

Agenda Ordinary (Planning) Meeting

Thursday, 10 November 2022



BYRON
SHIRE
COUNCIL

Agenda Ordinary (Planning) Meeting

held at Conference Room, Station Street, Mullumbimby
commencing at 9.00am

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.

A handwritten signature in black ink, appearing to read 'Mark Arnold'.

Mark Arnold
General Manager

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)

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.

OATH AND AFFIRMATION FOR COUNCILLORS

Councillors are reminded of the oath of office or affirmation of office made at or before their first meeting of the council in accordance with Clause 233A of the Local Government Act 1993. This includes undertaking the duties of the office of councillor in the best interests of the people of Byron Shire and the Byron Shire Council and faithfully and impartially carrying out the functions, powers, authorities and discretions vested under the Act or any other Act to the best of one's ability and judgment.

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BUSINESS OF ORDINARY (PLANNING) MEETING

1. PUBLIC ACCESS

2. APOLOGIES

3. ATTENDANCE BY AUDIO-VISUAL LINK / 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 October 2022

7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS

8. MAYORAL MINUTE

9. NOTICES OF MOTION

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10. PETITIONS

11. SUBMISSIONS AND GRANTS

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Sustainable Environment and Economy

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14. QUESTIONS WITH NOTICE

Nil

Questions with Notice: A response to Questions with Notice will be provided at the meeting if possible, that response will be included in the meeting minutes. If a response is unable to be provided the question will be taken on notice, with an answer to be provided to the person/organisation prior to the next Ordinary Meeting and placed on Councils website www.byron.nsw.gov.au/Council/Council-meetings/Questions-on-Notice

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.

NOTICES OF MOTION

Notice of Motion No. 9.1 Bring Julian home; drop the charges

File No: I2022/1532

5

I move that Council:

- 10 1. recognises Julian Assange is an Australian citizen and a journalist with WikiLeaks who aided in exposing possible war crimes and civilian casualties in the release of documents which included Afghanistan War logs in 2010 and Guantanamo Bay files in 2011, supplied to WikiLeaks by Chelsea Manning, a former United States Army intelligence analyst.
- 15 2. acknowledges Mr Assange genuinely believed his actions were for the purpose of:
 - a) government accountability, transparency and integrity; and
 - b) the broader public interest and for the interest of justice.
- 20 3. notes that since the publication of those documents, Mr Assange has been forced into isolation or imprisoned over the course of 10 years (including 4 years in His Majesty's Prison Belmarsh) resulting in the serious deterioration of his health and mental wellbeing.
- 25 4. recognises Mr Assange's impending prosecution by the United States of America constitutes a serious attack on the fundamental democratic freedoms of the press.
- 30 5. questions:
 - a) the legitimacy of prosecuting Mr Assange in the United States through that country's Espionage Act of 1917 (carrying a penalty of up to 175 years imprisonment);
 - b) whether that Act applies to non-US citizens either living and / or working in other countries, at the time of any alleged offending; and
 - c) whether, by approving the extradition, the UK Government isn't violating the US-UK Extradition Treaty and international law which states that extradition should not be for political purposes.

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6. calls on the Mayor to write:

- a) to President of the United States, Joe Biden, expressing Council's desires that President Biden (i) show clemency by intervening in the extradition and prosecution of Mr Assange, and (ii) instruct the US Attorney-General and the US Department of Justice to withdraw all charges on medical and humanitarian grounds;
- b) to the Prime Minister of Australia, the Right Honourable Anthony Albanese, and to Minister for Foreign Affairs, the Honourable Senator Penny Wong, requesting them to write to the President of the United States and to the US Ambassador to Australia, Ms Caroline Kennedy, expressing Australia's concerns regarding Mr Assange's prosecution.

7. notes a poll conducted by the Sydney Morning Herald in January 2022 which showed 71% support for Mr Assange being returned to Australia.

Signed: Cr Duncan Dey

Councillor's supporting information:

Council resolved in February 2020 to write to the then Foreign Affairs Minister, asking our federal government to step in and to uphold Julian's rights as we would were he locked up in Iran, Egypt, Cambodia or Indonesia rather than by our supposed allies. The Resolution 20-059 reminded us that Julian was a resident of the Northern Rivers from 1979 to 1983. Through Wikileaks he has exposed misbehaviour by authorities who prefer secrecy, by making their own secrets public. He did not compose any of these leaked documents.

I have no doubt that, were we to lock up a prominent American on trumped up charges, the USA would send in a Black Ops team and extract their citizen by force.

The fact of Australia not campaigning publicly for Assange's rights, and later for his welfare, is an indictment of our lack of respect for our own sovereignty.

Even though local government is Australia's 3rd tier of government, we still care about free speech and citizens' rights. Councils have the closest relationship with citizens. We conduct citizenship ceremonies, welcoming some who are refugees from countries where human rights are ignored.

Citizens of Australia expect their rights to be upheld and protected by their government.

It remains time to Bring Assange Home. It's time to tell our allies to Drop the Charges.

Staff comments

by Esmeralda Davis, Director Corporate and Community Services, Corporate and Community Services:

- 5 It is open to Council to receive and debate the Motion and to resolve as moved or in some alternate form. Councillors should consider their individual roles and responsibilities and those of the governing body, outlined below.

If the motion is supported, staff can prepare the required correspondence.

Financial/Resource/Legal Implications:

The role of a Councillor is set out in section 232 of the Local Government Act.

10 **232 The role of a councillor**

(1) *The role of a councillor is as follows—*

- (a) *to be an active and contributing member of the governing body,*
- (b) *to make considered and well informed decisions as a member of the governing body,*
- (c) *to participate in the development of the integrated planning and reporting framework,*
- 15 (d) *to represent the collective interests of residents, ratepayers and the local community,*
- (e) *to facilitate communication between the local community and the governing body,*
- (f) *to uphold and represent accurately the policies and decisions of the governing body,*
- (g) *to make all reasonable efforts to acquire and maintain the skills necessary to perform the role of a councillor.*
- 20 (2) *A councillor is accountable to the local community for the performance of the council.*

The role of the governing body is set out in section 223 of the Local Government Act.

223 Role of governing body

(1) *The role of the governing body is as follows—*

- (a) *to direct and control the affairs of the council in accordance with this Act,*
- 25 (b) *to provide effective civic leadership to the local community,*
- (c) *to ensure as far as possible the financial sustainability of the council,*
- (d) *to ensure as far as possible that the council acts in accordance with the principles set out in Chapter 3 and the plans, programs, strategies and policies of the council,*
- 30 (e) *to develop and endorse the community strategic plan, delivery program and other strategic plans, programs, strategies and policies of the council,*

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- (f) *to determine and adopt a rating and revenue policy and operational plans that support the optimal allocation of the council's resources to implement the strategic plans (including the community strategic plan) of the council and for the benefit of the local area,*
- (g) *to keep under review the performance of the council, including service delivery,*
- 5 (h) *to make decisions necessary for the proper exercise of the council's regulatory functions,*
- (i) *to determine the process for appointment of the general manager by the council and to monitor the general manager's performance,*
- (j) *to determine the senior staff positions within the organisation structure of the council,*
- 10 (k) *to consult regularly with community organisations and other key stakeholders and keep them informed of the council's decisions and activities,*
- (l) *to be responsible for ensuring that the council acts honestly, efficiently and appropriately.*
- (2) *The governing body is to consult with the general manager in directing and controlling the affairs of the council.*

Is the proposal consistent with any Delivery Program tasks?

15 No

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 13.1 PLANNING - 10.2020.483.1 Staged
Development: Stage 1: Farm Cafe, Stage 2:
Tourist & Visitor Accommodation
Comprising Six (6) Cabins, Swimming Pool**

Directorate: Sustainable Environment and Economy

Report Author: Patricia Docherty, Planner

File No: I2022/893

Proposal:

Proposal description: Staged Development: Stage 1: Farm Cafe, Stage 2: Tourist & Visitor Accommodation Comprising Six (6) Cabins, Swimming Pool

Property description: LOT: 2 DP: 869145
911 Binna Burra Road FEDERAL

Parcel No/s: 215720

Applicant: Peaberry Farm

Owner: Original owners when DA was lodged: Mr P G & Mrs A L McLisky & Hopeview Pty Ltd
New owners: Evenjest Pty Limited, Jack James Jonathon Dods, Matilda Isabel Dods & Charlotte Hope Dods (written consent received 16 September 2022)

Zoning: RU1 Primary Production

Date received: 23 September 2020

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

Concurrence required Yes – CNR No.12895

Public – Community Significant Development Pre-Lodgement Consultation

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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notification or exhibition:	& Level 2 advertising under Council's Community Participation Plan. <ul style="list-style-type: none">– Exhibition period: 5/10/20 to 18/10/20– Submissions received: 16– Submissions acknowledged: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Estimated cost	\$2,761,000.00
Delegation to determine	Council
Issues	<ul style="list-style-type: none">• Proposed Roundabout and consideration against the Federal Main Street Concept Design (to be adopted)

Summary:

The DA proposes a Staged Development with Stage 1 being a Café and Stage 2 comprising 6 Tourist & Visitor Accommodation Cabins.

- 5 The site is legally described as Lot: 2 in Deposited Plan: 869145, 911 Binna Burra Road, Federal and is also known as Peaberry Farm. The site comprises approximately 14.58 hectares and is zoned RU1 Primary Production. It is situated opposite Federal Drive, the main street of Federal Village. The site is adjacent to Stony Creek which runs along the southern boundary.
- 10 The site is constrained by electricity infrastructure, bushfire and some high environmental value land. The proposed layout has been amended during assessment to address site constraints and to ensure that the required asset protection zone avoids existing native vegetation and proposed vegetation management areas. The Rural Fire Service (RFS) have issued Bushfire Safety Authority.
- 15 Part of the site is mapped within a cattle dip site buffer and the application included a preliminary site investigation which confirms that in accordance with the NSW EPA (1995) guidelines it can be concluded that the investigation area is uncontaminated.
- 20 A former dairy bales building nominated for proposed use as store / staff lunchroom has been fitted out and there is no record of these works being approved. It is recommended that a Building Information Certificate be required as a deferred commencement condition and that the use of this building formalised in stage one for the purposes of a staff room and store associated with the café.
- 25 During assessment, Essential Energy raised safety concerns about a metal shed located within the easement of high voltage overhead power lines and it is recommended as a deferred commencement that demolition of the container be undertaken prior to the consent becoming operational.

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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A detailed written vegetation management plan (VMP) is to be approved at Stage 1 and is to be consistent with the indicative management areas included in the amended plans submitted for approval with this application. Stage 2 for the rural tourist cabins requires the implementation of a (VMP)

- 5 The applicant initially proposed a large roundabout, with road widening indicated on the original plans, but the community want intersection upgrades to be driven by the ongoing Federal Main Street Concept Design project.

- 10 The draft Federal Main Street Concept Design that was exhibited November 2021 is the latest official version. It is understood the Concept Design is to be presented to Council in December 2022.

In this regard the community raised objections about a larger roundabout as proposed (and built at the applicant's expense) which could accommodate buses and garbage trucks to undertake a "u" turn legally at the intersection to return northwards back up Federal Drive.

- 15 The DA Plans have been amended by the applicant to indicate a much smaller roundabout but a widened road reserve to accommodate a larger round about if needed.

- 20 The recommended condition of consent for Roads Act approvals has been worded to reflect the views of the community and roundabout, footpath and other works in the road reserve must be generally consistent with the endorsed Federal Main Street Concept Design and a Road Safety Audit.

The application appropriately addresses the relevant constraints applying to the site and is recommended for approval in accordance with the amended development assessment plans enclosed at Attachment 1 and subject to the deferred commencement conditions in Attachment 2 of this report.

- 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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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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RECOMMENDATION:

That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.483.1 for Staged Development: Stage 1: Farm Cafe, Stage 2: Tourist & Visitor Accommodation Comprising Six (6) Cabins, Swimming Pool, be granted Deferred Commencement in accordance with recommended conditions of consent attached to this report.

