the public use of the Lookout to a commercial site;	Provision of additional parking within the Lookout site that can be used by the restaurant via a Planning Agreement will not commercialise the site.

**5. DEVELOPER CONTRIBUTIONS****5.1 Water & Sewer Levies**

- 5 No Section 64 levies will be required.

**5.2 Section 7.11 Contributions**

- 10 Section 7.11 Contributions will be payable based on the adoption and implementation of the Planning Agreement.

The Planning Agreement proposed that the owner of Lot 384 DP 724353 will complete significant upgrades to the driveway and parking areas at Scarrabelottis Lookout. This includes:

- 15 • Widening and extension of the driveway areas to achieve 2 way vehicle movements in accordance with AS 2480.
- Provision of 8 sealed car parking spaces at Scarrabelottis Lookout, plus the provision of 3 additional spaces to be offset by their contributions
- Upgraded vehicle access into the site at the entrance via a side road turning/waiting section; and
- 20 • Increased visibility of the vehicle sightlines, via earthworks adjacent to the entrance to Scarrabelottis Lookout

- 25 The draft Planning Agreement and associated upgrading works have been subject to various meetings with Council's Infrastructure Services team and land owner authority has been granted for the lodgement of this DA. The Planning Agreement has been put on public exhibition with the DA from 21.03.2019 to 17.04.2019. It is recommended that Council enter into the Planning Agreement. The Planning Agreement works must be completed prior to release of the Occupation Certificate of the proposed restaurant.

- 30 The Planning Agreement is supported in this instance.

**6. Public interest**

- 35 The proposed development is unlikely to prejudice or compromise the public interest.

**7. CONCLUSION**

- 40 The proposed development is consistent with the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development. The application is recommended for approval subject to conditions of consent.

**Report No. 13.3**      **Koala Habitat Protection SEPP 2019 and its implications for Byron Shire**

**Directorate:**      Sustainable Environment and Economy

**Report Author:**      Karen Love, Research Officer – Climate Change

**File No:**      I2020/165

**Summary:**

This report provides Council with a brief history of how the Byron Coast Comprehensive Koala Plan of Management 2016 (CKPoM) was developed and adopted by Council; and current information on the new Koala Habitat Protection State Environmental Planning Policy (KHP SEPP) 2019 and its implications to Byron Shire. The report also outlines matters identified so far regarding the Guideline that supports the KHP SEPP which will form the basis of Council's submission on same.

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**RECOMMENDATION:**

1. That Council note that the Byron Coast Comprehensive Koala Plan of Management 2016 has been re-submitted to the Department Of Planning, Industry and Environment under Clause 17 of the Koala Habitat Protection State Environmental Planning Policy 2019.
2. That Council note the concerns in the report on the Guideline supporting the Koala Habitat Protection State Environmental Planning Policy 2019, and that these concerns will form the basis of Council's submission, along with any other matters identified during a more detailed staff analysis.
3. That staff finalise and submit a submission on 2 above to the Department of Planning, Industry and Environment by 30 March 2020 and upload a copy of the submission to Council's website.

**REPORT**

**History of the Byron Coast Comprehensive Koala Plan of Management**

In 2011, Council resolved (**Res 11-137**) to prepare a Byron Coast Comprehensive Koala Plan of Management 2016 (CKPoM) and established a project reference group (PRG) (**Res 11-299, 11-300, 11-473 and 12-771**) to meet the requirements under State Environmental Planning Policy 44 (SEPP 44).

Between 2012-2015, the CKPoM was developed and prepared pursuant to SEPP 44 alongside close consultation with the Project Reference Group (PRG), Office of Environment and Heritage (OEH) and the Department of Planning and Environment (DPE). Funding of \$60K was provided by OEH through the 'Saving our Species' program.

Council adopted the CKPoM on 4 August 2016 (**Res 16-435**) and formally submitted it to the then Department of Planning and Environment (DPE). In December 2016, Council received advice from the then DPE that the CKPoM as submitted was not able to be approved due to lack of compliance with SEPP 44 and that 'the SEPP 44 review would address the areas of concern'. As with Tweed Shire, the SEPP 44 review resulted in Byron's CKPoM remaining in a state of uncertainty until this year.

**Koala Habitat Protection State Environmental Planning Policy ( KHP SEPP) 2019**

In January 2020, Council received advice from the Department of Planning, Infrastructure and Environment (DPIE) that on 1 March 2020, SEPP 44 would be repealed and the new [Koala Habitat Protection SEPP](#) would be enacted, alongside [SEPP mapping](#) upon which the new SEPP relies.

The aim of the KHP SEPP is: *to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.*

In addition, the DPIE advised staff that '*under Clause 17 of the new SEPP, any plans submitted to the Department prior to 1 March 2020 can be approved despite any inconsistencies with SEPP 44 or the new Koala SEPP*'.

Under clause 17, a formal re-submission of the CKPOM was made to the DPIE on 27 February 2020, with supporting documents.

Notwithstanding the enactment of the KHP SEPP on 1 March, the Guideline for the KHP SEPP was not released until 28 February 2020. The Guidelines being critical to the understanding and implementation of the SEPP as it outlines the following information:

1. Guide Council's on how to prepare Koala Plans of Management (KPoM's).
2. Define the criteria and requirements for applicants and consent authorities regarding development on lands identified within the SEPP mapping.
3. Guide Council's on how to implement the Ministerial Direction 2.6 Koala Habitat Protection.
4. Inform the wider community on the role of the SEPP to protect koalas and their habitat.

In this regard the timeframe for the KHP SEPP enactment and Guideline release has been completely unsatisfactory and not enabled a proper review of both by staff. A summary review is provided below.

**Key differences between SEPP 44 and KHP SEPP**

There are three major differences between SEPP 44 and the KHP SEPP discussed below:

As was the case with SEPP 44:

- 5 • The KHP SEPP only applies to Council approved developments, excluding Major Projects (State Significant Developments / Infrastructure), complying developments, Part 5 activities and land clearing under the *LLS Act* 2013.
- Land identified within an approved KPoM must meet the requirements of that KPoM. Land outside of an approved KPoM and now identified on the KHP SEPP mapping, must follow the provisions within the KHP SEPP.

**1. Under the KHP SEPP, the definition of *core koala habitat* has changed from:**

‘an area of land with a resident population of koalas, evidenced by attributes such as breeding females (that is, females with young) and recent sightings of and historical records of a population’.

15 To:

- an area where koalas are present, or
- an area of land –
  - (i) which has been assessed by a suitably qualified and experienced person in accordance with the guideline as being highly suitable koala habitat, and
  - (ii) where koalas have been recorded as being present in the previous 18 years.

- 25 **2. In Schedule 2 of the KHP SEPP there are now 123 Koala Feed Tree species identified across nine specific Koala Management Areas (KMA). Byron Shire is within the North Coast KMA. Within the North Coast KMA there are 39 feed tree species listed, compared to the ten species formerly listed in SEPP 44.**

- 3. The Schedule 2 feed tree species inform the base of the KHP SEPP mapping which is derived from modelling found in the Koala Habitat Information Base (SEED portal) and includes:**

- 30 1. **Habitat suitability, and**
2. **Tree species index.**

Information received from the DPIE states ‘the models that the KHP SEPP maps rely upon are a current-historic representation of ‘koala habitat’. The mapping illustrates two different areas (pink or blue) and where there is no approved KPoM, the following applies:

**Pink Area - Koala Development Application map**

- Underpinned by modelling of habitat, likelihood of koala’s being present and connectivity.
- There is no requirement to undertake individual survey, and
- 40 • Land identified within this area requires that a Development application be made in accordance with the new ‘guideline’ associated with the KHP SEPP.

**Blue Area - Site Investigation Area for Koala Plans of Management (KPoM)**

- 45 • Based on the ‘likely distribution of koala tree species listed in Schedule 2 of the KHP SEPP
- Indicates where Council should focus their survey efforts for developing a KPoM



**Key Issues: Koala Habitat Protection SEPP****1. The KHP SEPP and mapping as released precludes any input from stakeholders, community or local government about:**

- a) the mapping on which the KHP SEPP rests, where current and explicit data sets exist from detailed and on-going koala monitoring and projects.
- b) the treatment of indirect impacts arising from development such as vehicle strike, dogs, increased bushfire risk and disease.

**2. Under the KHP SEPP, koala habitat can still be cleared or offset.**

The *Local Land Service Act* 2013 allows clearing in the coastal zone of up to 6m wide for fences under the 'Allowable Activities' (Schedule 5A) without assessment. In addition, identified *core koala habitat* will be mapped on the Biodiversity Values map and therefore will enter the Biodiversity Offsets Scheme. This means that *core koala habitat* will have a dollar value to developers as it can be offset.

**3. The 1 hectare trigger remains on areas with koala habitat, where there is no approved KPOM.**

The KHP SEPP only applies to land parcels of  $\geq 1$  hectare. There is no ecological basis for this and should not apply to areas with known koalas and koala habitat. This has been an on-going point of contention since 2010 with numerous submissions made against it since that time. Given the highly fragmented habitat existing in Byron Shire, particularly in our urban/semi urban areas, the cumulative impacts of clearing on land  $<1$  hectare is highly likely to have a deleterious impact on any local koala populations.

**4. There is no provision in the KHP SEPP for:**

- a) **Habitat corridors or linkages - which are essential within a fragmented landscape;**
- b) **Climate change impacts; or**
- c) **Improvements in compliance or monitoring.**

The KHP SEPP due to its release timing fails to take into consideration the most recent impacts on the NSW environment due to drought and the 'unprecedented fire season' 2019/20; also how longitudinally climate change more broadly will impact koala species and habitat which is now being debated as a result.

The above has direct impacts on threatened species, particularly koala, as foliar chemicals and nutritional values across food trees change during drought, while a third of their habitat (estimated) has been destroyed by fire. Added to this, extremes in temperature and lack of water exacerbate stress, where koalas are now seeking refuge outside of their natural range and utilising trees in areas not seen before.

It is therefore crucial that *all koala habitat*, core, potential or otherwise, be treated as refugia and the formation and extension of corridors and linkages be implemented with the highest priority and protection.

**Koala Habitat Protection (KHP) SEPP Guidelines**

A preliminary review of the Guideline since release has identified the following concerns:

- a) The mapping on which the KHP SEPP rests is inaccurate. For example, the Site Investigation Area for KPOM's (Blue area) includes all of the dunes on Byron's coast and the Development Application Area (Pink areas) also covers roads.

