



# Byron Shire Council



## Agenda

### Ordinary (Planning) Meeting Thursday, 17 September 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 13 August 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**

- |       |   |    |
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| 13.1  | PLANNING - 26.2019.10.1 Planning Proposal North Beach Byron.....  | 5  |
| 13.2  | PLANNING - 26.2019.1.1 - Planning Proposal for an amendment to Byron LEP 2014 to permit Community Title subdivision and dwellings at Lot 38 DP 1059938, Alidenes Road, Wilsons Creek.....   | 14 |
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| 13.6  | PLANNING - Report of the 13 August 2020 Planning Review Committee .....   | 40 |
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# **BYRON SHIRE COUNCIL**

## **ORDINARY (PLANNING) MEETING**

***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 - 26.2019.10.1 Planning Proposal North Beach Byron**

**Directorate:**                      Sustainable Environment and Economy

**Report Author:**                Rob Van Iersel, Major Projects Planner

**File No:**                            I2020/665

**Summary:**

Council has received a request to amend Byron Local Environmental Plan (BLEP) 2014 to rezone land immediately to the north-west of the Elements of Byron resort at Belongil. The site includes a number of properties under one ownership.

The land had previously been used as a private golf course associated with a former tourist facility on the land. In more recent times it has been used to accommodate the Byron Writer's Festival.

The rezoning request has been made to facilitate a residential subdivision of the land to create nine (9) larger residential lots, each with provision for a single dwelling.

Part of the subject land is zoned SP3 Tourist under Byron Local Environmental Plan 2014, with other parts of the land deferred, retaining the zoning under Byron Local Environmental Plan 1988, including 2(t) Tourist Area, 7(a) Wetlands, 7(b) Coastal Habitat and 7(f1) Coastal Lands.

The requested rezoning relates primarily to the cleared grassed parts of the land, to implement a zoning of E4 Environmental Living. This zoning has not previously been applied within LEP 2014, and this would be the first property zoned as such.

The objectives of the E4 Environmental Living Zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*

In this case, the significant values of the land relate to its beachfront location and the potential ongoing implications of coastal processes.

To address this, the applicant has commissioned a detailed Coastal Hazards Assessment, which provides contemporary modelling to establish the likely location of the erosion escarpment in years 2050, 2070, 2100 and 2120.

The modelling approach, which includes allowance for sea-level rise, was agreed by staff of the Department of Planning, Industry and Environment Coastal Division, and forms a sound basis for the hazard assessment.

The modelling shows that the contemporary 100 year hazard line (i.e. for the year 2020) is located approx. 135m seaward of the previously mapped 100 year hazard line, which was used as the basis of the 7(f1) Coastal Land zoning and associated DCP Part J erosion precincts. The previous mapping was based on analysis from the 1970s.

The contemporary modelling demonstrates that the area within the site that is subject to coastal hazard is far smaller than previously understood.

The land owners requested that the E4 Environmental Living zone be applied over the whole of the cleared parts of the property, including parts of the property seaward of the contemporary 100 year hazard line; suggesting that Development Control Plan (DCP) provisions could address coastal hazards for the part of the land identified as subject to coastal hazards (i.e. seaward of the 100 year hazard line).

Council is currently working on a Coastal Management Program (CMP) for the whole of the Shire. Amongst other things, the CMP will identify land subject to coastal hazard, by way of contemporary “probabilistic” modelling similar to that undertaken for the land subject to this rezoning request. The Program will also develop policies for how that land will be managed.

5 It is considered that, pending completion of the Coastal Management Program, it is premature to rezone land that is subject to identified coastal hazard.

10 It is recommended, therefore, that the E4 zone be applied to the cleared parts of the site located landward of the contemporary 100 year coastal hazard line (i.e. land not subject to coastal hazards), but that the current 7(f1) Coastal Land zoning remain in place for the part of the site located seaward of the contemporary 100 year hazard line, pending completion of the Coastal Management Program, at which time it could be reviewed.

15 In addition to the requested E4 Environmental Living Zone, the land owner has previously agreed to Environmental Protection Zones E2 and E3 being applied over the vegetated parts of the property, as part of the wider “E zone review” process.

20 For completeness, it is recommended that these environmental zones be applied through this Planning Proposal, so that the property can be addressed as a whole.

The request for rezoning has been accompanied by a detailed site-specific coastal hazard study, a flood study and ecological assessment.

25 Preliminary assessment of those studies indicates that, while there are some issues to be fully resolved, the Planning Proposal can be progressed to Gateway. It is therefore recommended that Council prepare the Planning Proposal, and forward it to the Department of Planning, Industry and Environment for a Gateway Determination.

30 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.

**RECOMMENDATION:**

1. **That Council prepare a planning proposal to rezone a section of land at North Beach Byron to E4 Environmental Living, and implement the agreed E2 and E3 environmental zones across the site (Attachment 1 E2020/67667), and forward the proposal to the Department of Planning, Industry and Environment for Gateway determination.**
2. **That the planning proposal be placed on public exhibition in accordance with the Gateway determination, and that Council receive a further report at the end of the exhibition period detailing submissions made.**
3. **That the current 7(f1) Coastal Land zoning remain in place for the part of the site located seaward of the contemporary 100 year hazard line, pending completion of the Coastal Management Program, at which time it can be reviewed.**

**Attachments:**

- 40
- 1      26.2019.10.1 Plan Set - Proposed Rezoning, E2020/67667 

**REPORT**

**1. The Site**

5

<i><b>Property</b></i>	<i><b>Total Area (ha)</b></i>	<i><b>Zoning</b></i>	<i><b>Existing Uses</b></i>
Lot 1 DP 1215893	32.73	LEP 2014: SP3 Tourist LEP 1988 2(t) Tourist Area 7(a) Wetland 7(f1) Coastal Lands	Elements of Byron resort
Lot 2 DP 1215893	2.02	LEP 2014: SP3 Tourist LEP 1988: 7(f1) Coastal Lands	Vacant
Lot 12 DP 243218	2.73	LEP 2014: SP3 Tourist LEP 1988: 7(f1) Coastal Lands	Vacant
Lot 13 DP 243218	3.95	LEP 2014 SP3 Tourist LEP 1988 7(f1) Coastal Lands	Vacant
Lot 449 DP 812102	32.08	LEP 2014: SP3 Tourist LEP 1988: 2(t) Tourist Area 7(a) Wetland 7(b) Coastal Habitat 7(f1) Coastal Lands	Vacant
Lot 4 DP 1215893	2.27	LEP 2014: SP3 Tourist LEP 1988: 2(t) Tourist Area	Vacant
Lot 1 DP 1215814	1.20	LEP 2014: SP3 Tourist LEP 1988: 2(t) Tourist Area	Vacant

The property is shown in the attached plan set, and is located as shown below:





## 2. Development History

- 5 The property has an extensive history of approvals, the key approvals ones being:

**Lot 1 DP 1215893** (i.e. Elements resort site; previously Lot 10 & 11 DP 243218)

BA 85/2470 Construction of 32 holiday cabins.

5.1987.208.1	Tourist Accommodation, comprising 161 x 2 and 3 room cabins and the use of an existing 32 cabins (total 193 cabins)	Approved 11/08/1987
5.1995.197.1	Restaurant for up to 200 persons	Approved 18/08/1995
5.1996.319.1	Extensions to conference facility	Approved 18/11/1996
5.1987.208.2	Modify the design of cabin number 82	Approved 20/12/2012
5.1987.208.3	Modification of the approval, incorporating design modernisation and reconstruction of 75 cabins (Stage 1A of the Elements Resort)	Approved 22/11/2013
5.1987.208.4	Relocate and modernise the design of 22 of 193 previously approved cabins (Stage 1B of the Elements Resort)	Approved 20/02/2015
5.1987.208.5	Modify the Design and Siting of 96 Tourist Accommodation Cabins (Stage 2 of the Elements Resort)	Approved 06/03/2016



10.2013.562.1	North Byron Beach Resort Central Facilities Building	Approved 12/06/2014
10.2018.406.1	Change of Use from Designated Outdoor Smoking Area to Office and Minor Building Alterations	Approved 14/11/2018

**Lot 4 DP1215893**

10.2018.132.1	Car parking associated with craft beer & cider festival at Sun Bistro	Approved 30/11/2018
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**Whole of Property**

10.2011.124.1	Byron Bay Writers Festival 2011, 2012 & 2013	Approved 21/07/2011
10.2012.138.1	Temporary Camping Ground for 2012 Splendour in the Grass	Approved 19/06/2012
10.2012.269.1	Temporary use of the site for small cultural events (with some camping)	Approved 18/04/2013
10.2015.274.1	Temporary event (Byron Bay Writers Festival) to be held annually for the years 2015 and 2016	Approved 30/7/2015
10.2015.584.1	Subdivision of 11 lots into 9 lots	Approved 29/01/2016

**3. Description of the site**

Property is constrained by:

- Acid Sulfate Soils (Class 3)
- Bush Fire Prone Land
- Coastal Erosion Precinct 3
- Flood Prone Land
- High Environmental Value Vegetation

5 The land is located at the northern end of Bayshore Drive. All of the subject land is owned by Ganra Pty Ltd.

10 Lot 1 contains the approved Elements of Byron resort. That lot is only affected by the "E zone review" component of the rezoning. The E4 zone is not proposed to be applied to the resort lot.

The remaining lots are vacant.

15 The north-eastern boundary of the land abuts vegetated sand dunes of Belongil beach. The Belongil Creek mouth is located at the south-east end of the subject land.

20 Immediately north of the Elements resort, the land is predominantly cleared, having been used in the 1980s as a private golf course. An existing 3.0 m wide Right of Way is located in this area, across Lot 2 DP 1215893 & Lot 12 DP 243218, connecting public parking areas on Bayshore Drive and the beach, to provide for public access to the beach.

Further to north and west, substantial parts of the site are heavily vegetated, with revegetation works having been successfully implemented by the land owner, particularly in the north-west parts.

25 The whole of the site is generally flat, with levels averaging around RL 1.8 to 2.2 m AHD throughout the central part. It rises to the rail line to approximately RL 3.0 m AHD, and to a ridge along the north-eastern sand dunes at around RL 7.5 to 10.0 m AHD.

Two main drainage lines traverse the site, draining to Belongil Creek, with a number of artificial water bodies located across the property.

#### **4. Proposed Zone Changes**

The proposal to alter the existing zoning of the site has two components.

The first, the land owner requested proposal, seeks to apply an E4 Environmental Living zone over the cleared part, to facilitate a subdivision of the land to create nine (9) single dwelling lots.

The second component relates to Council's "E Zone Review". Separate to the rezoning request, the land owners have agreed to the application of Environmental Protection Zones over the vegetated parts of the site that are currently 'deferred' under BLEP 2014.

Details of both rezoning proposals are outlined below, and shown in the attached plan set.

#### **Land owner request**

The land owner's rezoning request is supported by a Coastal Hazards Assessment undertaken for the site by Royal Haskoning DHV. That assessment maps 50, 80 and 100 year coastal erosion hazard lines for the site, based on contemporary "probabilistic" modelling. The modelling approach was agreed by staff of the Department of Planning, Industry and Environment Coastal Division, and therefore forms a sound basis for the hazard assessment.

The modelling shows that the contemporary 100 year erosion hazard line is located approx. 135m seaward of the 100 year hazard line that previously formed the basis of the 7(f1) zoning and Part J erosion precincts, demonstrating that the area within the site that is subject to coastal hazard is far smaller than previously thought.

The land owner requested that the E4 Environmental Living zone be applied over the whole of the cleared part of the site, including the land located seaward of the contemporary 100 year hazard line; suggesting that Development Control Plan (DCP) provisions could address coastal hazards for the land identified as subject to coastal hazards (i.e. seaward of the 100 year hazard line).

Council is currently working on a Coastal Management Program (CMP) for the whole of the Shire. Amongst other things, the CMP will identify land subject to coastal hazard, by way of contemporary "probabilistic" modelling similar to that undertaken for this rezoning request. The Program will also develop policies for how that land will be managed.

It is considered that, pending completion of the Coastal Management Program, it is premature to rezone land that is subject to identified coastal hazard.

It is recommended, therefore, that the E4 zone be applied to the cleared part of the site located landward of the identified 100 year coastal hazard line (i.e. land not subject to coastal hazards), but that the current 7(f1) Coastal Land zoning remain in place for the part of the site located seaward of the contemporary 100 year hazard line, pending completion of the Coastal Management Program, at which time it could be reviewed.

The table below provides a summary of the recommended change in zoning for each of the affected lots, with the proposed zoning shown in the attached plan set.

<b>Property</b>	<b>Current Zone</b>	<b>Proposed Zone</b>
Lot 2 DP 1215893	SP3 Tourist	E4 Environmental Living for part of western frontage
	7(f1) Coastal Lands	E4 Environmental Living

<b>Property</b>	<b>Current Zone</b>	<b>Proposed Zone</b>
		landward of 100 year coastal hazard line
Lot 12 DP 243218	SP3 Tourist	E4 Environmental Living
	7(f1) Coastal Lands	E4 Environmental Living landward of 100 year coastal hazard line
Lot 13 DP 243218	SP3 Tourist	E4 Environmental Living
	7(f1) Coastal Lands	E4 Environmental Living landward of 100 year coastal hazard line
Lot 449 DP 812102	7(f1) Coastal Lands	E4 Environmental Living over cleared portion landward of 100 year coastal hazard line
	2(t) Tourist Area	E4 Environmental Living over cleared portion

**Proposed E4 Zone**

E4 Environmental Living is a zone that has not previously been applied in Byron Local Environmental Plan 2014. It is intended as a zone for land with special environmental or scenic values where residential development can be accommodated. Development in this zone is to give priority to preservation of the environmental qualities of the land

Within the State Government's Standard LEP Template, the description of the zoning is:

**1. Objectives of zone**

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- To ensure that residential development does not have an adverse effect on those values.*

**2. Permitted without consent**

*Home occupations*

**3. Permitted with consent**

*Dwelling houses; Oyster aquaculture; Pond-based aquaculture; Tank-based aquaculture*

**4. Prohibited**

*Industries; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3*

Council is able to build on this development table, subject to the following guidance:

*The following must be included as either "Permitted without consent" or "Permitted with consent" for this zone:*

*Environmental protection works*

*Roads*

*Home industries may (but need not) be included as permitted with consent.*

Based on that, and in the circumstances of the proposed rezoning, the E4 Environmental Living zoning table is proposed as shown below (land uses added are shown in *italic*):

**Zone E4 Environmental Living****1. Objectives of zone**

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.

**2. Permitted without consent**

*Environmental protection works; Home occupations*

**3. Permitted with consent**

Dwelling houses; Oyster aquaculture; Pond-based aquaculture; *Roads*; Tank-based aquaculture

**4. Prohibited**

*Home industries; Industries; Residential accommodation; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3*

**Lot Size & Dwelling Density**

A minimum lot size of 1ha is proposed for the E4 Environmental Living zone, which will help maintain the open 'green' amenity of the land. Further controls are proposed to limit development to one dwelling per lot.

**E Zone Review**

The land owner has agreed to the application of environmental zones as part of the wider E Zone review process. Given that agreement, it is reasonable that the implementation of the E2 and E3 zones be amalgamated into the Planning Proposal for the site.

<b>Property</b>	<b>Current Zone</b>	<b>Proposed Zone</b>
Lot 1 DP 1215893	7(f1) Coastal Lands	No change
	2(t) Tourist Area	part E2 Environmental Conservation part E3 Environmental Management
	7(a) Wetland	E2 Environmental Conservation
Lot 2 DP 1215893	7(f1) Coastal Lands	No change
Lot 12 DP 243218	7(f1) Coastal Lands	No change
Lot 13 DP 243218	7(f1) Coastal Lands	No change
Lot 449 DP 812102	7(f1) Coastal Lands	No change
	2(t) Tourist Area	E2 Environmental Conservation over vegetated part
	7(a) Wetlands	E2 Environmental Conservation
	7(b) Coastal Habitat	E2 Environmental Conservation
Lot 4 DP 1215893	2(t) Tourist Area	E2 Environmental Conservation over vegetated part
Lot 1 DP 1215814	2(t) Tourist Area	E2 Environmental Conservation over vegetated part

## 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	4.1.3.10	Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps

#### 5 ***Legal/Statutory/Policy Considerations***

This planning proposal would amend the Byron Local Environmental Plan 2014 as discussed in the report.

#### 10 ***Financial Considerations***

If Council chooses to proceed with the planning proposal, it will be at the proponent's expense as an applicant initiated planning proposal. Full cost recovery of the remaining stages will be undertaken by Council. If the applicant chooses not to pay then the planning proposal will not proceed.

If Council chooses not to proceed then the matter does not incur any additional costs.

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

No consultation has occurred at this stage. Consultation will occur after a Gateway determination.



**Report No. 13.2**      **PLANNING - 26.2019.1.1 - Planning Proposal for an amendment to Byron LEP 2014 to permit Community Title subdivision and dwellings at Lot 38 DP 1059938, Alidenes Road, Wilsons Creek**

**Directorate:**      Sustainable Environment and Economy

**Report Author:**      Alex Caras, Land Use Planning Coordinator

**File No:**      I2020/1081

**Summary:**

Council at its 12 December 2019 meeting considered a [report](#) to amend Byron LEP 2014 to permit Community Title Subdivision and dwellings at Lot 38 DP 1059938 Alidenes Road (12.27 ha), Wilsons Creek. The report was deferred so that staff could further liaise with the proponent to discuss differing views regarding management of key fish habitat, traffic impacts, flooding and minimum lot size for the subject land.

Staff have since held ongoing discussions with the proponent to see if there may be common ground on any of the above issues, however the parties have been unable to reach agreement on the most fundamental of these. The purpose of this report is to provide a summary of the key issues and outcomes relating to further discussions held with the proponent since January 2020. The report requests that councillors decide between the following two (2) options in moving forward with this planning proposal:

- Proceed with an amended planning proposal based on inserting a 'Schedule 1 Additional Permitted Uses' listing in LEP 2014 that would permit a community title subdivision of up to 15 neighbourhood lots/dwellings, with the common 'residue' lot to include the Yankee Creek waterway and suitable riparian buffers. **(Recommended)**
- Proceed with a planning proposal based on the proponent's request to apply a combined *E3 Environmental Management* and *R5 Large Lot Residential* zoning over the subject land, with the E3 zone encompassing the 'residue' lot comprising the Yankee Creek waterway and riparian zone (excluding "flood free" land) and applying a Minimum Lot Size of 0.3 ha to the remaining R5 zone.

**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 Council:**

1. **Proceed with a planning proposal based on inserting a 'Schedule 1 Additional Permitted Uses' listing in LEP 2014 that would permit a community title subdivision of up to 15 neighbourhood lots/dwellings, with the common 'residue' lot to include the Yankee Creek waterway and suitable riparian buffers;**
2. **Amend wording of Council's Planning Proposal (pages 12 & 36 in Attachment 2 – E2019/85691) to clarify that "Council does not support any new lots or dwellings having access from Wilson's Creek Road due to safety issues with the access point";**

3. **Remove the following sentence from ‘Section D’ and ‘Summary’ section of Council’s planning proposal (pages 36, 38 in Attachment 2 – E2019/85691): “*Limiting the dwelling yield to 15 dwellings addresses this concern*”.**
4. **Amend and forward the planning proposal to the NSW Department of Planning, Industry and Environment for a Gateway determination.**
5. **Pending a positive Gateway determination undertake public exhibition of the planning proposal in accordance with the determination requirements.**
6. **Consider a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption.**

**Attachments:**

- 5 1 Staff response to issues raised in letter provided to Councillors by the landowner, dated 10/12/19, E2020/67994 
- 2 Planning Proposal 31 Alidenes Rd, Wilsons Creek (Council's amended version, as attached to 12 December 2019 Council report), E2019/85691 

## REPORT

### Background

5 Council at its 12 December Planning Meeting considered a [report](#) to amend Byron LEP 2014 to permit Community Title Subdivision and dwellings at Lot 38 DP 1059938 Alidenes Road (12.27 ha), Wilsons Creek. The matter was deferred (**Res 19-675**) so staff could:

10 “... *liaise with the proponent to discuss differing views and provide advice on the following matters at the next available Planning Meeting:*

1. *Mapping of Yankee Creek as Key Fish Habitat.*
2. *Traffic impacts and appropriate intersection designs, including access from Wilsons Creek Road (without increasing from current access users) and upgrading Alidenes Road.*
- 15 3. *Flood, including filling of some flood prone land and clarity on the area affected by the 1% ‘2100yr’ climate change flood event and 30m riparian buffer to Yankee Creek and therefore, clarifying the amount of the site that is developable.*
4. *The most appropriate Minimum Lot Size capable of treating wastewater generated on the land.”*

20 The above resolution was also in response to a letter provided to Councillors by the landowner dated 10/12/19. A copy of this letter together with the staff response to issues raised is contained in Attachment 1.