Attachments:

- 1 DA10.2020.483.1 Combined Amended Plans 15.09.2022, E2022/90506 
- 2 DA10.2020.483.1 Recommended Conditions of Consent, E2022/91178 
- 3 Confidential - DA10.2020.483.1 combined submissions report to Planning meeting 13 October 2022, E2022/92043

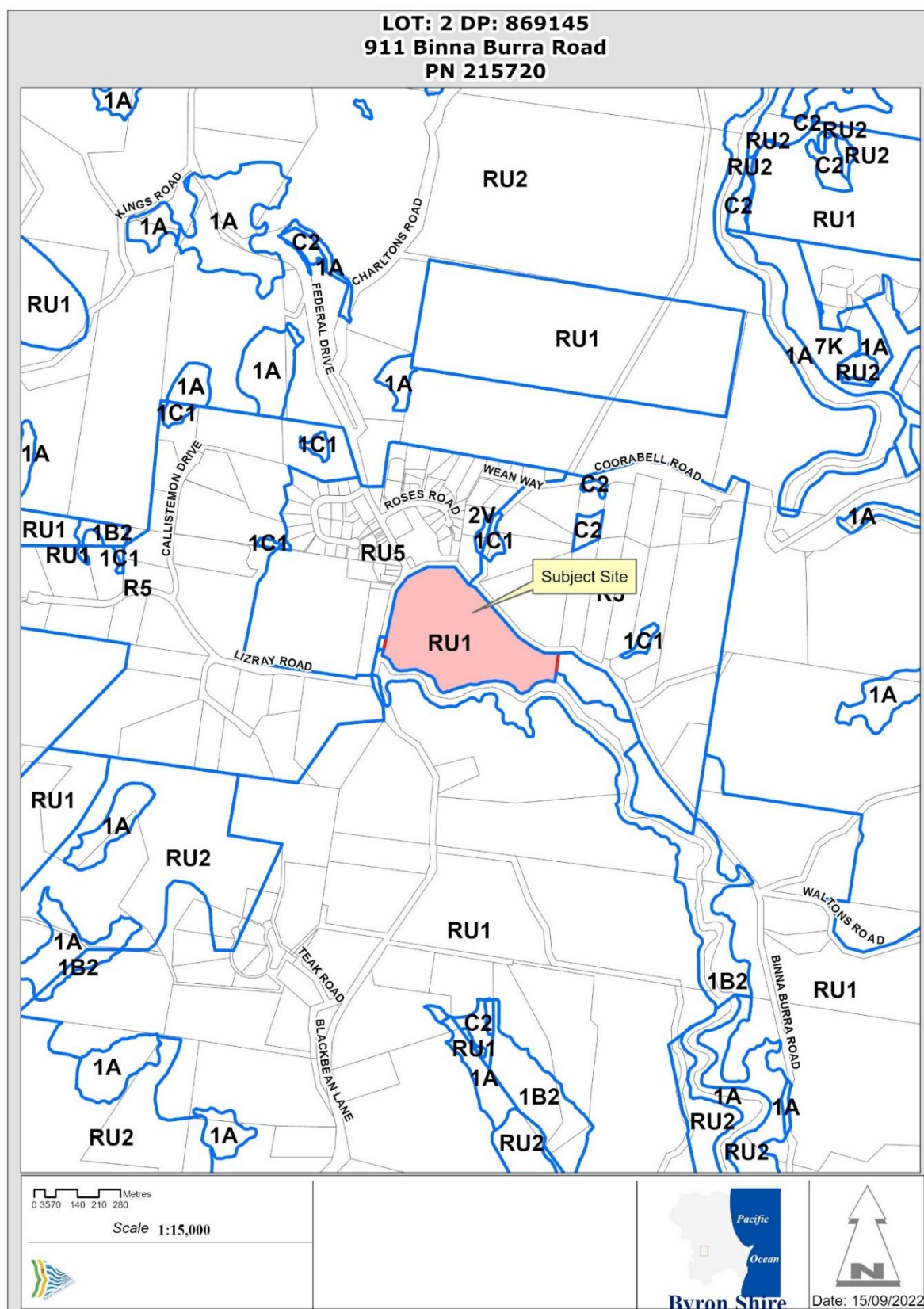


Figure 1: Locality Plan

Assessment:

INTRODUCTION

History/Background

Council records of Development Applications for the current lot are as follows:

Formatted Account	Document Type	Precis	Determination Date	Determination
010.2018.00000068.001	Development Application	Part Change of Use of Existing Dwelling to Home-Based Medical	05/03/2018	Withdrawn/Cancelled
010.2000.00000140.001	Development Application	Tree Removal	13/04/2000	Approved
005.1996.00000215.001	Development Applications	Subdivision - SUBDIVISION TWO LOTS	15/01/1997	Approved Delegation

The construction of the existing dwelling on the site predates Council development approval records. The site has a dwelling entitlement being the result of an approved council subdivision under DA96/215. The site has an agricultural history as a Dairy farm, and macadamia and coffee orchards.

Description of the proposed development

This application seeks approval for Staged Development:

Stage 1: Farm Café including the following:

- cafe building with a maximum capacity of 60 patrons
- site entry & associated works
- cafe car parking –23 formalised sealed spaces including 2 accessible parking; and 6 formalised grassed spaces
- associated driveways & pathways
- wastewater system 01
- water tanks
- change of use existing shed to maintenance facility
- use of fit out & change of use of existing farm building (dairy bails) to store/staff lunchroom
- approval of detailed vegetation management plan
- associated landscaping works

Stage 2: Tourist & Visitor Accommodation Comprising Six (6) Cabins, Swimming Pool including the following:

- construction of 6 one bedroom cabins (1 accessible)
- demolition of southern timber & metal shed
- visitor accommodation car parking – 8 total including 1 accessible
- associated driveways & pathways
- pool cabana
- water tanks
- wastewater system 02
- implementation of detailed vegetation management plan
- associated landscaping works

The proposed layout has been adjusted during assessment to address site constraints, power lines and to ensure the required asset protection zone does not impact on existing native vegetation or the proposed vegetation management areas.

The complete set of amended plans for consideration are in Attachment 1 of this report.

5 Part extracts below:



Figure 2: Site Plan

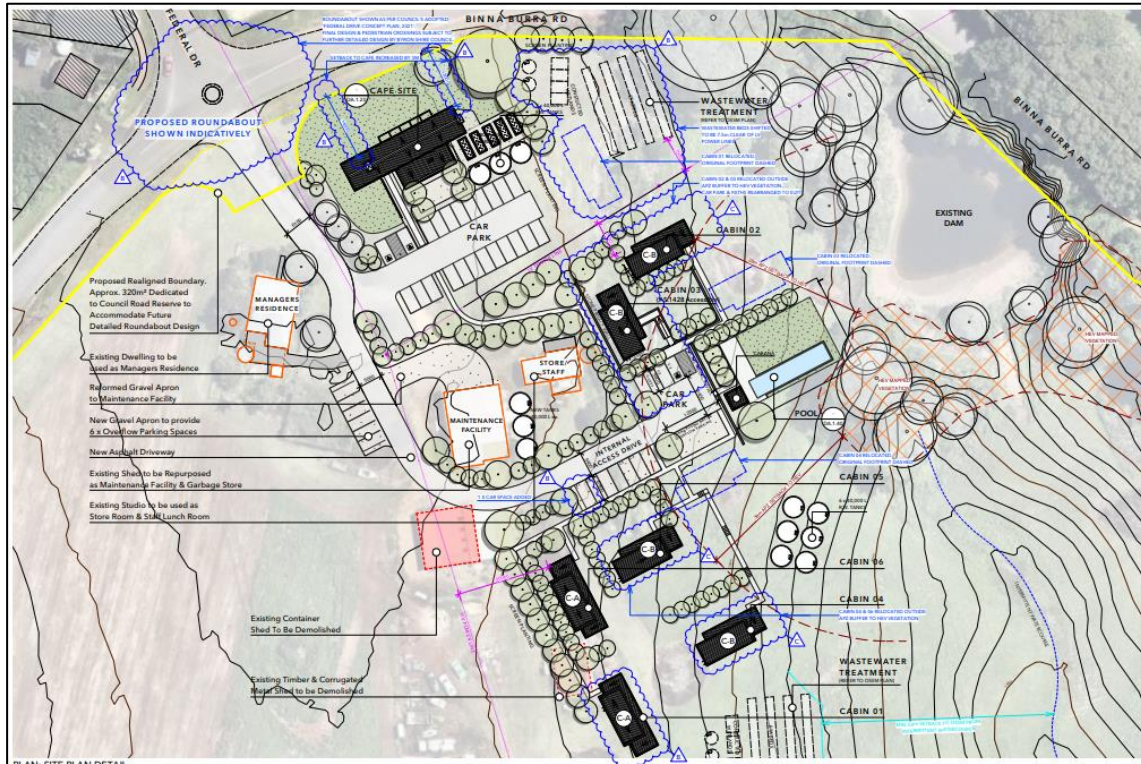
10 The former dairy bales building nominated for proposed use as store / staff lunchroom has been fitted out and there is no record of these works being approved. It is therefore recommended that a Building Information Certificate be required as a deferred commencement condition and that the use of this building formalised in stage one for the purposes of a staff room and store associated with the café.

15 Essential Energy raised safety concerns about a metal shed located within the easement of overhead power lines and it is recommended as a deferred commencement that demolition of the container be undertaken prior to the consent becoming operational.

Stage 2 requires the implementation of a vegetation management plan which will need to be prepared in detail and a condition of consent is recommended to specify what the VMP must include and is to be consistent with the indicative management areas included in the plans attached to this report.

20 The applicant initially proposed a large roundabout, with road widening and dedication at the applicants expense etc indicated on the original plans. Community submissions indicate that intersection upgrades should be driven by the ongoing Federal Village master planning process. As such Plans have been amended to indicate a smaller roundabout.

The recommended condition of consent for Roads Act approvals has been worded to reflect the views of the community.



5 **Figure 3: Site Detail**

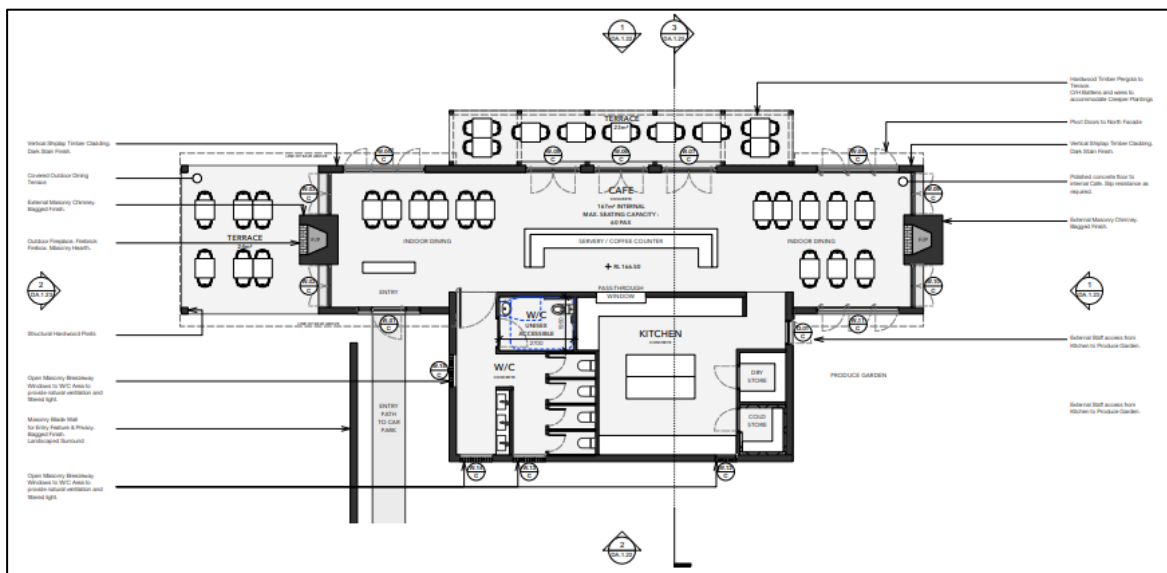


Figure 4: Café Restaurant Floor Plan



Figure 5: Photomontage of Café Restaurant

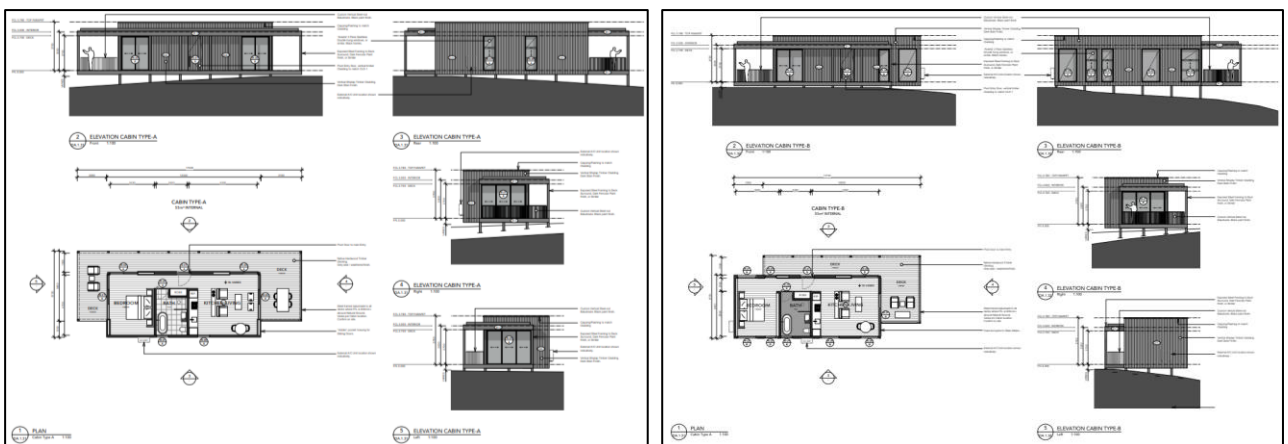


Figure 6: Cabins Type A Left & B Right

Description of the site

A site inspection was carried out on 28 January 2021 and 8 July 2022.

The site is legally described as Lot: 2 DP: 869145, 911 Binna Burra Road, Federal and is also known as Peaberry Farm. The site comprises approximately 14.58 hectares and is zoned RU1 Primary Production. It is situated opposite the main street of Federal Village. The site is adjacent to Stony Creek which runs along the southern boundary.

Land is legally described	LOT: 2 DP: 869145
Property address	911 Binna Burra Road FEDERAL
Land is zoned:	RU1 Primary Production
Land area is:	14.58 hectares

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Property is constrained by:	Bushfire prone land; High Conservation Value; High Environmental Value Cattle Dip Buffer; Electricity infrastructure	
	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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No



Figure 7 Subject Site from Federal Drive



5 **Figure 8:** View to village from the subject site.