SEPP mapping v CKPOM 2016 mapping



- b) There is no definition for 'avoid or minimise' as with the *Biodiversity Conservation Act* 2016 and these terms should be defined in legislation so as to have context.
- c) The Guideline directs Council to merely 'consider' the impacts of development on Koala's where properties are within the Development Application Area (Pink area) and are >1 hectare.
- d) The identification of *core koala habitat* and the development of a KPOM **may only occur** on lands identified on the KHP SEPP mapping as being within the Site Investigation Area for KPOM's (Blue area). Council's vegetation mapping and fauna records indicate that there are other areas of known koala habitat outside of these Areas.
- e) Part 3 of the KHP SEPP encourages Council to develop 'control plans' (mitigation measures) that specifically deal with koala management issues that must be addressed within DA's of 'low or no direct impact on koalas or habitat (Tier 1 Assessment).
- f) In order to establish 'presence' within the definition of *core koala habitat*, Council must undertake significant survey including either;
  - a. SAT survey on 250m grids, or
  - b. Detection dogs.
  - c. Spotlighting,
  - d. Call playback at 2 locations on separate nights per site, or
  - e. Passive acoustic recording.

These requirements are considered overly onerous given the large extent of the Site Investigation Area (blue) present in the Byron Shire, and the existence of good current vegetation mapping and koala records.

**Next steps:**

It is recommended that staff:

1. Complete a detailed review and analysis of the Guideline supporting the KHP SEPP to clarify the best path for koala habitat protection in Byron Shire i.e. KHP SEPP v KPOM.
2. Incorporate gaps found in the above review and analysis into the development of a Biodiversity DCP and possible update of other related DCP chapters.
- 5      3. Further discuss the development of a Byron Hinterland Comprehensive Koala Plan of Management under the KHP SEPP provisions as a matter of priority.

**STRATEGIC CONSIDERATIONS**

***Community Strategic Plan and Operational Plan***

<b>CSP Objective</b>	<b>L2</b>	<b>CSP Strategy</b>	<b>L3</b>	<b>DP Action</b>	<b>L4</b>	<b>OP Activity</b>
<b>Community Objective 3: We protect and enhance our natural environment</b>	3.1	Partner to protect and enhance our biodiversity, ecosystems and ecology	3.1.1	Protect and enhance our natural environment and biodiversity	3.1.1.8	Implement the Koala Plan of Management

***Legal/Statutory/Policy Considerations***

*Environmental Planning and Assessment Act 1979*

*Biodiversity Conservation Act 2016*

*Koala Habitat Protection SEPP formerly SEPP 44*

*Local Land Services Act 2013*

***Financial Considerations***

There may be resource and budget implications the result of the KHP SEPP and Guideline.

***Consultation and Engagement***

Consultation with Tweed Shire Council and Department of Planning, Infrastructure and Environment (DPIE) Biodiversity Officer, Byron Shire Council

**Report No. 13.4**                      **PLANNING - Draft Local Strategic Planning Statement**  
**Directorate:**                      Sustainable Environment and Economy  
**Report Author:**                  Alex Caras, Land Use Planning Coordinator  
**File No:**                              I2020/178

5

**Summary:**

10 The Local Strategic Planning Statement (LSPS) is a new legislative requirement that has been designed to provide the link between the State Government's strategic plans and Council's local land use plans and guidelines. All NSW Councils are required to prepare a LSPS by **1 July 2020**.

15 The draft Byron LSPS presents a 2036 vision and framework for land use within our Shire. Structured around four (4) key themes that align with the vision and community priorities in our Community Strategic Plan – *Our Byron Our Future 2028* (CSP), the draft LSPS includes 14 Planning Priorities along with corresponding actions, timeframes and the means for monitoring and reporting on the delivery of these actions. Most of these priorities align with Council's current Delivery Program/ Operational Plan (DP/OP); however some actions are new and represent **"gaps" to be included in a future DP/OP**.

20 By combining key priorities and actions from our existing land use plans and strategies into one accessible document, the LSPS aims to make it easier for the community to understand the overall direction for land use planning in their local area.

25 Once completed, the LSPS will inform changes to Council's local environmental plan (LEP) and development control plans (DCP) to achieve the priorities. It will also inform other planning tools, such as contribution plans; to ensure better alignment of infrastructure delivery with planned growth. The LSPS must now be considered when these plans are reviewed and updated.

30 This report recommends that Council endorse the draft Byron LSPS for public exhibition for a period of 5 weeks during April-May 2020.

**NOTE TO COUNCILLORS:**



35 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

40

**RECOMMENDATION:**

1. **That Council endorse the draft Byron Shire Local Strategic Planning Statement (LSPS), as contained in Attachment 1 (E2020/15696), for public exhibition;**
2. **That Council authorise the Director Sustainable Environment & Economy (through the General Manager) to undertake any necessary formatting, grammatical edits, diagrams and/or other 'non-policy' updates to ensure a suitable standard for public exhibition;**
3. **That Council publicly exhibit the draft Local Strategic Planning Statement during April-May 2020 and undertake the actions/tasks identified in the Community Engagement Plan (as contained in Attachment 2 (#E2020/15697));**
4. **That Council receive a submissions report and final draft Local Strategic Planning Statement for adoption prior to the 1 July 2020.**

**Attachments:**

- 1 Draft Byron Local Strategic Planning Statement, E2020/15696 
- 2 Communication and Engagement Plan - Draft Byron Local Strategic Planning Statement,  
5 E2020/15697 

**REPORT*****LSPS Overview***

5 The Local Strategic Planning Statement is a new legislative requirement that has been designed to provide the link between the State Government's strategic plans and Council's local land use plans and guidelines. The Statement sits within Council's Integrated Planning and Reporting Framework, providing an important link with our Community Strategic Plan 'Our Byron Our Future 2028'.

10 The draft Byron Shire Local Strategic Planning Statement (LSPS) presents a 2036 vision and framework for land use within our Shire. This includes 14 Planning Priorities along with corresponding actions, timeframes and the means for monitoring and reporting on the delivery of these actions. By combining key priorities and actions from our existing land use plans and strategies into one accessible document, the LSPS aims to make it easier for the community to understand the overall direction for land use planning in their local area.

15 All NSW Councils are required to prepare a LSPS by **1 July 2020**.

***Purpose and Policy Context***

20 Local Strategic Planning Statements must be prepared in accordance with section 3.9 of the Environmental Planning and Assessment Act 1979 (the Act), which requires that it include or identify the following:

- a) the basis for strategic planning in the area, having regard to economic, social and environmental matters,
- 25 b) the planning priorities for the area that are consistent with any strategic plan applying to the area and (subject to any such strategic plan) any applicable community strategic plan under section 402 of the Local Government Act 1993,
- c) the actions required for achieving those planning priorities,
- d) the basis on which the council is to monitor and report.

30 Byron Shire's population is projected to increase from around 34,000 in 2018 to 37,500 people by 2036. To manage this growth and change, the North Coast Regional Plan 2036 provides the overarching framework for future land use planning of the North Coast, which in turn will guide Council's land use strategies, studies, and plans during this timeframe. Accordingly the draft LSPS must align with relevant actions from the North Coast Regional Plan, in addition to Council's own  
35 priorities as outlined in the Community Strategic Plan (CSP) and other strategies and plans applicable to land use.

It will be a living document, updated regularly to ensure it reflects current information, which in turn will inform our [Local Environment Plan](#) (LEP), [Development Control Plans](#) (DCP) and infrastructure contribution plans. Importantly, the LSPS must be considered when these documents are  
40 reviewed and updated.

The link or "line-of-sight" between the LSPS Planning Priorities, North Coast Regional Plan, Council's CSP, LEP and DCP is illustrated in Figure 1.





Figure 1: Strategic Policy Context

Due to the tight legislative timeframe for all NSW councils to prepare an LSPS by **1 July 2020**, **this is an evolving document that will be updated on a regular basis** to accurately reflect completion of new land use strategies and plans and/or changes in Council's land use planning priorities.

### LSPS Structure

The draft LSPS is structured around four (4) key themes that align with the vision and community priorities in our Community Strategic Plan – *Our Byron Our Future 2028* (CSP), with corresponding land use planning priorities and actions developed to address each theme. Most of these priorities align with Council's current Delivery Program/ Operational Plan (DP/OP); however some actions are new and represent **"gaps" to be included in a future DP/OP**.

The draft LSPS also sets ongoing, immediate (2019-2021), short (2021-2025), medium (2025-2029) and long-term (beyond 2029) action timeframes in which to deliver strategic land use planning priorities. These priorities will provide the strategic basis for future land use decisions and how these achieve the community's broader goals.

An outline of the draft LSPS sections and the information included within each is presented below:

Section	Structure and Information
1. Introduction	Overview and purpose of LSPS, along with policy context, consultation and structure.
2. Byron Shire here and now	Snapshot of people, place, environment and economy today.
3. Byron Shire moving forward	Snapshot of expected population and demographic changes to 2036.  LSPS vision and land use themes
4. Our Key Priorities and Actions	A summary of the key strategic planning priorities and actions.

<b>5. ENVIRONMENT: A Sustainable Shire</b>	General overview, land use planning priorities and actions relating to environment and sustainability.
<b>6. LIVEABILITY: A Liveable Shire</b>	General overview, land use planning priorities and actions relating to the liveability of Byron Shire. 5
<b>7. ECONOMY: A Thriving Shire</b>	General overview, land use planning priorities and actions relating to our local economy, business centres and industrial lands.
<b>8. INFRASTRUCTURE: A connected Shire</b>	General overview, land use planning priorities and actions relating to Infrastructure. 10
<b>9. Implementation</b>	The program for delivery and completion of our identified land use planning priorities and actions.

15

The full draft LSPS is contained in Attachment 1.

### **Consultation**

20

The draft LSPS builds on the extensive engagement undertaken in developing Council's Community Strategic Plan, *Our Byron Our Future*, during 2017-2018, including community feedback regarding what residents most like and dislike about Byron Shire, and what people would like to see retained and changed.

25

It also builds on recent consultation undertaken across a range of land use planning projects, including:

30

- Local Growth Management Strategies (Rural Land Use Strategy; Business & Industrial Lands Strategy; draft Residential Strategy)
- Recent place Plans (Bangalow Village Plan, Byron Bay Town Centre Master Plan, Our Mullumbimby Masterplan, Byron Arts & Industry Estate Precinct Plan (draft))
- Tourism Planning (Sustainable Visitation Strategy (draft), stakeholder engagement to inform planning for Short term rental accommodation )

35

Additional community engagement, as well as State Government agency consultation, will be undertaken before the LSPS is adopted by Council. This may result in changes to the planning priorities and actions contained in this draft document and or the incorporation of additional planning priorities and actions.

A Communication and Engagement Plan (CEP) has been prepared and is currently being reviewed by the Communications Panel. This is contained in Attachment 2.

Key features include:

40

- Five (5) week exhibition period
- Community Roundtable presentation
- Two (2) drop-in sessions (Mullumbimby and Byron Bay)
- Notification to community groups/representatives/traditional owners
- Website update and promotion across a range of media

45

If necessary, the CEP will be updated to reflect any forthcoming advice from the Communications Panel.

***Implementation, Monitoring and Reporting***

The LSPS will communicate with Byron Shire Council's land use strategies and integrated planning and reporting framework over a 2036 planning horizon. To realise the priority actions from each of our themes, a series of amendments may be required to other Council plans that provide the delivery framework for Council's strategic planning program. These include Council's LEP, DCP and infrastructure contribution plans.