### 25 Planning Proposal (from proponent)

The [original planning proposal](#) lodged by the proponent in February 2019 and considered at the 12 December 2019 Council meeting, requested that all of the subject land be included in an *R5 Large Lot Residential* zone with a Minimum Lot Size of 0.3 ha and a prospective lot yield of 30.

30 Recently the proponent has proposed a variation to the planning proposal that includes a combined *E3 Environmental Management* and *R5 Large Lot Residential* zoning for the subject land, with the E3 zone encompassing the ‘residue’ lot comprising the Yankee Creek waterway and suitable riparian buffers, while retaining a Minimum Lot Size of 0.3 ha for R5 Large Lot Residential zone. The applicant has not indicated a MLS for the E3 zone or the predicted lot yield from a combined R5/E3 zoning. Although a revised planning proposal for this scenario has not been submitted, Council estimates this would equate to a potential lot yield of 21. Under this scenario responsibility for the future management of Yankee Creek is uncertain.

### 40 Planning Proposal (revised by Council)

An amended planning proposal was prepared by staff and considered at the 12 December 2019 Council meeting (Attachment 2) to permit:

- 45 ▪ A subdivision using a neighbourhood community title scheme enabling up to 15 neighbourhood lots. Each lot can be privately owned. It will also include one lot comprising the residue of the land that will be in shared ownership and will contain the main Yankee Creek waterway (including a riparian buffer) that runs through the land.
- Each privately owned lot will be limited to only one dwelling.

### 50 Subject Land

55 The subject land is described as Lot 38 DP 1059938, Alidenes Road, Wilsons Creek. It is an area of 12.27 hectares with approximately 550 metres frontage to Alidenes Road and approximately 170 metres frontage to Wilsons Creek Road. The site is burdened by a 10-metre wide Right of Carriageway that provides access to Lot 1 DP 701525 (southwest of subject land) from Alidenes

Road. It is also burdened by two 10-metre wide easements for pipelines that stem from the old Mullumbimby power station and run along the Wilsons Creek Road boundary. The land previously contained two dwellings and one of these was recently demolished, with a replacement dwelling approved this year.

5



Figure 1 - Subject site showing old Mullumbimby power station at southern boundary

### Summary of Key Issues and Outcomes from further discussions with proponent

- 10 Since the 12 December Council report, staff and specialist consultants have held numerous discussions with the proponent to see if there may be common ground on the issues identified in Resolution **19-675**. Unfortunately the parties remain unable to reach agreement on the most fundamental of these issues as discussed below:

#### 15 **(i) Mapping of Yankee Creek as Key Fish Habitat and required buffers**

##### Proponent requests:

- that staff regard Yankee Creek as only “minimal” key fish habitat due to its ephemeral nature and its current degraded state;
- that staff remove 30m buffer to Yankee Creek as it does not represent the actual (technical) riparian zone, the extent of which should be defined by the flood mapping;
- 20 ▪ An arbitrary 30m minimum riparian buffer is contrary to the *Water Management Act 2000*

##### Planning staff response:

- 25 A 30m minimum riparian buffer has been applied to Yankee Creek having regard to Council's *Design Guidelines for On-Site Sewage Management for Single Households* (5.1.6 Buffer Distances) and DPI's *Policy and guidelines for riparian and freshwater aquatic vegetation* (section 3.2.4.2).

- 30 Although recommended buffer distances in these documents are not absolute, given their consistency with the Office of Water document titled “[Guidelines for riparian corridors on waterfront land](#)” (see Table 1 below), it remains staff's position that a minimum 30m buffer for 3rd order streams represents best practice planning in the absence of a site inspection by a suitably qualified ecologist to verify the habitat sensitivity, waterway class and riparian buffers for this section of Yankee Creek.

Table 1. Recommended riparian corridor (RC) widths

Watercourse type	VRZ width (each side of watercourse)	Total RC width
1 <sup>st</sup> order	10 metres	20 m + channel width
2 <sup>nd</sup> order	20 metres	40 m + channel width
3 <sup>rd</sup> order	30 metres	60 m + channel width
4 <sup>th</sup> order and greater (includes estuaries, wetlands and any parts of rivers influenced by tidal waters)	40 metres	80 m + channel width

The *Water Management Act 2000* relates primarily to “controlled activities” and other development near a watercourse. The provisions are really a consideration at the DA stage and not relevant to determining suitable riparian buffers at the planning proposal stage, particularly where a coordinated management framework for Yankee Creek needs to be in place.

Notwithstanding this, the 30m buffer that staff have applied to Yankee Creek is consistent with the recommended riparian corridor (RC) widths by the NSW Office of Water (see Table 1 above) and the water management principles set out in the *Water Management Act 2000*. The need to keep this buffer free of development is also consistent with NSW DPI’s [Policy and guidelines for fish habitat conservation and management](#) (2013 update) – section 3.2.4.2.

It is also noted that the SEPP Biodiversity Values map shows a riparian corridor around Yankee Creek that is at least 30 metres wide. The *Biodiversity Conservation Regulations 2017* refer to such land as:

**CI 7.3 (3) (e) ”land that is identified by the Environment Agency Head as protected riparian land,**

Whilst the above legislation does allow for certain non-riparian land uses to occur within the outer 50% of protect riparian land, staff are of the view that a 30 metre minimum buffer should form part of the riparian zone to be managed on the subject site into the future.

#### **(ii) ‘Community Title’ vs ‘Torrens Title’ Subdivision AND Preferred Zoning**

##### **Proponent requests:**

- a zoning that enables Torrens Title subdivision, as putting watercourses in the collective ownership of a “community” with no individual private ownership will not work;
- application of a split R5 / E3 zone on subject land with an *E3 Environmental Management* zone encompassing the ‘residue’ lot comprising the Yankee Creek waterway and suitable riparian buffers, while retaining a Minimum Lot Size of 0.3 ha in the *R5 Large Lot Residential* zone;
- ability to prepare a Vegetation Management Plan (VMP) “post gateway which could be applied by a restriction on title and require rehabilitation of Yankee Creek to an agreed level prior to this issue of a subdivision certificate for any future DA”.



**Planning staff response:**

Staff consider that a future Torrens Title subdivision will not deliver a coordinated management framework for Yankee Creek and associated riparian buffer. As stated in the 12 December Council report: *"Given the complex drainage of the subject land and the biodiversity value of Yankee Creek (as key fish habitat), this outcome is best achieved by a Community Title development and a Schedule 1 listing in LEP 2014, rather than application of the R5 zone with an arbitrary minimum lot size. A Community Title development also has the advantages of shared internal access roads and waterway crossings, the potential for collective onsite wastewater management systems and disposal areas, suitable buffers to Yankee Creek and greater flexibility for 'private' lot sizes."*

In addition, the application of a split R5 / E3 zoning on this land has the following shortcomings to achieving the above aim:

- an R5 Large Lot Residential zone allows for secondary dwellings and other land uses that cannot be controlled (ie. prohibited) by Schedule 1 in BLEP 2014; only the latter can ensure that each privately owned lot will be limited to only one dwelling.
- Council cannot legally require community title development over any part of land in a future R5 Large Lot Residential zone;
- an E3 Environmental Management zone also permits uses such as dwelling houses and dual occupancies which is at odds with the nature of Yankee Creek and its riparian zone objectives. Council has not typically placed small waterways such as Yankee Creek in a separate zone;
- LEP 2014 clause '4.1D Exceptions to minimum subdivision lot sizes for certain split zones' currently does not apply to E2 or E3 zones and would need to be amended to include these. Even if clause 4.1D was amended to capture the E3 zone and assuming a 40ha Minimum Lot Size were applied (or anything > 10ha), the end result is that one of the R5 lots would have to contain ALL of the E3 zoned watercourse/riparian area. This is not an acceptable outcome for the subject land;
- A hybrid R5 zone (both Torrens and Community Title arrangement) is likely to create a confusing rural residential estate that could be 'messy' to recommend in a planning proposal, let alone justify to Council and the Department of Planning, Industry and Environment.

Regarding the proponent's suggestion that a Vegetation Management Plan (VMP) can be created prior to, or as part of, a future subdivision DA for this site — it is noted that such a plan has a finite life (generally 5 years) beyond which the long term and ongoing management of Yankee Creek would remain uncertain.

On the other hand, a VMP that forms part of a Community Neighbourhood Scheme can better deliver a consistent and coordinated management framework over the long term. Furthermore, under a community title scheme Council only has to deal with 1 entity (neighbourhood association) for any non-compliance issues arising from future activities and management of the common lot. A community title scheme also has the advantages of shared internal roads and waterway access, the potential for collective onsite wastewater management systems and disposal areas, suitable buffers to Yankee Creek and greater flexibility for 'private' lot sizes.

***(iii) Flood, including filling of some flood prone land and clarity on the area affected by the 1% '2100yr' climate change flood event and 30m riparian buffer to Yankee Creek and therefore, clarifying the amount of the site that is developable.***

**Proponent requests:** (from email of 23/06/2020)

- Staff accept the proponent's modelling showing 8.4ha of subject land as being flood free and hence developable. This is based on very minor works involving either shallow swales or earth bunds up to 0.5m in depth or height to remove surface sheet flow in the western corner of the site, thereby removing this section of flood prone area in the flood mapping;

- Staff remove 30m buffer to Yankee Creek as: (a) does not represent the actual riparian zone, (b) is contrary to the Water Management Act 2000 guidelines and (c) the parameters in the proponent's flood modelling are sufficient to support reasonable buffers to Yankee Creek).

**Planning staff response:**

- 5 Staff are not opposed to minor flood mitigation works in the far western part of the site, which could potentially reduce the total area of flood-affected land by up to 0.18ha. Overall this is considered inconsequential.

10 The main area of disagreement, however, seems to be around the *purpose* vs the *technical definition* of a riparian zone for the subject land. Staff acknowledge that a riparian zone includes the immediate vicinity of the stream, which consists of the bed, banks and adjacent land, and may include the floodplain (or part of it). But for reasons outlined in the above response to issue (i) and given that improving the water quality and riparian habitat/biodiversity values of Yankee Creek are key issues for this site, a 30 metre minimum buffer is warranted (even if on flood-free land) and should form part of the riparian zone to be managed into the future.

15

**(iv) The most appropriate Minimum Lot Size capable of treating wastewater generated on the land."**

**Proponent requests:**

- 20 Minimum Lot Size of 0.3 ha (3,000m<sup>2</sup>) be applied based on the On-site Sewage Management Systems (OSMS) assessment provided with the applicant's planning proposal;

**Planning staff response:**

25 Based on the advice and further modelling undertaken by Council's specialist OSMS consultant (ie. as part of Council's review), the proponent has been consistently advised that: *"in order to accurately assess the site's OSMS capability — given the obvious constraints with respect to watercourses, gullies and intermittent streams — a proposed lot layout, with dwelling and effluent envelopes and nominated buffers to Yankee Creek and drainage channels would need to be supplied based on a site specific soil assessment of the proposed lots. In the absence of this information, a minimum lot size of 3,000m<sup>2</sup> cannot be supported for this planning proposal."*

30 This proponent was also advised that the OSMS modelling must consider the capability of the site to assimilate treated effluent on a 'catchment basis'; **therefore the smaller the lot (or cumulative lots across the site), the larger the land application area required to disperse treated effluent.** The OSMS assessment provided with the applicant's planning proposal does not satisfy this requirement.

35 **Issues where some agreement was reached (partly or fully)**

**(v) Traffic impacts and appropriate intersection designs, including access from Wilsons Creek Road (without increasing from current access users) and upgrading Alidenes Road**

**Proponent requests:**

- 40 Minimum Lot Size of 0.3 ha (3,000m<sup>2</sup>) be applied based on the On-site Sewage Management Systems (OSMS) assessment provided with the applicant's planning proposal;
- 45 That staff acknowledge that the following statements made in the 12 December 2019 Council report are incorrect
- (p163) regarding the need to *"limit the traffic generation to less than 19 dwellings, as any more than 19 dwellings would require a complete redesign of the Alidenes/ Wilsons Creek Road intersection via a Voluntary Planning Agreement"* is incorrect;
- (p165) *"... staff do not support any access from Wilsons Creek Road due to safety issues with the access point"*;
- Remove the following wording in 'Section D' and 'Summary' sections of Council's planning proposal (pages 36, 38) highlighted in **yellow** below:

*“Council considers that the applicant must upgrade Alidenes Road from Wilsons Creek Road through to Robinsons Road if they propose 20 or more dwellings. **Limiting the dwelling yield to 15 dwellings addresses this concern**”.*

**5 Planning staff response:**

(p163) – This relates to ‘Section D’ and ‘Summary’ of Council’s planning proposal (pages 36 & 38 of Attachment 2). Further discussions with Council’s Traffic Engineer have confirmed that the statement that *“any more than 19 dwellings would require a complete redesign of the Alidenes/ Wilsons Creek Road intersection via a Voluntary Planning Agreement”* was incorrect. Although there would be a traffic loading threshold at which an intersection redesign would be required, the SIDRA modelling (undertaken by Ardill Payne) found that this intersection was working satisfactory in 2018 (base case) and would be in 10 years time if fully developed (based on an assumed 30 dwellings).

No change is required to Council’s planning proposal (Attachment 2) as this statement only relates to the 12 December 2019 [report](#).

(p165) – This relates to pages 12 & 36 of Council’s planning proposal (Attachment 2). Further discussions with Council’s Traffic Engineer have confirmed that this statement only applies to new lots/dwellings created on the subject land (ie. access for these must be via Alidenes Road). Council’s Planning Proposal will be amended to clarify this and this forms part of the report recommendations.

(‘Section D’ and ‘Summary’ of Council’s planning proposal) – staff are in agreement with the proponent’s request to remove the wording **highlighted** above and this forms part of the report recommendations.

**vi) Percentage (%) of developable land required for infrastructure and utilities (such as roads and power)**

**Proponent requests:**

- For purposes of determining future dwelling yield, that the 10% figure cited in the December 2019 Council report (p6) should be reduced to reflect that internal ‘community title’ road requirements (min 5.5 m width) are less than public road dedication in R5 Zone (min 14m width)

**Planning staff response:**

Based on discussions with the proponent and advice from Council’s traffic engineer relating internal ‘private’ road requirements, it was determined that a 5% allowance for infrastructure is more appropriate if future subdivision occurred under ‘community title’. Whilst applying this lower % increases the potential developable land area to approximately 6.2 ha (previously 5.85ha), the calculated dwelling yield is still only 15 dwellings under the methodology applied in the 12 December 2020 council report (ie. 6.2ha / 0.4 MLS = 15.4 dwellings, rounded down to the nearest dwelling multiple).

**vii) Access to any future development from Alidenes Road**

**Proponent requests:**

- Ability to create more than 2 access points off Alidenes Road to minimise impacts on waterways from road/bridge crossings on subject land.

**Planning staff response:**

Advice from Council’s traffic engineer is as follows:

- Having more than 2 access point to minimise impacts on waterways from road/bridge crossings may be accepted under certain circumstances, where adequately justified; and
- Such a scenario (as part of any future DA) would need to be supported with a traffic impact study in accordance with Chapter B4 of the DCP to identify the type of access required for the catchment and internal road requirements but not limited to.

## CONCLUSION AND OPTIONS GOING FORWARD

Following Council's deferral of this matter in December 2019 staff have been in ongoing discussions with the proponent to see if there may be common ground on the issues identified in Resolution 19-675. Whilst there has been some progress on a few issues, unfortunately the parties remain unable to reach agreement on the most fundamental issues relating to this planning proposal. Staff have endeavoured to apply a holistic and precautionary approach to the planning process. Given the exhaustive communication between Council and the Applicant to date on this planning proposal, the most practical way forward is for councillors to choose between the following two (2) options for this planning proposal:

- Proceed with a planning proposal based on inserting a 'Schedule 1 Additional Permitted Uses' listing in LEP 2014 that would permit a community title subdivision of up to 15 neighbourhood lots/dwellings, with the common 'residue' lot to include the Yankee Creek waterway and suitable riparian buffers. **(Recommended);**

OR

- Proceed with a planning proposal based on the proponent's request to apply a combined *E3 Environmental Management* and *R5 Large Lot Residential* zoning over the subject land, with the E3 zone encompassing the 'residue' lot comprising the Yankee Creek waterway and riparian zone (excluding "flood free" land) and applying a Minimum Lot Size of 0.3 ha to the remaining R5 zone.

## STRATEGIC CONSIDERATIONS

### *Community Strategic Plan and Operational Plan*

CSP Objective	CSP Strategy	DP Action	OP Activity
<i>Objective 4: We manage growth and change responsibly</i>	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	4.1.3.10 Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps

### Financial Implications

If Council chooses to proceed with the planning proposal, it will be at the proponent's expense as a landowner initiated planning proposal. Full cost recovery of the remaining stages will be required by Council. If the applicant chooses not to pay then the planning proposal will not proceed.

If Council chooses not to proceed then the matter does not incur any additional costs.

### Statutory and Policy Compliance Implications

*S. 9.1 Directions and SEPPs*

The planning proposal is justifiably inconsistent with some Section 9.1 directions because it:

- has not yet been referred to RFS for bushfire consideration
- introduces site specific provisions
- restricts the potential development of resources on the site

5

These justifiable inconsistencies are all discussed in more detail in the planning proposal in Attachment 2.

10

The planning proposal is consistent with the relevant SEPPs including SEPP 55 (Remediation of Land). These are also discussed in more detail in the planning proposal (Attachment 2).



**Report No. 13.3**                      **PLANNING - 24.2020.15.1 Habitat Stage 5 DCP Amendment Chapter E5**  
**Directorate:**                      Sustainable Environment and Economy  
**Report Author:**                  Isabelle Hawton, Planner  
**File No:**                              I2020/1211

5

**Summary:**

10      At the Planning Meeting of 25 May 2020, Council resolved to exhibit a proposed amendment to Chapter E5 of Byron Development Control Plan 2014, relating to the proposed Stage 5 development at Habitat, Bayshore Drive in the Arts and Industry Estate.

15      An application to amend the Chapter was made in association with Development Application 10.2020.87.1, which seeks consent for additional mixed use development at the site. In addition to retail and commercial components, that application includes proposals for a function centre space, café/restaurant, co-working space, hotel accommodation, apartments and a basement car park.

20      The current DCP Chapter does not provide for all of these components.

25      In accordance with the resolution of Council (**Res 20-197**) the proposed DCP amendment was publically exhibited in June 2020. One submission was received objecting to the proposed DCP amendment.

30      The concerns outlined in the submission relate primarily to the proposed tourist use at the site, which is considered by the objector to be a 'radical change from a local village to a tourist hub', fundamentally inconsistent with the objectives and intent of the DCP.

35      The development application originally proposed a total of 106 short stay rooms. Following discussions with staff, the applicant has reduced the number of hotel rooms to 59 and increased the number of office, wellness, apartment and commercial spaces. The applicant indicates that the short term accommodation is intended as a 'wellness and business hotel', primarily to meet the needs of existing and proposed businesses at Habitat and those in the wider Arts and Industry Estate. In particular, the short term accommodation would be used in conjunction with the function spaces and meeting rooms, for conferences and the like, and in association with the proposed wellness precinct in Stage 5.

40      The applicant acknowledges that the accommodation would not exclusively be used for business tourism and traditional tourists would be able to use the rooms.

45      The current DCP Chapter does not include provisions for short term accommodation. It is based primarily on a live / work model.

50      The concept of short term accommodation linked with business activities at the site (and beyond), while not currently considered in the DCP, has merit and can meet an identified need in the area. Work undertaken for the draft Sustainable Visitation Strategy highlights a shortfall in accommodation for such purposes, and the principals adopted within the Arts and Industry Estate Precinct Plan promote increased collaboration, communication and diversification of business in the area.

Any initial concerns about the scale of the proposed tourist and visitor accommodation have been allayed by the reduction in scale and the mix of proposed uses in the revised plans. It is recommended, therefore, that the Chapter be amended, as set out in Attachment 1.

Amendment of the DCP will not guarantee approval of the development application (DA 10.2020.87.1). Assessment of that application is continuing and, given the scale proposed, determination will be the responsibility of the Northern Regional Planning Panel.

5 **NOTE TO COUNCILLORS:**



- 10 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 adopt the amendments to Byron Shire DCP 2014 Chapter E5 as per Attachment 1 (E2020/26874) and notifies the amendments as required by the Environmental Planning and Assessment Act and Regulation.**

15 **Attachments:**

- 1 24.2020.15.1 Draft Byron Shire DCP 2014 Chapter E5 Certain Locations in Byron Bay and Ewingsdale - amendment request Habitat Stage 5, E2020/26874 
- 2 24.2020.15.1 Submission from local Strata Committee - Habitat DCP amendment, E2020/50916 
- 20

**REPORT**

Council received an application from Planners North (the Applicant) on behalf of Bayshore Development Pty Ltd seeking to amend Chapter E5 of Byron Development Control Plan 2014 (DCP 2014), associated with Development Application 10.2020.87.1 – Mixed Use Development (Habitat Stage 5).