SUMMARY OF REFERRALS

Referral	Issue
Environmental Health	No objections subject to conditions. Conditions prohibiting live or amplified music and limiting hours of operation to the

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Referral	Issue
Officer	same has been included. The proposal is supported with an On-site sewage management system (OSMS) report that demonstrates the land can accept and dispose of effluent onsite without negative environmental impacts. Conditions to apply
Development Engineer	No objections subject to conditions.
Infrastructure Services	Comments subject to condition for works in road reserve.
Building Surveyor	No objections subject to deferred commencement condition for a Building Information Certificate for the shed/ workers lunch room.
S64 / Systems Planning Officer	No objections or conditions.
Contributions Planner	No objections subject to conditions S7.12 Levy.
Natural Resource Planner	As required by Section D3.3.4 of the Byron Shire DCP 2014, rural tourism development must include an ecological restoration effort comprising 900 local native tree plantings or equivalent assisted natural regeneration per cabin. For the present proposal this equates to 5,400 native plantings or equivalent area (at Stage 2). A preliminary VMP concept plan was included in the application which proposed a combined strategy of assisted natural regeneration (removal of weeds including mature camphor laurel trees) and revegetation by direct planting. Restoration would be undertaken in two management zones: a vegetated gully in the north-east of the site and the northern riparian zone of Stony Creek which runs along the southern boundary. The approach and VMP in general is supported. A detailed VMP will be conditioned to be approved prior to Stage 1 of the development (the café) with primary works to be completed prior to issue of CC for the tourist cabins (Stage 2). Conditions to apply.
Resource Recovery	No objections subject to conditions.
Rural Fire Service (100B)	See comments below.
Essential Energy	See comments below.
Jali Local Aboriginal Land Council	Referred 29 September 2020. No objections or response received.

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 bush fire prone land. The development application includes a special fire protection purpose (tourist cabins) and was referred to the NSW Rural Fire Service in accordance with Section 100B of the Rural Fires Act 1997.

The original proposed plans have been amended and cabins have been re-sited to ensure the required APZ does not intersect any existing vegetation mapped as high environmental value or otherwise identified for future vegetation management for ecological restoration purposes.

The latest amended plans have been considered by Council's Ecologist and the RFS. The RFS approved the amended layout under the Bushfire Safety Authority required for the tourist accommodation on the site in accordance with S100B of the Rural Fires Act 1997. The RFS integrated approval is at Schedule 4 in Attachment 2 - Recommended conditions of consent.

SECTION 4.15C – MATTERS FOR CONSIDERATION

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.

State Environmental Planning Policies (SEPP)

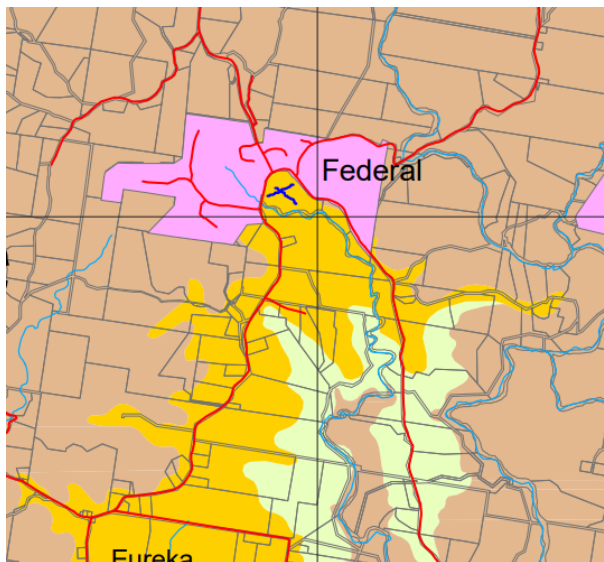
Consolidated SEPPs 2021


Considerations	Satisfactory	Unsatisfactory
<p><i>Resilience and Hazards SEPP 2021</i></p> <p>Chapter 4: Remediation of Land</p> <p>A preliminary site investigation report was provided and concludes:</p> <p><i>"The investigation indicated with a high level of confidence that the site of the proposed development has primarily an agricultural land use history. Historic buildings on the site were targeted for possible contamination sources, however results were below the guideline limits. Soil contamination analysis shows levels of contaminations detected below adjusted NEPM (1999) health investigation levels. In accordance with the NSW EPA (1995) guidelines it can be concluded that the investigation area is</i></p>	☒	☐

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Considerations	Satisfactory	Unsatisfactory
<p><i>uncontaminated.”</i></p> <p>It is considered that no further investigation is warranted and that the site is suitable for the proposed use.</p>		
<p><i>Primary Production SEPP 2021</i></p> <p>Chapter 2 Primary production and rural development</p> <p>Consideration: The proposed development is suitably clustered in a location close to existing buildings that does not undermine the overarching purpose of the site for agricultural use and avoids impacts on native vegetation and biodiversity. The remainder of the site is available for agricultural purposes and the proposed use would not restrict viability of the site for agriculture. It is noted that at the time Chapter 2 of this SEPP was made, Schedule 1 State significant agricultural land (Section 2.8) was blank.</p> <p>It is further noted that the site is identified as state significant farmland on the Northern Rivers Farmland Protection Project Final Map 2005 (Section 117(2)Direction), prepared by the NSW Government.</p> 	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Considerations	Satisfactory	Unsatisfactory
<p>LEGEND</p> <ul style="list-style-type: none"> State Significant Farmland Regionally Significant Farmland Significant Non-Contiguous Farmland Other Rural Land Committed Urban Uses and Rural-Residential Zones National Parks, State Forests Land outside Northern Rivers Catchment Management Area <ul style="list-style-type: none"> Highways Major Roads Railways Watercourses Land Parcel Boundary Catchment Management Board Boundary Local Government Boundary <p>Source: map-queensland-northern-rivers-farmland-protection-project-final-map-section-117-2-direction-2-of-4-2005.pdf (nsw.gov.au)</p> <p>The site is also mapped on the draft State Significant Agricultural Land (SSAL) Map exhibited from 1 Nov 2021 till 31 Jan 2022:</p> <div style="text-align: center;">  </div> <p>SSAL Social Pinpoint (mysocialpinpoint.com)</p> <p>The proposed development is not inconsistent with the relevant aims and objectives of the SEPP, as follows—</p> <ul style="list-style-type: none"> (a) to facilitate the orderly economic use and development of lands for primary production, (b) to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources, (c) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations... (e) to encourage sustainable agriculture 		

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Considerations	Satisfactory	Unsatisfactory
It is considered that Byron Shire LEP 2014 permits the proposed uses and Council, being the consent authority has approved such development where it does not undermine the viability of land for primary production.		
<i>Transport and Infrastructure SEPP 2021</i> Chapter 2 Infrastructure: Consideration: The DA was referred to Essential Energy in accordance with Section 2.48 of the SEPP. The site is constrained by low voltage and high voltage powerlines traversing the site. During assessment, Essential Energy raised safety concerns about a metal shed located within the easement of high voltage overhead power lines and it is recommended as a deferred commencement that demolition of the container be undertaken prior to the consent becoming operational. Plans were also amended to ensure all structures and on-site sewage management systems will meet Essential Energy clearance requirements.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>SEPP (Building Sustainability Index: BASIX) 2004</i> Consideration: The plans for the tourist cabins were accompanied by a BASIX certificate.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

4.2 Byron Local Environmental Plan 2014 (LEP 2014)

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

- 5
- (a) The proposed development is defined in the LEP 2014 Dictionary as restaurant or cafe and tourist cabins which area a type of tourist and visitor accommodation, both ancillary to farm;
 - (b) The land is within the RU1 Primary Production according to the Land Zoning Map;
 - (c) The proposed development is permissible with consent; and
 - (d) Regard is had for the Zone Objectives as follows:

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Zone Objective	Consideration
<ul style="list-style-type: none"> • To encourage sustainable primary industry production by maintaining and enhancing the natural resource base. 	<p>The proposed café/restaurant and 6 cabins are clustered near to Binna Burra Road, minimising the development footprint and located near existing structures to avoid the loss of viable agricultural land within the site.</p> <p>The proposal is unlikely to generate land use conflict due to its low scale and suitable distances to adjoining agricultural land and residences.</p> <p>The proposal does not involve subdivision and will not fragment land used for primary production purposes.</p> <p>The development provides for small scale tourist accommodation and a new café restaurant while avoiding and enhancing existing biodiversity within the site.</p> <p>The application proposes a combined ecological restoration strategy of assisted natural regeneration (removal of weeds including mature camphor laurel trees) and revegetation by direct planting. Restoration is to be undertaken in two management zones: a vegetated gully in the north-east of the site and the northern riparian zone of Stony Creek which runs along the southern boundary</p> <p>In terms of visual impact, the proposed development is not on a scenic escarpment or ridgeline. The Cafe building will be visible from parts of Binna Burra Road and the intersection at Federal Drive. The proposed development will not impact on views to a significant vista and will be screened by vegetation amongst cabins and proposed along Binna Burra Road.</p>
<ul style="list-style-type: none"> • To encourage diversity in primary industry enterprises and systems appropriate for the area. 	
<ul style="list-style-type: none"> • To minimise the fragmentation and alienation of resource lands. 	
<ul style="list-style-type: none"> • To minimise conflict between land uses within this zone and land uses within adjoining zones. 	
<ul style="list-style-type: none"> • To encourage consolidation of lots for the purposes of primary industry production. 	
<ul style="list-style-type: none"> • 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. 	
<ul style="list-style-type: none"> • To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality. 	

The remaining checked 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).

In accordance with Byron LEP 201, the proposed development is legally defined as follows:

5 **restaurant or cafe** means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.

tourist and visitor accommodation means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following—

- (a) backpackers' accommodation,
- 10 (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,
- but does not include—
- 15 (f) camping grounds, or
- (g) caravan parks, or
- (h) eco-tourist facilities.

Clause 4.3 Height of Buildings

20 All buildings are substantially below the 9 metre maximum height of building permissible on this land. The tallest building is the café restaurant which is 5.54 metres to the roof ridge and approximately 7 metres to the top of each of the two proposed chimneys. The cabins are single storey and less than 4 metres ground floor level to roof. The cabins will be of variable heights due to siting and topography but substantially lower than the permissible 9 metres.

25 Clause 6.2 Earthworks

The proposal will involve minor earthworks primarily related to construction of the pool, car parking and café restaurant. Council's Development Engineer has assessed the proposal and recommends in the conditions of consent that A certificate from a professional Engineer experienced in soil mechanics is to be provided to the Principal Certifying Authority, certifying that the design of the civil engineering works, including retaining walls and/or cut & fill batters, has been assessed as structurally adequate, the civil engineering works will not be affected by landslip or subsidence either above or below the works; and adequate drainage has been provided.

30

Clause 6.5 Drinking Water Catchments

5 The site is in a Drinking water catchment. The proposal has been assessed by Council's Environmental Health Officer and Council can be satisfied that the relevant matters have been considered to protect drinking water catchments, including the distance between the development and waterways that feeds into the drinking water storage, the on-site use, storage and disposal of any chemicals on the land, the treatment, storage and disposal of waste water and solid waste generated or used by the development, and that appropriate measures are required to avoid, minimise or mitigate the impacts of the development. Conditions of consent are recommended to avoid impacts of development on the quality and quantity of water entering drinking water storages.

Clause 6.6 Essential Services

15 Council can be satisfied that services including the supply of water, the supply of electricity, the disposal and management of sewage, stormwater drainage, and suitable vehicular access, that are essential for the development are either already available or that adequate arrangements have been made to make them available (e.g. on-site sewage management).

Clause 5.8 Rural and Nature Based Tourism

Note. In this clause:

20 **small scale** means a scale that is small enough to be generally managed and operated by the principal owner living on the property.

tourism development includes, but is not necessarily limited to, development for any of the following purposes—

- 25 (a) bed and breakfast accommodation,
(b) camping grounds,
(c) farm stay accommodation,
(d) eco-tourist facilities,
(e) home industries that provide services, or the sale of goods, on site to visitors,
(f) information and education facilities,
(g) restaurants or cafes,
30 (h) rural industries that provide services, or the sale of goods, on site to visitors.

35 It is considered that the proposed development is consistent with the objective of this clause to ensure that tourism development in rural and natural areas is small scale and does not adversely impact on the agricultural production, scenic or environmental values of the land.

Council being the consent authority can be satisfied that:

- 40 • There is adequate vehicular access to and from Binna Burra Road that is not a classified road, taking into account the scale of the development proposed including a 60 patron café restaurant and 6 one bedroom tourist cabins.
• The development is small scale and low impact being single storey development, setback from the road and clustered together on a part of the site near existing

structures and avoiding riparian areas and other sensitive areas of biodiversity on the site.

- The development is of a scale and form that is complementary to the rural and environmental attributes of the land and its surrounds including setbacks to the road, watercourses.
- The development is suitably clustered to avoid any adverse impact on the capacity of the land for agricultural production or significant features of the natural environment. Conditions of consent relating to operation is recommended to address any potential amenity impacts.
- A lawfully erected dwelling house is situated on the land
- The proposal is capable of being generally managed and operated by the principal owner living on the property and will not require construction of a separate additional ancillary caretakers or managers residence.

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

No Draft Environmental Planning instruments apply.

4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

Chapter B3 Services

B3.2.1 Provision of Services: Rainwater tanks are proposed to provide potable water supply. Conditions are recommended to ensure sufficient water supply including the need for adequate storage for the purposes of firefighting. A condition is recommended that requires a quality assurance program for drinking water to be supplied to NSW Health prior to occupation of the development.