Councils are legislatively required to review their LSPS every 7 years, however the Byron LSPS is expected to be reviewed more frequently to reflect the completion of key land use strategies and plans (currently underway) and/or or changes in Council's land use planning priorities.

**STRATEGIC CONSIDERATIONS**

***Community Strategic Plan and Operational Plan***

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 4: We manage growth and change responsibly</b>	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.1	Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.1.10	Prepare Local Strategic Planning Statements

***Legal/Statutory/Policy Considerations***

Local Strategic Planning Statements are regulated under the EP&A Act 1979.

Council will need to meet the following task/milestone timelines to comply with the **1 July 2020** legislative deadline for preparing our LSPS:

	<b>Key task / Milestone</b>	<b>Timing</b>
1	Draft LSPS endorsed for public exhibition	<b>By 19<sup>th</sup> March (Planning Meeting)</b>
2	Conclusion of exhibition (approx. 5 weeks in April/May)	<b>By 8<sup>th</sup> May</b>
3	Report to Council for adoption	<b>By 30<sup>th</sup> June</b>

***Financial Considerations***

Preparation of the LSPS is being funded from the current 2019/20 budget.

***Consultation and Engagement***

Communication and Engagement Plan has been prepared in line with the following objectives:

- To inform/consult the community about the Local Strategic Planning Statement (LSPS) and its public exhibition.
- To ensure the community has a good understanding the role of a LSPS and how it fits in the overall planning framework.

- To provide clear 'plain speak' and easily understood information via various media and activities.
- To attract a high level of stakeholder engagement and submissions to Council on the draft LSPS.

5

A copy of the draft LSPS has also been circulated to Directors and internal staff for early feedback, as part of the CEP.

**Report No. 13.5**  
**Directorate:**  
**Report Author:**  
**File No:**

**Sustainable Visitation Strategy - Public Exhibition**  
Sustainable Environment and Economy  
Sarah Workman, Tourism Officer  
Lisa Richards, Tourism Officer  
I2019/2138

**Summary:**

The following report provides the draft Byron Shire Sustainable Visitation Strategy (SVS) for endorsement by Council for public exhibition for a period of 6 weeks from 24 March to 5 May 2020.

**Note: The SVS attached to the report is a working draft that will be professionally designed for public exhibition purposes in accordance with Council's style guide and national accessibility and vision guidelines.**

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**RECOMMENDATION:**

**That Council endorse the draft Sustainable Visitation Strategy, Attachment 1 (E2020/9477), to proceed to public exhibition subject to design changes to meet Council's style guide and national accessibility and vision guidelines.**

**Attachments:**

1 Draft Byron Shire Sustainable Visitation Strategy 2020-2030, E2020/9477 

## REPORT

### Background

- 5 In August 2018, Council resolved that a new tourism strategy be developed using a deliberative democracy approach (**18-551**). This process saw Council consult widely with the Byron Shire community and their concerns were surveyed along with their ideas and suggestions on how to manage tourism into the future.
- 10 Council has prepared the draft Byron Shire Sustainable Visitation Strategy 2020-2030 (SVS) ready for public exhibition. The SVS has been developed based on research and engagement from the community, visitors, stakeholders and industry and aims to position Byron Shire as a leading sustainable tourism destination (see Attachment 1).
- 15 In 2019, 2.21 million people visited Byron Shire and visitors stayed for 5.5 million nights. This is forecasted to grow to 3.86 million visitors and 8.5 million visitor nights in 2030 if trends continue.

20 Tourism is a significant contributor to Byron Shire's economy; 27% of local jobs are in the tourism and hospitality industry (4,400 jobs) and 16% of total output sales (\$580 million). With growth and opportunities, come identified challenges including; traffic congestion, parking, a reduction in available and affordable residential housing, impacts on infrastructure and our environment and antisocial behaviour.

25 Council has been taking action towards a sustainable tourism future for more than a decade, with the implementation of the Tourism Management Plan 2008-2018. The Byron Shire SVS is the first Sustainable Visitation Strategy developed for a regional destination in Australia.

30 It outlines a framework to address the impacts and benefits of tourism whilst taking into consideration our natural and built environment, our culture, our community and our heritage. It is written in line with the Global Sustainable Tourism Council's criteria for a sustainable destination and is built on robust engagement and collaboration from:

- 11 facilitated community sessions
- 1,200 individual responses received from community members through kitchen table discussions and surveys
- 35 • 3 visitor focus groups
- 20 interviews with Council staff impacted or affected by the visitor economy
- 26 randomly selected residents and/or ratepayers who formed a Community Solutions Panel to deliberate the future of tourism in our shire
- Secondary research and data
- 40 • Tourism product and accommodation audit

Six themes have been developed to guide the management of tourism in Byron Shire over the next ten years. These are:

- 45 1. Leadership and Destination Management
2. Repositioning Byron Shire
3. Culture
4. Events
5. Transport, Infrastructure and Open Spaces
- 50 6. Planning for Visitor Accommodation

This strategy includes an Action Plan with short and long term strategies and actions to work toward a sustainable tourism future for Byron Shire over the next ten years.



**Public Exhibition**

5 Public exhibition will be held for a period of 6 weeks from 24 March to 5th May 2020. To ensure community and industry have adequate time to provide a submission, the public exhibition period has been extended to consider Easter and the school holiday period.

A morning tea with the Community Solutions Panel will take place to round off the engagement process.

**STRATEGIC CONSIDERATIONS**

10

***Community Strategic Plan and Operational Plan***

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 4: We manage growth and change responsibly</b>	4.4	Promote and support local business development, education and employment opportunities	4.4.1	Build a tourism industry that delivers local and regional benefits in line with the community's values	4.4.1.1	Develop a new Byron Shire Sustainable Visitation Plan

***Legal/Statutory/Policy Considerations***

15

Planning, Environment and Local Government Legislation

***Financial Considerations***

20

Project currently funded within the existing operational budget FY19/20.

***Consultation and Engagement***

Consultation and engagement as discussed in the report.

**Report No. 13.6**                      **PLANNING - Design Excellence Panel**  
**Directorate:**                      Sustainable Environment and Economy  
**Report Author:**                  Rob Van Iersel, Major Projects Planner  
**File No:**                              I2020/188

5

**Summary:**

10      A proposed amendment to Byron LEP 2014 was recently exhibited, relating to planning controls that apply to the Byron Bay Town Centre.

15      One important component of the draft amendment is the introduction of a Design Excellence Provision, with the objective of raising the quality of new development in the Town Centre, and ensuring good design that respects the Byron context.

Response to the exhibition indicated strong support for this objective.

20      A number of other matters are included in the draft LEP amendment and assessment work continues in respect of those matters, including assessment of all submissions received. A report will be provided to the April meeting of Council in that regard.

25      In the meantime, Council has received a number of development applications for significant new development in the centre, and recent enquiries from land owners and developers indicate that further significant proposals are on the way.

30      Given this, it is considered that the establishment of a Design Excellence Panel would provide a valuable tool for Council's decision making and that such a Panel should be convened as a matter of priority.

The Design Excellence Panel would act as a 'review panel', to provide independent expert advice to proponents early in the process.

35      To support the establishment of a Design Excellence Panel, a policy and procedure will need to be drafted to outline the intent of the Panel and how it would operate.

**NOTE TO COUNCILLORS:**

40      In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

45

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**RECOMMENDATION:**

1.      **That Council support the establishment of a Design Excellence Panel.**
2.      **That Council receive a further report to outline the policy and procedure to facilitate the Design Excellence Panel.**

## **REPORT**

### ***Background***

- 5 As part of the proposed LEP amendment to the Byron Bay town centre, a new clause was drafted to ensure development in the Town Centre exhibits design excellence.

During the exhibition of the proposed amendment, there was community support for the need to ensure new buildings are well designed with respect to the local character of Byron Bay.

10

A report will be presented to Council in April addressing the exhibition period.

- 15 To ensure the design excellence clause is effective in achieving its intended outcome, it is recommended that a Design Excellence Panel, made up of suitably qualified members be established to provide design advice for new developments within the Town Centre. This will ensure new development is aesthetically pleasing, of a suitable design and fits in with the context of Byron.

- 20 Design Excellence Panels are currently used in a number of other local governments, predominately in metropolitan areas to assess large scale apartment buildings. A similar method for operating the Panel could be moulded for the purpose of design in the Byron Town Centre.

### ***Design excellence***

- 25 The intent of the design excellence clause is to ensure new buildings in the Town Centre are of a high design standard, sustainable, inviting and fit in with their surrounds. Design excellence is not just about how a place looks, but also how it works and feels for people.

- 30 A number of other clauses including active street frontages and built form characteristics have been proposed in the Byron Town Centre planning proposal and DCP.

These controls will help to ensure developments in the town centre add to the feel of Byron and facilitate a lively space for the community and visitors.

- 35 Excellent design can be subjective. This is why a number of clauses in the LEP and DCP have been drafted to guide the design of new development. Additionally, an independent Design Excellence Panel made up of experienced persons will help to ensure developments are of a high standard and enable the draft clauses of the LEP and DCP.

- 40 ***Purpose and function of a Design Excellence Panel***

Design panels seek to improve design quality and aim to achieve a better built form, streetscape and aesthetics of buildings and the public spaces they define and maximise amenity, safety and security for the benefits of occupants and the community.

45

The Design Excellence Panel will be an independent panel made up of experienced architects and designers or other suitably qualified people. An expression of interest will be sort for suitable members at a later date.

- 50 The Panel will assess applications using the design excellence clause that will be placed into the Byron LEP as part of the Byron Bay Town Centre planning proposal. The Panel will consider the exterior of the building and how it fits in with the streetscape and surrounds.

- 55 An application may be reviewed by the Panel prior to the lodgement of a development application or once a development application has been submitted.

The Panel will provide comments on ways to improve the buildings design. If the Panel supports the design (with or without alterations) a design excellence certificate will be provided to the applicant.

5 The Design Excellence Panel is not a statutory requirement and will act in an advisory nature. To encourage new developments to be reviewed by the Panel an incentive of an increased Floor Space Ratio is proposed for applications that are issued with a design excellence certificate.

10 On receipt of this certificate a development may be considered for an increased Floor Space Ratio. This will be enabled by inserting a sub-clause in the draft Design Excellence clause in the LEP.

The proposed sub-clause is modelled from the Holroyd LEP.

15 *“the floor space ratio of a building to which this clause applies may exceed the floor space ratio shown for the land on the Floor Space Ratio Map by an amount, to be determined by the consent authority, of up to 1.5:1.”*

20 This gives staff the control to enable an increased FSR if a building is deemed to be of design excellence, shown through the receipt of a design excellence certificate signed by the Panel.

Staff will not be apart of the Design Excellence Panel and will not be able to vote on a buildings design excellence.

25 A rotational membership of the Panel will be used to minimise any potential conflict of interest in the process.

All development subject to the Panel will still be considered through the traditional development application process.