Subject Site

The site is described as Lot 1 & Lot 12 DP 271119, located within the mixed use development known as Habitat, located on the north west edge of the Byron Arts and Industry Estate.

Chapter E5 of Byron DCP 2014 contains a range of controls and guidelines relating to the development of the overall site. The controls are precinct-based, with the current Habitat Precinct Plan shown below in Figure 1. The proposed Stage 5 development is within Precinct 1A.

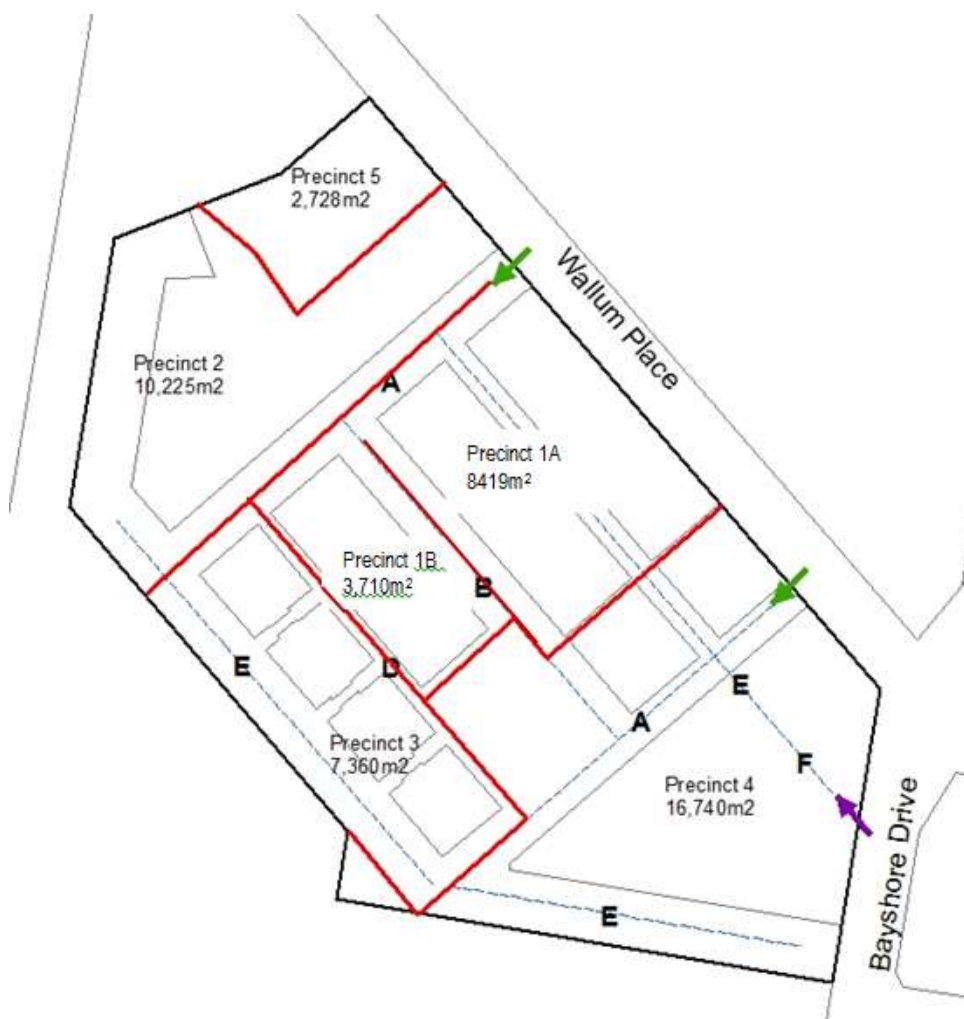


Figure 1 Map E5.3 Habitat Precinct Plan

Background

The site originally received development approval in 2008 (DA 10.2008.360) for a mixed use development comprising residential dwellings, commercial, retail and creative industrial units. Chapter E5 was drafted at that time to facilitate the anticipated development.

Development has subsequently been approved and constructed within Precincts 2, 3 and 4, with some changes to the original concept. A recent development consent – 10.2019.517.1 – was issued for a mixed use development within Precinct 1B.

5 Due to the development being implemented in stages, changes have been made to the original site plan and design concept as Habitat has evolved into a successful mixed use development supporting residential, commercial and industrial purposes. Therefore, several amendments to the DCP have been made across these stages of development.

10 Stage 1: DA 10.2015.353.1 provided for the mixed-use development comprising residential dwellings, commercial and retail units, recreational facilities, associated infrastructure and subdivision – located within Precinct 4. Construction of that stage is complete.

15 Stage 2: Live/ work buildings were approved pursuant to DA 10.2017.4.1. This development application provided for two additional live/work buildings extending on the two buildings approved at stage 1 – located within Precinct 3. Construction is complete and buildings occupied.

20 Stage 3: DA 10.2017.628.1 approved construction of 60 ‘pocket living’ apartments in four buildings in Precinct 2. Construction is complete and most apartments are now occupied.

25 Stage 4: DA 10.2019.517.1 was approved in May 2020 for additional retail and commercial uses and additional at grade car parking. Construction has not yet commenced on that stage. Chapter E5 was amended in association with that application, updating the Habitat Precinct Plan and adjusting the development controls associated with Precinct 1B.

#### Summary of Proposed Changes

30 The proposed amendment to Chapter E5 relates to the proposed stage 5, as outlined in Development Application 10.2020.87.1. The application to amend Chapter E5 of the DCP has been made concurrently with that DA.

35 The changes suggested by the applicant relate to the provisions for Precinct 1A, replacing the nominated land use of ‘tiered living’ with ‘mixed use’. The tiered living use related to the original 2008 concept plan, which proposed individual stand-alone three-bedroom dwellings for this precinct, each two-storey in height and containing a home office.

As the development of Habitat (and the rest of the Arts and Industry Estate) has evolved since then, it is agreed that stand-alone three-bedroom dwellings are not an appropriate use of this land.

40 In addition to altering the nominated land use, the applicant proposed the following amendments:

- Update to Table E5.2 amending minimum setbacks for external property boundary and external roads;
- Update to Table E5.3 to set out the appropriate parking requirements for Precinct 1A; and
- 45 • Update to Map E5.3 – Habitat Precinct Plan adding indicative service access from internal carpark to Precinct 4.

50 In addition to the specific applicant requested changes, it is considered that mix of land uses currently proposed require amendments to the objectives of Section 5.5 Habitat and an update to the Statement of Desired Future Character.

Primarily, these amendments relate to the proposal to introduce short-term accommodation to Habitat.

In additional to commercial development, development application 10.2020.87.1 proposes a total of 59 short stay rooms. The applicant indicates that this short term accommodation is intended as a ‘wellness and business hotel’, primarily to meet the needs of existing and proposed businesses at Habitat and those in the wider Arts and Industry Estate. In particular, the short term accommodation would be used in conjunction with the function centre, for conferences and the like and in association with the proposed wellness precinct in Stage 5.

The applicant acknowledges that the accommodation would not exclusively be used for business tourism and traditional tourists would be able to use the rooms.

The current DCP Chapter does not include provisions for short term accommodation. It is based primarily on a live / work model.

The concept of short term accommodation linked with business activities at the site (and beyond), while not currently considered in the DCP, has merit and can meet an identified need in the area. It is expected that this would add to the vitality of the mixed use precinct.

Work undertaken for the draft Sustainable Visitation Strategy highlights a shortfall in accommodation for such purposes, and the principals adopted within the Arts and Industry Estate Precinct Plan promote increased collaboration, communication and diversification of business in the area.

A key direction of the draft Sustainable Visitation Strategy is to work to diversify tourism in the Shire, in part promoting greater business tourism. Whilst not yet adopted, the Strategy notes that diversifying the tourist economy will shift the dominance of ‘day trip’ tourism and increase the industry’s resilience.

Similarly, State, Regional and local economic strategies note the importance of diversity in business and employment activities, particularly focussing locally on growing the creative and digital based economies.

The inclusion of the meeting rooms, business premises and associated function spaces within the proposed Stage 5 development are directly consistent with these strategy directions and will assist in growing those industry sectors in Byron Bay.

The inclusion of short-term business accommodation at the site will assist in progressing both the tourism and economic strategies by providing where businesses and groups from the regional and beyond can gather and collaborate.

It is also considered that, given the evolution of business in the Shire, particularly within the Arts and Industry Estate, Habitat is an appropriate location for such accommodation.

It is acknowledged that short-term accommodation would not be exclusively used for business tourism at all times, and that ‘traditional’ tourists would be able to stay at the site. The location of the accommodation within Habitat, removed from the Bayshore Drive frontage and more “internally focussed” within the existing development will minimise any external impacts of the tourist use. The short-term accommodation has been concentrated on the southern boundary of precinct 1A further minimising any potential impacts on neighbouring areas.

**Submission**

Council resolved to exhibit the proposed amendment to Chapter E5 of Byron Development Control Plan 2014 at the Planning Meeting of 25 May 2020 (**Res 20-197**).



In accordance with that resolution, the proposed DCP amendment was publically exhibited for a 28 day period in June 2020. One submission was received on behalf of the strata committee of owners of residential units located on the opposite side of Bayshore Drive from Habitat (see Attachment 2).

5 The submission objects to the proposed DCP amendment, primarily due to the proposed tourist use at the site, which is considered in the submission to be a 'radical change from a local village to a tourist hub', which is fundamentally inconsistent with the objectives and intent of the DCP.

10 The primary concerns of the strata committee are listed as:

1. *The amendment is inconsistent with how the development has been presented to the community and is a blatant example of "development creep".*
- 15 2. *The justifications offered for the proposed hotel in Habitat Stage 5 are flimsy and do not withstand critical evaluation.*
3. *The radical change from a local village to a tourist hub will negatively impact our neighbourhood amenity due to increased traffic and patron noise.*
- 20 4. *Increased traffic movement is inconsistent with the Draft Precinct Plan for the A&I Estate, which staff have recommended that Council adopt in their next planning meeting.*

25 The committee express concern over both the nature and scale of the hotel and function centre components of the proposal development, noting that it presents a significant shift in focus "*from a live/work village for locals ....into a major commercial and tourist hub*".

30 The revisions to the initial proposal, and the scaling back of short-term accommodation from 106 to 59 rooms, change the focus for stage 5 from a hotel precinct to a mixed use precinct incorporating retail, commercial, residential and tourist and visitor facilities. This is considered to be directly consistent with the original intent of Habitat and its evolution over time.

35 In terms of the DCP, the current Chapter E5 does suggest residential use for this precinct within the site, but that relates to a dated proposal for stand-alone three bedroom dwellings, which would be less consistent with the existing vibrant precinct that Habitat has become than the proposed mixed of apartments, commercial premises and short-term accommodation.

40 The strata committee note that the number of rooms in the initial proposal is excessive in terms of the business needs of the site. As noted above, the scale of the short-term accommodation component has been significantly reduced, with 59 rooms proposed in the revised proposal.

45 There is a known demand for business tourism more generally in the Shire and the Habitat site is well located to meet that demand. Additionally, there are no significant site constraints that would argue against traditional tourist use of the site, subject of course to merit assessment of traffic, noise etc.

50 The strata committee are concerned that changing the land use in the DCP for this precinct from residential to tourism use results in less housing stock for locals and adds to existing concerns regarding the nature and scale of tourism in the Shire. The revised proposal contains a mix of housing (in the form of apartments) as well as commercial, retail and short-term accommodation premises.

55 Strategies for future residential, business and tourism are in the final stages of development. The draft residential strategy does not rely in any way on dwelling yields from the Habitat site. The Business and Employment Land Strategy acknowledges the importance of the Arts and Industry

Estate in meeting the Shire's future needs, and the Sustainable Visitation Strategy notes the need to diversify the tourism economy and, in particular, promote growth in business tourism.

- 5 The committee's concerns around potential traffic and amenity impacts will be addressed through the assessment of DA 10.2020.87.1. Amendment of the DCP does not inevitably lead to such impacts, as there are design and layout options/ solutions available to mitigate concerns.

Conclusion

- 10 Overall, it is considered that the addition of a 'wellness and business hotel' to the site has merit and will add to the vitality of the mixed use precinct. It is recommended, therefore, that the Chapter be amended, as set out in Attachment 1.

**STRATEGIC CONSIDERATIONS**

- 15 ***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	4.1.3.11	Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps
<b>Community Objective 4: We manage growth and change responsibly</b>	4.3	Promote and support local business development, education and employment opportunities	4.3.1	Facilitate and support sustainable development of our business community		

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

- 20 As per above.

***Financial Considerations***

- 25 The amendment to the DCP was applicant funded as per Council's adopted Fees and Charges.

***Consultation and Engagement***

- 30 The proposed amendments were exhibited for a period of 28 days and received one submission which has been discussed in the report.

**Report No. 13.4**      **PLANNING - 24.2020.26.1 Exhibition Outcomes of amendment to multiple chapters of Byron DCP 2014 to include Character Narratives**  
**Directorate:**      Sustainable Environment and Economy  
**Report Author:**      Sam Tarrant, Planning Support Officer  
**File No:**              I2020/1229

**Summary:**

This report presents the exhibition outcomes of multiple Byron DCP 2014 chapters to include the residential character narratives as found in the draft Residential Strategy.

The character narratives were created to inform the content of any Design Verification Statements required by the Low Rise Housing Diversity Code (formerly Low Rise Medium Density Code). The narratives will provide a basis for complying development to ensure development under the code will have regard to the local character.

The character narratives are not designed to be a 'silver bullet' for maintaining character and heritage values as other controls will still apply for development applications. Controls exist under the Low Rise Housing Diversity Design Guides that considers aspects such as sitting, parking and landscaping.

The character narratives in the DCP are currently the only mechanism available to ensure medium density development permitted as complying development under the code considers the character of the relevant locality.

As part of the creation of the draft Residential Strategy Council undertook the "shaping our neighbourhoods" consultation in May 2019 where the community was asked to help define what was unique about their neighbourhood and how it should look and feel in the future. The outcomes of the shaping our neighbourhoods consultation was incorporated into the character narratives that was exhibited as part of the draft Residential Strategy from 28 August to 11 October 2019.

In anticipation of the Low Rise Housing Diversity Code Council resolved **20-218** to place these character narratives into the relevant sections of the Byron DCP 2014 and proceed to exhibition. This amendment to the DCP was available for public comment from 24 June to 24 July 2020. During this time 22 submissions were received.

The majority of the submissions supported the character narratives in some form and applauded Council for being proactive in protecting the character of each locality from the possible impacts of the Low Rise Housing Diversity Code.

A number of suggestions for improvements to the character narratives, the mapping and other ways to ensure future development will compliment the existing character of the towns was presented in the submissions.

A number of submissions were outside the scope of the character narratives role in the DCP.

The primary purpose of this exhibition was to ensure the character narratives were placed in the correct locations of the DCP and to include necessary improvements. Noting the prior consultation and the creation of the narratives in conjunction with the community, only minimal changes to the exhibited narratives are recommended.

The submissions are addressed within this report.

The Low Rise Housing Diversity code came into effect in July 2020, so it is important that the character narratives are adopted into the DCP in a timely manner. Staff will continue to look at ways to manage the impacts of medium density development and update the DCP and LEP where appropriate.

It is recommended that Council adopt the DCP chapters attached with the changes outlined in this report.

**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:**

- 1. That Council adopt the draft Byron DCP 2014 Chapters appended to this report as Attachments 1 – 8 (#E2020/66607, #E2020/66606, #E2020/66604, #E2020/66603, #E2020/66599, #E2020/66206, #E2020/65603, #E2020/41194).**
- 2. That Council publish the Chapters on the website and notify the public as required by the Environmental Planning and Assessment Act and Regulation.**

**Attachments:**

- 1 DRAFT -- Byron Shire DCP 2014 Part A Preliminary - Character Narratives - POST exhibition, E2020/66607 
- 2 DRAFT -- Byron Shire DCP 2014 Chapter E1 Suffolk Park - POST exhibition version, E2020/66606 
- 3 DRAFT -- Byron Shire DCP 2014 Chapter E2 Bangalow - POST exhibition version, E2020/66604 
- 4 DRAFT -- Byron Shire DCP 2014 Chapter E9 (NEW) Ocean Shores and New Brighton - POST exhibition version, E2020/66603 
- 5 DRAFT -- Byron Shire DCP 2014 Chapter E4 Brunswick Heads - POST exhibition version, E2020/66599 
- 6 DRAFT -- Byron Shire DCP 2014 Chapter E5 Certain Locations in Byron Bay and Ewingsdale - POST exhibition., E2020/66260 
- 7 DRAFT -- Byron Shire DCP 2014 Chapter E3 Mullumbimby - POST exhibition version, E2020/65603 
- 8 DRAFT -- Byron Shire DCP 2014 Chapter D1 Residential Accommodation in Urban, Village and Special Purpose Zones - Residential Character Narratives - POST and public exhibition version, E2020/41194 
- 9 Summary and response to submissions, E2020/64583 
- 10 Public version submissions DCP 2014 Character Narratives Locality Chapters, E2020/66335 

**REPORT**

The Low Rise Housing Diversity Code (formerly the Low Rise Medium Density Code) permits medium density housing such as dual occupancies, manor houses and terraces in residential zones as complying development. This means they can be approved by a private certifier as long as they meet specific standards set out in the code and the Design Guides for Low Rise Housing Diversity.

A 'Design Verification Statement' will be required for complying development under the code which will need to consider the local character as set out in the DCP Character Narratives.

The narratives have been constructed through collaboration with the community during preparation of the Residential Strategy. This included targeted consultation on the character narratives as part of the shaping our neighbourhoods consultation.

The character narratives from this consultation have now been included in the DCP requiring further exhibition. This exhibition was about fine-tuning the narratives and making sure they fit appropriately into the DCP.

As the code has come into effect, it is important that the narratives are finalised in the DCP. The character narratives are currently the only mechanism available to ensure complying development under the code considers the local character.

If deemed necessary and depending on the uptake of medium density housing, additional design controls can be considered in a later review of the design criteria for the DCP.

Council has recently finalised an amendment to the LEP that sets minimum lot sizes for manor houses and terraces to help ensure medium density housing is situated on appropriately sized lots. The indicative category maps presented in the narratives are based on the 600m<sup>2</sup> minimum lot size rather than the new 800m<sup>2</sup> and 1000m<sup>2</sup> lot sizes. This means that if an area is earmarked as 'transitional' to include pockets of low rise medium housing diversity, only the large lots may have capacity for an increase in density.

Medium density development will not be permitted as complying development in Heritage Conservation Areas. A development application will be required for these areas allowing a thorough assessment using the existing heritage chapter in the DCP.

The amended DCP chapters including the proposed changes below are attached to this report.

Chapter E5 Certain locations in Byron Bay and Ewingsdale also contains the exhibited version of the recent Habitat amendment which is being assessed and presented to Council in a separate report to this meeting.

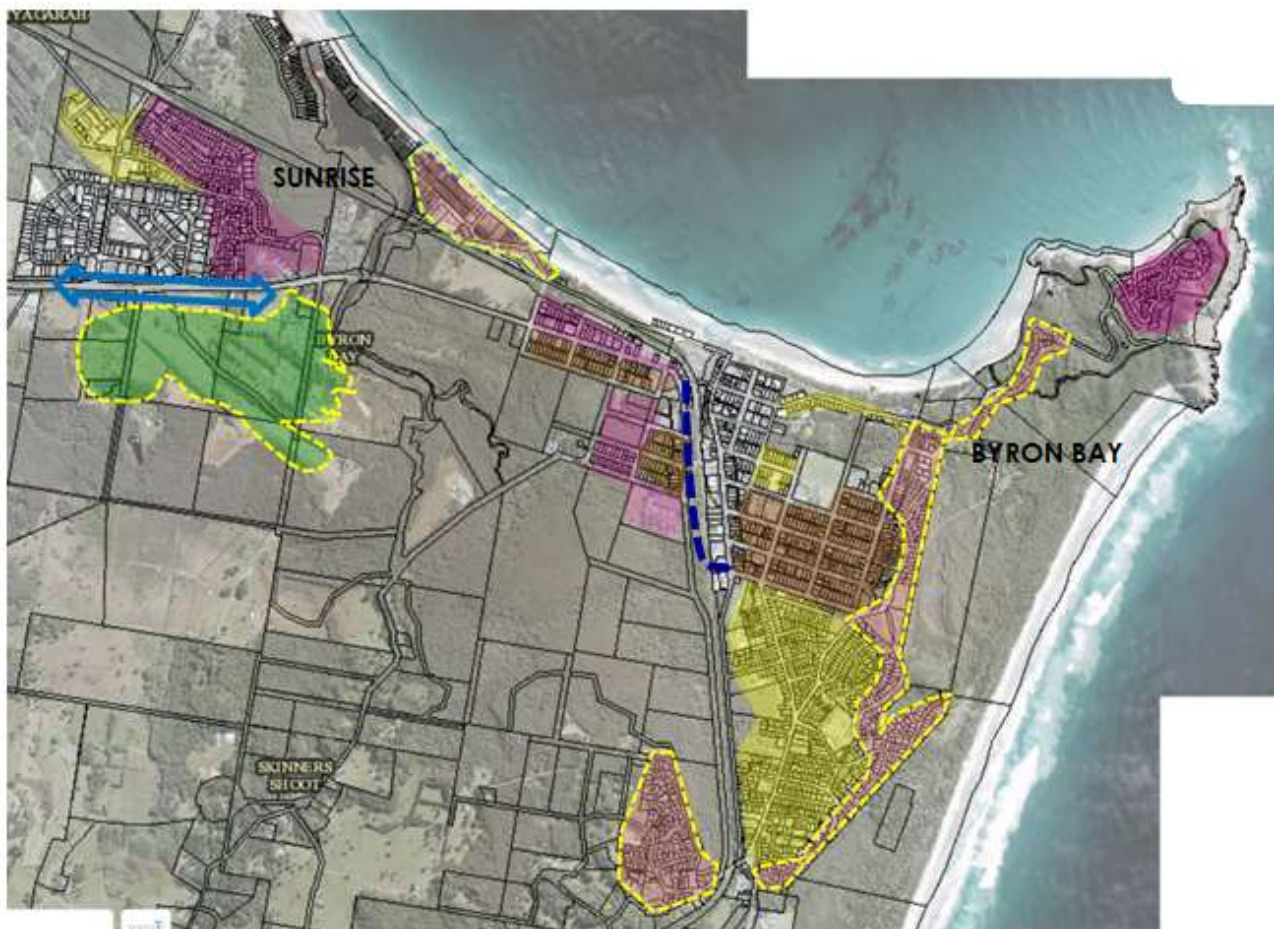
The submissions are contained in Attachment 10. Staff assessment of the received submissions is contained in Attachment 9.