B3.2.2 On-site Sewage Management: has been assessed by Council's Environmental Health Officer. Separate systems are proposed for the café restaurant and the cabins. Conditions of consent are recommended for the installation, inspection and operation of the system including the need for trade waste approvals as part of a S68 approval, prior to issue of a construction certificate.

B3.2.4 Sedimentation and Erosion Control Measures: The site adjoins a waterway and is located within a drinking water catchment. A sediment and erosion control plan is therefore required in accordance with B3.2.4. Condition of consent is recommended.

Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access

B4.2.1 Traffic Impact: Parameters of the Proposal (derived from the applicant's Engineering Services Report) is as follows:

1. 11.5 hour traffic count accounted 1,973 vehicles (6:30AM to 6:00PM);

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2. Peak hour volume of 269 trips between 8:00AM & 9:00AM;
3. Peak hour volume of 242 trips between 3:00PM to 4:00PM;
4. 21 U-turn movements at the intersection in a 12 hour period;
5. 142 average daily traffic generated by the development; and
- 5 6. 22 peak hour trips.

Based on this information and other Council traffic data, it is concluded that a roundabout at the intersection of Binna Burra / Federal Drive is the safest treatment. This is triggered due to pre-existing safety concerns and not specifically the volume of traffic arising from the proposed development. The scale and detailed design of a new roundabout will be
10 subject to a safety audit and must be consistent with Federal Main Street Concept Design.

The applicant initially proposed a large roundabout, with road widening indicated on the original plans but the community want intersection upgrades to be driven by the ongoing Federal Main Street Concept Design project.

15 The DA has been under assessment for two years, to give additional time for the draft Federal Main Street Concept Design and related community consultation to be considered. The purpose of the delay in bringing the DA to Council for determination was to provide integration between the DA and the Federal main street design including the intersection of Federal Drive and Binna Burra Road.

20 The draft Federal Main Street Concept Design that was exhibited November 2021 is the latest official version. The Final Federal Main Street Concept Design is expected to be presented to Council in December 2022.

25 Plans have been amended by the applicant to ensure that the proposed realigned edge of the property boundary and the land to be dedicated to Council for widened road reserve is approved as part of the DA and clarifies that the extent of works is subject to further detailed design.

The boundary alignment on plans is based on the original large roundabout, thereby providing sufficient room for a smaller, more refined design including improved footpaths to occur in future. As such, there is no detailed road design included in the recommendation.

30 The recommended condition of consent for Roads Act approvals has been worded to ensure the roundabout, footpath and other works in the road reserve must be generally consistent with the endorsed Federal Main Street Concept Design and a Road Safety Audit.

35 B4.2.3 Vehicle Access and Manoeuvring Areas: The proposal will utilise the existing access generally in the location of the current driveway. Other access options have been considered to be unsuitable due to topography and the need to avoid existing watercourses and vegetation or excessive earthworks. There is satisfactory space for onsite manoeuvring of all vehicle types likely to use the site including cars and trucks. All vehicles will enter and leave the site in a forward direction.

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5 B4.2.5 Car Parking Requirements: 23 car spaces are required for the café restaurant and 6 car spaces are required for the tourist cabins. The proposal provides 23 formalised sealed spaces including 2 accessible parking; and 6 formalised grassed spaces for the café restaurant and 8 formalised sealed spaces including 1 accessible parking or the cabins.

B4.2.8.1 Bicycle Parking: The café restaurant requires 1 space per 25m² of GFA x 166m² GFA = 6.6 spaces say 7 spaces and the tourist cabins are not required to provide bicycle parking. There is ample space to provide 7 bicycle parking spaces to meet the DCP requirement and the proposal is supported, subject to conditions of consent.

10 B4.2.8.2 Coach Parking: Neither the café restaurant nor the tourist cabins require coach parking under the DCP. There is an excess in parking numbers in the café and ample space within the site for coach parking if ever required to cater for a bus.

15 B4.2.9 Loading Bays: DCP requires 1 small rigid vehicle (SRV) for each of the uses and the proposal provides loading space for a medium rigid vehicle. It is considered by Councils development engineer that the loading bay between the uses can cross utilised.

Chapter B5 Providing for Cycling

See above. B4.2.8.1 Bicycle Parking

Chapters B6 Buffers and Minimising Land Use Conflict

20 The proposed development is located near to Binna Burra Road and has adequate buffers from adjoining farmland and residences. The site is bound by road and watercourses on all sides. The development is unlikely to cause conflict with surrounding agricultural uses or sterilise any neighbouring land from future agricultural development.

Chapter B8 Waste Minimisation and Management

25 See Referrals section above and recommended conditions of consent to manage all waste streams including organic / food waste.

Chapter B9 Landscaping

The applicant has prepared sufficient landscaping details in the site plans submitted for assessment. Screen and buffer landscaping between cabins is shown on plans. See attachment 1.

Chapter B13 Access and Mobility

30 The café has been designed to be accessible including provision of two accessible spaces. One of the tourist cabins (Cabin 3 on plans) including an accessible car space will provide for access and disability.

Chapter B14 Excavation and Fill

35 Earthworks are required and has been considered by Council's Development Engineer to satisfactory and subject to conditions of consent. See consideration of LEP 2014 Clause 6.2 above.

Chapter C3 Visually Prominent Sites, Visually Prominent Development and View Sharing
Note.

Visually prominent development means any development located on a visually prominent site or development in a location that has the potential to impact the visual or scenic character of a visually prominent site.

Visually prominent site means land that is wholly or partly within the coastal zone; and land in Zone RU1 Primary Production, RU2 Rural Landscape with a height of 60m AHD or greater.

The applicant submits that the: *proposal is not located within a visually prominent location. The main location where the proposal can be viewed is from Binna Burra Road, looking west. The VMP includes native plantings along the eastern boundary to improve the privacy of the visitor cabins on the site, that will also improve any visual amenity issues from the Binna Burra road location.*

Consideration: The site is zoned RU1 Primary Production. According to Council mapping information, the site is at approximately 164 m AHD, which is a similar level to the southern section of Federal Drive and lower AHD than the rest of the Village, the nearby park and visible adjacent sites.

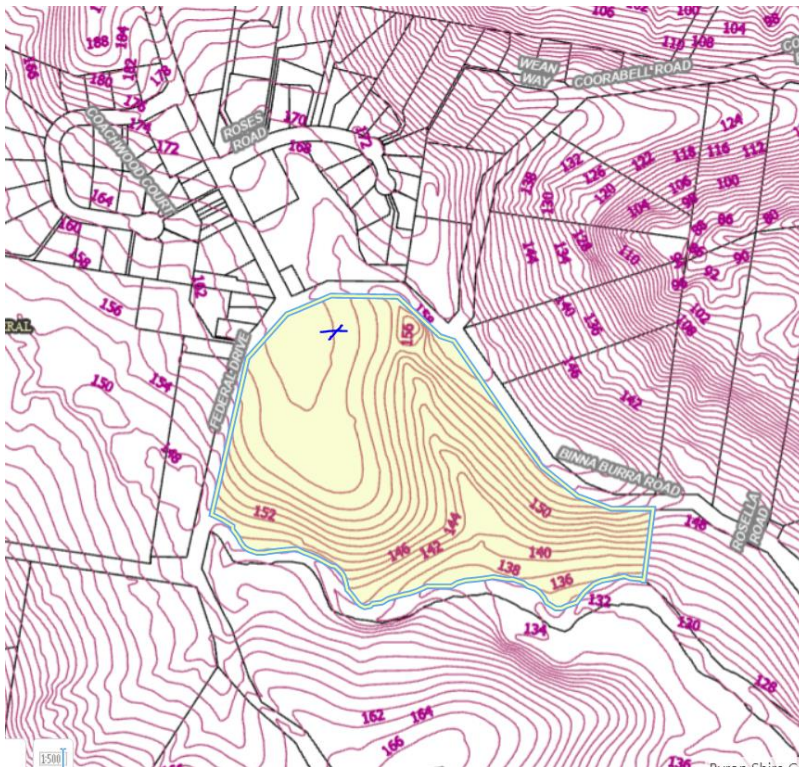


Figure 9: Contours (Council Geocortex Mapping)

The Cafe will be constructed on a part of the site which gently slopes to the east and is vacant except for nearby overhead powerlines and sheds. The location of the buildings is supported in accordance with Clause 5.8 of Byron LEP 2014 and Chapter D3 Byron DCP discussed elsewhere in this section of the report. The proposal is mainly only visible from Binna Burra Road and the intersection of Federal Drive.

The single storey Cafe building when viewed from public places is gable roof form and is in keeping with the rural character of the area. The building height is substantially below the 9 metres maximum building height, being 5.54 metres to the roof ridge and approximately

7m to chimney tops. The proposal meets the required setbacks for a development of its type and proposed materials are muted tones that will not be visually intrusive. The café is screened from the existing dwelling on the site by vegetation and the cabins are to be suitably screened. Existing vegetation creates a visual buffer and additional planting is proposed. The proposal does not impact unreasonably on any significant views from another property.

The proposed development is not likely to create adverse visual impacts due to its low scale, clustered siting, height, topography of the site and the proximity to the nearest dwellings and public spaces and existing and proposed vegetation. The proposed development is not on a scenic escarpment or ridgeline and will not impact on views to a significant vista as may be the case in other parts of the Shire (e.g. Cape Byron, Mount Chincogan). It is considered that the development does not adversely impact on scenic character and visual quality.

Chapter C4 Drinking Water Catchments

The land is in a drinking water catchment and has been addressed under LEP 2014 Clause 6.5. See above.

Chapter D3 Tourist Accommodation

D3.2.1 Location and Siting: The siting and design of the 6 proposed cabins is clustered in a location that close to all other structures including the existing dwelling and proposed café and will not conflict with important ecological characteristics and conservation values of the site, and respects the natural systems and values of its location and surrounds. The proposed location of the cabins are minimising the potential for any land use conflicts and buffers to existing dwellings and farmland in the area.

D3.2.3 Character and Design in Rural Zones: the proposed cabins are compatible in character and amenity with the surrounding rural and natural landscape, and with development in the locality. Due to clustering with existing buildings close to Binna Burra Road most of the site will be available for agricultural use and environmental restoration. The proposed cabins are low scale, single storey structures and raise no issues in terms of the DCP provisions.

Section D3.3.4 of the Byron Shire DCP 2014, rural tourism development must include an ecological restoration effort comprising 900 local native tree plantings or equivalent assisted natural regeneration per cabin. For the present proposal this equates to 5,400 native plantings or equivalent area (at Stage 2). The application proposes a combined strategy of assisted natural regeneration (removal of weeds including mature camphor laurel trees) and revegetation by direct planting. Restoration is to be undertaken in two management zones: a vegetated gully in the north-east of the site and the northern riparian zone of Stony Creek which runs along the southern boundary. Conditions of consent to apply.

The provisions of Chapter D2 Residential Accommodation and Ancillary Development in Rural Zones apply to all tourist accommodation development in zones RU1 in the same way they apply to residential accommodation in Rural Zones. Tourist accommodation is

required to comply with Section D1.2.2 – Setbacks from Boundaries; All tourist cabins substantially exceed the minimum 15 metre setback required to Binna Burra Road.

Chapter D4 Commercial Development

- 5 The proposed use of the farm café is a type of commercial use and is permissible with consent in the RU1 Zone.

D4.2.9 Restaurants/ Cafes in Rural Areas applies to enable restaurant or café development that preserves the rural amenity, character and environment of the locality; to mitigate and manage any land use conflicts; to limit the impacts of a restaurant or café on the broader environment; and to provide an avenue for supplementary income on rural holdings. The proposal has been assessed and is considered to meet the following requirements (in some cases subject to recommended conditions of consent):

- a seating capacity for a maximum of 60 patrons including any outdoor garden seating.
- 15 • located so that it may benefit from an existing road
- all weather car-parking provided on site in accordance with Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access.
- landscape plan submitted with the application in accordance with Chapter B9 Landscaping to primarily provide adequate landscaping and screen plantings when viewed from a public road or a dwelling on other land in the locality.
- 20 • Liquid trade waste to be managed and effluent will be disposed of via an on-site sewage management system, designed to cater for increased water usage associated with the restaurant including multiple sittings throughout the day, peak loads and a separate Liquid Trade Waste approval pursuant to Section 68 of the
- 25 Local Government Act, 1993 is required subject to conditions of consent.

There are no specified DCP setbacks for the proposed café in the RU1 zone and therefore the development controls for the use in the context of a rural zone on the edge of the R5 Village have been considered.

30 D4.2.5 Street Setbacks: Commercial/ retail type premises in the RU5 Zones to have regards to the setbacks of adjoining and surrounding development. The proposal provides for 13-14.6 metre setback to the proposed realigned boundary. Commercial setbacks on the opposite corner of the intersection are zero and built to the street boundary. The proposed setbacks are therefore considered to be satisfactory with regards to commercial setbacks in the locality.

35 Note. Chapter E6 Federal Village: The site is not located in the Federal Village Map (Map E6.1) and Chapter E6 does not apply to the proposed development.

4.5 Environmental Planning and Assessment Regulation 2000 considerations

	Applicable to the proposal:	Considered the control as it relates to the proposal:	If this control is applicable, does the proposal comply?
Clause 92 - Additional matters that consent authority must consider	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA
Clause 93 Fire safety and other considerations	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Clause 94 - Consent authority may require buildings to be upgraded	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Clause 94A - Fire safety and other considerations applying to erection of temporary structures	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA

** 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

4.6.1

Impact on:	Likely significant impact/s?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	No. The proposal will not have a significantly adverse impact on

	the built environment of the locality. Conditions of consent to apply to operating hours, number of patrons, amplified music and lighting to mitigate potential amenity impacts on surrounding development
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	Yes – The proposal will have positive economic impacts through the construction of the development and in the long terms with operating the café and tourist accommodation in terms of ongoing hospitality employment.
Construction Impacts	The development will generate minor impacts during its construction. Conditions of consent recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.