30 ***Design Excellence Panel triggers***

35 It is proposed that any new development within the Byron Town Centre that consists of three storeys be submitted to the panel for review. Any other applicant can submit an application to the Panel for any development within the town centre.

40 As the design Excellence Panel consists of experts, a fee will be required for developments to be reviewed by the Panel. Members on the Panel will be paid for their time to review a development and provide comments.

***Relationship with the proposed amendments of the Byron Town Centre***

45 Removal of the Floor Space Ratio control for the Town Centre was proposed in the exhibited planning proposal. There were a number of objections to this specifying that design excellence was not a strong enough control to mitigate bulky development.

In response to this concern the Design Excellence Panel will help to strengthen the design controls for the town centre. A Panel was also raised as a potential solution in a number of submissions.

50 By permitting an increase in FSR through the design excellence process, it will minimise the concerns related to removing the FSR completely from the town centre.

**Key issues**

This will create another step in the development process for the Town Centre. It is considered that this step will assist in raising the standards of design and amenity in the town centre and will help to ensure community support for appropriate development in the Town Centre.

As addressed previously, the Panel will not have any statutory power and will act only at an advisory level. To combat this, an increase in FSR is proposed to incentivise applications to be reviewed by the Panel. Allowing staff discretion on increasing the FSR will ensure that developments follow through with the advice given by the Panel.

**Next steps**

If Council supports the establishment of the Design Excellence Panel, a policy and procedure will be drafted outlining the intent of the Panel and details on how the Panel will operate.

Council will receive the policy and procedure prior to their exhibition.

**STRATEGIC CONSIDERATIONS**

**Community Strategic Plan and Operational Plan**

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 4: We manage growth and change responsibly</b>	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.1	Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.1.1	Progress draft Planning Proposal and DCP chapter to amend planning controls for Byron Bay town centre (Byron Bay Town Centre Masterplan action)

**Legal/Statutory/Policy Considerations**

N/A

**Financial Considerations**

A budget will need to be allocated to the Design Excellence Panel to remunerate the expert members attendance and advice. The operational costs of the Panel will likely be offset through application fees. This application fee would need to be incorporated into Council's Fees and Charges.

Clause 248 of the Environmental Planning and Assessment Regulation 2000 prescribes a maximum fee for referral to a design review panel of \$3,000 which is charged to the applicants.

**Consultation and Engagement**

N/A

**Report No. 13.7**      **Draft Biodiversity Conservation Strategy**  
**Directorate:**      Sustainable Environment and Economy  
**Report Author:**      Lizabeth Caddick, Biodiversity Officer  
**File No:**              I2020/209

5

**Summary:**

10 Council's draft Biodiversity Conservation Strategy is a plan of action for both Council and the Byron  
 Shire community to protect and enhance our local biodiversity. The Strategy describes some of  
 our unique biodiversity values, why they are under threat, and what opportunities exist to mitigate  
 these threats. Providing strong leadership, up-to-date resources and a best practice management  
 15 biodiversity and providing better support and incentives to those land managers who want to  
 manage their land to improve biodiversity. The Strategy includes over 90 Actions to help improve  
 biodiversity conservation in the Shire.

20 Council's draft Biodiversity Conservation Strategy has been reviewed by the Biodiversity Advisory  
 Committee and by nine key local industry professionals, with expertise in flora, fauna, ecological  
 restoration and town planning, plus a representative from the Bundjalung of Byron Bay Corporation  
 (Arakwal). These comments have been incorporated into the draft Strategy.

25 Council's Biodiversity Advisory Committee has recommended that Council put the draft Biodiversity  
 Conservation Strategy on public exhibition from 24 March to 15 May 2020.

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**RECOMMENDATION:**


1. That Council endorse the update to the Byron Shire draft Biodiversity Conservation Strategy vision to:

***Biodiversity in Byron Shire is valued, protected and enhanced, through inspiring leadership, community engagement, expert input, urgent action and innovation.***

2. That Council exhibit the draft Biodiversity Conservation Strategy (Attachment 1 E2020/14421) from 24 March to 15 May 2020.

**Attachments:**

30

- 1 Draft Biodiversity Conservation Strategy - Public Exhibition Version, E2020/14421 



**REPORT**

Council's Biodiversity Conservation Strategy is a plan of action for both Council and the Byron Shire community to protect and enhance our local biodiversity. The Strategy describes some of our unique biodiversity values, why they are under threat, and what opportunities exist to mitigate these threats. Providing strong leadership, up-to-date resources and a best practice management approach are key elements of the strategy, as are keeping our community well informed about biodiversity and providing better support and incentives to those land managers who want to manage their land to improve biodiversity.

The Strategy includes over 90 Actions to help improve biodiversity conservation in the Shire, including:

- Updating our mapping and other environmental datasets to guide and prioritise on-ground environmental work and inform the development assessment process.
- Creating a biodiversity chapter in our Development Control Plan.
- Restoring biodiversity values on Council-managed land.
- Working with the community and other agencies to support, facilitate and secure funding for biodiversity conservation on private land.
- Providing better information to residents and visitors on our biodiversity values and what people can do to protect them.
- Keeping the community informed about threats to biodiversity and their responsibilities, including weeds, pest animals, domestic pets and fire.
- Identifying effective solutions to manage wildlife deaths on our roads.
- Working with universities to ensure best practice in threatened species management is integrated into Council's on-ground programs and projects.
- Partnering with our environmental volunteers to help support their amazing work and working together to maximise biodiversity benefits.
- Monitoring our existing biodiversity values so we can track our progress.

**Peer review**

Council's draft Biodiversity Strategy has been reviewed by the Biodiversity Advisory Committee, nine key local industry professionals, with expertise in flora, fauna, ecological restoration and town planning, plus a representative from the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal).

Table 1 gives a summary of key issues raised during peer review:

**Table 1. Summary of key comments made by peer reviewers**

Issue	Outcome
Length of Strategy – generally considered too long.	Strategy length reduced. Some information removed to appendices. Strategy is still quite long, but broken down into readable sections, so that the more detailed information is still available for those that are interested.
Need for greater focus on rainforest vegetation/species, and threats to this. Over-emphasis on fire and dry forest ecosystems.	Additional section on rainforest ecosystems added, drafted by local ecologist David Milledge,

<b>Issue</b>	<b>Outcome</b>
Over-emphasis on Koalas	<p>Additional information has been added on other species, (rainforest biota, birds). Images of a diversity of plant and animal species also added (there were no images in the peer-reviewed draft).</p> <p>Koalas are a strong focus of BSCs biodiversity projects, partly due to funding availability (because they are iconic and charismatic), but also because they are an important umbrella species for our wet and dry sclerophyll forests and, in protecting their habitat we are protecting habitat of other threatened species.</p>
The Strategy is an opportunity for community education and needs to include, at the front, simple steps people can take to help protect biodiversity and reduce their carbon footprint.	<p>How you can help section included at front of strategy.</p> <p>Simple awareness raising information will also be included on the Your Say page and as part of other public exhibition activities to maximise opportunities for public education.</p>
<p>Monitoring and review needs to include some biodiversity benchmarks, e.g. status of threatened taxa, status of weeds.</p> <p>A scientifically based monitoring program to measure biodiversity gains/losses over time (and thus effectiveness of the strategy), would be beneficial.</p>	<p>Actions updated to give greater focus for monitoring and benchmarking. This will require resourcing, but there may also be opportunities to connect with existing citizen science data collectors for monitoring some species, e.g. Byron Bird Buddies.</p>
Some errors in facts and figures and references identified	Errors corrected.
Could 'expert advice' be added to vision	<p>Vision amended in draft Strategy to:</p> <p><i>Biodiversity in Byron Shire is valued, protected and enhanced, through inspiring leadership, community engagement, <b>expert input</b>, urgent action and innovation.</i></p> <p>Biodiversity Advisory Committee members support this amendment.</p>
Too human-centric – strategy needs more focus on biodiversity.	Section on community/economy has been edited, and biodiversity information moved to the front of the strategy. However, some information on our community and economy is important for context.
Lack of species lists, maps.	<p>These data are not included because they are likely to change over the 10 year timeframe of the strategy.</p> <p>High priority actions are included to review vegetation maps and species lists for Byron Shire and make these available on line.</p>
Funding section – should be renamed Resourcing and include opportunities other than Council funding and grants.	Renamed; with sections added on community resources and opportunities for biodiversity conservation through DA process.
Need to bring back the biodiversity extension services that Council provided under the 2004 Biodiversity Strategy, which were very popular	Action included to increase extension services, subject to funding availability.

<b>Issue</b>	<b>Outcome</b>
and effective.	

**Next steps**

- Public exhibition of draft Biodiversity Conservation Strategy is proposed for 24 March to 15 May 2020. This timeframe is considered appropriate since the exhibition period will run over the Easter school holidays.
- Following review of public submissions, it is hoped to take the final draft Biodiversity Conservation Strategy to the 18 June Council Planning meeting.

**STRATEGIC CONSIDERATIONS**

**Community Strategic Plan and Operational Plan**

<b>CSP Objective</b>	<b>L2</b>	<b>CSP Strategy</b>	<b>L3</b>	<b>DP Action</b>	<b>L4</b>	<b>OP Activity</b>
<b>Community Objective 3: We protect and enhance our natural environment</b>	3.1	Partner to protect and enhance our biodiversity, ecosystems and ecology	3.1.1	Protect and enhance our natural environment and biodiversity	3.1.1.1	Continue to undertake the Biodiversity Conservation Strategy review

**Legal/Statutory/Policy Considerations**

- Legislation relevant to the BCS that has been recently changed or is in the progress of being amended includes:
- State Environmental Planning Policy 44 (SEPP 44) for Koala Habitat Protection*. This has recently been replaced by *SEPP (Koala Habitat Protection) 2019*, due to come into effect in March 2020.
- Staff are in the process of reviewing the new Koala SEPP and it's implications for Council's Comprehensive Koala Plan of Management for the Byron Shire Coast. At the time of preparation of this report, new SEPP guidelines and methodology were unavailable. An update on the new SEPP will be provided to Council on 19 March.
- Minor updates to the draft Biodiversity Conservation Strategy may be required once further information on the new SEPP is available.
- Since the BAC reviewed the Strategy (10 Feb), a new action has been added to: Develop a Comprehensive Koala Plan of Management for the Byron Shire hinterland, in accordance with SEPP (Koala Habitat Protection) 2019.
- Biodiversity Conservation Act (2016)*: Act commenced on 25 August 2017, however Plant Community Types (PCTs) are still under review. Current advice is that these will be available 30 June 2020. Council's Biodiversity Conservation Strategy includes actions to update our mapping in accordance with these changes, when they occur.

**Financial Considerations**

Existing budget is available in FY2019/20 to finalise development of the revised BCS.