***Proposed changes to the exhibited version***

All text changes are marked up in green text in the respective DCP chapter.

- Changed the code name from Low Rise Medium Density Housing to Low Rise Housing Diversity.
- Inserted an extra sentence about the importance of retaining the trees for the country lane feel in Mullumbimby.

- Two sentences added to Pocket B in Byron Bay to add extra detail regarding the character of this area.
- Inserted an extra part in Pocket A in Byron Bay to clarify the unique interpretation of local applies outside of the Heritage Conservation Area.
- 5 • Changed the category of the land south of Shirley Street to 'sensitive' (brown shading) to reflect the Heritage Conservation Area. See map below.
- 10 • Changed the category of some parcels along Shelly Drive, Lighthouse Road, Beachcomber Drive, Pacific Vista and Alcorn Street to Environmentally Sensitive (pink shading with yellow dashed boarder) to reflect the topography and proximity to coastal hazards and Arakwal National Park . See maps below.







**Next steps**

- 5 If adopted by Council the DCP will come into effect on the day it is posted on Council's website.

**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	4.1.3.12	Progress DCP Character Design Guideline for Low Rise Medium Density Housing Code



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

**Environmental Planning and Assessment Regulation 2000**

5 **Division 3 Approval of development control plans**

**21 Approval of development control plans (cf clause 20 of EP&A Regulation 1994)**

- (1) After considering any submissions about the draft development control plan that have been duly made, the council
- 10 (a) may approve the plan in the form in which it was publicly exhibited, or
- (b) may approve the plan with such alterations as the council thinks fit, or
- (c) may decide not to proceed with the plan.
- (2) The council must publish notice of its decision on its website within 28 days after the decision is made.
- 15 (3) Notice of a decision not to proceed with a development control plan must include the council's reasons for the decision.
- (4) A development control plan comes into effect on the date that notice of the council's decision to approve the plan is published on its website, or on a later date specified in the notice.

20 ***Financial Considerations***

Not applicable.

***Consultation and Engagement***

25 As outlined in this report.

**Report No. 13.5**      **PLANNING - Streets as Shared Spaces Grant - Mullumbimby Talking Street**  
**Directorate:**      Sustainable Environment and Economy  
**Report Author:**      Andrew FitzGibbon, Place Liaison Officer  
**File No:**      I2020/1258

**Summary:**

To inform Councillors of the successful Streets as Shared Spaces Grant for the Mullumbimby Talking Street and to outline next steps to begin the project.

**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 Council:**

1. **Notes the successful Streets as Shared Spaces grant application (titled Mullumbimby Talking Street) which enables a trial of activation and traffic calming measures on Burringbar Street, Mullumbimby.**
2. **Supports the establishment of an informal community Working Group to collaborate with Council staff on the project delivery. The following groups would be invited to have representation on the Working Group: the Place Planning Collective, the Mullumbimby Chamber of Commerce, Creative Mullumbimby and the Mullumbimby Residents Association.**
3. **Advises if any Councillors wish to join the proposed Working Group.**
4. **Notes that in addition to the Grant funds this project would also utilise up to \$30,000 of Council revenue funds already allocated to Mullumbimby Masterplan projects in the budget. This would enable more detailed masterplanning of Burringbar Street to support permanent changes following on from the trial.**

**Attachments:**

- 1 Streets as Shared Spaces - Byron Shire Council - Mullumbimby Talking Street, E2020/67021 

**REPORT**

Council has been selected to receive a \$250,000 grant from the NSW Government to trial a number of main street activation measures in Burringbar Street, Mullumbimby.

The Streets as Shared Spaces Grant program aims to improve or activate streets as shared public spaces in a way that tests possible longer-term permanent changes. Byron Shire was one of 27 regional councils and 14 councils in Greater Sydney selected in a highly competitive grant program.

Further information about the grant program can be found here:

<https://www.dpie.nsw.gov.au/premiers-priorities/great-public-spaces/streets/grants-for-councils>

Projects are to be delivered within a year of funding approval and must be temporary works only.

Council will use this grant funding to trial measures to create the 'Mullumbimby Talking Street' – which is the number one priority in the Our Mullumbimby Masterplan (2019).

The project will include temporary measures to provide a more people friendly, covid-responsive and activated Main Street. Overall the project aims to further energise the centre of Mullumbimby – economically, socially and culturally.

An excerpt from Council's grant application is included at Attachment 1. This shows the main design elements proposed.

**Key issues**

The project will involve trialling a number of changes in the centre of Mullumbimby. These changes will impact all users: Mullumbimby businesses, residents and visitors. Change can be a difficult process for a community. However, the project is a trial of temporary or semi-permanent measures only. As such, if there are aspects of the project that are not working or prove to be too much of a change for the community – we will be able to try different measures in line with community feedback.

**Next steps**

- This project will be lead by Council's Place Activation Team.
- Council will need to enter into a funding agreement with the NSW Department of Planning, Industry and Environment. We are awaiting information from the Department on this matter.
- Council proposes to establish an informal community Working Group as per the consultation section below.
- Council will establish an internal, cross disciplinary team to support the project.

**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	4.1.1.5	Implement Our Mullumbimby Masterplan, Bangalow Village Plan and Byron Arts and Industry Estate Plan

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

NA

**5    *Financial Considerations***

10    Within the grant application Council proposed to contribute up to \$30,000 of Council revenue funds (already allocated to Mullumbimby Masterplan projects) in the project budget. This would primarily enable more detailed design masterplanning for Burringbar Street to support permanent changes following on from the trial.

***Consultation and Engagement***

15    The Mullumbimby Talking Street application was developed primarily with key stakeholders the Mullumbimby Chamber of Commerce and Creative Mullumbimby (who are actively planning events in this precinct). The Place Planning Collective was also involved in the application and design process.

20    To continue Council/community collaborative on this project, Council staff proposes to establish an informal community Working Group with representatives from the Mullumbimby Chamber of Commerce, the Place Planning Collective, Creative Mullumbimby and the Mullumbimby Residents Association.

Councillors are invited to join this Working Group as per the report recommendation.

**Report No. 13.6      PLANNING - Report of the 13 August 2020 Planning Review Committee**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Chris Larkin, Manager Sustainable Development

Noreen Scott, EA Sustainable Environment and Economy

**File No:** I2020/1207

**Summary:**

This report provides the outcome of the Planning Review Committee (PRC) held on 13 August 2020.

**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 Council endorse the outcomes of the Planning Review Committee meeting held on 13 August 2020.**

**REPORT**

The Planning Review Committee meeting was held on 13 August 2020. The Meeting commenced at 2:00pm and concluded at 2:30pm.

5

Councillors: Crs Hunter, Ndiaye, Lyon, Coorey, Cameron and Martin

Apologies: Cr 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
10.2020.323.1	V Polasek	541 Friday Hut Road POSSUM CREEK	Change of Use of a Dwelling House for Purposes of an Education and Information Facility (Art Gallery) and Use of Two (2) Existing Unauthorised Buildings, for a 'Farm' Shed and other Outbuilding	Level 2 23/7/20 to 5/8/20  6 submissions	The perceived public significance of the application  Council
10.2020.242.1	Balanced Systems	84 Blindmouth Road MAIN ARM	Rural Land Sharing Community (Multiple Occupancy) consisting of Twelve (12) Dwelling Sites, Associated Infrastructure, Land Management and Environmental Enhancement	Level 2 18/6/20 to 18/7/20  15 submissions	The number of public submissions  Council
10.2020.342.1	Byron Council	1/54 Butler Street BYRON BAY	Acoustic Fencing and Other Works on Multiple Properties on Butler Street and Burns Street	Level 0	Under Staff Delegated Authority

- 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.

**BYRON SHIRE COUNCIL****STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY****13.6**

<b>DA No.</b>	<b>Applicant</b>	<b>Property Address</b>	<b>Proposal</b>	<b>Exhibition Submissions</b>	<b>Reason/s Outcome</b>
10.2017.474.3	AgCorp Constructions	70-88 Station Street MULLUMBIMBY	S4.55 for additional on-site carparking	Level 2 9/1/20 to 22/1/20  6 Submissions	The number of public submissions  Council
10.2018.486.2	Town Planning Studio Pty Ltd	South Beach Road BRUNSWICK HEADS	S4.55 Brunswick Heads Surf Life Saving Club - Modify Internal Layout, External Windows and Doors	Level 2 7/5/20 to 27/5/20  0 Submissions	Under Staff Delegated Authority
10.2019.275.2	Balanced Systems Planning Consultants	45 and 105 Monet Drive MONTECOLLUM	S4.55 to Modify Boundary Adjustment Conditions	Level 0	Under Staff Delegated Authority



# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.7

Report No. 13.7

**PLANNING - DA 10.2020.170.1 Multi Dwelling Housing Comprising Four (4) Dwellings and Four (4) Swimming Pools at 16 Short Street Brunswick Heads**

Directorate:

Sustainable Environment and Economy

5 Report Author:

Chris Larkin, Manager Sustainable Development

Noreen Scott, EA Sustainable Environment and Economy

File No:

I2020/1247

10

Proposal:

<b>DA No:</b>	10.2020.170.1		
<b>Proposal description:</b>	Multi Dwelling Housing Comprising Four (4) Dwellings and Four (4) Swimming Pools		
<b>Property description:</b>	LOT: 4 SEC: 25 DP: 758171		
	16 Short Street BRUNSWICK HEADS		
<b>Parcel No/s:</b>	83930		
<b>Applicant:</b>	Ardill Payne & Partners		
<b>Owner:</b>	Short St Long Stay Pty Ltd		
<b>Zoning:</b>	R2 Low Density Residential		
<b>Date received:</b>	31 March 2020		
<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>	<ul style="list-style-type: none"> <li>Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications</li> <li>Exhibition period: 16/4 – 6/5/2020 and re-exhibited 4/6 – 25/6/2020</li> <li>Submissions received: For first exhibition 83 submissions, all substantially opposed; for re-exhibition 38 submissions, all substantially opposed</li> <li>Submissions acknowledged: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</li> </ul>		
<b>Planning Review Committee:</b>	Not applicable / Date of PRC		
<b>Delegation to determine</b>	Council		
<b>Issues:</b>	Objectives of the Low Density zone; site density and intensity of development; impact on neighbourhood character; landscaped area and common landscaped area; deep soil areas; stormwater detention and disposal; building height plane and shadow impacts; sunlight access to private courtyards and pools; privacy to courtyards and pools; privacy to neighbours from upper floor terraces; compliance with adaptable housing standards; side paths; no garbage or post service to Galleon Lane; dwelling frontage to Galleon Lane; visitor parking; egress in a forward direction; no footpath in Galleon Lane; parking in Galleon Lane; fence height on the front and rear boundaries; public interest.		

**Summary:**

5 The DA proposes Multi Dwelling Housing comprising Four (4) Dwellings and Four (4) Swimming Pools, two with frontage to Short Street and two with frontage to Galleon Lane. The proposed development is substantially inconsistent with the objectives of the R2 Low Density Residential zone and substantially inconsistent with the planning controls applicable to the site as prescribed by Byron DCP 2014. The development has generated significant community opposition and is not in the public interest.

10 The issues raised by the development and reasons for refusal are documented in this report, and the proposal is considered to be an overdevelopment of the site in the context of the zoning and its location within a low density residential neighbourhood. The application is recommended for refusal.

**NOTE TO COUNCILLORS:**

20 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 and Assessment Act 1979, Development Application No 10.2020.170.1 for Multi Dwelling Housing Comprising Four (4) Dwellings and Four (4) Swimming Pools, be refused for the following reasons:**

- 1. Pursuant to Section 4.15(1)(a)(i) the proposal is inconsistent with the objectives of the R2 Low Density Residential zone having regards to the site density and intensity of development;**
- 2. Pursuant to Section 4.15(1)(a)(iii) the proposal is inconsistent with Chapter B3 Services and Chapter B4 Traffic planning, Vehicle Parking, Circulation and Access of Byron DCP 2014 with inadequate visitor parking, unsuitable manoeuvring areas for vehicles to egress in a forward direction, unsafe reversing movement and sight distance in Galleon Lane;**
- 3. Pursuant to Section 4.15(1)(a)(iii) the development will not mitigate the stormwater discharge of the site back to predevelopment levels and is inconsistent with Chapter B3 Services of Byron DCP 2014;**
- 4. Pursuant to Section 4.15(1)(a)(iii) the proposal is inconsistent with common landscaped area and deep soil area requirements under Chapter B9 Landscaping of Byron DCP 2014;**
- 5. Pursuant to Section 4.15(1)(a)(iii) the proposal is inconsistent with Chapter B13 Access and Mobility of Byron DCP 2014 as the garage in the proposed adaptable housing dwelling does not comply with AS2890 & AS4299;**
- 6. Pursuant to Section 4.15(1)(a)(iii) the proposal is inconsistent with the building height plane and setback requirements under Chapter D1 Residential Accommodation in Urban, Village and Special Purpose Zones of Byron DCP 2014;**

7. Pursuant to Section 4.15(1)(a)(iii) the proposal is inconsistent with the private open space and courtyard requirements under Chapter D1 Residential Accommodation in Urban, Village and Special Purpose Zones of Byron DCP 2014 as the development generates excessive shadow impacts and provides inadequate sunlight access on private courtyards and open space and a lack of privacy between dwellings;
8. Pursuant to Section 4.15(1)(a)(iii) the proposal is inconsistent with the Character and Visual Impact, Fencing, Sound Proofing and Clothes Drying requirements under Chapter D1 Residential Accommodation in Urban, Village and Special Purpose Zones of Byron DCP 2014;
9. Pursuant to Section 4.15(1)(a)(iii) the proposal is inconsistent with the Character Bulk and Scale Provisions under Chapter E4 Brunswick Heads of Byron DCP 2014;
10. Pursuant to Section 4.15(1)(b) the proposal having regards the developments density of four dwellings and intensity of development will have an unacceptable impact on the neighbourhood character, and generates deleterious impacts on neighbours through overshadowing and loss of privacy;
11. Pursuant to Section 4.15(1)(c), the site is considered unsuitable for the density and intensity of development as proposed;
12. Pursuant to Section 4.15(1)(e) the proposal is considered to be an overdevelopment of the site and is not in the public interest creating an undesirable precedent.

**Attachments:**

- |   |  |
|---|--|
| 1 | Plans 10.2020.170.1, E2020/66377  |
| 5 | 2 Confidential - Submissions received (first) exhibition 10.2020.170.1 - 16/4/20 to 6/5/20, E2020/67526              |
| 3 | 3 Confidential - Submissions received (second) exhibition 10.2020.170.1 - 4/6/20 to 25/6/20, E2020/67543             |



**Assessment:****1. INTRODUCTION****1.1. History/Background**

The subject land has contained a single dwelling since 1971. A recent application (DA10.2019.301.1) for demolition of the existing dwelling house and construction of two (2) new dwellings and two (2) swimming pools to create dual occupancy (detached) was considered by Council on 19 March 2020. It was refused for the following reasons:

<b>Report No. 13.9</b>	<b>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</b>
<b>File No:</b>	12020/229

**20-094 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 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. (Richardson/Hunter)

*The motion was put to the vote and declared carried.*

*Crs Coorey, Martin, Ndiaye, Richardson, Cameron and Hunter voted in favour of the motion.*

*Nil Councillors voted against the motion.*

**1.2. Description of the proposed development**

The proposed development includes demolition of the existing dwelling and garage, and removal of two trees at the rear of the site. The site area is 1,014 m<sup>2</sup>.

The application seeks approval for multi dwelling housing comprising four (4) dwellings and four (4) swimming pools. Each dwelling has three (3) bedrooms and two (2) bathrooms with approximately 125 m<sup>2</sup> of gross floor area (GFA) over two storeys plus decks and terraces. Two dwellings have frontage to Short Street with a shared driveway, and two dwellings have frontage to Galleon Lane with a shared driveway. Each dwelling has a two-car garage. The maximum building height is 7.5 metres above existing ground level.

The applicant's latest set of plans and Statement of Environmental Effects are attached at Appendix A.

**1.3. Description of the site**

A site inspection was carried out on 8 May 2020

Land is legally described	LOT: 4 SEC: 25 DP: 758171
Property address	16 Short Street BRUNSWICK HEADS

Land is zoned:	R2 Low Density Residential	
Land area is:	1,014 m <sup>2</sup>	
Property is constrained by:	Acid Sulfate Soils Class 4	
	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

## 2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions. See comments below.
Development Engineer	Not supported. See comments below.
Water & Sewer Engineer (Local Approvals Officer)	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to conditions.
S94 / Contributions Officer	No objections subject to conditions.

### 5 Issues:

**Acid Sulfate Soils:** The site is mapped as being Class 4 Acid Sulfate Soils. Works more than 2 metres below the natural ground surface or where the water table is likely to be lowered more than 2 metres below the natural ground surface trigger ASS controls. The proposed development includes construction of 4 x 2-metre-deep swimming pools (as per SEE prepared by APP dated February 2020). Excavation is likely to extend beyond 2 metres to allow for concrete formwork, and therefore works have the potential to disturb acid sulfate soils. It is recommended that if the development is approved, a Preliminary Acid Sulfate Soil Management Plan be submitted to, and approved by the PCA prior to the issue of a construction certificate. The plan should include any remedial measures that may be required as a result of testing.

**Contamination:** There is a likelihood that the existing building contains asbestos material and surfaces may have been treated with lead-based paint. Termiticides may be residual in the soil beneath the building, and lead from wear and tear (paint chips) may be in soils surrounding the building. To ensure the site soil is suitable following demolition of the existing building, it is recommended that soil testing be undertaken by a suitably qualified person in accordance with NSW EPA Consultants Reporting on Contaminated Land – Contaminated Land Guidelines 2020 investigations, reporting methodology and information sources for obtaining land use history. Should elevated levels of lead or other contaminants be detected through soil testing, a remedial works program will also be necessary. Soil testing and remedial works should be completed following demolition of the existing structures and prior to construction of the new development. Validation (including additional soil results) and a report must be provided to the PCA prior the issue of an Occupation Certificate. Appropriate conditions would need to be drafted should the application be approved.

**Access:** The proposal did not provide sufficient details to fully assess traffic safety, specifically the reversing movement and sight distance in Galleon Lane.

Adaptable Housing: The proposed internal dimension of the garage in the proposed adaptable housing dwelling does not comply with AS2890 & AS4299. The proposal (6.0m width & 6.0m long) will adversely impact onto the structural components of the adaptable housing when required. The plans fail to nominate which dwelling will be adaptable.

Stormwater: The revised plans submitted as part of the response to the additional information do not provide new stormwater details to support the amended plans to comply with Council requirements. The amended plans increase the imperviousness of the site. This increase will require additional Onsite Detention volume to mitigate the stormwater discharge of the site back to predevelopment levels. This has not been provided.

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

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 not bush fire prone land.