4.7 The suitability of the site for the development

The development is sited to avoid site constraints including overhead power lines, water courses and suitable for the proposed development subject to conditions of consent.

5

4.8 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited

There were **16** submissions made against the development application:

Issue	Consideration
Character Small rural village outlook and amenity Rural setbacks – café restaurant should be set back further from the road Impacts of commercial development on RU1 zoned. Immediate and massive impact on the village. Inappropriate for a small village and the	The proposed character, scale, siting and setbacks are considered in full under the relevant and applicable LEP and DCP provisions above. Advertised plans provided setbacks that comply with the DCP. These have been further increased in the latest amended plans.

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<p>entrance is dangerous.</p> <p>It looks like a full-on resort.</p> <p>Roundabout is far too large an entrance to a small village and will dramatically change the rural nature of Federal.</p> <p>In favour of a roundabout, but it doesn't need to be anything like as large as proposed.</p>	
<p>Pressure of development on village infrastructure including the roads already at capacity.</p> <p>Rubbish bins overflow after the weekends and visitors are leaving refuse laying around in the park and playground.</p> <p>Parking is stressed in the village centre where our children catch the bus</p> <p>Impacts locals and wildlife increasing amount of roadkill in recent times.</p> <p>The proposed development provides little benefit to Federal locals.</p>	<p>The proposal provides for on-site parking and management of all services to accommodate the development.</p> <p>Proposed upgrades to the road will be subject to a safety audit and are to be consistent with the master planning process including the to be endorsed Federal Main Street Concept Design and a Road Safety Audit.</p>
<p>The roundabout pre-empts the recent Council initiated "Federal Village Project Community led Governance and Place Plan" which will look at all traffic, parking and pedestrian issues affecting the village and will yield a comprehensive management plan from the ground up as opposed to this developer led imposition.</p> <p>Urge Council to put a hold on this and any other commercial development in Federal until the new Masterplan is accepted.</p> <p>This application should not be approved by Council until such time as a well thought out plan is developed by the Council initiated "Federal Village Project Community led Governance Plan & Plan" which will look at all traffic, parking and pedestrian issues affecting the village.</p> <p>Roundabout and traffic, alternative access, existing entrance should be closed and moved, impacts on adjoining properties.</p>	<p>The application has been under assessment for 2 years and this has given ample time for the concept plan and recent exhibition draft of the masterplan to be further developed.</p> <p>Notwithstanding Council must assess development in accordance with the relevant matters for consideration including public submissions. This does not include a concept or masterplan, which may amend planning controls in future.</p> <p>The roundabout works must be consistent with the endorsed Federal Main Street Concept Design and a Road Safety Audit.</p>

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<p>Particularly properties on the western leg where driveways will be obstructed by two traffic islands, a pedestrian crossing and a culvert. The DA shows the intent to direct all the pedestrian traffic from both the café and the cabins to the southern outskirts of the development and toward my property. 'guests' looking directly into property as they traverse the path day and night.</p> <p>Welcome opportunities for traffic calming in the village, a roundabout here may slow vehicles briefly but would likely cause traffic to accelerate towards the narrow corner near the Federal Children's Centre.</p> <p>Large articulated vehicles use this junction and the roundabout would have to accommodate these. The loss of the stop sign at the intersection may make it less safe for pedestrians.</p>	
<p>Vegetation Management Plan does not include the intermittent stream that runs out of the Park. This sadly neglected gully will look even worse once the proposed plantings around the dam and along Stoney Creek are complete. The plantings need to be extended.</p> <p>The Vegetation Management Plan does not include the intermittent stream that runs out of the Park under Binna Burra Road. This sadly neglected gully will look even worse once the proposed plantings around the leaky dam and along Stoney Creek are complete. The plantings can be extended into this riparian zone simply by planting trees at the widest allowable centres.</p> <p>The Vegetation Management Plan provides insufficient details and is not in accordance with Councils guidelines.</p> <p>Claim vegetation management works are to be undertaken with the local Landcare group... no such agreement exists.</p>	<p>The applicant's Statement of Environmental Effects pg. 16, submits their future intent that: "<i>The ecological works is to be conducted in consultation with the local Landcare group</i>". The involvement of the local Landcare team will be a matter for the individual parties. A vegetation management plan (VMP) is not required to be implemented until Stage 2 for rural tourist development. The detailed VMP is still to be approved by Council prior to a construction certificate for Stage 1, including an implementation plan. The indicative vegetation restoration / management areas are shown in the amended plans at Attachment 1 (DA.1.10) and avoid all bushfire asset protection zones. The application was prepared by a qualified and experienced environmental planner who works with bush regenerators on ecological restoration in the Shire.</p>
<p>Design and Energy</p> <p>The proposed buildings do not meet the</p>	<p>A Section J report relates to compliance with the National Construction Code (NCC)</p>

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<p>objectives of the DCP in relation to design for climate, sustainability nor respect for the surrounding built environment. They should have open gabled roofs with eaves that match the form of the restaurant. Parapet roofs with box gutters do not work in this climate due to extremely heavy rainfall events, blow-in leaf matter building up and blocking flow and the need for continuous careful maintenance. The aesthetic of this development is a city apartment one.</p> <ul style="list-style-type: none"> • The restaurant: The roof of the kitchen has the same problem. It can be changed to an open gable meeting the restaurant ridgeline at the same pitch and width, while the amenities can be moved south under the same roof form. A more discrete entry from the loading bay to the kitchen stores can be incorporated in this redesign. I also suggest that the cold store is not big enough. The loading bay is not well sited. • Solar energy: Attachment E2020/78046 shows that the Combined Certificate of the NatHERS reports on the tourist accommodation together give an average rating of only 4.7 out of a possible 10. Only solar hot water has been included in the Basix Certificates. A change to open gabled roofs to be used for solar energy collection would greatly improve the rating and bring the development into the 21st century. <p>There is no reference to Section J of the National Construction Code Volume 1 in relation to the energy efficiency requirements for the Restaurant.</p>	<p>and is a requirement for certification prior to construction certificate (CC).</p> <p>Council Building Inspector confirms that a Section J report is required for CC for class 2-9 buildings as it deals with lighting/AC/ water and thermal.</p> <p>It will be addressed at CC stage and should not be required or approved at DA stage.</p> <p>A condition of consent is recommended for solar power to be incorporated into the design prior to cc. This can be roof mounted or bracket mounted on roofs or at ground level.</p> <p>There is ample room on the site and buildings to accommodate this.</p> <p>The design has been assessed objectively against the applicable development control plan requirements.</p>
<p>Outcomes of pre lodgement consultation - inadequate response to issues raised:</p> <p>Noise - weakening of the commitment to only operating the restaurant during daylight hours. At the consultation stage the developer (their representative) said daytime trading only...now it is "initially day time only" ...</p> <p>No mention of the commitment made at</p>	<p>A number of issues raised are beyond the powers of the DA including:</p> <p>Council cannot require a private land holder to provide a public path through their property.</p> <p>Issues related to noise have been assessed and strict operational requirements are recommended including operational hours, maximum patrons, limits on live or amplified</p>

<p>Community Consultation to provide onsite management presence of the overnight cabins as a condition of DA approval.</p> <p>Community had suggested a pathway around the property be incorporated to allow for more exercise and environmental enjoyment for village inhabitants. The developers seemed to agree during the consultation phase but have now explicitly rules it out in their application. Reportedly based on liability.</p> <p>Vegetation Management Plan is both minimal and needs to be more enforceable. The developer has proposed the minimum works and less than they indicated at their public consultations, for instance they have omitted the intermittent stream which flows into the property from Federal Park which was a focus of discussions at the consultations and would connect their environmental works with the communities.</p> <p>No attempts to minimise their carbon footprint or even look to aim for self-sufficiency in energy use.</p>	<p>music.</p> <p>An onsite management residence is provided and a condition of consent imposed to require this to be provided at all times.</p> <p>Vegetation management is addressed above.</p> <p>Solar power addressed above.</p> <p>The café restaurant will require a Section J report in terms of sustainability prior to CC and the cabins have been accompanied by a BASIX and NatHERS assessments.</p>
<p>Future intent of the site: The owners have been for some time looking to develop a housing sub-division and I have been one of many community members engaged with them.</p>	<p>Council can only consider the proposed development that is permissible with consent on the site. Any subdivision for housing will require a planning proposal to be prepared to rezone the land and amend the Byron LEP 2014. This is not a matter for consideration and is beyond the powers of this DA.</p>

All submissions have been shared with Council's Place Planning Team for ongoing consideration in the ongoing Federal Main Street Concept Design and master plan process and Infrastructure Services for any future works in the road reserve subject to a Road Safety Audit and ongoing implementation of the be endorsed Federal Main Street Concept Design.

4.9 Public interest

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

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

5 The site is not connected to reticulated water supply systems or sewerage systems and is not serviced by Rous Water or Council. It has no entitlement for water or sewerage and there is no nexus to charge water and sewer levies under the Water Management Act.

5.2 Developer Contributions

Section 7.12 Contributions will be payable.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Disclosure details	Response
Has a Disclosure Statement been received in relation to this application? If Yes, Provide Disclosure Statement register reference: 91.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

10 7. CONCLUSION

15 The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development. The application is recommended for approval subject to conditions of consent, including deferred commencement conditions in Attachment 2 of this report.

5

Report No. 13.2 PLANNING - 10.2020.513.1 Alterations and Additions to Existing Motel including Five (5) Additional Guest Rooms, Restaurant/Bar, Swimming Pool and Car Parking Spaces at 84 Harbour Way BRUNSWICK HEADS

Directorate: Sustainable Environment and Economy

Report Author: Ivan Holland, Planner

File No: I2022/847

Proposal:

DA No: 10.2020.513.1

Proposal description: Alterations and Additions to Existing Motel including Five (5) Additional Guest Rooms, Restaurant/Bar, Swimming Pool and Car Parking Spaces

Property description: LOT: 10 DP: 805193
84 Harbour Way BRUNSWICK HEADS

Parcel No/s: 65950

Applicant: Planners North

Owner: 26 Swales Pty Ltd & 2222 Pty Ltd

Zoning: B4 Mixed Use

Date received: 8 October 2020

Integrated / Designated ☐ Integrated ☐ Designated ☒ Not applicable

Development:

- Public notification or exhibition:**
- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
 - Exhibition period: 20/10/20 to 2/11/20
 - Submissions received: Nine (9)

Planning Review Committee: 12/11/2020

Variation request Clause 4.6

Summary:

5 This application seeks approval for alterations and additions to the existing motel including provision of six (6) additional guest rooms (17 rooms currently, 23 proposed). The alterations and additions will result in an approximate doubling the current building through extension predominantly to the west and construction of an additional, third level (Level 2) containing guest rooms with roof terraces, a powder room, lobby and access to a roof terrace area. This application also seeks approval for a restaurant on the ground floor and with associated terrace areas. The proposed development includes a new swimming pool and formalisation of car parking spaces on Council land in addition to onsite car parking. 10 The proposal includes a chimney that exceeds the building height limit for which a request to vary the development standard has been provided.

15 The proposed development is deficient in car parking spaces and does not incorporate adequate landscaping. However, the fundamental issue with the development application is that the proposal is not compatible with the streetscape and character of the locality particularly as:

- It has three storey elements with all adjoining, neighbouring and surrounding buildings being a maximum of two stories.
- Much of the development is finished with parapet walls, while most surrounding buildings have pitched/gable roofs.
- Proposed building materials (i.e., coloured concrete and dry stone masonry) are not evident on any adjoining or neighbouring buildings.

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The proposed development does not “*reflect a low-scale, tourist-beach image*” and is out of character with the “*low key, family-friendly, coastal village character, streetscape and scale of Brunswick Heads*”.

- 5 A significant re-design is required to address the incompatibility of the proposal with streetscape and character requirements for Brunswick Heads and consequently it is recommended that this development application be refused for the reasons outlined below.

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.

15

RECOMMENDATION:





- 20 That pursuant to Section 4.16 of the *Environmental Planning & Assessment Act 1979* (EP&A Act), Development Application No. 10.2020.513.1 for Alterations and Additions to Existing Motel including Five (5) Additional Guest Rooms, Restaurant/Bar, Swimming Pool and Car Parking Spaces at 84 Harbour Way, Brunswick Heads, be refused for the following reasons:

- 25 1. The development application is not satisfactory having regard to subsection 4.15(1)(a)(iii) of the EP&A Act as the development application did not adequately assess the likely traffic impacts of the development contrary to the requirements of Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access of the Byron Shire Development Control Plan 2014 (BDCP 2014).
- 30 2. The development application is not satisfactory having regard to subsection 4.15(1)(a)(iii) of the EP&A Act as the proposed development does not provide adequate car parking contrary to the requirements of Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access of the BDCP 2014.
- 35 3. The development application is not satisfactory having regard to subsection 4.15(1)(a)(iii) of the EP&A Act as the proposal does not include safe and convenient cycling access and end-of-trip facilities and did not address promotion and/or facilitation of cycling contrary to the requirements of Chapter B5 Providing for Cycling of the BDCP 2014.
4. The development application is not satisfactory having regard to subsection 4.15(1)(a)(iii) of the EP&A Act as the proposed development does not provide adequate landscaping, including but not limited to adequate screening and landscaping setback of the street front of the development and shade trees

for car parking, contrary to the requirements of Chapter B9 Landscaping of the BDCP 2014.