Council's environmental programmes receive core funding from general revenue, with expenditure directed by the [Environmental Levy Implementation Policy](#). Expenditure on biodiversity programs is equivalent to approximately 2% of general revenue, varying slightly year by year in accordance with Council's annual operational plan (for example where contract funding is allocated for specific projects such as mapping, monitoring or additional bush regeneration). Grant funding also supplements this budget.

Biodiversity plans, including the BCS, plus Council's Pest Animal Management Plan, Flying Fox Camp Management Plan and Coastal Koala Plan of Management, are currently implemented by 1 full time permanent and 1.4 temporary staff.

- 5 These positions, in addition to Council's 3 full time bush regeneration staff, will be required (as a minimum) to deliver the BCS, in addition to support from the EEP project support team.

Annual funding for the bush regeneration team currently comprises:

- 10
- \$200,000/year 'environmental levy' funding – administered by IS Open Space and Resource Recovery.
  - \$180,000/year work at Council's STPs – funded from IS Utilities.

15 Additionally, the BCS recommends increasing Council's level of extension services (currently provided by Brunswick Valley Landcare), to improve the capacity of our many private landholders to protect our biodiversity and climate – around \$16,000/year.

Input from other Council staff will also be required for some specific actions, most of which are part of their ongoing core business, including:

- 20
- GIS officer - assistance with regular updates to threatened flora and fauna mapping.
  - Land Use and Natural Resource Planners – updates to DCP and LEP and Council's environmental mapping layers.
  - Infrastructure Services – Traffic Engineer, Infrastructure Operations Coordinator – assistance with developing and implementing funding proposals for wildlife road strike mitigation.
  - Open Space Technical Officer – implementation of Integrated Pest Management Strategy.

25

  - Grants officer – assistance with identifying and preparing funding applications.
  - Communications team – assistance with website updates, social media posts, promotion of awareness raising campaigns.
  - Resource Recovery and Waste Education Officers – community education regarding green waste.

30

  - Community and Cultural Development Coordinator – liaison with relevant Aboriginal stakeholders.

35 Over the course of the BCS, EEP staff will be required to make additional budget bids for funding/part funding for some strategy actions, listed in Table 2 below. There may also be opportunities to seek grant funding for assistance with some of these actions.

**Table 2. Cost estimates for Biodiversity Strategy Actions**

No.	Action	Priority	Resources	Lead
1.1	Update Council's DCP 2014 to include a Biodiversity, Vegetation and Habitat Management Chapter that: - <ul style="list-style-type: none"> <li>• Reflects current legislation; -</li> <li>• Aligns with the Byron Shire Rural Land Use Strategy 2017.</li> <li>• Reflects updates to local and regional vegetation mapping;</li> <li>• Provides standards and controls to ensure planning of new development maintains or improves ecological values &amp; ecological function;</li> <li>• Incorporates clear planning controls for protection</li> </ul>	VH	\$20,000	Council SEE Directorate

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.7

No.	Action	Priority	Resources	Lead
	of Koala Habitat, within the Byron Coastal Koala Management Area, and other rural koalas habitat areas.			
1.3	Review opportunities to improve biodiversity through tree planting/restoration provisions in Council's urban and rural development approval processes.	M	\$7,000	Council SEE Directorate
1.7	Develop a Comprehensive Koala Plan of Management for Byron Shire Hinterland, in accordance with SEPP (Koala Habitat Protection) 2019.	H	\$40,000	Council SEE Directorate
1.9	Develop a priority restoration investment map that identifies key sites on private and public land requiring either protection or restoration, to assist in directing future Council and community restoration activities.	H/M	\$15,000	Council SEE Directorate
1.10	Conduct a review of Byron Shire's biodiversity values as a baseline for ongoing biodiversity monitoring. Include: <ul style="list-style-type: none"> <li>• Updated Byron Shire flora and fauna lists,</li> <li>• Status of threatened flora and fauna,</li> <li>• Status of weed species;</li> <li>• Extent of native vegetation,</li> <li>• Extent of protected vegetation (public and private land)</li> </ul>	VH	\$10,000	Council SEE Directorate
1.13	Update and maintain Council's vegetation and HEV mapping with revised Plant Community Types (PCTs) and current aerial photography.	H	\$8,000	Council SEE Directorate
1.16	Update Council's wildlife corridor mapping and liaise with other NRJO Councils to ensure consistency in wildlife corridor mapping across the region.	H	\$40,000	Council SEE Directorate
1.18	Map areas that have been revegetated: <ul style="list-style-type: none"> <li>a) using public funds, and</li> <li>b) for conservation purposes</li> </ul>	H	\$3,000	Council SEE Directorate
1.19	Update Council's Koala Potential Habitat mapping to reflect new PCTs and emerging datasets from OEH (Koala Habitat Information Base) and UQ (North Coast Koala Linkage Project).	H	\$20,000	Council SEE Directorate
1.22	Map potential habitat areas for Mitchell's Rainforest Snail.	M	\$10,000	Council SEE Directorate
2.3	Update existing Brunswick Catchment Riparian Planting Guide and make available on-line.	M	\$4,000	Council SEE Directorate
2.5	Raise community awareness of how planned fire in some dry forest ecosystems can help conserve biodiversity, re-invigorate Aboriginal cultural practices, improve community bush fire safety and reduce green house gas emissions.	M	\$2,500	Council SEE Directorate

No.	Action	Priority	Resources	Lead
2.6	Implement a community awareness campaign to assist in protection and habitat identification for the Mitchell's Rainforest Snail in the Byron Bay area.	M	\$8,000	Council IS Directorate
2.12	Develop an education and awareness program regarding managing the impacts of domestic animals on native wildlife.	M	\$25,000	Council SEE Directorate
2.13	Seek opportunities to work with tourism operators to build capacity in environmental awareness, e.g. through: <ul style="list-style-type: none"> <li>Identifying industry needs;</li> <li>Developing clear, simple messaging;</li> <li>Identifying effective means to deliver key messages.</li> </ul>	M	\$15,000	Council SEE Directorate
3.11	Partner with Landcare to deliver annual/bi-annual training sessions for landowners on native vegetation restoration.	M	\$2,500	Council SEE Directorate
4.4	Identify priority dry sclerophyll and heath ecosystems requiring restoration through the reintroduction of fire.	H	\$4,000	Council SEE Directorate
4.29	Audit and renew roadside threatened vegetation markers.	M	\$20,000	Council SEE Directorate
	<b>TOTALS</b>		<b>\$250,000 over 10 years</b>	

*Grant Funding*

Council currently seeks additional funding for biodiversity projects through grants, for example the NSW Environment Trust, Local Government NSW and NSW Recreational Fishing Trust Habitat Action Grants.

This Strategy will increase Council and the community's capacity to secure grant funding through providing a clear strategic framework of aims and objectives, plus an action plan to support funding applications, as well as directing priorities for grant applications.

Actions requiring grant funding are listed in Table 3 below.

**Table 3. Biodiversity Strategy Actions likely to require grant funding**

No.	Action	Priority	Resources	Lead
2.14	Seek funding for design and fabrication of engaging interpretive information regarding native wildlife at locations receiving high visitor numbers.	M	\$10,000	Council SEE Directorate
3.9	Seek grant funding opportunities for combined Council-private landholder restoration and revegetation projects on private land.	M	Project-specific funding	Council SEE Directorate



No.	Action	Priority	Resources	Lead
3.14	Seek grant funding for an extension officer to work with landholders to protect and enhance biodiversity values on private land.	M	\$150,000	Council SEE Directorate
4.3	Seek additional grant funding for the implementation of on-ground ecological restoration actions at priority Council-managed sites, including wildlife corridors, koala habitat and HEV vegetation.	H	Project-specific funding	Council SEE Directorate
4.6	Seek grant funding for baseline study of koala populations in Site Investigation Area for Koala Plans of Management that is west of the coastal Koala Plan of Management area.	H	\$100,000	Council SEE Directorate
4.26	Seek funding for road strike mitigation trials at priority road strike hotspots.	M	\$100,000	Council SEE Directorate
4.31	Continue to develop and implement 'Bringing back the Bruns' branded projects to address improvements in riparian and instream habitat, water quality, fish passage and habitat connectivity on Council and private land along the Brunswick River and its tributaries.	M	Project-specific funding	Council SEE Directorate
4.32	Seek funding to develop and implement projects addressing improvements in riparian and instream habitat, water quality, fish passage and habitat connectivity on Council and private land along waterways of the Wilson River catchment.	M	Project-specific funding	Council SEE Directorate

#### *Opportunities on Private Land*

5 There are many active environmental volunteers in Byron Shire – contributing an estimated 37,000 hours per year (equivalent to \$1,000,000 worth of paid work). Additionally, around 4,000ha of private land in the Shire are currently being managed for conservation, including Landcare work sites, Land for Wildlife properties and Wildlife Refuges.

10 A key element of the BCS is for Council to support and build the capacity of environmental volunteers, to capitalise on these opportunities. Conservation funding resources for private landholders include Land for Wildlife, Voluntary Private Land Conservation Agreements, Local Land Services Grants, Richmond Community Grants Hub and projects coordinated through Brunswick Valley Landcare.

15 There are also opportunities for Council to enhance tree planting and bush regeneration on private land through DCP provisions. There are actions in the BCS to develop a Biodiversity Chapter for the DCP, as well as reviewing other DCP chapters (B2, D2, D3), to maximise opportunities to enhance biodiversity, with flexible options relevant to the scale of development and condition of existing on-site vegetation.

#### **20 Consultation and Engagement**

Several phases of stakeholder consultation informed the BCS, including a community survey in 2015 (over 400 responses), plus follow up surveys, workshops and key stakeholder meetings in 2018-2019, attended by farmers, local business, environmental groups, industry professionals, interested individuals, plus representatives from Bundjalung of Byron Bay Aboriginal Corporation

(Arakwal), Local Aboriginal Land Councils, NSW National Parks and Wildlife Service, Marine Parks and Council.

5 Recent community surveys for Council's Sustainable Visitation Strategy and Community Strategic Plan also identified community trends in relation to biodiversity conservation, which have been considered during the development of the BCS.

10 A detailed summary of community engagement is given in Appendix 5 of the draft Biodiversity Conservation Strategy (attached).

15 Council's draft Biodiversity Strategy has been reviewed by nine key local industry professionals, with expertise in flora, fauna, ecological restoration and town planning, plus a representative from the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal). Additionally, feedback has been provided by four members of the Biodiversity Advisory Committee, and proposed actions have been discussed with relevant Council staff.

**Report No. 13.8**                      **PLANNING - Report of the February 2020 Planning Review Committee**  
**Directorate:**                      Sustainable Environment and Economy  
**Report Author:**                  Chris Larkin, Manager Sustainable Development  
**File No:**                              I2020/215

5

**Summary:**

10      This report provides the outcome of the Planning Review Committee (PRC) held on 14 February, 2020. Due to a significant rainfall and flood event on the day, the PRC meeting was held electronically. Five responses were received from Councillors.