### 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 and 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 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The site has been utilised for residential occupation since 1971. See discussion above. . Appropriate conditions of consent will apply in relation to demolition of the existing dwelling.		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Multi dwelling BASIX certificate received for the four (4) proposed dwellings dated 3 February 2020. Certificate No: 1073836M. The proposed dwellings meet or exceed the required standards for water, thermal comfort and energy.		
State Environmental Planning Policy (Coastal Management) 2018	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The site is located in the Coastal Environment and Coastal Use areas mapped under the SEPP. The application proposes the removal of one planted Hoop Pine and a landscape tree. Neither tree would require consent to be removed under current controls. The development is in a suburban location and will have no impact on coastal environmental values and natural coastal processes. The proposal does not impact on foreshore access or any known item or place of Aboriginal cultural heritage. The proposal raises no issues in terms of the Coastal Management SEPP and the provisions contained within clauses 13 and 14, in particular.		

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

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

- (a) the proposed development is defined in the LEP 2014 Dictionary as multi dwelling housing;



- (b) the land is within the R2 Low Density Residential zone according to the Land Zoning Map;
- (c) the proposed development is permitted with consent; and
- (d) regard for the Zone Objectives as follows:

Zone Objective	Consideration
To provide for the housing needs of the community within a low density residential environment.	The proposed multi dwelling housing development will provide four dwellings to replace the single dwelling that currently exists on the lot. It will increase the site density significantly, going from an equivalent density of 10 dwellings per hectare to 40 dwellings per hectare. Four large dwellings on this site is not consistent with the low density nature and character of this neighbourhood.
To enable other land uses that provide facilities or services to meet the day-to-day needs of residents.	Not Applicable – the proposal does not include land uses other than residential uses.

5

The following clauses are of relevance to the development:

#### Characterising the proposed development

- 10 **Multi dwelling housing** means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

Each of the four proposed dwellings has a separate access at ground level and therefore meets this definition.

15

#### Clause 4.1E Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings

Byron LEP 2014 identifies that the minimum lot size for multi dwelling housing in the R2 Low Density Residential zone is 1,000 m<sup>2</sup>.

20

The subject site has an area of 1,014 m<sup>2</sup> and therefore complies with the minimum lot size requirements.

#### Clause 4.3 Height of buildings

- 25 The Height of Buildings map identifies that the site has a maximum allowable height of 9 metres.

The proposed dwellings will have a height of 7.5 metres above existing ground level, which complies with the height limit.

#### Clause 4.4 Floor space ratio

30 The site has a maximum FSR of 0.5:1.

The proposed development has an FSR of 0.5:1 and complies with the development standard. However, the maximum FSR will not always be achievable on all sites. It is the generic way of defining the density of the site and is to be measured once all the other design controls have been achieved.

35

#### Clause 6.1 Acid sulfate soils

The site is identified as containing Class 4 Acid Sulfate Soils that are likely to be located at a depth of 2 metres or more.

40

The proposal may result in ASS being excavated during construction due to excavation for the proposed pools.

#### Clause 6.6 Essential services

- 5 The subject site has full access to essential services such as water, reticulated sewerage and electricity.

Stormwater disposal and vehicular access are discussed in more detail below.

#### Clause 6.7 Affordable housing

The proposed development is not for affordable housing purposes, nor does it result in the removal of any affordable housing currently on the property as defined under the EP&A Act 1979.

**Affordable housing** means housing for very low income households, low income households or moderate income households.

15 It is likely that the development will add to the housing stock of Brunswick Heads for rental accommodation or permanent accommodation and 3-bedroom homes can be used by families. As the property is not used for affordable housing purposes, there is no nexus to levy conditions requiring that the dwellings be utilised for that purpose in this instance.

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

Not applicable.

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

DCP 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 land to which LEP 2014 applies. The DCP 2014 Parts/Chapters that are checked below are of relevance to the proposed development:

Part A	<input checked="" type="checkbox"/>
Part B Chapters:	<input checked="" type="checkbox"/> B2  <input checked="" type="checkbox"/> B3  <input checked="" type="checkbox"/> B4  <input type="checkbox"/> B5  <input type="checkbox"/> B6  <input checked="" type="checkbox"/> B7  <input checked="" type="checkbox"/> B8  <input checked="" type="checkbox"/> B9  <input type="checkbox"/> B10  <input type="checkbox"/> B11  <input type="checkbox"/> B12  <input checked="" type="checkbox"/> B13  <input type="checkbox"/> B14
Part C Chapters:	<input type="checkbox"/> C1  <input type="checkbox"/> C2  <input type="checkbox"/> C3  <input type="checkbox"/> C4
Part D Chapters	<input checked="" type="checkbox"/> D1  <input type="checkbox"/> D2  <input type="checkbox"/> D3  <input type="checkbox"/> D4  <input type="checkbox"/> D5  <input type="checkbox"/> D6  <input type="checkbox"/> D7  <input type="checkbox"/> D8
Part E Chapters	<input type="checkbox"/> E1  <input type="checkbox"/> E2  <input type="checkbox"/> E3  <input checked="" type="checkbox"/> E4  <input type="checkbox"/> E5  <input type="checkbox"/> E6  <input type="checkbox"/> E7

The following comments are provided on relevant DCP provisions.

What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Aims and/or Objectives and/or Performance Criteria of this Section?	Does the proposed development comply with the Prescriptive and/or Performance Criteria of this Section?
<b>Chapter B2 – Preservation of Trees and Other Vegetation</b>	Chapter B2 does not apply to the removal of the trees at the rear of the property as they are planted vegetation on a residential allotment and are not located within a heritage conservation area.	The site contains three (3) hoop pines in the rear of the property with the application indicating one (1) hoop pine and an additional smaller unknown species to be removed. The removal of planted vegetation does not require approval under Chapter B2, <i>Table B2.1. – Types of</i>

What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Aims and/or Objectives and/or Performance Criteria of this Section?	Does the proposed development comply with the Prescriptive and/or Performance Criteria of this Section?
	The trees can be removed without requiring consent from Council.	<i>vegetation removal to which this Chapter does not apply.</i>
<b>B3 Services B3.2.1.6 – Road Access</b>	No. The development does not comply with the objective: <i>To ensure provision of adequate engineering and safety standards for public road access, together with equitable apportionment of road upgrading requirements and associated costs for development served by existing public roads, un-constructed or partially constructed public roads and Crown Roads.</i>	No. The speed along Galleon Lane is generally slow due to the vehicles parked along the road. Reversing manoeuvre from the development in Galleon Lane will pose safety issue due to a very narrow verge, vehicles parking along the road and limited sight distance. The development does not provide any safety assessment of vehicles reversing from the development to verify the safety requirements. Sight distance assessment using AutoCAD found that parking along the full frontage of the development would need to be restricted and extend up to the full frontage of the neighbouring block to the west. This will facilitate reversing manoeuvre for the development. Parking restriction along those areas may not be possible.
<b>B3.2.3 Stormwater Management</b>	No. The development does not comply with the objectives: <i>1. To promote on-site stormwater management practices that support the 'predevelopment' hydrological regime (surface flow, streams and groundwater). 2. To ensure that new development does not reduce the effectiveness of existing drainage patterns (including built infrastructure). 3. To minimise the impacts of stormwater runoff from a site on adjoining properties.</i>	No. The development provides a relatively small area of deep soil suitable for on site infiltration and does not provide for sufficient on site storage of stormwater. The development will not mitigate the stormwater discharge of the site back to predevelopment levels.
<b>B4.2.5 Car Parking Requirements and table B4.2.12 Parking Schedules</b>	No. The development does not make adequate provision for off-street car parking, such that the needs of visitors are met.  The development therefore does not comply with the provision of car parking as	Partly. Chapter B4 requires a minimum of 2 spaces per 3 or more bed unit for parking onsite for multi dwelling housing. Plus 1 visitor space per 4 dwellings.  The development has provided 2 garage spaces per dwelling and this

What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Aims and/or Objectives and/or Performance Criteria of this Section?	Does the proposed development comply with the Prescriptive and/or Performance Criteria of this Section?
	required under Chapter B4.	complies with the minimum parking requirement for residents. Stack parking in the driveway is proposed for visitors. This will impact on vehicles leaving in a forward direction (shared driveway) and will not be possible when the gates are closed for either road frontage. This will be particularly problematic at the Galleon Lane frontage where there is no opportunity for street parking without blocking the lane.
<p><b>Chapter B9 – Landscaping</b></p> <p><b>B9.4 Multi Dwelling Housing, Attached Dwellings and Residential Flat Buildings</b></p>	<p>No. Multi dwelling housing, shall provide a high quality landscape that seeks to enhance the amenity and function of the development and provide a pleasant environment for residents that supports their physical and psychological well-being.</p> <p>The size, shape and location of proposed common landscaped areas fail to meet this performance criteria.</p> <p>The area proposed as deep soil landscaping fails to meet the objective of providing an opportunity for water to infiltrate into the ground and allow for mature trees to grow on the site.</p>	<p>No. The applicant has provided a concept landscaping plan; however, it does not contain species lists or planting density. It does not accurately represent different types of landscaped area. It does not show the common landscaped area.</p> <p>The proposed concept landscaping does not include screen planting to street frontages and driveway areas, and does not provide privacy between the proposed dwelling houses and the boundaries of the site.</p> <p>The proposed concept landscaping plan does not indicate sufficient detail to determine whether planting selection relates to building scale and mass. The small areas available for planting will provide limited opportunity for mature trees given it is recommended that they be planted at least 3 metres away from a dwelling. The two Hoop Pines to be retained at the rear will both be located less than 3 metres from dwellings. It is not certain that they will be able to grow to maturity so close to the proposed dwellings.</p> <p>The development requires a “common landscaped area” equivalent to not less than 90 m<sup>2</sup> per dwelling, being a total of 360 m<sup>2</sup>.</p> <p><b>Common landscaped area</b> means <i>“that part of the site not occupied by any building, that is predominantly</i></p>

What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Aims and/or Objectives and/or Performance Criteria of this Section?	Does the proposed development comply with the Prescriptive and/or Performance Criteria of this Section?
		<p><i>landscaped by way of planting, trees, gardens, lawns or shrubs and is available for common use and enjoyment by the occupants of the building erected on the site. It excludes drying yards, garbage collection and handling spaces and any spaces used for the movement or parking of vehicles but can include swimming pools at or below ground level (existing). Where Council deems it appropriate in terms of accessibility, treatment and appearance, the common landscaped area may include rooftop spaces, terraces, steps, walkways, pergolas or other built elements."</i></p> <p>The concept landscaping plan provided indicates 470 m<sup>2</sup> of "soft landscaping", but this term is not defined by the applicant. The concept landscaping plan includes the ground floor terraces, which are part of the building and have a combined area of 102 m<sup>2</sup>. It also includes the side access paths to Short Street, which have a combined area of 130 m<sup>2</sup>. It also includes garbage storage areas and water tanks, which have a combined area of 10 m<sup>2</sup>. It also includes outdoor drying areas, which have a combined area of 8 m<sup>2</sup>. This leaves a total common landscaped area of 220 m<sup>2</sup>, which is 39% less than the required area. It represents just 22% of the overall site area. This is not acceptable.</p> <p><b>Deep soil area</b> means "a specified area of the development site, not covered by an impervious surface, that allows water on the site to infiltrate naturally to the groundwater and allows for the future provision of mature vegetation."</p> <p>A minimum of 75% of the total common landscaped area of the site must consist of deep soil areas. This is equivalent to not less than a total of 270 m<sup>2</sup> for the proposed development.</p>

What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Aims and/or Objectives and/or Performance Criteria of this Section?	Does the proposed development comply with the Prescriptive and/or Performance Criteria of this Section?
		<p>In order to support mature vegetation areas, deep soil areas less than 1 metre wide are typically excluded from calculation.</p> <p>This definition excludes any built structures including terraces, swimming pools, sun decks, side access paths, garbage storage areas and water tanks.</p> <p>Starting with the applicants 470 m<sup>2</sup> of “soft landscaping” less 102 m<sup>2</sup> for terraces, less 130 m<sup>2</sup> for side accesses, less 85 m<sup>2</sup> for pools and sun decks, and less 10 m<sup>2</sup> for garbage storage areas and water tanks, this leaves the total deep soil area for this site at 143 m<sup>2</sup>, which is 47% less than the required area. It represents just 14% of the overall site area. This is not acceptable.</p>
<p><b>B13.2.2 Multi Dwelling Housing (adaptable housing)</b></p>	<p>No. The development fails to implement the requirements and objectives of the Disability Discrimination Act 1992, relevant equitable access legislation and the Byron Disability Access and Inclusion Plan 2008–2013.</p>	<p><i>Dwelling Units: A minimum of 10% of units, rounded up to the nearest whole number should be adaptable housing.</i></p> <p>One of the Short Street dwellings has been amended to be an adaptable housing unit.</p> <p><i>Access: A continuous accessible path of travel in accordance with AS1428 or an inclinators/lift/hoist (in accordance with AS1735) as appropriate must be provided between the main street entrance to the residential complex, adaptable housing units, access or car parking spaces, letterboxes, garbage storage area, recreation areas and clothes drying areas.</i></p> <p>One of the Short Street dwellings meets this criterion.</p> <p><i>Car Parking: At least one accessible car parking space for the disabled must be provided for each adaptable housing unit.</i></p> <p>No. The proposed internal dimension of the garage in the proposed adaptable housing dwelling does not</p>

What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Aims and/or Objectives and/or Performance Criteria of this Section?	Does the proposed development comply with the Prescriptive and/or Performance Criteria of this Section?
<b>D1.2.1 Building Height Plane</b>	<p>No.</p> <p>The objectives of this control are:</p> <ol style="list-style-type: none"> <li>1. To ensure that residential development is designed to minimise impacts on solar access and privacy on adjoining properties, and on the views from adjacent existing buildings.</li> <li>2. To ensure that the occupants of the building or buildings will enjoy the optimum use of winter sunlight and summer shade.</li> </ol> <p>The proposed development fails to comply with these objectives as it will impact on the solar access and privacy of adjacent existing and approved buildings.</p> <p>The proposed development will not provide for the optimum use of winter sunlight for its future residents as it impacts seriously on winter sunlight to the private open spaces of all four dwellings.</p>	<p>comply with AS2890 &amp; AS4299.</p> <p>No. Although the BHP intrusion has been reduced in the latest plan set, it is still not compliant. It represents approximately 0.4-metre intrusion to the south and north elevations (side boundaries).</p> <p>The development does not demonstrate that the windows of living areas (decks, living rooms, bedrooms, kitchens, etc) of development on adjoining properties will, as a minimum, retain full solar access between the hours of 9 am and 3 pm on any day.</p> <p>Despite screening, there is still some potential for overlooking into the two adjacent properties from the upper level terraces. There is also potential for loss of privacy within the development from upper level terraces overlooking neighbouring pools and sundecks.</p> <p>The bulk and scale of the development result in the overshadowing of private open spaces at the rear of all four dwellings to the extent that some pools and private terraces and sundecks receive no sunlight in winter at all between 9 am and 3 pm.</p> <p>The DCP requires that any application that does not comply with the BHP can be permitted where:</p> <p><i>i) such wall or walls (that don't comply) contain no openings; and</i></p> <p><i>ii) it is demonstrated to Council's satisfaction that the development, if carried out, would improve the siting or orientation of the dwelling/s or the provision of private open space; and would not significantly:</i></p> <ul style="list-style-type: none"> <li>• <i>increase the overshadowing of adjoining properties; or</i></li> <li>• <i>reduce the level of privacy enjoyed by adjoining properties.</i></li> </ul>



What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Aims and/or Objectives and/or Performance Criteria of this Section?	Does the proposed development comply with the Prescriptive and/or Performance Criteria of this Section?
		<p>The development does contain side wall openings and does not comply with the other matters.</p> <p>BHP non-compliance remains unacceptable.</p>
<p><b>D1.2.2 Setbacks from Boundaries</b></p> <p><b>Minimum Street Frontage Setbacks</b></p> <p><b>Minimum Side Setbacks</b></p>	<p>No. The development fails to achieve the objective <i>“To achieve good orientation and spacing of residential developments that achieve high quality living environments relative to sunlight, shade, wind and weather protection, residential amenity and proximity of neighbouring development.”</i></p> <p>It also fails to achieve the objective <i>“To achieve effective use of allotments to create useable and liveable private open space and courtyards.”</i></p>	<p>Partly. The proposed development meets the 5.5-metre minimum front setback requirement to Short Street and 4.5-metre setback to Galleon Lane.</p> <p>It provides 1.45-metre side setbacks and breaches the Building Height Plane on the upper storey. This is inconsistent with Prescriptive Measure 4, which requires two-storey multi dwelling housing to achieve a side setback consistent with the Building Height Plane.</p> <p>The development also provides stacked visitor parking in the front setback for both Short Street and Galleon Lane, which is inconsistent with Prescriptive Measure 1.</p>
<p><b>D1.2.4 Character &amp; Visual Impact</b></p>	<p>No. The development fails to achieve the objective <i>“To ensure that new development respects and complements those aspects of an area’s natural and built environment that are important to its existing character.”</i></p>	<p>No. The development fails to achieve the Performance Criterion: <i>“There must be a reasonable degree of integration with the existing built and natural environment, balanced with the desirability of providing for variety in streetscapes.”</i></p> <p>In this case, the intensity of development (1 dwelling per 253 m<sup>2</sup>) on the site is considerably greater than surrounding low density development. It will change the built environment in both Short Street and Galleon Lane rather than integrate with it. It will also set a precedent for other similar size sites to be developed at that intensity.</p> <p>The bulk of this development maximises the use of the development envelope and this creates a dense character with less ‘breathing space’ than surrounding sites and less</p>

What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Aims and/or Objectives and/or Performance Criteria of this Section?	Does the proposed development comply with the Prescriptive and/or Performance Criteria of this Section?
		opportunity for landscaping between buildings, both on the site and between this site and the neighbouring land.
<b>D1.2.5 Fences</b>	No. The development fails to achieve the objectives <i>“To ensure that fences do not unduly reduce opportunities for casual social interaction in the community”</i> and <i>“To ensure that fences do not become a dominant built element in the streetscape”</i> and <i>“To ensure that the design and placement of fences do not adversely impact traffic or pedestrian safety.”</i>	No. The height of fences should not exceed: Front Fence – 1.2 metres Side Fence – 1.2 metres within the building line setback and 1.8 metres for the remainder.  The development has been recently amended and now proposes 1.2-metre fences at both Galleon Lane and Short Street, but with 1.8-metre-high gates. Side fences are 1.8 metres along the whole side boundary, including in the front setback. This does not comply with the Prescriptive Measures and the reasons provided for the inconsistency are not well founded.
<b>D1.6.1 Private Open Space Courtyards</b>	Partly. Each dwelling will have a private courtyard; however, they do not comply with the Performance Criterion: <i>“Orientation and shading of courtyards must provide for maximum year round use in terms of sunlight.”</i>  They also do not comply with the Performance Criterion: <i>“Location of courtyards must take account of outlook and natural features of the site without impacting on neighbouring buildings or open space.”</i>  In this case, the proximity of the pools and terraces will impact on the other dwellings in the development through noise impacts and loss of visual privacy while using terraces, pools or sundecks.	No. Each dwelling will have an area of private open space that exceeds the minimum 30 m <sup>2</sup> in the Prescriptive Measure (60 m <sup>2</sup> per dwelling is proposed). However, <i>“The courtyard must be designed to facilitate access to winter sunshine and must be landscaped to Council’s satisfaction.”</i>  In this case, the shadow diagrams show that the private courtyards on the winter solstice receive almost no sunlight between 9 am and midday, and only the two western courtyards receive 3 hours to parts of the site. The two eastern courtyards receive either zero hours or less than 1 hour. This does not meet Council’s design requirements and demonstrates the impact of over-development on this site in terms of the livability of the proposed dwellings.
<b>D1.6.5 Sound Proofing</b>	No. The development fails to achieve the objective <i>“To ensure an adequate acoustic environment for residents.”</i>	No. The development has not been <i>“designed to provide a reasonable acoustic environment within dwellings and to minimise the potential for noise impact on the occupants of surrounding</i>

What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Aims and/or Objectives and/or Performance Criteria of this Section?	Does the proposed development comply with the Prescriptive and/or Performance Criteria of this Section?
		<p><i>dwelling.</i></p> <p>The pools and sundecks are located approximately 3 metres apart, separated by a fence that is unlikely to assist with noise reduction unless it is an acoustic fence. Each pool area will also potentially impact on neighbours on either side as they are less than 10 metres from adjoining dwellings. Pool pumps will also likely be a source of noise impact on this site, both to residents and neighbours.</p>
<b>D1.6.6 Clothes Drying Facilities</b>	<p>No. The development fails to achieve the objective <i>“To ensure that adequate, effective space is provided and provision is made for clothes drying.”</i></p>	<p>No. The development fails to meet the Performance Criterion: <i>“Outdoor clothes drying facilities must be provided to meet projected needs and located to facilitate privacy and sunlight access.”</i></p> <p>Although outdoor clothes drying lines are located on the plans, the shadow diagrams show that in winter these locations receive minimal sunlight (if any) and are unlikely to be useful for drying clothes.</p>
<b>E4.2.1 Character, Bulk and Scale of Development</b>	<p>No. The development fails to achieve the objective <i>“To ensure that all development is consistent with, and will maintain and enhance the low-key, family-friendly, coastal village character, streetscape and scale of Brunswick Heads.”</i></p> <p>In this case, the intensity of development on this site is not consistent with the coastal village character of Brunswick Heads and will set new residential development on a different and less village-like course.</p>	<p>No. The development fails to achieve the Performance Criterion: <i>“The residential areas of Brunswick Heads contain a varied and compatible range of architectural styles, materials, landscapes and streetscapes. Housing comprises mainly low density, low rise single and attached dwellings with low-impact bulk and scale.”</i></p> <p>The proposed development maximises the FSR in order to achieve four substantial dwellings on the site, and this exceeds the low density residential amenity of this neighbourhood with two dwellings fronting both Short Street and Galleon Lane.</p> <p>The development is not low impact in terms of bulk and scale as demonstrated by it not meeting the key design controls such as common landscaped area, deep soil zones and building height plane.</p>

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

	Yes	No
Is there any applicable planning agreement or draft planning agreement?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consideration:		

**5 4.6 Environmental Planning & Assessment Regulation 2000 Considerations**

The proposal raises no issues under the regulations. Should the application be approved appropriate conditions of consent would apply in relation to demolition of the dwelling house.