5. **The development application is not satisfactory having regard to subsection 4.15(1)(a)(iii) of the EP&A Act as the bulk, scale and design of the proposed development is incompatible with, and likely to adversely impact on, the streetscape and character of the locality, contrary to the requirements of Chapters D3 Tourist Accommodation, D4 Commercial and Retail Development.**
6. **The development application is not satisfactory having regard to subsection 4.15(1)(a)(iii) of the EP&A Act and is inconsistent with the bulk, scale and character provisions contained within Chapter E4 Brunswick Heads of the BDCP 2014.**
7. **The development application is not satisfactory having regard to subsection 4.15(1)(b) of the EP&A Act as the proposed development will have an adverse impact on the built environment due to its design, bulk, scale and being incompatible with the 'low scale', 'coastal village character' and streetscape of Brunswick Heads.**
8. **The development application is not satisfactory having regard to subsection 4.15(1)(c) of the EP&A Act as the site is not suitable for the development having regard to the scale and design of the development proposed and incompatibility with the streetscape and character of the locality.**
9. **The development application is not satisfactory having regard to subsection 4.15(1)(d) of the EP&A Act as nine (9) submissions were received by Council in opposition to the development that raise concerns about the proposal including those outlined in the other reasons for refusal.**
10. **The development application is not satisfactory having regard to subsection 4.15(1)(e) of the EP&A Act as the development application is not in the public interest due to the issues outlined in the other reasons for refusal particularly incompatibility with the streetscape and character of the locality.**

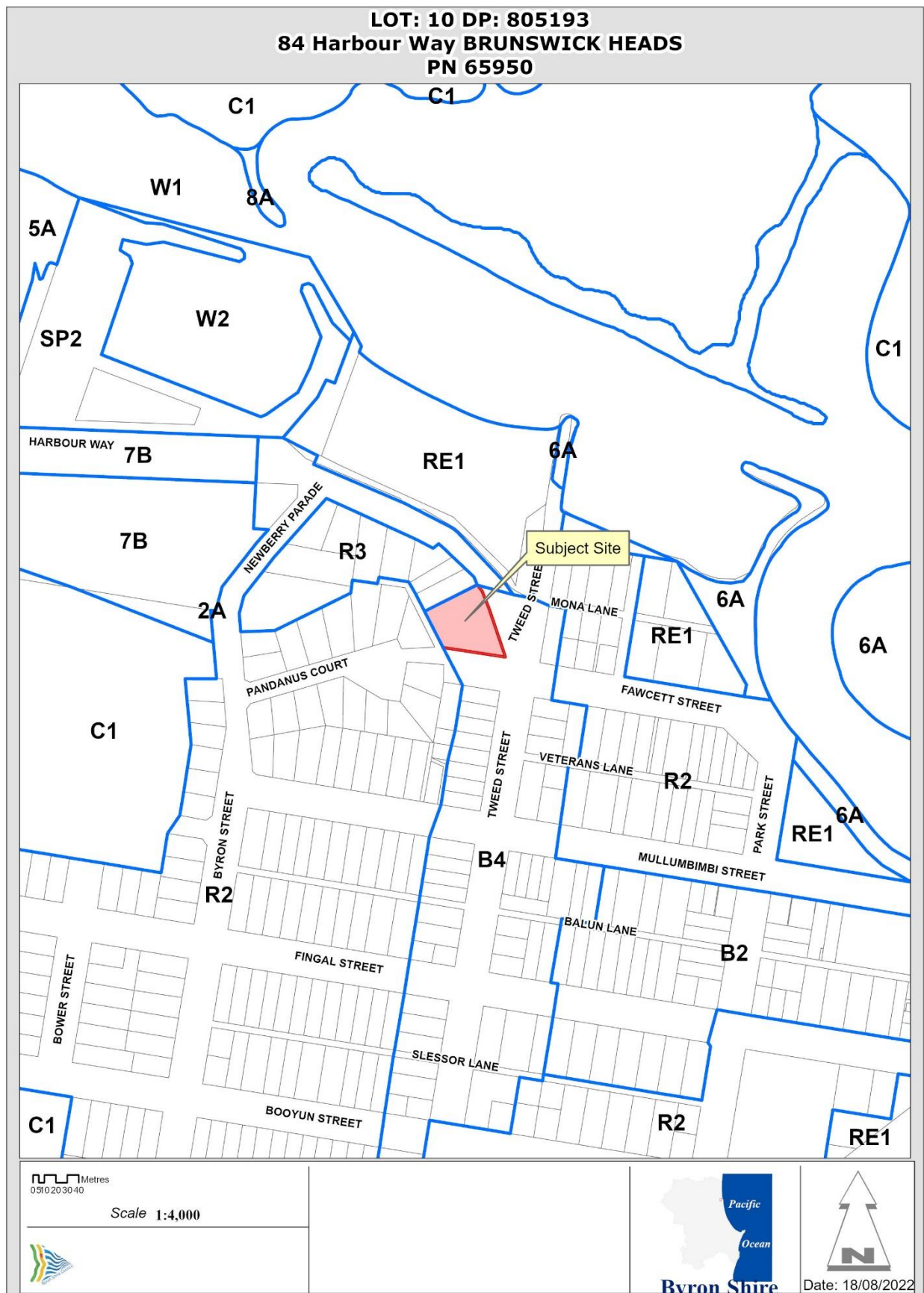
Attachments:

- 1 DA 10.2020.513.1 - Amended development plans, E2022/102534 
- 2 DA 10.2020.513.1 - Redacted submissions, E2022/79565 
- 3 DA 10.2020.513.1 - Development renders, E2022/102533 
- 4 DA 10.2020.513.1 - Planning agreement for public art, E2022/50510 

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Assessment:

1. INTRODUCTION

1.1. History/Background

Council's records indicate the following development approval history for the property:

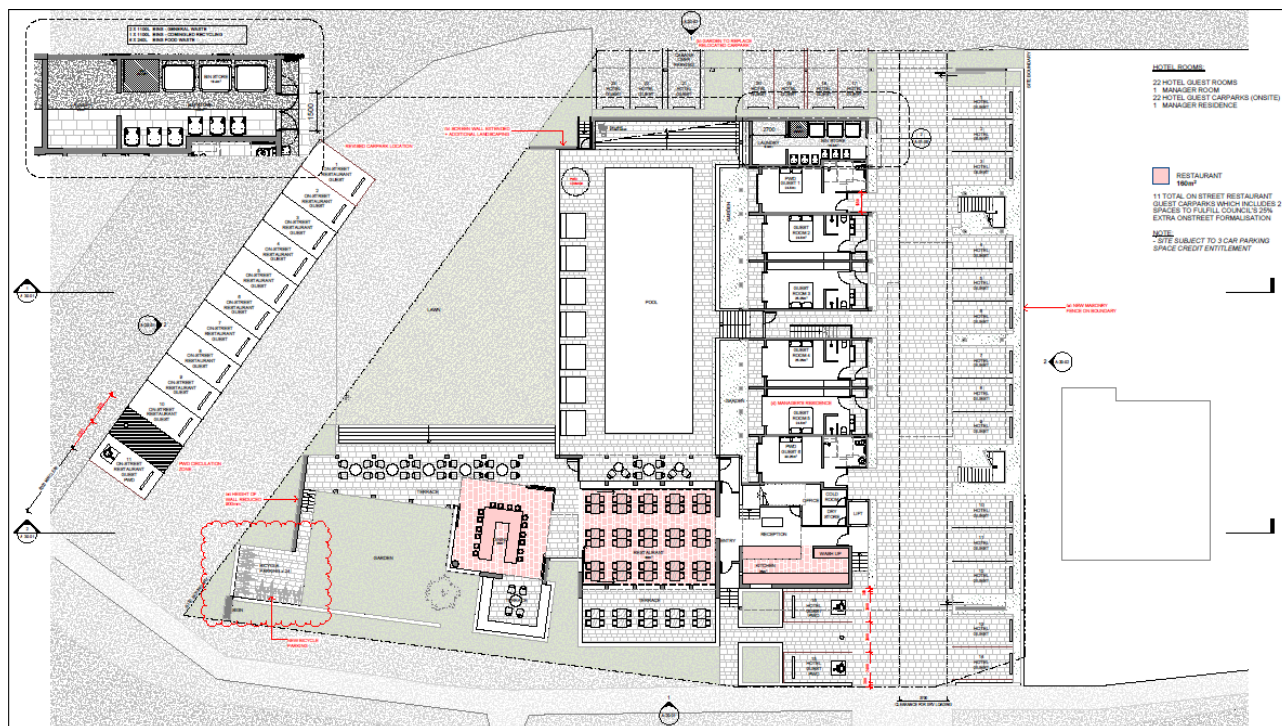
- BA 6.1989.2781.1 – for alteration – approved 10/4/1990.
- DA 5.1991.406.1 – for tourist facility – approved 14/2/1992.
- BA 6.1996.2110.1 – for fence – approved 2/4/1996.
- DA 5.1996.444.1 – for sign – approved 24/1/1997.
- DA 10.2002.344.1 – for motel – restaurant and renovations/additions – withdrawn 10/12/2002

The plans have been amended various times throughout the assessment process. Although the design of the development has improved through that process, the amendments including the latest plans fail to adequately address the fundamental issues that are wrong with the design relating to height, bulk, scale, character, lack of car parking and the like as discussed in the body of the report below.

1.2. Description of the proposed development

This application seeks approval for Alterations and Additions to the Existing Motel including:

- Demolition of the northeast corner and much of the east and west façade of the current building, and the swimming pool;
- Alterations and additions to the external and internal layout of the motel including:
 - Six (6) additional guest rooms (17 rooms currently, 23 proposed),
 - Approximately doubling the current building through extension predominantly to the west,
 - Extension of the western end of Level 1 to the south for cabanas,
 - Construction of an additional level (Level 2) containing five guest rooms with roof terraces, a powder room, lobby and access to a roof terrace area.
- A Restaurant and associated terrace areas (ground floor) with roof terrace areas above (Level 2);
- A new Swimming Pool; and
- Alteration of the 18 car parking spaces and construction of 5 addition car parking spaces within the property and use of Council land to provide an additional 11 car parking spaces.



1.3. Description of the site



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Land is legally described	LOT: 10 DP: 805193		
Property address	84 Harbour Way BRUNSWICK HEADS		
Land is zoned:	B4 Mixed Use		
Land area is:	2478 m ²		
Property is constrained by:	<ul style="list-style-type: none"> • Flood Liable Land • 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	

A site inspection was carried out on 18 August 2022



Photo 1 – View southwest to subject



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property from Harbour Way. Current motel is white building.



Photo 3 – View west to subject property from Harbour Way. Current motel is white building.

Photo 2 – View south along Tweed Street from opposite the subject site.



Photo 4 – View east to subject property from Fawcett Street/Lane. Corner of motel is in left foreground.



Photo 5 – View northwest to subject property from Fawcett Street/Lane.



Photo 6 – View southeast along Fawcett Street/Lane. Corner of motel (white building) is in left foreground.



Photo 7 – View east to motel/subject property from Fawcett Street/Lane.

2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	<u>Not supported – insufficient parking.</u>
S64 / Systems Planning Officer	No objections subject to conditions.
S94 / Contributions Officer	No objections subject to conditions.
Infrastructure Services	Consent to use and occupy Council owned land has been provided
Essential Energy (CNR-42294)	No objections, general comments only.

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.

5

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.

10

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 55— Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Consideration:</u> The property is not mapped in Council's GIS as a contaminated land parcel. Council's Environmental Health Officer (EHO) requested a preliminary site contamination investigation however this wasn't provided by the applicant. Should the application be approved, the EHO has recommended a deferred commencement condition to require a preliminary contaminated land assessment to be carried out and actioned if required.		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Consideration:</u> A motel is not BASIX affected development and as such a BASIX Certificate is not required.		
State Environmental Planning Policy (Coastal Management) 2018	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Consideration:</u> The property is within the mapped coastal environment and coastal uses areas. The development is not expected to cause adverse impacts on the coastal environment (cl.13) or coastal use area (cl 14) matters.		

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	Satisfactory	Unsatisfactory
State Environmental Planning Policy (Infrastructure) 2007	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><u>Consideration:</u> The proposed development is within 5m of mapped powerlines and as such was referred to Essential Energy for comment pursuant to clause 2.48 (CNR-42294). Essential Energy had no safety concerns and provided general comments only.</p>		

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

- 5
- (a) The proposed development is defined in the LEP 2014 Dictionary as hotel and motel accommodation and food and drink premises (see Note);
 - (b) The land is within the B4 Mixed Use according to the Land Zoning Map;
 - (c) The proposed development is permitted with consent; and
 - (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
To provide a mixture of compatible land uses.	The application does not propose to change the primary use of the property/development but does propose the introduction of a restaurant.
To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.	The development is located to take advantage of walking, cycling and public transport by being located on a main street of Brunswick Heads and close (~330m) to the village.

- 10
- Note: The food and drink premises is permitted within the zone as a sub-category of commercial premises.

hotel or motel accommodation means a building or place (whether or not licensed premises under the Liquor Act 2007) that provides temporary or short-term accommodation on a commercial basis and that—

(a) comprises rooms or self-contained suites, and

(b) may provide meals to guests or the general public and facilities for the parking of guests' vehicles,

5 but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.

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

(a) a restaurant or cafe,

10 (b) take away food and drink premises,

(c) a pub,

(d) a small bar.