NOTE TO COUNCILLORS:

15

In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

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**RECOMMENDATION:**

**That Council endorse the outcomes of the Planning Review Committee meeting held for February 2020.**

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**REPORT**

- 5 The Planning Review Committee meeting scheduled for 14 February 2020, was cancelled due to a significant rain and flooding event on the day. Staff advised Councillors that the PRC could run as an electronic meeting offline with a copy of the agenda emailed to all councillors. Five responses were received from Councillors by the 20 February 2020.

Councillors E - Responses: Hunter, Lyon, Richardson, Coorey, Spooner

- 10 Staff: Chris Larkin (Manager Sustainable Development)

The following development applications were reviewed with the outcome shown in the final column.

DA No.	Applicant	Property Address	Proposal	Exhibition Submissions	Reason/s Outcome
10.2020.21.1	Byron Shire Council	Bay Street BYRON BAY	Subdivision Two (2) into Five (5) Lots (boundary adjustment to resolve encroachments re Byron swimming pool and fishheads restaurant)	Level 1 21/1/20 to 3/2/20  No submissions	Staff Delegation
10.2019.650.1	Newton Denny Chapelle	103 Kings Road FEDERAL	New Dwelling to create Dual Occupancy (Detached)	Level 1 31/12/19 to 31/1/20  One submission	Council  Public significance

- 15 Council determined the following original development applications. The Section 4.55 application to modify these development consents are referred to the Planning Review Committee to decide if the modification applications can be determined under delegated authority.

DA No.	Applicant	Property Address	Proposal	Exhibition/ Submissions	Reason/s Outcome
10.2017.712.2	Town Planning Studio Pty Ltd	25 Strand Avenue NEW BRIGHTON	S4.56 to Modify internal design, minor adjustment to strata boundary and swimming pool	Level 1 5/12/19 to 18/12/19  No submissions	Staff Delegation
10.2018.305.2	Bayview Land Development Pty Ltd	77 Tuckeroo Avenue MULLUMBIMBY	S4.55 to Modify Subdivision Layout, Include Underground Drainage Pit and modify	Level 2 23/1/20 to 6/2/20  One submission	Staff Delegation

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.8

			requirements relating to Biodiversity Conservation Management Plan and Plantings		
10.2016.625.2	Mr B J Lawless	35-37 Burringbar Street MULLUMBIMBY	S4.55 Minor Modifications to Design and Conditions	Level 2 30/1/20 to 12/2/20  No Submissions	Council  Public Significance
10.2013.587.7	Mercato on Byron P/L	98-114 Jonson Street BYRON BAY	S4.55 for Minor Changes to Approved Plans and Amendments to Easements	Level 2 12/12/19 to 15/1/20  No Submissions	Staff Delegation

**Report No. 13.9**      **PLANNING - Further report following resolution 19-569 10.2019.301.1 demolition of existing dwelling house and construction of two (2) new dwellings and two (2) swimming pools to create dual occupancy at 16 Short Street Brunswick Heads**

**Directorate:** Sustainable Environment and Economy  
**Report Author:** Chris Larkin, Manager Sustainable Development  
 Luke Munro, Planner  
**File No:** I2020/229

**Summary:**

Council resolved **19-569** at the Planning Meeting held 21 November 2019 as follows:

*Resolved that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application 10.2019.301.1 for demolition of existing dwelling house and construction of two (2) new dwellings and two (2) swimming pools to create dual occupancy (detached), be deferred until the next available Council Meeting and that:*

- a) *Staff are requested to further consider the Building Height Plane encroachment and shadow impact on adjoining properties as a result of the development proposal.*
- b) *Shadow diagrams that meet the requirements of Council's Shadow Diagram Fact Sheet are to be provided by the applicant for this purpose.*
- c) *The proponents are requested to consider amending the designs for the building height encroachment.*
- d) *The condition regarding use as dual occupancy be redrafted to make it clear that short term holiday letting is a prohibited use.*

The applicant has submitted shadow diagrams which indicate in particular that the northern dwelling fronting Short Street impacts upon the dwelling to the east during the afternoon hours.

Options to further reduce the impact have not been taken up by the applicant in terms of amending the design as suggested in part c) of the resolution. This could have included a reduction in width of the building on the first floor by up to a metre to provide for increased setbacks to the eastern boundaries to address this issue.

In terms of point d) a condition can be readily imposed to address the holiday letting requirements should the DA be approved.

The proposal on review is considered to generate unreasonable impacts on the neighbouring development in terms of overshadowing. Further, the applicant has not adequately addressed the resolution in terms of amending the design of the development to provide for better compliance with the building height plane and to lessen impacts on the immediate neighbour to the east. In the circumstances it is recommended the development application be refused.

Should Council want to approve the development application, conditions of consent are included in Attachment 2.

**NOTE TO COUNCILLORS:**

In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council



Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.



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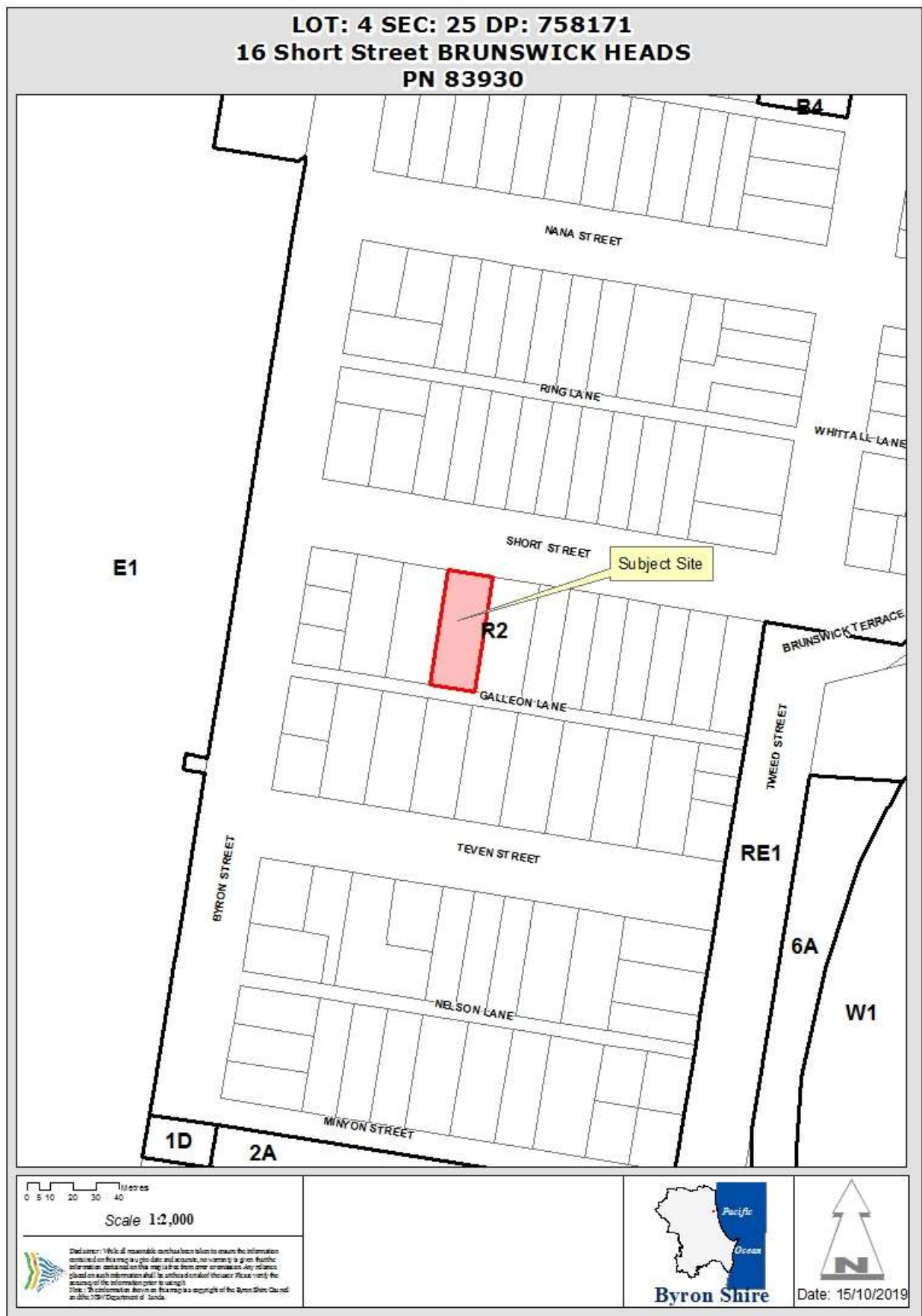
**RECOMMENDATION:**

**That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application 10.2019.301.1 for demolition of existing dwelling house and construction of two (2) new dwellings and two (2) swimming pools to create dual occupancy (detached), be refused for the following reasons:**

- 1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with D1.2.1 Building Height Plane of the Byron Shire Development Control Plan 2014 as the development will intrude into the Building Height Plane and will overshadow adjoining properties.**
- 2. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development generates adverse amenity impacts on the built environment in terms of overshadowing.**
- 3. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.**

**Attachments:**

- 1 Proposed Plans - 10.2019.301, E2020/13518 **
- 2 Draft Conditions of consent - 10.2019.301, E2020/13516 **



**Report**

Council resolved **19-569** at the Planning Meeting held 21 November 2019 as follows:

- 5 Resolved that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application 10.2019.301.1 for demolition of existing dwelling house and construction of two (2) new dwellings and two (2) swimming pools to create dual occupancy (detached), be deferred until the next available Council Meeting and that:
  - 10 a) Staff are requested to further consider the Building Height Plane encroachment and shadow impact on adjoining properties as a result of the development proposal.
  - b) Shadow diagrams that meet the requirements of Council's Shadow Diagram Fact Sheet are to be provided by the applicant for this purpose.
  - 15 c) The proponents are requested to consider amending the designs for the building height encroachment.
  - d) The condition regarding use as dual occupancy be redrafted to make it clear that short term holiday letting is a prohibited use.

A link to the previous report from the Planning meeting held 21 November, 2019 is provided below:

[https://byron.infocouncil.biz/Open/2019/11/PLAN\\_21112019\\_AGN\\_1094.PDF](https://byron.infocouncil.biz/Open/2019/11/PLAN_21112019_AGN_1094.PDF)

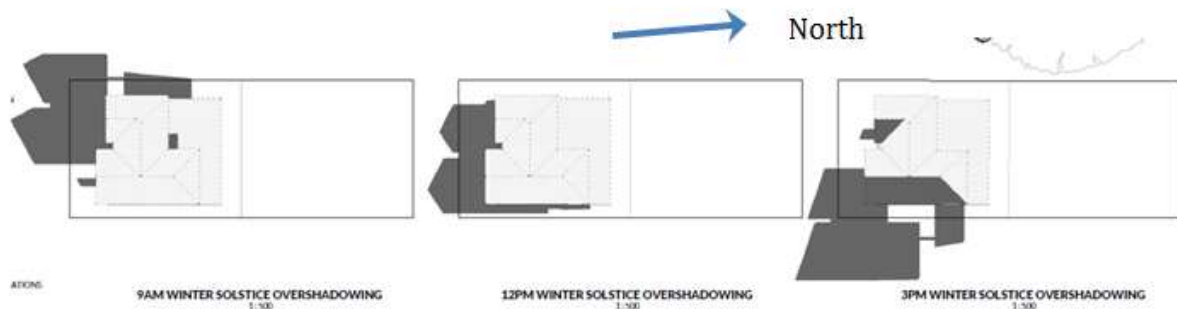
- 25 In response to the resolution staff comments are provided for Council's consideration.