**10 4.7 Any Coastal Zone Management Plan?**

	Satisfactory	Unsatisfactory	Not applicable
Is there any applicable coastal zone management plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**15 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**

Impact on:	Likely significant impact/s?
<b>Natural environment</b>	No. The proposal will not have a significant adverse impact on the natural environment of the locality.
<b>Built environment</b>	Yes. The proposal will have a significant adverse impact on the built environment of the locality. It is inconsistent with the development intensity and character of the neighbourhood as detailed in this report.
<b>Social Environment</b>	Yes. The proposal will have a significant social impact on the locality through disruption and negative effects on neighbouring land owners and the neighbourhood generally.
<b>Economic impact</b>	No. The proposal will not have a significant economic impact on the locality.

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

20 The site is a serviced, flat and relatively unconstrained property. However, the intensity of the proposed development makes it unsuitable for this site. It is effectively a medium density development in a low density neighbourhood.

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

25 The development application was publicly exhibited on two occasions, initially with an original plan set and then with a revised plan set.

30 There were 83 submissions for the first exhibition, all substantially opposed; and for the re-exhibition there were 38 submissions, all substantially opposed. No submissions supporting the application were received.

Many submissions raised similar issues, which include the following:

35 Size/scale in this location; traffic and parking inadequacies; noise from four family dwellings with four pools and four pool pumps; use of the development for holiday letting; effect on Galleon Lane;

high fences; overshadowing of neighbours; deficient deep soil zones; inadequate landscaping; shade on landscaping; stormwater issues from excessive hard surfaces; space for 12 rubbish bins; side paths blocked by clothes lines, pumps and water tanks; multiple DAs and multiple plan versions.

5 The issues raised in submissions are addressed in this report. In many cases, they are the reasons that the development is recommended for refusal.

10 The fact that this site has previously been the subject of a dual occupancy development application that was refused is frustrating for the community, but not something that Council can control. However, it is important that Council considers whether its current suite of planning controls should be revised to make it abundantly clear what sort of residential development is expected in the R2 Low Density Residential zone in Brunswick Heads.

#### 15 **4.11 Public interest**

The proposed development has received a large number of detailed submissions and appears to have minimal public support.

20 There is significant public interest in maintaining and applying development standards and controls that have been publicly exhibited and adopted by Council in Byron DCP 2014. This development is inconsistent with multiple controls in the DCP as well as the objectives of the R2 Low Density Residential zone. It is considered approval would compromise the public interest and create an undesirable precedent.

25 It is noted Council resolved on June 18, 2020 the following:

#### **20-277 Resolved:**

30 2. *"That Council request staff to receive a further report that investigates available planning mechanisms to control medium density housing development within the R2 Low Density Residential Zone through the application of a development ratio (of 1 per 333m2 or the like), coupled with increased landscaping, private open space and or setbacks provisions to boundaries which respect the objectives of the zone."*

35 Such an investigation and any subsequent change in the planning controls is warranted and will provide greater clarity as to the intensity and scale of development that is anticipated in the R2 Low Density Residential Zone for residents, developers, Council and the greater community.

### 5. DEVELOPER CONTRIBUTIONS

40 Should the application be approved contributions would be levied

### 6. CONCLUSION

45 The DA proposes Multi Dwelling Housing Comprising Four (4) Dwellings and Four (4) Swimming Pools, two with frontage to Short Street and two with frontage to Galleon Lane. The proposed development is substantially inconsistent with the objectives of the R2 Low Density Residential zone and substantially inconsistent with the planning controls applicable to the site as prescribed by DCP 2014. The development has generated significant community opposition and is not in the public interest being an overdevelopment of the site. The application is recommended for refusal.

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

*Note: From July 1 2018, Councils 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.*

55

**Statement of Reasons**

The proposed development does not comply with some provisions of Byron Local Environmental Plan 2014.
The proposed development does comply with some of the relevant provisions of Byron Shire Development Control Plan 2014.
The proposed development will have a significant adverse impact on the built or social environment of the locality.
The proposed development is considered unsuitable for the proposed site.
The proposed development will compromise the public interest and create an undesirable precedent.

**How community views were addressed**

The DA was advertised in accordance with Byron Shire Development Control Plan 2014. The submissions received were considered on merit and addressed during assessment of the application.
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**8. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS**

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

5

Provide Disclosure Statement register details here: Not applicable

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.8

**Report No. 13.8**      **PLANNING - 10.2020.323.1 Use of two (2) existing structures as Class 10a buildings for the purposes of one (1) farm storage shed including alterations and additions, and one (1) outbuilding including removal of an unapproved bathroom structure.**

5      **Directorate:** Sustainable Environment and Economy  
**Report Author:** Patricia Docherty, Planner  
**File No:** I2020/1222

10      **Proposal:**  
**DA No:** 10.2020.323.1  
**Proposal description:** Use of two (2) existing structures as Class 10a buildings for the purposes of one (1) storage shed including alterations and additions, and one (1) outbuilding including removal of an unapproved bathroom structure.  
**Property description:** LOT: 3 DP: 252483  
541 Friday Hut Road POSSUM CREEK  
**Parcel No/s:** 26280  
**Applicant:** Ms V Polasek  
**Owner:** Mr S L Bassett & Ms V Polasek  
**Zoning:** RU2 Rural Landscape / 1A General Rural Zone  
**Date received:** 8 July 2020  
**Integrated / Designated Development:** ☐ Integrated      ☐ Designated      ☒ Not applicable  
**Concurrence required** CNR No.9881  
**Public notification or exhibition:**

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 23/7/20 to 5/8/20
- Submissions received: nil
- Submissions acknowledged: ☐ Yes      ☐ No      ☒ N/A

**Planning Review Committee:** 13 August 2020  
**Variation request** Not applicable  
**Delegation to determine** Council  
**Issues:** Existing unauthorised structures on site.  
Conditions require modification of DA 10.2019.196.1.

### Summary:

- 15      Development Consent DA10.2019.196.1 for a dual occupancy development on the land required demolition / removal of a number of buildings on the land, including two other dwelling houses and an observatory structure. The two dwellings are identified as Buildings 1 and 2 and the observatory structure which appeared to have capacity for habitation was identified as Building 4.
- 20      This development application originally sought consent to convert Building 1 (dwelling house) to an art gallery, convert Building 2 (dwelling house) to a shed and re-convert Building 4 back into its original approved form as an observatory. The application was amended during the assessment



process and it was decided not to retain and use Building 1 as the Art Gallery. The building will therefore be demolished or removed as per the previous consent.

- 5 The proposed development has therefore been amended to seek approval for Use of Two (2) Existing Unauthorised Buildings, for a 'Farm Shed and other non- habitable outbuilding (Observatory) including the removal of a bathroom.

- 10 The proposal has been considered against Chapter D2 of Byron DCP 2014 and Byron LEP 2014. In this regard the observatory building (Building 4) is sited within a garden sitting and is designed in the style of an Pagoda . The building is neither offensive to the rural or visual amenity of the area and provided it is not used for residential or tourist and visitor accommodation, and the bathroom and other kitchen amenities are removed, its retention is recommended for approval.

- 15 In relation to Building 2 the applicant has advised it is to be used for farm storage purposes. The kitchen and bathroom amenities are to be removed from this structure and the building opened up with a roller door for ease of access for farm equipment and machinery. It is noted that farm sheds can be built without development consent as exempt development under the relevant State Environmental Planning Policy with a footprint of 200m<sup>2</sup>. Appropriate conditions of consent are recommended in relation to the retention and use of these buildings which will also amend the development consent DA10.2019.196.2.

- 20 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.

- 25 NOTE TO COUNCILLORS:



- 30 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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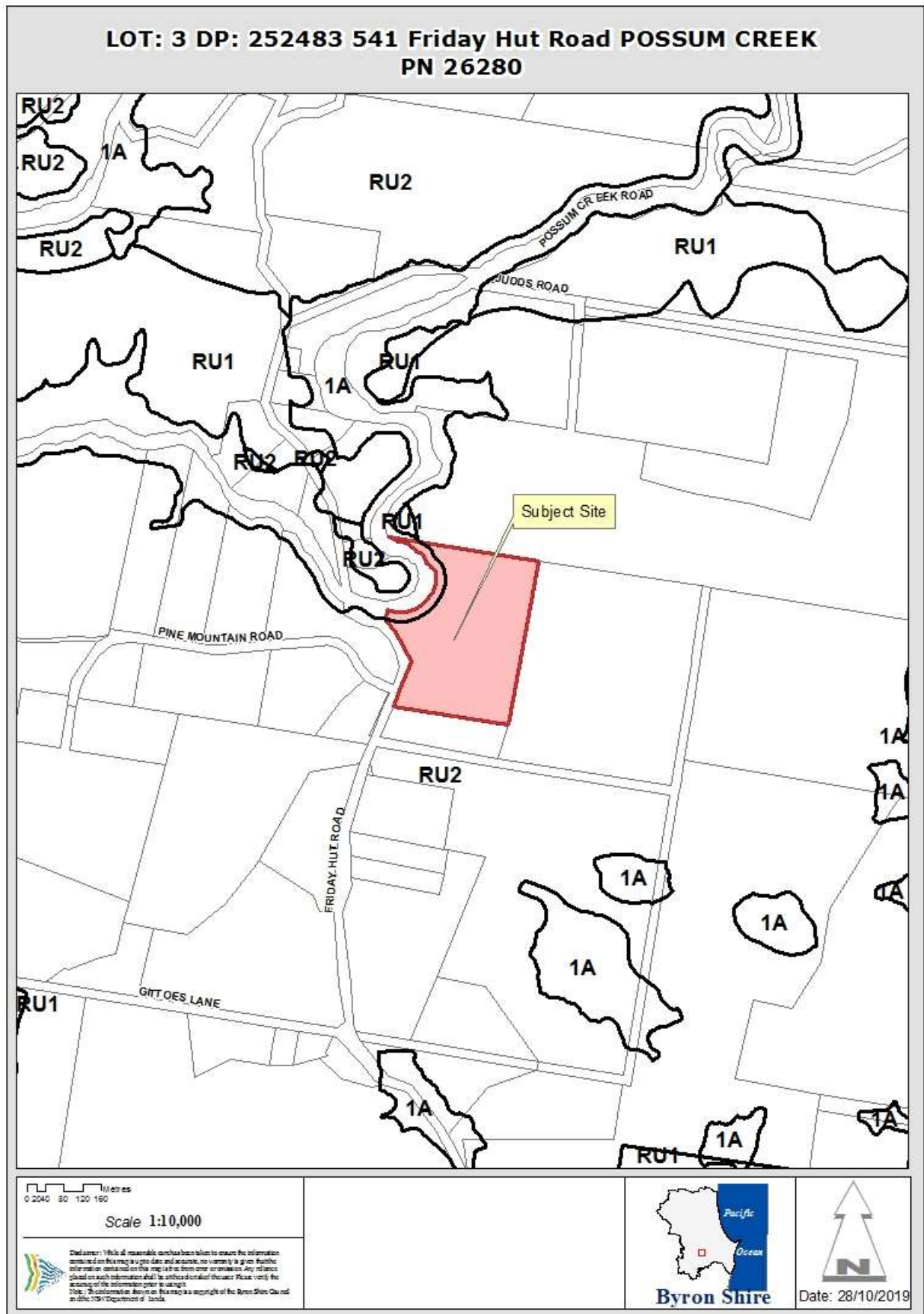
## RECOMMENDATION:

- 35 That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.323.1 for use of two (2) existing structures as Class 10a buildings for the purposes of one (1) farm storage shed including alterations and additions, and one (1) outbuilding including removal of an unapproved bathroom structure, be granted approval subject to the attached conditions of consent (See Attachment 2 E2020/66895).

## Attachments:

- 40 1 10.2020.323.1 - Plan Set, E2020/66591   
2 10.2020.323.1 Recommended Conditions of Consent, E2020/66895 

REPORT



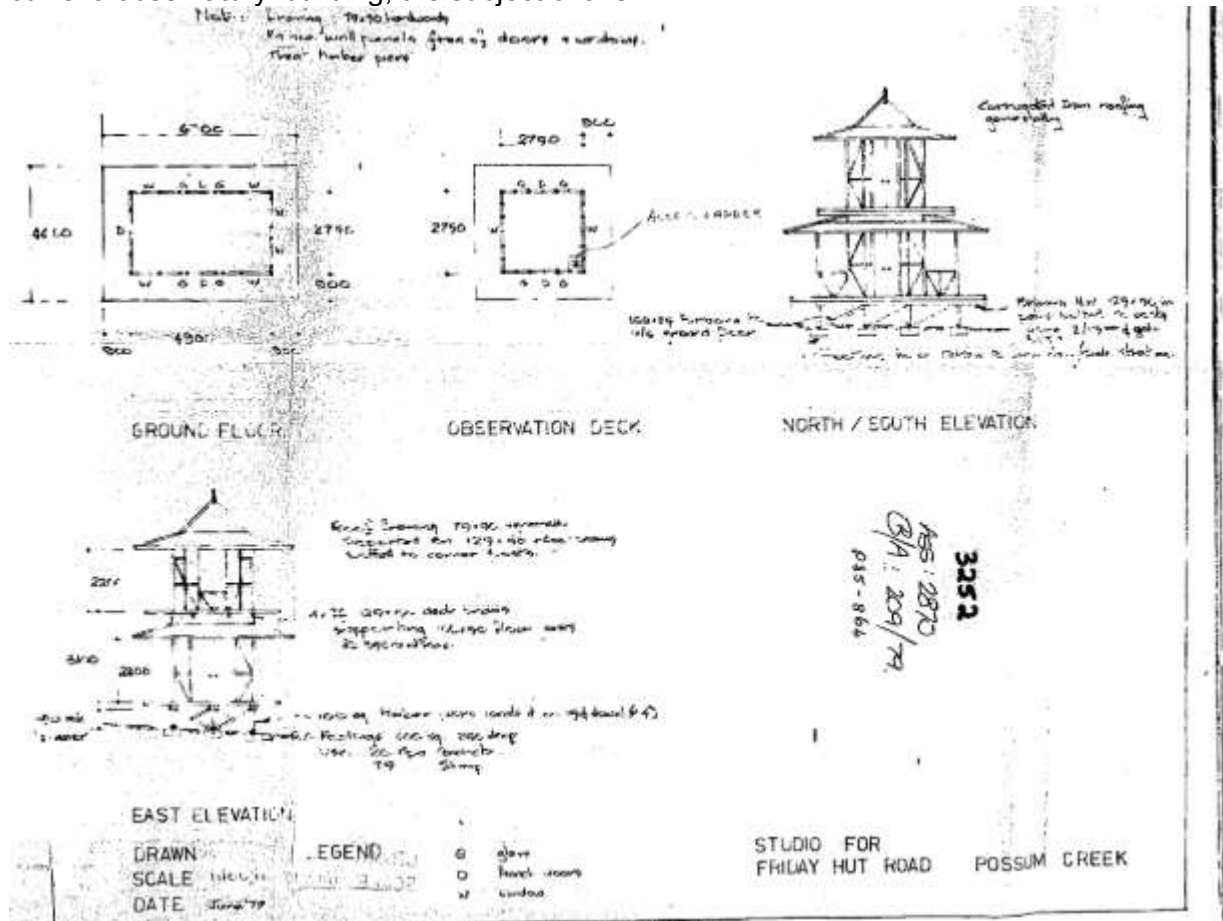
**Assessment:**

**1. INTRODUCTION**

**5 1.1. History/Background**

Historic Determinations

BA 209/79 Building Application for a workshop and studio, lodged 8 June 1979. This approved the current 'observatory' building, the subject of this DA:



Extract of approved studio with observation deck

BA 389/80 Building Application for extension to existing dwelling, determined 8 September 1980.

BA 216/81 Building Application for pottery studio, determined 10 June 1981.

BA 588/87 Building Application in-ground swimming pool, determined 10 November 1987.

Recent Determinations

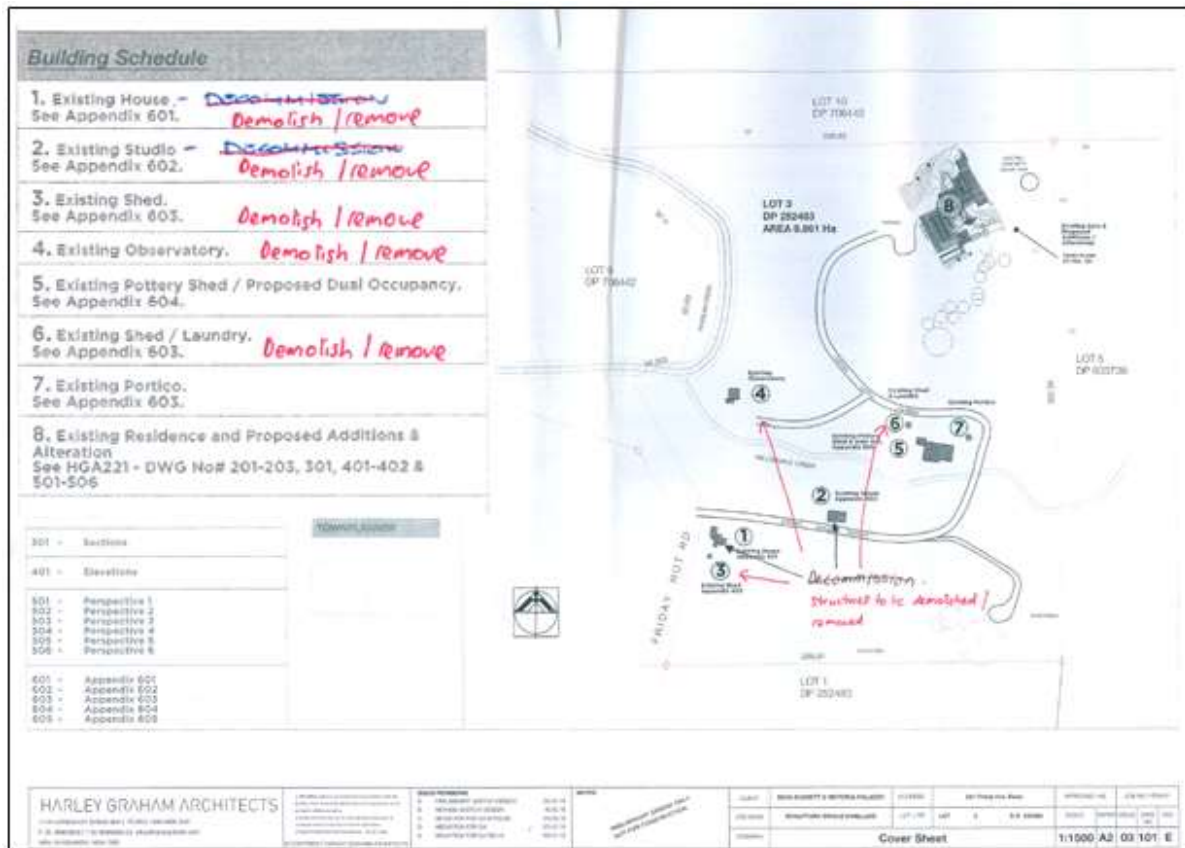
DA 10.2017.602.1 was refused by Council on the 15 December 2017, with an appeal dismissed by the Land and Environment Court 19 March 2019 in relation to the refusal, *Ardill Payne & Partners v Byron Shire Council* [2019] NSWLEC 1125.

DA 10.2019.196.1 for use of existing buildings as a detached dual occupancy and demolition / removal of five (5) buildings – Deferred Commencement approved 21 November 2019.