4.3 Height of buildings

15 Most of the building will be at, or below, the 9m building height limit. A chimney, associated with the bar, that will exceed the 9m building height limit by 900mm (Note: the plans show the chimney at 1.51m above the building height limit). A request to vary this development standard in relation to the chimney was lodged with the application and is considered below.

4.4 Floor space ratio

20 The applicant provided plans showing the breakdown of gross floor area as follows:

- ground floor – 426m²
- level 1 – 509m²
- Level 2 – 170m²

25 The total proposed gross floor area of 1105m² results in a floor space ratio (FSR) of 0.46:1 for the proposed development, being under the limit of 0.5:1 for the property.

5.21 Flood planning (previously clause 6.3)

30 The entire site is mapped as flood prone. The floor level of existing building is 3.110m A.H.D. The proposed ground floor level remains at 3.110m A.H.D. and complies with the flood planning level (FPL) requirements in DCP 2014. However, based on the recent flooding in Byron Shire, Council's Development Engineer considers it to be desirable for new development to adopt the current FPL of 3.42m A.H.D. to further protect the new commercial area.

6.1 Acid sulfate soils

- 5 The property is mapped as class 4 acid sulfate soils (ASS). Works are likely to extend ~1m below ground (as such, a consent is not required under this clause) and based on GIS mapping it is unlikely for proposed works to disturb ASS. However, a soil investigation conducted nearby discovered ASS at less than 1m below ground level and as such the excavation for the swimming pool may encounter ASS. Conditions would be recommended to address this possibility.

6.2 Earthworks

- 10 Sections provided with the application indicate up to 1m of fill under buildings at the east of the site (i.e., bar, restaurant and kitchen/reception) and either side of the swimming pool and 700mm of excavation for the swimming pool. It is considered the earthworks can be adequately managed with conditions.

6.6 Essential services

- 15 An approved motel is currently being operated on the property. Consequently, essential services are available for the development. In relation to stormwater management arrangements can be put in place to adequately managed stormwater including a bioretention swale and 6000L water tank for on-site detention.

Conclusion

- 20 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) but for building height (cl.4.3). A request to vary the building height standard, in relation to the chimney, was lodged with the application and is considered below.

25 **Clause 4.6 Exceptions to Development Standards**

Applicant has sought a variation to Height of buildings for a chimney, associated with the bar, that will exceed the 9m building height limit by 900mm or 10% (Note: the plans show the chimney at 1.51m above the building height limit, or a 17% variation).

- 30 The applicant has submitted a written request that strict compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental grounds to vary the controls as follows:

1. *The building bulk and scale is not impacted by the proposed variation.*
2. *The proportion of the roof affected by the variation is very minor, comprising 3.61m² of the roof protruding above the 9 metre height limit.*
- 35 3. *Strict compliance will have little impact on the building as viewed from the streetscape and surrounding area.*

4. *There is no disruption to planned views, loss of privacy or visual intrusion occasioned by the numerical excess in the BLEP14 specified building height.*

5. *In terms of overshadowing, the proposal has no material impact. The proposed shadow impact will result on the subject site only.*

5 6. *The design has an FSR of 0.42:1, which is significantly less than the 0.5:1 permitted for the proposed development.*

The chimney component is a minor element of the proposal and if the application was to be approved, a variation could be supported.

10 **4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority**

No proposed instruments were identified that are relevant to this application.

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

B1 Biodiversity

15 There are no 'red flag' areas mapped on the property (B1.2.1). The SEE states that "*the proposed development does not require the removal of native vegetation*".

B3 Services

20 Council's Development Engineer is satisfied adequate stormwater management can be provided for the development including during construction (see comments under cl.6.6 of LEP 2014 above). The property has connections to reticulated wastewater and water which can be utilised for the proposed development.

B4 Traffic Planning, Vehicle Parking, Circulation and Access

25 The development generates numerically a total of 34 car parking spaces, The application has proposed 23 spaces onsite and 11 car parking spaces in Fawcett Street Where development relies on constructing and formalising onstreet parking to support a development, Council provisions enable that variation to be sought with the caveat that an additional 25% of spaces are provided in the public domain to provide a benefit to the general community. The provisions under Section B4.2.7 state:

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

a) The net increase in formalised (ie paved &/or linemarked) on street parking is 25% greater than the number otherwise required on site;"

35 The proposal as such requires the provision of 14 spaces in the public domain. The application based on the current plans in effect seeks a variation to the provisions within

the DCP which enable a variation to standard provisions of providing all parking onsite. This cant be supported and in essence is an overdevelopment of the site. The proposal also includes a lack of detail relating to traffic impacts. The Application is recommended for refusal.

5 **B5 Providing for Cycling**

10 The updated plans provides a bicycle parking area at the southeast corner of the site, fronting Tweed Street with capacity for several bicycles (9-10 bicycle parking spaces are required for the development – Table B4.1). Details of safe and convenient cycling access and end-of trip facilities (e.g., parking/storage, showers and lockers) are required for the development (B5.2.2 and B5.2.4).

B7 Mosquitoes and Biting Midges

Conditions would be recommended in terms of effective screening to all windows, doors and openings of the motel accommodation.

B8 Waste Minimisation and Management

- 15 The applicant provided an amended Site Waste Minimisation & Management Plan (Tim Fitzroy & Associates, 10/7/2022) in response to concerns raised by Council's Resource Recovery Team. Their review of the amended plan found it to be generally acceptable, subject to conditions of consent.
- 20
- It is proposed to use a small rigid vehicle (SRV) to service the commercial bins however the vehicle shown in the turning diagram is a medium rigid vehicle (MRV).
 - Development plans should show the area where bins will be presented when being serviced.
 - Prior to occupation, the need for a letter from licensed commercial waste provider confirming they will be servicing the development.
- 25
- Details of measures to minimise and manage potential impacts on local amenity (e.g., noise) from numerous commercial waste collections proposed in the plan.

The above amendments/additions to the plan can be required by a condition of approval.

B9 Landscaping

30 A concept landscape plan (Richards & Spence) was provided with the initial application, but this did not include the rationale behind the proposed landscaping. The concept landscape plan includes retention of existing vegetation but is not consistent with several landscape design principles (B9.3.1) particularly:

- avoiding planting trees within 3m of buildings.
 - no information on the expected size and spread of trees to be planted when mature.
- 35
- proposed landscaping does not utilise plant species locally indigenous to the area.
 - minimal/negligible vegetative buffers to adjoining residential development.

5 It appears that at least 10% of the site will be landscaped however the Tweed Street façade has significant bulk and scale and is not adequately screened by vegetation (see East Elevation) contrary to B9.6.1. Most of the Tweed Street façade of the development has a landscape garden bed less than (~1.5-1.6m) the required minimum width of 2m (B9.6.1).

The proposed formal car parking in Council's Fawcett Street road reserve does not include shade trees every 2-5 parking spaces however existing vegetation to the north will provide shading (B9.9.1).

B14 Earthworks

- 10 As noted above, the proposal includes up to 1m of fill, under buildings and adjacent to the swimming pool, and up to 700mm of excavation for the swimming pool. The proposed earthworks are consistent with relevant requirements. The impact, if any, of the proposed filling on flooding is considered under Chapter C2 below.

C2 Areas Affected by Flood

- 15 Council's Development Engineer is satisfied the development meets relevant flood planning requirements (see comments under cl.5.21 of LEP 2014 above).

D3 Tourist Accommodation

Character and design are considered under D4 below as required by D3.2.4.

D3.3.6 Hotel or Motel Accommodation

- 20 It is acknowledged that design changes were made to improve the visual impact of the development including:
- Additional roof garden along the northern façade.
 - Additional roof garden on west façade.
 - garden area to replace one carpark along western boundary.
- 25
- reduction in height of southern screen wall to dining terrace.
 - further setback of first floor above restaurant with garden in setback area.
 - Use of an open balustrade for the eastern façade of the 'Yoga' roof terrace.
 - use of gable and skillion roofs in certain locations as opposed to solid, full height parapets and flat rooves with terrace frames.
- 30 However, the proposed development is not compatible with streetscape and character of the locality as (See artist's impressions below):

- Elements of the proposed building are three stories with all adjoining, neighbouring and surrounding buildings being a maximum of two stories.
 - Most of the development is finished with parapet walls, rather than gable rooves which common on surrounding buildings.
- 5 • Proposed building materials (i.e., coloured concrete and dry stone masonry) are not evident on any adjoining or neighbouring buildings.

In relation to amenity, the design of the development has been modified to minimise noise impact on adjoining properties through:

- provision of a 2m high masonry fence along the northern boundary.
- 10 • privacy screens on the northern stair wells (first and second floors).
- reduction in roof terrace area along the northern façade with 2.15m high solid balustrades.
 - further setback of guest room 23 from the western façade with garden terrace in the setback area.
- 15 • further setback of western screen wall for the swimming pool and additional screening vegetation.
- use of a guest room as a manager's residence (no further detail of management of the motel/restaurant/bar was provided).

- 20 In relation to solar access, shadow diagrams were provided with the application that show the proposed development will not result in shading of neighbouring properties between 9am and 3pm in summer. However the development to the west at 12 Pandanus court with have additional overshadowing winter in the morning hours.

External pedestrian access is provided between the accommodation units and other facilities including car parking, however:

- 25 • the ground floor pedestrian access between the accommodation units and car parking is shared with the driveway.
- the ground floor access to/from carparks 17 to 24 relies on the Fawcett Street road reserve.

- 30 The motel rooms do not have cooking facilities however the development includes a restaurant with on-site kitchen.



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CK HEADS

RICHARDS & SPENCE

VIEW - EAST FACADE - TWEED STREET

Artist's render: View – East/Tweed St façade



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RICHARDS & SPENCE

VIEW - WEST FACADE - FAWCETT STREET

Artist's impression: West / Fawcett St facade

D4 Commercial and Retail development

Commercial and retail development provisions are largely considered above (e.g., parking, access) and the development is generally consistent with design and character objectives and criteria (D4.2.1) with the exception being that the development does not “*reflect a low-scale, tourist-beach image*”.

However, as detailed above, the proposed development conflicts with the design detail and appearance requirements (D4.2.2) as:

- the development is not compatible with the existing character of the precinct. The scale, bulk and design on the development is not compatible with the current streetscape.
- large components of the building design, roof profile and materials are not compatible with the surrounding design themes.

Upper storey levels of the development are not consistently set back from the street frontage (D4.2.5).

Hours for operation of the swimming pool, restaurant and bar are specified in the noise impact assessment as 7am – 10pm and could be further conditioned to manage impacts if the DA was to be approved.

D8 Public Art

The proposal triggers the requirement to provide public art. The applicant has provided Council with a voluntary planning agreement for the provision of a financial contribution for the purposes of Council providing public art.

E4 Brunswick Heads

The character narratives for Brunswick Heads provide the context for development in terms of design, height, bulk, scale and streetscape. The subject property fits within Pocket A. The following comments from the DCP are of relevance:

Fisherman’s cottages and residential watch towers provide a legacy from the past. The various styles and blend of external materials including fibro, rendered brick and weatherboard. Existing homes and new development in this area will need to maintain a consistency with the domestic scale, rhythm and defining features of existing houses. Large buildings typical of the 1970’s flat development and cubist forms are inappropriate where they do not exhibit details appropriate to the existing mix of predominantly small-scale traditional dwellings. These are typically single storey, with low pitched roofs, setbacks that minimise their impact and front doors and verandahs facing the street typical of a traditional seaside village atmosphere.

And

Tweed Street has seen a change in function from highway to gateway to Brunswick Heads. The native Cyprus pines, streetscape and building form of this street hints entrance to a smaller coastal village set amongst estuaries and wetlands. Developments should connect with the street and look beyond just the

basic provision of housing and transport aspects of Tweed Street to focus on the ways to creating an inviting, interesting and memorable vista:

- *through the retention of low set pitched roof housing*
- *use of verandahs, porches and vertical windows and doors addressing the street*
- 5 • *pockets of parking interspersed with paths, open space, seating and vegetation to encourage walkability and a slowing of vehicles*
- *well blended planting of local indigenous trees and vegetation to create a visual connection to the estuaries and wetlands as well shade, shelter and ecological benefits*

10 The subject site also fronts the northern Gateway to the town centre described as

Gateways: enhance as welcoming gateway feel to a seaside village - retaining wetland and esplanade vista, low scale & low intensity atmosphere and encouraging integrated street scaping.

15 Existing development surrounding the site is dominated by one and two storey development with a clear absence of three storey buildings, other than the art deco flats at 12 Fawcett Street (Broadview flats). In this regard, the design cue for Brunswick Heads is one and two storey buildings.