**Item a) and Item b) – Shadow Diagrams**

- 30 The applicant has provided shadow diagrams to address items a) and b) of the resolution. The shadow diagrams have been prepared for each individual dual occupancy dwelling and show the winter solstice shading across adjoining properties as shown below. Further detail can also be found in Attachment 1 to this report.



**Dwelling 1 – Shadow Diagram (Short Street frontage)**



#### Dwelling 2 – Shadow Diagram (Galleon Lane frontage)

The extent of overshadowing from the plans does not appear to show the full extent of overshadowing created by the two dwellings and as a result maybe somewhat understated. Notwithstanding, both dwellings appears to have the greatest impact on the adjoining property to the east at 3pm. In particular the shadow will fall upon the existing dwelling at 14 Short Street and across the rear yard. This impact is further exacerbated when considering Council has recently approved a second house for this property being a single storey dual occupancy (DA10.2019.349.1) It is considered significant shading would be cast onto the western wall of the approved single storey dual occupancy dwelling.

#### Item c) – Amending the dwelling designs to reduce the BHP encroachment

The applicant has indicated they do not seek to further amend the dwelling design to reduce the intrusion into the building height plane. Having regard to the width and design of the building there would be opportunities to increase setbacks to the eastern boundary to bring both dwellings into better compliance with the Building Height Plane and to lessen impacts on the neighbour to the east. This would occur by narrowing the width of the dwelling on the upper floor level by approximately 900 mm to one metre resulting in a corresponding increased setback of the same distance along this elevation. Such a change would demonstrate that the dual occupancy development meets the performance criteria 1 underpinning Clause D1.2.1 of DCP 2104 as follows:

*1. Developments must be set back progressively from the site boundaries as height increases so that they do not adversely affect existing or future development on adjoining properties by way of overshadowing, impinging on privacy or obstructing views.*

The dwelling design at present provides little in the way of articulation along this elevation, and does not satisfy the performance criteria 1.

#### Item d) – Short Term Holiday Letting restriction

An additional Condition 48 has been incorporated into the recommended conditions for if Council decide to approve the development application (Attachment 2). The condition restricts short term holiday letting of the proposed dual occupancy dwellings and reads as:

##### **48 Use of Dual Occupancy (detached) dwellings**

The dual occupancy (detached) dwellings are not to be holiday let or used as tourist and visitor accommodation.

#### **Conclusion**

The proposal on review is considered to generate unreasonable impacts on the neighbouring development in terms of overshadowing. Further, the applicant has not adequately addressed

Resolution 19-569 in terms of amending the design of the development to provide for better compliance with the building height plane and to lessen impacts on the immediate neighbour to the east. In the circumstances it is recommended the development application be refused.

- 5 Should Council want to approve the development application, conditions of consent are included in Attachment 2.

**Report No. 13.10**      **PLANNING - Resolution 19-553 Review of Council's Signage Policy**  
**Directorate:**      Sustainable Environment and Economy  
**Report Author:**      Dylan Johnstone, Planner  
**File No:**      I2020/242

5

**Summary:**

10

The purpose of this report is to provide a review of Council's current signage policy, including potential amendments to the policy, in accordance with Resolution 19-553 of Council meeting date 24 October 2019.


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**RECOMMENDATION:**

**That Council note the report on the review of Council's current signage policy and that engagement with the business community and amendments to the current Signage Policy as discussed in the report will now follow.**

15

**Attachments:**

- 1      Mapping showing Regional Roads - classified roads re section 138 (2) of the Roads Act 1993 and freeway, transitway or controlled access roads re section 70 of the Roads Act 1993, E2018/4504 

20

**REPORT****Background**

5 Notice of Motion No. 9.4 Review of the current Signage Policy was considered at the Ordinary Meeting 24 October 2019, where Council resolved as follows:

[https://byron.infocouncil.biz/Open/2019/10/OC\\_24102019\\_AGN\\_1000.PDF](https://byron.infocouncil.biz/Open/2019/10/OC_24102019_AGN_1000.PDF)

**19-553 Resolved:**

- 10
1. *That given the huge impact lighting and signage can have on the look, feel and ambience of our community, we request that Council staff conduct a review of the current signage policy looking at:*
    - 15 a) *The approval framework for signage including building and business identification signs, remote business and building identification signs and community event signs.*
    - b) *The hierarchy of planning legislation in relation to the criteria and controls applicable to each sign type (i.e. SEPP, LEP, DCP) and how these controls interplay with the Town and Village 'Character Statements'.*
    - 20 c) *The potential for the inclusion of stricter guidelines for the luminance of LED signage.*
    - d) *A comparative study of other Local Government Areas that have a more recent signage policy.*
    - 25 e) *The enforcement options where buildings or businesses are non compliant for both current and retrospective DA's in respect to signage.*
    - 30 f) *The use and proliferation of sandwich board and other mobile signage*
  2. *That Council engage with the business community regarding self assessment and review of commercial signage with a view to seek compliance with current standards and a responsibility to support the character of towns and villages.*
  - 35 3. *That a report be brought to Council responding to points A-E outlining options for a way forward before March 2020.*

40 As per Resolution 19-553 Council staff have conducted a review of the current signage policy as follows:

**The approval framework for signage including building and business identification signs, remote business and building identification signs and community event signs.**

45 Certain signage is exempt from Council approval in accordance with State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (codes SEPP). Such exempt development signage includes building identification signs, a variety of business identification signs, temporary community event signage, community notices, real estate signage and election signage.

<https://www.legislation.nsw.gov.au/#/view/EPI/2008/572>

50 Some signage (projecting wall signs and freestanding pylon and directory board signs) may also be installed as complying development under the provisions of the Codes SEPP's Commercial and Industrial Alterations Code subject to compliance with nominated development standards.



General requirements for signage as exempt development include that there must be no more than 3 business identification signs in relation to a building housing one commercial tenant, and no more than 6 business identification signs in relation to any building with multiple tenancies.

- 5 Signage that does not meet the requirements for exempt development requires consent in the form of an approved development application. DA's for signage are assessed in accordance with State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP 64), Byron LEP 2014 and DCP 2014, and LEP 1988 and DCP 2010 for Deferred Matter areas. Deferred Matter zonings generally relate to rural, environmental and some residential areas where signage is generally not a significant compliance issue.

10 <https://www.legislation.nsw.gov.au/#/view/EPI/2001/199>

<https://www.legislation.nsw.gov.au/#/view/EPI/2014/297>

<https://www.legislation.nsw.gov.au/#/view/EPI/1988/329>

<https://www.byron.nsw.gov.au/Services/Building-development/Plans-maps-and-guidelines/Byron-DCP-2014-and-2010>

- 15 SEPP 64 requires that Council must not grant development consent for signage unless Council is satisfied that the signage is consistent with the objectives of the Policy and that the signage satisfies the assessment criteria in Schedule 1 of the Policy.

The objectives of the Policy include that signage:

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

Schedule 1 of the Policy requires that Council be satisfied that the following criteria are addressed in a development application for signage:

- 25 • compatibility with the character of the area
- whether the proposal detracts from the amenity or visual quality of special areas that are environmentally sensitive, heritage areas, natural or other conservation areas, open space area, waterways, rural landscapes or residential areas
- 30 • views and vistas – whether the proposal compromises important views, dominates the skyline, and respects the viewing rights of other advertisers
- streetscape, setting or landscape – whether the scale and form is appropriate for the setting, contributes to the visual interest of the setting, and reduces clutter by rationalising and simplifying existing signage
- 35 • site and building – whether the signage is compatible with the scale and proportion of the site and/or building on which the signage is to be located
- associated devices and logos with advertisements and advertising structures
- illumination – amenity / safety impacts
- safety – whether the proposal will reduce safety for road users and/or pedestrians

- 40 Byron LEP 2014 provides that signage is only permitted in certain locations based on the zoning of the land.

Signage and its child definitions of advertising structures, building identification signs and business identification signs are defined by LEP 2014 as:

**signage** means any sign, notice, device, representation or advertisement that advertises or promotes any goods, services or events and any structure or vessel that is principally designed for, or that is used for, the display of signage, and includes any of the following—

(a) **an advertising structure**,

5 (b) **a building identification sign**,

(c) **a business identification sign**,

but does not include a traffic sign or traffic control facilities.

**advertising structure** has the same meaning as in the Act.

10 Note. The term is defined as a structure used or to be used principally for the display of an advertisement.

**building identification sign** means a sign that identifies or names a building and that may include the name of a building, the street name and number of a building, and a logo or other symbol but does not include general advertising of products, goods or services.

**business identification sign** means a sign—

15 (a) that indicates—

(i) the name of the person or business, and

(ii) the nature of the business carried on by the person at the premises or place at which the sign is displayed, and

20 (b) that may include the address of the premises or place and a logo or other symbol that identifies the business,

but that does not contain any advertising relating to a person who does not carry on business at the premises or place.

25 Signage permitted with consent on rural land zoned RU1 and RU2, and in the residential zones R2, R3 and R5 is limited to business identification signs. All other forms of signage are prohibited on rural and residential zoned land.

Building identification signs and business identification signs are permitted with consent in the RU5 village zone (Federal). Advertising structures are prohibited.

All signage in business zones B1, B2, B4 and B7, industrial zones IN1 and IN2 and tourist zone SP3 is permitted with consent.

30 If the signage is permitted with consent in the relevant zone under LEP 2014, a Development Application will be assessed in accordance with Chapter B10 of DCP 2014. The DCP provides the development standards for the various types of building and business identification signs.

35 With regard to remote business and building identification signs, Clause 15(2)(b)(i) of State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP 64) provides that signage on rural or non-urban land must be related to the land on which the signage is to be displayed, or to adjacent land. The only exceptions to this requirement include signage directing the travelling public to tourist facilities or activities or to places of scientific, historical or scenic interest.

The LEP 2014 definition of a business identification sign requires that the sign must relate to the premises or place at which the sign is displayed.

Temporary Community event signage may be undertaken as exempt development if carried out in accordance with the development standards set out in Clauses 2.102 and 2.103 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP). The SEPP does not prevent temporary community event signage from being located on Council land (i.e. road reserves). However any temporary community event signage on Council land requires landowners consent from Council, a Section 138 approval under the Roads Act 1993, consultation with Roads and Maritime Services (for signage within classified road reserves), and potentially approval from Local Traffic Committee (LTC). LTC meetings are held only every two months.