10.2019.196.2 S4.55 to modify kitchen design for building eight (8) was approved 25 March 2020.

Note. At the time of assessment of 10.2019.196.2, the site contained eight (8) existing buildings:  
Building 1 – existing dwelling (historical approval)  
Building 2 – existing studio being used as a dwelling (unauthorised)

- Building 3 – existing shed  
 Building 4 – existing observatory and bathroom module (main building approved)  
 Building 5 – existing dwelling (approved as part of detached Dual Occupancy 10.2019.196.1)  
 Building 6 – existing shed/laundry  
 5 Building 7 – existing portico  
 Building 8 – existing dwelling (approved as part of detached Dual Occupancy 10.2019.196.1)



Site Layout Plan and Building Schedule

Deferred commencement Condition 1 of 10.2019.196.1 required the applicant to obtain a Building Information Certificate for Buildings 5 and 8; and Condition 2 required the applicant to obtain a Section 68 approval for an on-site sewage management facility.

Section 68 for on-site sewage management system 70.2019.196.1 was issued on 7 April 2020. Building Information Certificate 50.2020.6.1 was issued on 13 May 2020. Therefore the two (2) deferred commencement conditions have been satisfied and consent 10.2019.792.1 is operational.

Condition 2 of consent 10.2019.196.1 requires demolition / removal of Buildings 1, 2, 3, 4 and 6 within 2 years of the date of issue of the Deferred Commencement consent or prior to issue of a Construction Certificate whichever comes first. Condition 5 requires the demolition / removal of these structures prior to issue of a Construction Certificate.

DA 10.2020.323.1, which is assessed in this report relates to buildings 1, 2, and 4, which are required to be removed under DA 10.2019.196.1.

## 1.2. Description of the proposed development

This application (DA 10.2020.323.1) originally sought approval for change of use of a dwelling house (Building 1) for purposes of an education and information facility (art gallery) and use of two (2) existing buildings, for a 'farm' shed and other outbuilding.



During assessment, the applicant decided to proceed with demolition of the existing dwelling house in accordance with consent DA 10.2019.196.1. The reason the proposal was amended was to avoid impacts of native vegetation mapped under the Biodiversity Values Map due to requirements for asset protection zones required for the purposes of bushfire protection.

5 The proposed development has therefore been amended to seek approval for use of two (2) existing structures as Class 10a buildings for the purposes of one (1) farm storage shed including alterations and additions, and one (1) outbuilding including removal of an unapproved bathroom structure.

10



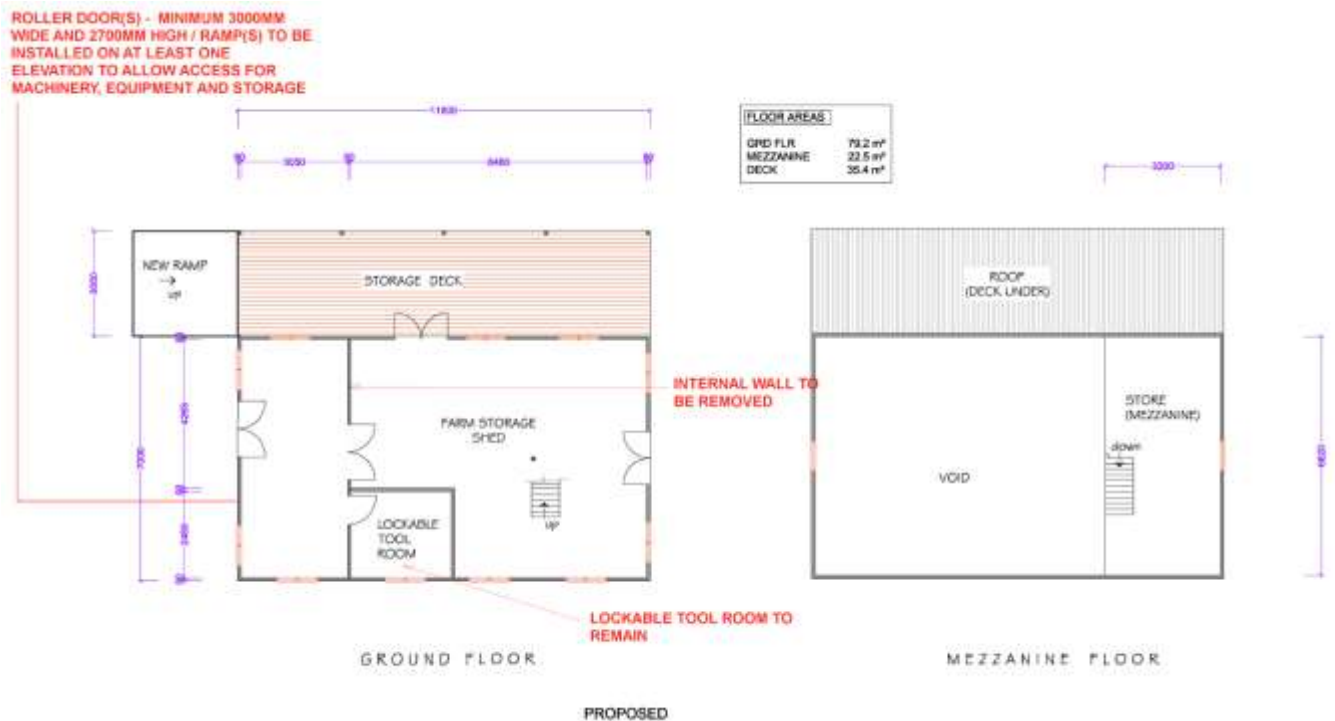
***Approved studio (Pagoda) with observatory level***



15 ***Unapproved bathroom structure to be removed from Observatory***



*Unapproved dwelling to become a shed*

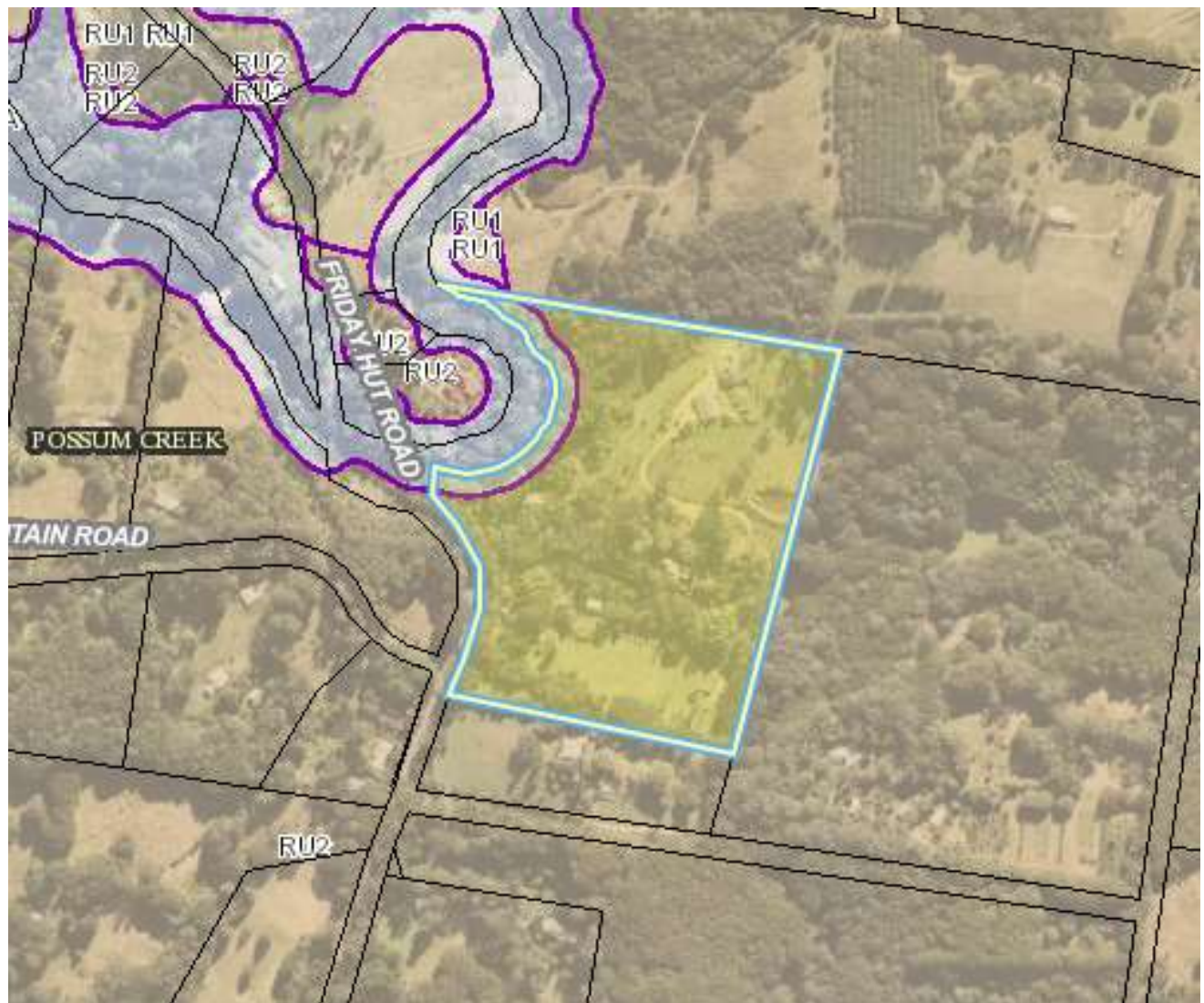


5 ***Shed plan***



**1.3. Description of the site**

Land is legally described	LOT: 3 DP: 252483	
Property address	541 Friday Hut Road POSSUM CREEK	
Land is zoned:	RU2 Rural Landscape / Part 1A General Rural zone	
Land area is:	8.861 ha	
Property is constrained by:	Bushfire prone land, High Environmental Value, Cattle Dip Buffer, Biodiversity Values Map	
	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 Lot Boundary / Land Use Zone**



**2. SUMMARY OF REFERRALS**

Referral	Issue
Development Engineer	No objections subject to conditions..
Building Surveyor	No objections subject to conditions..
Ecologist	No objections subject to conditions.
Rural Fire Service	No objections and no conditions applicable to non habitable buildings.

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

- 5 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 was referred to the NSW Rural Fire Service, which confirmed that the Farm Storage Shed and Observatory are Class 10 buildings located more than 6 metres from a dwelling so no specific bushfire protection measures are required for those structures.

**EFFECT OF 10/50 RULE ON SIGNIFICANT VEGETATION**

All buildings the subject of this assessment report are non-habitable and conditions of consent have been drafted to ensure the applicant cannot clear vegetation under the 10/50 clearing code.

**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 Koala Habitat Protection 2019	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposed development will have no impact on land identified for consideration under the SEPP.		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: This matter was considered in detail in the previous LEC proceeding and development consent. It is considered that no further investigation is warranted.		
State Environmental Planning Policy (Rural Lands) 2008	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposal is not inconsistent with the provisions of the SEPP.		

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

- 25 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.

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

- 30 (a) The proposed development is defined in the LEP 2014 Dictionary as non habitable buildings, ancillary to a dwelling house;
- (b) The land is within the RU2 Rural Landscape according to the Land Zoning Map;
- (c) The proposed development is permissible with consent; and
- 35 (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
• To encourage sustainable primary industry production by maintaining and enhancing the	The proposed use of the buildings is ancillary to approved residential development and is

<p>natural resource base.</p> <ul style="list-style-type: none"> <li>• To maintain the rural landscape character of the land.</li> <li>• To provide for a range of compatible land uses, including extensive agriculture.</li> <li>• 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.</li> <li>• To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.</li> </ul>	<p>not contrary to the objectives of the zone. The buildings are located below 60 metres Australian Height Datum, are non habitable and will not result in clearing of vegetation. Their retention and use is unlikely to increase impacts on the scenic quality of the locality with the observatory/ pagoda building located within a garden setting and the shed appropriately setback from Friday Hut Road</p>
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The relevant clauses have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The proposed development complies with all clauses of LEP 2014 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

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

LEP 1988 is not 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 the affected buildings are not zoned under LEP 1988.

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

Not applicable.

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

DCP 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 land to which LEP 2014 applies.

#### **D2.2.3 Character and Visual Impact**

The proposal will result in a two buildings being retained. Both are located at or below 50 metres AHD and are not considered to be inconsistent with the objectives of the Clause, being:

##### *Objectives*

- 1. To retain and enhance the unique character of Byron Shire and its distinctive landscapes, ecology, rural and natural areas.*
- 2. To ensure that new development contributes to the character of its locality by respecting and complementing the natural and built environment.*

The Observatory building was approved as a studio in 1979, however the previous owners installed the bathroom additions without the consent of Council, and was in all likelihood used as a form of residential or tourist accommodation. Therefore the unauthorized portion of the structure is proposed to be demolished to bring the structure back to the original approval.

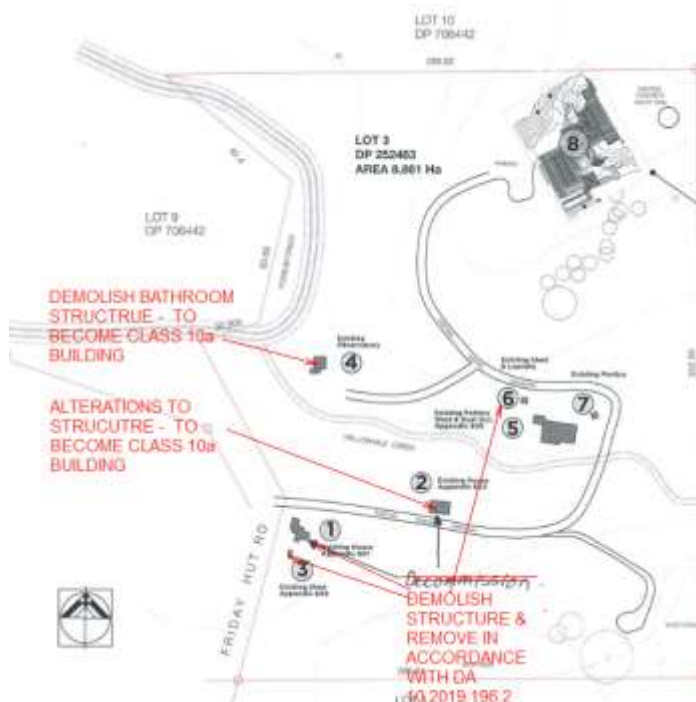
The structure's locations within the rural landscape is neither offensive nor creates any sort of visual impact being within a landscape setting.



The resultant total number of buildings would be five (5), as follows:

- Building 2 – Dwelling converted to a shed (proposed)
- 5 Building 4 – Studio / observatory (approved) with bathroom structure removed (proposed)
- Building 5 – Dual Occupancy (approved)
- Building 7 – Portico Structure (approved)
- Building 8 – Dual Occupancy (approved)
- 10 The following will be removed / demolished in accordance with approvals:
- Building 1 – Existing dwelling
- Building 3 – Existing shed
- Building 6 – Existing shed / laundry
- Bathroom structure only to be removed from Building 4.

15



Site plan – number of buildings

**D2.7.1 Studios**

The Observatory is an approved studio and must not be used as residential accommodation and conditions of consent are recommended to ensure this is required to be complied with at all times.

- 5 The building, if considered against the current controls complies with the following:

It is situated on the same site as the dwelling;

It does not exceed 60m<sup>2</sup> gross floor area;

It does not contain internal partitions;

- 10 It does not contain a kitchen;

It is not be used for separate habitation;

It does not require additional clearing of native vegetation, or the provision of additional public services infrastructure over and above that required by the dwelling.

- 15 The approved studio is located a maximum distance of approximately 165 metres to a dwelling, however this was approved in 1979 prior to the development of DCP provisions for studios. In general the Observatory (studio) is not to inconsistent with the objectives of Clause D2.7.1, as follows:

20 *Objectives*

1. *To enable construction and use of a detached building that is ancillary to and compatible in character with a dwelling where, because of its nature or space requirements the proposed use of the building is not practical within the confines of the dwelling.*
2. *To limit the number of studios allowed per property.*

25

Conditions of consent to apply.

**D2.7.2 Farm Buildings, sheds and other Structures**

- 30 The conversion of building 2 into a shed is required to store machinery and materials for the purposes of maintaining the gardens and orchards on the site and for other farming purposes.

The plans have been marked in red ink following discussion with the applicant to include at least one roller door to make the shed more function for the intended purpose. The separate lockable tool room is considered acceptable. This will ensure compliance with the relevant provisions including dwelling house to shed conversions under Section D2.7.2, as follows:

35

*Dwelling house to shed conversions should include at a minimum the removal of the kitchen cooking and washing facilities to facilitate use for agricultural needs which may include the addition of a roller door. This should include the removal of any non- structural internal partitions.*

40

*Sheds should be open, have minimal dividing walls and plumbing and be suitable for machinery and vehicle storage. Plans of decommissioning should be included with Development Applications seeking to change the use of the building from a dwelling to a shed.*

45

It is noted that farm sheds can be built without development consent as exempt development under the relevant State Environmental Planning Policy with a footprint of 200m<sup>2</sup>, whilst this structure will only have footprint of approximately 120 m<sup>2</sup>. Appropriate conditions of consent are recommended in relation to the retention and use of these buildings which will also amend the development consent DA10.2019.196.2.

50

The proposal raise no other issues under the DCP.

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

<b>Clause</b>	<i>This control is applicable to the proposal:</i>	<i>I have considered this control as it relates to the proposal:</i>	<i>If this control is applicable, does the proposal comply?</i>
<b>92</b>	Yes	Yes	Yes standard /prescribed conditions.
<b>93</b>	No	No	N/A
<b>94</b>	No	No	N/A
<b>94A</b>	No	No	N/A

*\* Non-compliances and any other significant issues discussed below*

**5 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.

10 Council Policies that are applicable to the proposed development have been considered during assessment.

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

15 Although partly constrained by vegetation and bushfire hazards, the site suitable for the proposed development, subject to conditions of consent.

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

20 The development application was publicly exhibited. There were **no** submissions made on the development application

**4.9 Public interest**

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

**5. DEVELOPER CONTRIBUTIONS**

30 There is no nexus to levy contributions for the proposed developments

**6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS**

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be	No

determined by the Director or Manager of the Planning, Development and Environment Division.	
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## **7. CONCLUSION**

The DA proposes use of two (2) existing structures as Class 10a buildings for the purposes of one (1) farm storage shed including alterations and additions, and one (1) outbuilding (Observatory Pagoda) as a studio type structures including removal of an unapproved bathroom structure.

The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. In particular the Observatory Pagoda building is within a garden setting and does not offend the rural or visual amenity of the area. The other building as shed is considered acceptable provided it is converted for that purpose through opening the building up and installing roller doors for ease of access for farm machinery and the like. The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development. Conditions of consent have also been drafted to reflect changes required to development consent DA10.2019.196.2 as both of these buildings will no longer be required to be demolished or removed.

The application appropriately addresses the relevant constraints applying to the site, and is recommended for approval subject to the conditions listed in the attachment to this Report.

## **8. 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.

### **How community views were addressed**

The DA was notified/advertised in accordance with Byron Shire Council Community Participation Plan (CPP). No submissions were received.
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**Report No. 13.9**      **PLANNING - DA 10.2020.230.1 Use of existing Nursery Structure ancillary to Community Facility (Mullumbimby Community Garden) at 156 Stuart Street Mullumbimby**  
**Directorate:**      Sustainable Environment and Economy  
**Report Author:**      Dylan Johnstone, Development Investigations Lead  
**File No:**      I2020/1356

**10 Summary:**

**Proposal description:**      Use of existing Nursery Structure ancillary to Community Facility (Mullumbimby Community Garden)  
**Property description:**      LOT: 22 DP: 1073165  
    156 Stuart Street MULLUMBIMBY  
**Parcel No/s:**      239417  
**Applicant:**      Ms S Y Mainsbridge  
**Owner:**      Byron Shire Council  
**Zoning:**      RE1 Public Recreation / PART DM Deferred Matter Byron LEP 1988  
**Date received:**      16 May 2020  
**Integrated / Designated Development:**      ☐ Integrated      ☐ Designated      ☒ Not applicable  
**Concurrence required**      No  
**Public notification or exhibition:**      – Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications  
    – Exhibition period: 28/5/20 to 17/6/20  
    – Submissions received: Two (2)  
**Delegation to determine**      Council  
**Issues:**

- Conflicts with the Mullumbimby Community Garden Plan of Management
- Flood prone land
- Unauthorised works

**Summary:**

**15**      This development application seeks (retrospective) approval to use an existing nursery structure at the Mullumbimby Community Garden that was installed without development consent.

The structure which is best described as a greenhouse has a maximum height of 4m and measures 10m x 20m and is proposed to be used by ReForest Now.

**20**      ReForest Now using the nursery structure, is operating as a not-for-profit organisation, fundraising for, and facilitating local tree plantings, with a particular focus on volunteer engagement at the nursery site.

**25**      The nursery structure is located outside of the nominated community garden area under the Plan of Management (POM) for this Reserve, and falls within land identified for sports fields. This POM is currently the subject of review, as is the zoning of land (Lot 22).

To ensure there is no long term conflict with the above reviews, a time limited consent for two years is proposed, whereby the structure will need to be removed/relocated on the land at the end



of this period. The nursery structure is lightweight in nature and will be able to be removed or relocated with relative ease.