In order to avoid any lengthy time delays for installing temporary community event signage via the processes outlined above, a potential solution could be for Council to install permanent advertising structures on the approaches to towns/villages on which individuals could attach temporary community event signage that complies with the requirements of the Codes SEPP. It is noted that Ballina Shire Council currently adopts a similar approach within their "Community Event Signage & Banner Pole Guidelines".

<https://ballina.nsw.gov.au/files/Guidelines%20for%20Community%20Event%20Signage%20-%20to%20go%20with%20policy%20-%20adopted%2028%20March%202013.pdf>

However, in accordance with the LEP 2014 Land Use Table, advertising structures are only permitted with consent in business and industrial zones. The approaches to towns/villages are generally zoned rural or residential therefore if Council wishes to permit advertising structures in these zones, a planning proposal to amend LEP 2014 is required.

**The hierarchy of planning legislation in relation to the criteria and controls applicable to each sign type (i.e. SEPP, LEP, DCP) and how these controls interplay with the Town and Village 'Character Statements'.**

The criteria and controls of the hierarchy of planning legislation, from the objectives and assessment criteria of SEPP 64 to the objectives and performance criteria of DCP 2014, provide state and shire wide requirements for signage to be compatible with the amenity and visual character of an area.

DCP 2014 may be amended to specifically require that all signage must be compatible with the "Residential Character Narrative" (contained within the *Byron Shire Draft Residential Strategy*) of the locality in which it located.

**The potential for the inclusion of stricter guidelines for the luminance of LED signage**

Australian Standard AS4282-2019, *Control of the obtrusive effects of outdoor lighting* provides a common basis for assessment of the likely effects of developments that involve the provision of outdoor lighting including signage.

Any illuminated signage installed as exempt development or complying development in accordance with the codes SEPP must comply with AS4282-2019.

AS4282-2019 requires illuminated signage to comply with the following maximum permitted night time luminance levels

TABLE 1 - MAXIMUM NIGHT TIME AVERAGE LUMINANCE FOR SIGNAGE		
Environmental Zone	Description	Max Average Luminance (cd/m2)
A4	High district brightness e.g. Town and city centres, commercial areas, and residential areas abutting commercial areas	350
A3	Medium district brightness e.g. suburban areas in towns and cities	250
A2	Low district brightness e.g. sparsely inhabited rural and semi-rural areas	150
A1	Dark e.g. relatively uninhabited rural areas. No Road Lighting	0.1
A0	Intrinsically Dark e.g. Major Optical Observatories. No Road Lighting	0.1

Note: Where the signage is viewed against a predominantly dark background (e.g. night sky) then the maximum applicable environmental zone is A2

**Table 1 Maximum Night Time Average Luminance for Signage (AS4282-2019)**

Another document that guides the development assessment process for signage is the Department of Planning Infrastructure and Environment document titled "Transport corridor outdoor advertising and signage guidelines 2017". This guideline complements the provisions of SEPP 64 and outlines best practice for the planning and design of outdoor advertisements in transport corridors, such as along or adjacent to classified roads. Attachment 1 indicates the location of classified roads within Byron Shire.

<https://www.planning.nsw.gov.au/-/media/Files/DPE/Guidelines/transport-corridor-outdoor-advertising-and-signage-guidelines-2017-11.pdf?la=en>

Included in the guidelines is the provision of maximum allowable daytime luminance of illuminated advertisements as shown below.

**TABLE 5: MAXIMUM ALLOWABLE DAYTIME LUMINANCE OF ILLUMINATED ADVERTISEMENTS (NOT DIGITAL SIGNS)**

Illuminated Area (sqm)	Zone 1	Zone 2 (cd/sqm)	Zone 3 (cd/sqm)	Zone 4 (cd/sqm)	Zone 5
up to 0.5	no limit	2900	2000	1000	no limit
0.5 to 2.0		2300	1600	800	
2.0 to 5.0		2000	1200	600	
5.0 to 10.0		1500	1000	600	
over 10.0		1200	800	400	

**Luminance** means the objective brightness of a surface as measured by a photometer, expressed in candelas per square meter.

**Zone 1** covers areas with generally very high off-street ambient lighting, e.g. display centres similar to Kings Cross, central city locations.

**Zone 2** covers areas with generally high off-street ambient lighting e.g. some major shopping/commercial centres with a significant number of off-street illuminated advertising devices and lights.

**Zone 3** covers areas with generally medium off-street ambient lighting e.g. small to medium shopping/commercial centres.

**Zone 4** covers areas with generally low levels of off-street ambient lighting e.g. most rural areas, or areas that have residential properties nearby.

**Zone 5** covers areas within underground railway stations and areas fully contained within station buildings which are visible only from within the rail corridor.

**Table 2 Maximum Daytime Average Luminance for Signage (Transport Corridor Outdoor Advertising and Signage Guidelines)**

5 DCP 2014 does not currently include requirements for proposed signage to comply with AS4282-2019 or the Transport Corridor Outdoor Advertising & Signage Guidelines. To ensure a more comprehensive assessment of the potential impacts of lighting associated with any proposed illuminated signage at the DA stage, DCP 2014 could be amended to require applicants to submit an assessment demonstrating how illumination will comply with the requirements of AS4282-2019 and the Transport Corridor Outdoor Advertising & Signage Guidelines (if located adjacent to a classified road).

15 DCP 2014 may also be amended to include development standards that may impose a curfew on sign illumination between 11pm and 6am, or restrict illumination to hours of operation for late night trading premises, where it is considered that the amenity of any residential land would be adversely impacted by the illuminated sign. An amendment to the DCP could also include a requirement that the light intensity of illuminated signage must be capable of modification or control after installation.

**A comparative study of other Local Government Areas that have a more recent signage policy.**

A comparative study of signage policies of other Local Government Areas highlighted some key areas.

- 5 All signage DCPs/policies of other Councils that were reviewed (including Tweed, Ballina and Lismore City Shires) prohibit the use of A frame signage on Council owned land including footpaths. DCP 2014 permits A frame signage on Council land with consent and it is recommended that they not be permitted on any public land.
- 10 DCP 2014 contains a list of signage types that are undesirable. To be consistent with signage policies of other Council's it is recommended that the language be amended from "undesirable" to more clearly state that certain signage will not be supported by Council. This list should also be expanded upon to include moving signs, flashing signs, 3-Dimensional signs, and balloons or other gas filled advertising devices.
- 15 DCP 2014 does not contain any specific requirements around the wording and content of signage that other Council's require. It is recommended that DCP 2014 be amended to add requirements to control the size of the name/logo of the person/company which owns or leases an advertisement or advertising structure, and to ensure the wording or content of signage does not contain any offensive, sexual or discriminatory messages as regulated by the *Anti-Discrimination Act 1977*. The DCP can also be amended so that where a business or organisation offers a product or service,
- 20 the name of the business or organisation must have greater dominance over the product or service being advertised.
- 25 DCP 2014 is generally more restrictive with regard to the maximum number of permitted signs when comparing to other Council's requirements. DCP 2014 provides that each industrial or commercial premise is limited to a maximum of "three signs at road frontage" compared with 5-10 permitted in other shires. This wording should be amended though to remove any ambiguity and limit the maximum number of signs to 3 per industrial or commercial premises. Consideration may be given for a greater number if a premise has more than one street frontage. Consideration should also be given to limiting the maximum total area of all signage per industrial or commercial premise.
- 30 DCP requirements of other Council's provide more stringent requirements around illumination of signage which have been included in point C above.

**The enforcement options where buildings or businesses are non compliant for both current and retrospective DA's in respect to signage.**

- 35 Enforcement options for non compliant signage are as per Figure 2 of the Enforcement Policy 2016 (below).



**Figure 2: Enforcement actions available to the Council**

<p align="center"><b>Court order</b></p> <p>An order from the Court requiring certain things to be done to achieve compliance (civil proceedings)</p>	<p align="center"><b>Criminal Prosecution</b></p> <p>in the Land and Environment Court or the Local Court</p>
<p align="center"><b>Order</b></p> <p>Council will issue Orders requiring certain things to be done to achieve compliance</p>	<p align="center"><b>Penalty Notice</b></p> <p>Council will issue Penalty Notices for matters listed in the Fixed Penalties Handbook</p>
<p align="center"><b>Letter requesting undertaking</b></p> <p>A letter requesting an undertaking that corrective action will be taken within a certain timeframe</p>	<p align="center"><b>Negotiation</b></p> <p>with alleged offender and written confirmation of commitments made</p>
<p align="center"><b>Warning or advisory letter</b></p> <p>to encourage future compliance and caution that further action may be taken</p>	<p align="center"><b>Record the breach</b></p> <p>No further action – for very minor breaches only</p>

Community Enforcement Officers also have the powers to confiscate and impound illegal signage that is located on Council land under the Impounding Act 1993. This power is often exercised. Any impounded signage may be returned to its owner subject to payment of impounding fees and any unclaimed signage is disposed of.

Enforcement action with regard to illumination of existing signage (either approved or permitted as exempt development) is problematic. AS4282-2019 is a very technical document which makes it difficult to monitor compliance with its requirements. Council enforcement staff do not have the expertise to monitor compliance with the standard, which can only be undertaken by a suitably qualified person i.e. a lighting engineer.

It should be noted that if enforcement staff required a business operator to demonstrate compliance with AS4282-2019 or if a complainant is required to demonstrate that signage does not comply with AS4282-2019, an assessment by a lighting engineer could cost each party respectively up to \$2,000 depending on the circumstances. Likewise Council would bear this cost for initiated enforcement action.

### **The use and proliferation of sandwich board and other mobile signage**

All signage DCPs/policies of other north coast councils that were reviewed (Tweed, Ballina and Lismore) prohibit the use of A frame signage on Council owned land including footpaths. Staff recommend that Byron Shire adopt the same strategy.

SEPP 64 prohibits the use of signage on a trailer parked within a road reserve. Further, DCP 2014 provides that signage mounted on or attached to stationary vehicles or trailers are generally considered to be undesirable. In this regard, the language of the DCP could be amended so that it is clearly communicated that this type of signage will not be supported by Council.



**Business community engagement**

Following Council's consideration and resolution of this report, staff will engage with the business community regarding self assessment and review of signage with a view to seek compliance with current standards and a responsibility to support the character of towns and villages.

**STRATEGIC CONSIDERATIONS**

***Community Strategic Plan and Operational Plan***

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 4: We manage growth and change responsibly</b>	4.1 Support the visions and aspirations of local communities through place-based planning and management		4.1.3 Manage development through a transparent and efficient assessment process			

***Legal/Statutory/Policy Considerations***

Byron LEP 2014 was gazetted on 21 July 2014. Byron Shire DCP 2014 was adopted by Council on 26 June 2014 and came into effect on 21 July 2014.

These two documents establish the local assessment criteria for signage within Byron Shire and may be amended to resolve the issues identified within this report.

***Financial Considerations***

Not applicable.

***Consultation and Engagement***

Not applicable.