5 At present the remainder of the reserve resembles farmland and is not currently used as sports fields.



The application as assessed appropriately addresses the relevant planning controls and constraints applying to the land, and is recommended for approval subject to conditions of consent.

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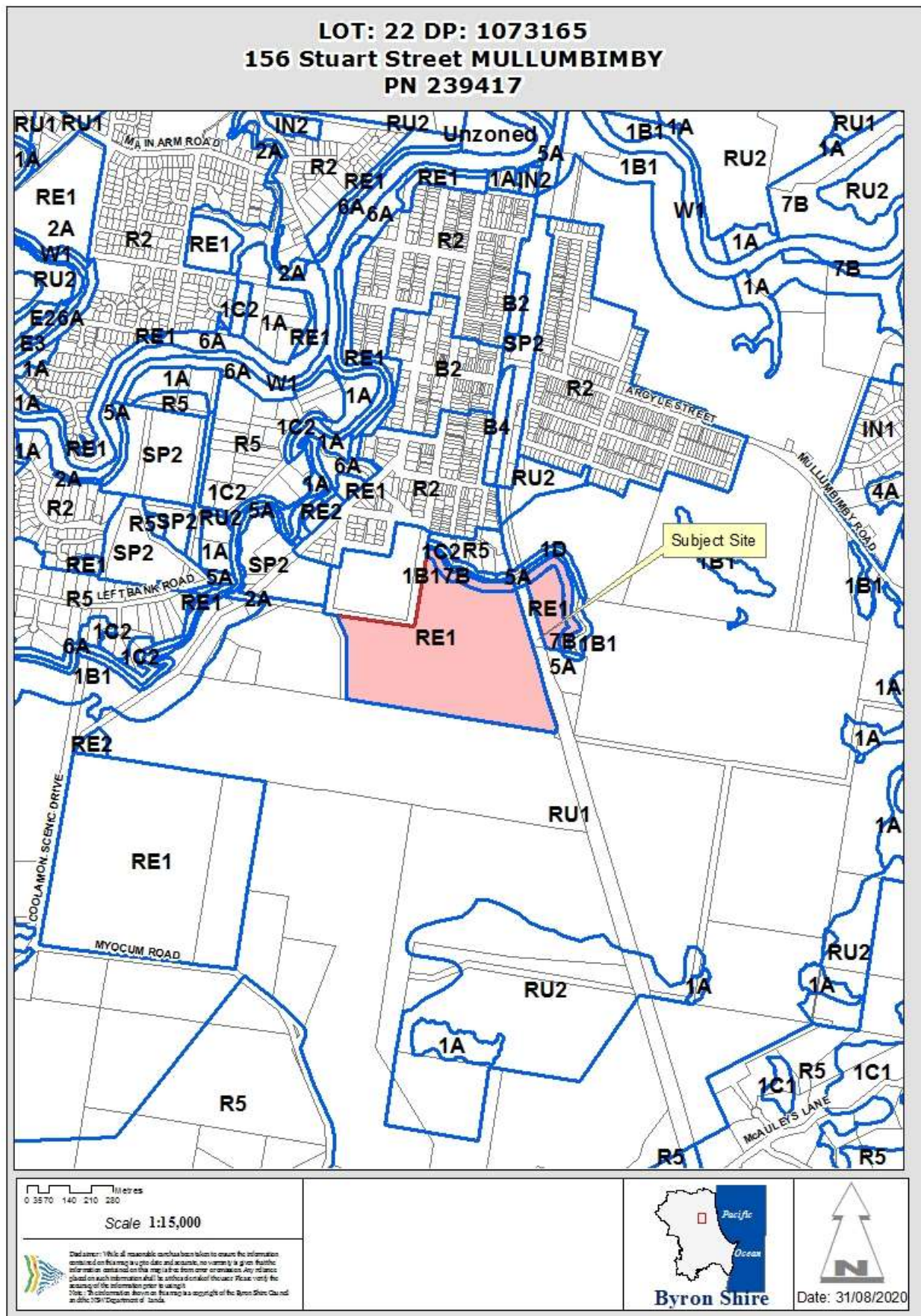
**RECOMMENDATION:**

10 That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, development application 10.2020.230.1 Use of existing Nursery Structure ancillary to Community Facility (Mullumbimby Community Garden), be granted consent subject to conditions (Attachment 2 E2020/69246).

**Attachments:**

- 15
- 1 Plans DA10.2020.230.1 156 Stuart Street - Mullumbimby Community Garden, E2020/69439 
  - 2 Draft conditions DA10.2020.230.1 at 156 Stuart Street -Mullumbimby Community Garden, E2020/69246 
  - 3 Confidential - Submissions DA 10.2020.230.1 156 Stuart Street - Mullumbimby Community Garden, E2020/69265

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**Assessment:**

**1. INTRODUCTION**

**1.1. History/Background**

- 10.2010.133.1 – Nursery Shed and associated drainage – approved 15/09/10
- 10.2015.159.1 – Replacement of site office and first aid room within Community Garden – approved 04/06/15
- 10.2018.296.1 – Men's Shed Complex including construction of 3 sheds and use of 1 existing shed – approved 22/11/18
- 10.2020.222.1 – Greenhouse structure in Mullumbimby Community Gardens – approved 14/05/20

**1.2. Description of the proposed development**

This application seeks (retrospective) approval for use of a nursery structure ancillary to community facility at the Mullumbimby Community Garden. The structure was installed without development consent.

The nursery structure has a maximum height of 4m and measures 10m x 20m and is proposed to be used by ReForest Now.

ReForest Now using the nursery structure, is operating as a not-for-profit organisation, fundraising for, and facilitating local tree plantings, with a particular focus on volunteer engagement at the nursery site.

The organisation currently has 7 core staff, with 2 staff members managing the nursery 2 days a week at a minimum (currently Tuesday and Sunday).

Up to 50,000 plants can potentially be on site, with 5,000 of those being ready to plant.

**1.3. Description of the site**

A site inspection was carried out on 16 April 2020 and 3 August 2020.

The subject nursery structure was inspected on 16 April 2020.

A further inspection of the site on 3 August 2020, revealed an additional shade structure had been constructed in front of the nursery structure. The area of this shade structure exceeds the maximum area permitted by State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. This structure required development consent prior to installation. This structure is recommended for removal/demolition, conditions apply.

Land is legally described	LOT: 22 DP: 1073165	
Property address	156 Stuart Street MULLUMBIMBY	
Land is zoned:	RE1 Public Recreation / PART DM Deferred Matter Byron LEP 1988	
Land area is:	29.18 ha	
Property is constrained by:	Flood Liable Land Acid Sulfate Soils Class 3 High Conservation Value High Environmental Value 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
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Existing nursery structure looking South (photo taken 16 April 2020)



Existing nursery structure and shade structure looking Southwest (photo taken 3 August 2020)

**2. SUMMARY OF REFERRALS**

Referral	Issue
Development Engineer	No objections subject to conditions.
Building Surveyor	No objections subject to condition.

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

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 not bush fire prone land.

**EFFECT OF 10/50 RULE ON SIGNIFICANT VEGETATION**

The land is located in a designated 10/50 clearing entitlement area however this rule does not apply to a Class 10a structure.

**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 (Koala Habitat Protection) 2019	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration:  The subject lot is partially mapped as being subject to the Koala Development Application Map in accordance with the SEPP.  The proposal does not require any vegetation removal and, in accordance with Clause 10(b), Council is satisfied that the development site is not core koala habitat.		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration:  Contaminated Land Assessment Report No. A1136 prepared by EAL dated December 2008, and lodged with DA 10.2010.133.1, demonstrates that the site is suitable for the intended use.		
<a href="#">State Environmental Planning Policy (Coastal Management) 2018</a>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration:  <u>Clause 13 – Development on land within the coastal environment area</u>  (1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following: (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,		

	<b>Satisfactory</b>	<b>Unsatisfactory</b>
<p>(b) coastal environmental values and natural coastal processes,</p> <p>(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,</p> <p>(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,</p> <p>(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,</p> <p>(f) Aboriginal cultural heritage, practices and places,</p> <p>(g) the use of the surf zone.</p> <p>(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:</p> <p>(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or</p> <p>(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</p> <p>(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.</p> <p>(3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.</p> <p>The application does not propose any vegetation removal or impacts on the coastal environment and coastal processes. The proposal does not impact on foreshore access or any known item or place of aboriginal cultural heritage. The proposal is consistent with the provisions of Clause 13 of the Coastal Management SEPP.</p>		

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

- 5 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.

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

- 10 (a) The proposed development is defined in the LEP 2014 Dictionary as Community Facility (development ancillary to). The use could also be described as horticulture which is also a permissible land use in the RE1 Zone.
- (b) The land is within the RE1 Public Recreation / PART DM Deferred Matter according to the Land Zoning Map (the proposal is located entirely on land zoned RE1).
- (c) The proposed development is permitted with consent.
- 15 (d) Regard has been given to the Zone Objectives as follows:

<b>Zone Objective</b>	<b>Consideration</b>
To enable land to be used for public open space or recreational purposes.	The proposal does not impact on the ability of the land to continue to be used for the purpose of a community garden or the larger areas to the south as sports fields.
To provide a range of recreational settings and activities and compatible land uses.	The structure facilitates the activities of ReForest Now which are compatible with the existing use of the site for a community garden.
To protect and enhance the natural environment for recreational purposes.	The proposal will not have a significant impact on the natural environment for recreational purposes.

6.1 Acid Sulfate Soils

The land is mapped as potential Acid Sulfate Soils Class 4. Works do not extend more than 2m below the natural ground surface therefore no further assessment is required.

6.3 Flood Planning

The land is subject to both the 10 year and 100 year flood events however, given the use of the structure as ancillary to a community garden, this does not present any significant safety risk.

6.6 Essential Services

The land contains an existing onsite sewage management system approved in accordance with 70.2016.1073.1 and associated with existing toilet facilities. There is no nexus to require any further provisions for onsite sewage management under this application.

The site has suitable vehicular access via the existing access arrangement through the community garden.

Recommended conditions will ensure that the site provides suitable stormwater drainage.

The proposed development complies with all clauses of LEP 2014 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

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

Not applicable.

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

DCP 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 land to which LEP 2014 applies.

The proposed development is demonstrated to meet the relevant Objectives of all relevant Parts/Chapters (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

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

Clause	<i>This control is applicable to the proposal:</i>	<i>I have considered this control as it relates to the proposal:</i>	<i>If this control is applicable, does the proposal comply?</i>
<b>92</b>	No	N/A	N/A
<b>93</b>	No	N/A	N/A
<b>94</b>	No	N/A	N/A
<b>94A</b>	No	N/A	N/A

\* Non-compliances and any other significant issues discussed below



**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**

Impact on:	Likely significant impact/s?
<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.

5 Are there any Council Policies that are applicable to the proposed development?

Community Gardens Policy 2020

10 This Policy requires that community land be considered with respect to the relevant plan of management. The Plan of Management (POM) for the land adopted on 26 June 2008 identifies the location of the existing nursery structure as being used for Sports Fields.





This POM is also currently the subject of review, as is the zoning of land (Lot 22).

To ensure there is no long term conflict with the above reviews, a time limited consent for two years is proposed, whereby the structure will need to be removed/relocated on the land at the end of this period. The nursery structure is lightweight in nature and will be able to be removed or relocated with relative ease.

It is also noted that a number of other green houses and shelters have been erected without consent adjacent to the subject greenhouse. Conditions to apply for these to be removed unless separate approval is sought for their regularisation/retention within 60 days of the date of this consent (if granted). In the event no further approval is issued these other structures will need to be removed.

#### **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 publicly exhibited

There were **2** submissions made on the development application:

<b>Issue - Objections</b>	<b>Comment</b>
Description of the land when advertising should have been Mullumbimby Sportsfields or rear of Mullumbimby Community Garden	It is considered that the site was sufficiently identified when placed on public exhibition as the street address and Lot and DP were specified.
The land where the nursery structure is located should only be used for sports fields in accordance with the Plan of Management	The Plan of Management adopted on 26 June 2008 identifies the location of the existing nursery structure as being used for Sports Fields. Therefore a 2 year time limited consent is recommended so that the nursery structure and its use do not conflict with the proposed future use of the site.
The nursery structure does not meet the definition of a community garden	<p>The LEP2014 land use definition that is applicable to the community garden is a community facility:</p> <p><b><i>community facility</i></b> means a building or place—</p> <p>(a) owned or controlled by a public authority or non-profit community organisation, and</p> <p>(b) used for the physical, social, cultural or intellectual development or welfare of the community, but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.</p> <p>ReForest Now is operating as a not-for-profit organisation, fundraising for, and facilitating local tree plantings, with a particular focus on volunteer engagement at the nursery site.</p> <p>Therefore the use of the nursery is consistent with the land use definition of a community facility.</p>
Why was the applicant able to lodge a DA without having a lease for this section of	Clause 49(1) of the <i>Environmental Planning and Assessment Regulation 2000</i> provides that a development application may be made by any person.

<b>Issue - Objections</b>	<b>Comment</b>
community land nor the adjoining community garden land which is leased to Mullum Seed	
Why was the application accepted without landowners consent from Council?	In accordance with <i>Harris Farm Markets Pty Limited v Ashfield Fresh Pty Limited and Anor. [2002] NSWLEC 106</i> (28 June 2002) landowners consent is not strictly required at the time of lodgement of a Development Application as long as it is obtained prior to determination of the application. On 1 July 2020 landowners consent was granted by Council subject to the development proposal being time limited and a temporary license for construction and occupation.
Access to the site is to be through the Barry Lomath oval adjacent to the community garden fenceline. This is not acceptable	Recommended condition will require that vehicular access must only be via the existing access through the community garden
The DA applicant has indicated they do not know any Councillors, a quick search of Facebook and the internet reveals the applicant is friends with the Mayor and 3 Councillors, it is an offence to provide false information.	Noted Councillors will need to determine whether they have a conflict of interest when voting on the determination.
How can council make an informed decision on this DA when it does not include any engineering plans or certification for the structure?	A condition is recommended requiring engineers certification for the structure prior to be provided.
The RE1 zoning permits Horticulture, does this also include Nurseries/Greenhouses of this scale?	The use of the nursery is consistent with the land use definition of a community facility which is permitted with consent in the RE1 zone.
Site Suitability and flooding	The application does not propose habitable structures therefore no further assessment is required.
The site has been illegally filled with approximately 8m3 of metal dust.	This is a compliance matter and is separate from this DA.
The Chemical Free Landcare group has been ring barking the Camphor trees in the area against council permission. If all these trees are removed, will there be adequate visual privacy to neighbours?	This is a compliance matter and is separate from this DA.
How do the staff and volunteers not create Sewage? There is an illegal toilet in the South East corner of the Community Gardens site. This issue needs to be addressed.	The land contains an existing onsite sewage management system approved in accordance with 70.2016.1073.1 and associated with existing toilet facilities. Conditions to apply requiring any unauthorised toilets or onsite sewage management systems to be removed within 6 months of the date of this consent.
The existing Reforest Now nurseries on the site results in	A condition is recommended requiring appropriate stormwater drainage to be provided.

<b>Issue - Objections</b>	<b>Comment</b>
large areas being left boggy, there needs to be formal drainage of the site and better excess water management.	
There have been large concrete blocks dumped on the sports fields near the rear entrance, these need to be disposed of.	This is a compliance matter and is separate from this DA.

#### **4.9 Public interest**

- 5 The proposed development is unlikely to prejudice or compromise the public interest or create an undesirable precedent given the time limit issued as a condition on the consent.

#### **5. DEVELOPER CONTRIBUTIONS**

- 10 There is no nexus to levy contributions for this development.

#### **6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS**

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

Provide Disclosure Statement register details here: Not applicable

#### **15 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 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 Environmental Planning & Assessment Regulation 2000 considerations.
The proposed development will not have a 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 development application was notified/advertised in accordance with the Community Participation Plan. Issues raised in the submissions have been addressed during assessment of the application.
The proposed development is unlikely to prejudice or compromise the public interest.

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##### **How community views were addressed**

The DA was advertised in accordance with Byron Shire Council Community Participation Plan (CPP). The submissions received were considered on merit and addressed during assessment of the application.
To view the considerations, please contact Council to view a copy of the assessment report relating to this DA.

**8. CONCLUSION**

- 5 The application as assessed has addressed the relevant constraints applying to the site, and is recommended for approval subject to conditions.

**Report No. 13.10**      **Footpath dining and COVID-19 impacts**  
**Directorate:**        Sustainable Environment and Economy  
**Report Author:**    Kylie Grainey, Business Improvement Officer  
**File No:**              I2020/1270

5

**Summary:**

10    In March this year in response to COVID-19, Council suspended footpath dining and associated licence fees between April and June. Credits for March payments were also applied to accounts.

15    On 1 June the suspension was lifted, and businesses were able to resume use of the footpath for dining purposes, as long as they were able to comply with COVID-19 social distancing requirements.

Some businesses have chosen not to use the footpath and others are only using a portion of their licenced area to enable compliance with the COVID-19 requirements.

20    Council has received representations from businesses wishing to suspend or reduce licence fees given the reduced number of seating they can use and the current downturn in the visitor market.

This report provides options to assist businesses during this time.

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**RECOMMENDATION:**

**That Council [insert Option/s a, b, c or d as noted in the report] for [period of time] in response to continuing impacts of COVID-19.**

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## REPORT

On the 26 March 2020 Council [resolved to suspend footpath dining](#) and associated licence fees for three months in response to COVID-19 (Resolution **20-124**).

On 28 May 2020 Council [resolved to lift the suspension](#) (Resolution **20-001**) for those businesses that had a valid footpath dining licence in place. This was in response to the easing of Government restrictions in relation to pubs, clubs, cafes and restaurants with strict social distancing guidelines as of 1 June 2020.

Businesses have recently been issued with invoices for licence fees for the period July to September. A number of which have made representations to either:

- a. Continue to suspend use and therefore associated fees for footpath dining for a temporary period; or
- b. Request a reduction in fees given that COVID-19 restrictions require them to provide distance between tables or reduce the number of people allowed to dine in at restaurants.
- c. Request continuation of suspension of licence fees whilst COVID-19 restrictions are impacting business.

NSW Government COVID-19 restrictions have since been increased with recent outbreaks. And the Queensland Government have introduced tighter border restrictions that restrict Queenslanders from coming south of the Tweed Shire. These restrictions are continuing to financially impact businesses in the Byron Shire.

The current licence fees for Footpath Dining are:

Footpath Dining Licence fees	Annual price per m <sup>2</sup>
Bangalow	\$255.00
Brunswick Heads (Brunswick Terrace, Fingal, Park and Mullumbimbi Streets block)	\$216.00
Byron Bay – Precinct 1 and 2 (Jonson Street from Lawson Street to Bay Street, Bay Street from Jonson Street to Middleton Street, Fletcher Street from Bay Lane to Bay Street, Lawson Street from railway line to Middleton Street, Byron Street from Jonson Street to Fletcher Street, Jonson Street from Marvell Street to Lawson Street, Fletcher Street from Byron Street to Bay Lane, Middleton Street from Lawson Street to Bay Street)	\$580.00
Byron Bay – remaining properties	\$363.00
Mullumbimby	\$174.00
Remainder of Shire	\$174.00

Neighbouring Council's have implemented the following assistance measures in relation to footpath dining licence fees to assist businesses to grow following the impacts of COVID-19.

- **Tweed Shire Council** - Waiver/rebate of all outdoor dining fees have been applied for 12 months
- **Lismore and Ballina** – Suspension on fees for a period of 15 months from 1 April 2020 to 30 June 2021 to allow businesses to re-establish.

Council could consider a similar suspension on licence payments for a fixed period of time.

***Options***

- 5        a. Implement a 'holiday' period whereby businesses can elect to temporarily suspend use of the footpath, and licence fees be suspended for that period. Their licence would recommence after that period and invoicing of licence fees would resume as per their original approval (note: if the licence expires during that period, a renewal would be required).
- 10       b. Grant a temporary reduction in licence fees for those businesses still wishing to use the footpath, but with restrictions table numbers so they can comply with COVID-19 requirements.
- c. Temporarily suspend licence fees for set period to allow businesses to continue using the footpath and re-establish their business.
- 15       d. Leave licence fees at the current rate in accordance with [Council's Fees and Charges](#).

Note, options a. and b. could be implemented together so businesses could decide on the plan of action that best suits their situation.

20       ***Next steps***

Regardless of the option Council resolves upon, businesses would still be required to have a valid approval in place, if they were to continue to use the footpath. Staff will continue to process applications and monitor compliance with approvals issued.

25

**STRATEGIC CONSIDERATIONS**

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

30       Not applicable

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

35       Not applicable

***Financial Considerations***

40       The 2020/21 budget for commercial use of footpaths, includes income from Footpath Dining in the amount of \$62,000. Any reduction or suspension of licence fees will reduce the amount of income received during the financial year .

***Consultation and Engagement***

Not applicable