Specific criteria for the character, bulk and scale of development in the mixed-use areas are provided under Clauses E4.3.1 for the Business and Mixed Use Areas as follows:

- 20 a) *Land zoned B2 and B4 (along Tweed Street between Mullumbimbi and Booyun Streets) provides a safe, low traffic speed, pedestrian/cycle friendly environment that encourages outdoor dining and community activity in the street. Land zoned B4 along Tweed Street north of Mullumbimbi Street and south of Booyun Street provides a transition area between town centre business zones and residential areas.*
- 25 *Development in this area uses setbacks, planting and design elements to contribute positively to village amenity and create a pedestrian/cycle friendly streetscape.*
- 30 b) *New commercial and retail development is consistent with the requirements of Chapter D4 Commercial and Retail Development. Development is designed to enhance the low key, family-friendly, coastal village character, streetscape and scale of Brunswick Heads. Shop-top housing is encouraged.*
- 35 c) *New development respects the north coast climatic conditions and adopts sustainable design principles. It incorporates footpath awnings and sun and rain protection for pedestrians. Landscaping is provided in accordance with the requirements of Chapter B9 Landscaping. Development respects heritage items and where relevant is consistent with Chapter C1 Non-Indigenous Heritage. It is compatible in design and character with its neighbours.*
- d) *No excavated parking basements will be permitted and additional vehicle footpath crossings will be discouraged in the B2 zone.*

e) *Development applications must demonstrate that:*

5 *i) the character, bulk, scale, density, streetscape and landscape treatment of proposed development will be compatible with and will enhance the low-key, family-friendly, coastal village character, scale and streetscape of Brunswick Heads, its built environment and its surrounds;*

ii) the proposed development will be consistent and compatible with the relevant characteristics and criteria described above in: 1. Natural Environment, 2. Residential Areas and 3. Business and Mixed Use areas inclusive.

10 *iii) building materials, textures, finishes and colours will be compatible with and enhance the coastal village character and scale of Brunswick Heads, its built environment and its surrounds;*

15 *iv) where applicable the proposed development is consistent with the requirements of other provisions of this DCP, including but not limited to Chapters B9 Landscaping, C1 Non-Indigenous Heritage, D1 Residential Development in Urban and Special Purpose Zones and D4 Commercial and Retail Development.*

Having considered the character narratives above, the proposal, whilst improved from that initially lodged, is not compatible with the low-key, family-friendly, coastal village character, scale and streetscape of Brunswick Heads, its built environment and its surrounds.

20 The proposed development provides a minimal setback to the northern and Fawcett Street boundaries which is exacerbated by the three storey elements along these facades. Despite the improvements to design, the building is still expected to result in a dominating/overbearing presence on the streetscape. There is a lack of landscaping, progressive setback of floors, compatible materials and design elements to adequately
25 'soften' the presentation of the proposed development. It is not clear why development of a third storey has persisted considering it only comprises one complete guest room, four guest room lofts, and a series of roof terraces. As designed, the proposal is not considered to be in accordance with relevant provisions of Chapter E4 for Brunswick Heads.

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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>
92	Yes	Yes	A condition would apply if approved to ensure demolition to be undertaken in accordance with the relevant Australian Standard
93	No	N/A	N/A
94	Yes	Yes	Conditions would apply if approved requiring partial upgrade to conform with building code recommended
94A	No	N/A	N/A

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?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	<u>Yes</u> . As discussed above under the provisions of Byron DCP 2014, the proposed development is not compatible with streetscape and character of the locality and will adversely impact on the built environment of the locality.
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.
Construction Impacts	The development will generate minor impacts during its construction. Conditions of consent recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.

5

4.7 The suitability of the site for the development

10 The site is not considered to be suitable for the development owing to the proposed built form being incompatible with streetscape and character of the locality. It is considered the proposal is an overdevelopment of the site in terms of height (number of storeys) and with insufficient car parking provided to cater for the development.

4.8 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited. Nine submissions were received objecting to the development.

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Key issues raised in submission	Consideration
Impacts on privacy	Noted
Noise impacts	Noise impact assessment provided. Modifications have been made to the plan to minimise the noise impacts of the development on neighbouring residential properties. These are discussed above.
No night management	Modifications have been made to the proposal to convert one of the guest rooms to a manager's residence. However, no further detail of the management of the development has been provided.
Density/character – overdevelopment Three storeys and the solid and elevated fences/walls along the Tweed Street façade are out-of-character.	As discussed above under D3.3.6, D4 and E4 the proposed development is not compatible with streetscape and character of the locality. Several submitters requested the building be restricted to 2 storeys to better fit with the existing streetscape character. Use of vegetation rather than walls/solid fences for the restaurant and bar was also suggested.
Building height	The development complies with the building height limit but for a chimney. As detailed above, a request to vary the building height limit for the chimney has been lodged and assessed.
Proximity of development to neighbours	Noted – the proposal is only 1.5 metres from the adjacent neighbour's boundary
Car parking – impact on character of Fawcett Street, use of Council land for parking	Council's Infrastructure Services Team provided approval for the request to use Council land for formalised car parking proposed by the development. Car parking however remains deficient and is a

Key issues raised in submission	Consideration
	reason for refusal
Flooding – impact on neighbouring properties from increase in site coverage, and impervious areas	Council's Development Engineer is satisfied the development meets relevant flood planning requirements.
Floor space ratio calculation	The development complies with the relevant floor space ratio for the property.
Impact of lighting of neighbouring residential properties	Noted

4.9 Public interest

The proposed development is contrary to several planning requirements particularly relating to car parking, character and visual impacts without adequate justification.

- 5 Council resolved (Resolution 22-554) on 13/10/2022 to amend **Chapter E4: Brunswick Heads of Byron DCP 2014** to give better effect, direction and clarity to the character narratives for the town. The draft provisions in red from that report under **Section E4.3.1 Character, Bulk, and Scale of Development** state:

Prescriptive Measures

~~There are no Prescriptive Measures.~~

1. Excavated parking basements are not permitted within Brunswick Heads.
2. Additional vehicle footpath crossings are discouraged in the business and mixed use zones.
3. The built form is to be limited to two storeys within the 9 metre height limit to reflect the low rise character of Brunswick Heads.
4. To maintain residential privacy, roof top decks are not permitted.
5. Front setbacks are to be maintained in accordance with Chapter D1 Residential Accommodation in Urban, Village and Special Purpose Zones, with front yards landscaped with lawn, and garden vegetation.

Although not a technical matter for consideration like a proposed LEP amendment under Section 4.15 of the EPA Act 1979, the proposed development includes third storey elements and roof top areas making it inconsistent with these plan changes. At the time of finalising this assessment report the DCP Amendments were being prepared to go on exhibition. In the event of an appeal to the Land and Environment court, assuming these provisions are finally adopted by Council would become matters of contention.

Consequently, approval of the proposal would not be in the public interest, noting the various other issues and matters discussed above in the body of the report.

5. DEVELOPER CONTRIBUTIONS

If the development is approved developer contributions would be levied including water and sewer headworks charges.

6. CONCLUSION

The proposed development is deficient in car parking spaces and does not incorporate adequate landscaping. However, the fundamental issue with the development application is that the proposal is not compatible with the streetscape and character of the locality particularly as:

- It has three storey elements with all adjoining, neighbouring and surrounding buildings being a maximum of two stories.
- Much of the development is finished with parapet walls, while most surrounding buildings have pitched/gable roofs.
- Proposed building materials (i.e., coloured concrete and dry stone masonry) are not evident on any adjoining or neighbouring buildings.

The proposed development does not “*reflect a low-scale, tourist-beach image*” and is out of character with the “*low key, family-friendly, coastal village character, streetscape and scale of Brunswick Heads*”.

A significant re-design is required to address the incompatibility of the proposal with streetscape and character requirements for Brunswick Heads and consequently it is recommended that this development application be refused.

Report No. 13.3 PLANNING - 10.2021.212.1 Temporary Use - Rural Function Centre at 36 Keys Road, Coorabell

Directorate: Sustainable Environment and Economy

5 **Report Author:** Patricia Docherty, Planner

File No: I2022/892

Proposal:

Proposal description: Temporary Use - Rural Function Centre

Property description: LOT: 7 DP: 1091198
36 Keys Road COORABELL

Parcel No/s: 239749

Applicant: Newton Denny Chapelle

Owner: Rockinghorse Unity Pty Ltd

Zoning: Part C2 Environmental Conservation / Part RU2 Rural Landscape

Date received: 3 May 2021

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

Concurrence required Yes – CNR No.21804

Public notification or exhibition:

- Community significant development and Level 2 advertising under Council's Community Participation Plan.
- Exhibition period: 12/5/21 to 1/6/21
- Submissions received: 35 (28 Oppose & 7 Support)
- Submissions acknowledged: ☒ Yes ☐ No ☐ N/A

Variation request to Not applicable

**Development
Standards
under an EPI
(e.g. clause 4.6)**

**Delegation to
determine** Council

Issues

Number of submissions: 28 Object & 7 Support

It is noted that 7 written submissions include the support of longstanding adjoining neighbours that have no concerns about the proposal and welcome the introduction of regulations to manage and monitor events in rural areas. 3 of these submissions of support are from individuals who also declared their interest in the events industry.

Notwithstanding, 28 written objections include submissions received from neighbouring residents and from the wider area of Federal, Coorabell and Goonengerry. Objections raise concerns about the following potential impacts that are relevant matters for consideration:

- Noise from outdoor events - impact on residents' rights to quiet enjoyment of their property & amphitheatre effect of topography.
- Light impacts on rural dark sky and concerns events will illuminate valley in direct view of living and sleeping areas.
- Wildlife habitat - ecological assessment insufficient
- Trial period:
 - Some suggest trial will occur at a time when Lots in Coorabell Springs (105 Keys Road) will still be vacant – period should be longer than 12 months as breaches and noise issues will be undetected - too late to have an impact on the trial
 - Others request that trial period should be shorter than 12 months to address non-compliance sooner
- Traffic, safety & access including concerns about:
 - private road surface
 - guests will drive their private cars to the venue, parking on side of private road (Keys Road) and not use required mini-bus
 - concerns about impeding Right of way/easement on Keys Road
 - traffic will impact Coorabell Road safety, Federal Village and wider road network
 - multiple truck movements to bring temporary structures to site

- Lack of amenities
- Proximity to Wilsons River & drinking water catchment - water quality
- Compliance & monitoring of events
- Cumulative uses on lot
- Not "small scale and/or low impact"
- Insufficient community engagement & concerns the pre consultation document is a misrepresentation
- Frequency of events not temporary
- Venue will alter the character of the local area
- NSW State Government agritourism legislation

Objections raised the following matters beyond the powers of the DA (ultra vires) and as such are not relevant matters for consideration in the particular circumstances of this temporary use proposal:

- Affordable Housing
- Concerns that the property will be sold
- Financial liability of wear and tear on a shared private road
- Should not be approved until the Federal Village Masterplan is completed
- Previous compliance action not directly related to the proposal including concerns about unauthorised helicopters
- Visual impact – not applicable to exempt development of temporary structures that do not require development consent

Relevant matters for consideration in this report are assessed as being satisfactory in the professional opinion of the relevant Council planner, ecologist, engineer and environmental health officer. The recommendation for approval in this report has been made with regards to the likely impacts of the temporary use of part of the site for a rural function centre and subject to compliance with recommended conditions of consent including a trial period and substantiated complaints procedure.

Summary:

The DA proposes Temporary Use as a Rural Function Centre, which is permissible with consent under Clause 6.11 of Byron Local Environmental Plan (LEP) 2014. Plans are in Attachment 1 of this report.

- 5 Clause 6.11 Temporary use of land in Zone RU2 for purpose of function centre under Byron LEP 2014 permits temporary use of land for the purpose of a function centre:
- *that is compatible with the primary production potential, rural character and environmental capabilities of the land, and*
 - *for the occasional holding of events in rural areas that does not adversely impact the rural amenity, agricultural production, scenic or environmental values of the surrounding lands.*
- 10

The temporary use clause allows for development consent to be granted within Zone RU2 Rural Landscape for the purpose of a function centre for a maximum period of 3 years from the date of consent.

- 15 Council being the consent authority must be satisfied that:
- the development is not for the purpose of a convention centre, exhibition centre or for music festivals, and
 - the development is small scale and low impact, and
 - the development will not generate noise, traffic, parking or light spill that will significantly impact on surrounding residential areas, and
 - the development will not impair the use of the surrounding land for agriculture or rural industries, and
 - no more than 1 event will be held at the function centre on any one weekend, and
 - no more than 20 events will be held at the function centre in any period of 12 months, and
 - no more than 150 guests will be permitted to attend an event at the function centre at any one time.
- 20
- 25

30 The temporary structures proposed to be used for each event do not require development consent and the installation of temporary structures associated with the use of the property as a function centre will be in accordance with State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, in force at time of each event.

Council staff have assessed the proposal with regards to potential impacts of the development including use of surrounding land for agriculture and rural industries and amenity of residential areas, ecological considerations and environmental health matters.

35 The DA was referred to the NSW Police and Rural Fire Service and their recommended conditions of consent have been included in the recommendation of this report.

Community consultation has been undertaken at pre lodgement stage by the applicant as required for community significant development as required by the Byron Shire Community Consultation Plan and was documented by the applicant. The applicant's pre consultation document submitted with the DA is available for Councillors consideration at Attachment 3.

40

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Formal public exhibition has occurred at Level 2 in accordance with the Byron Shire Community Participation Plan and relevant matters for consideration made in the public submissions have been considered. Full public submissions are available for Councillors consideration in Attachment 4.

- 5 It is considered that, subject to compliance with recommended conditions of development consent, the proposed temporary use of the land for a rural function centre meets the requirements of Byron LEP 2014 Clause 6.11 and other matters for consideration in accordance with the NSW Environmental Planning and Assessment Act 1979.

- 10 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 at Attachment 2.

NOTE TO COUNCILLORS:




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

20

RECOMMENDATION:

- 25 **That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.212.1 for Temporary Use - Rural Function Centre, be granted consent subject to the conditions of approval in Attachment 2 of this report**

Attachments:

- 30 1 DA10.2021.212.1 Plans Temporary Rural Function Centre, E2022/95559 
2 DA10.2021.212.1 - Recommended conditions of consent, E2022/97931 
3 Confidential - DA10.2021.212.1 submission received, E2022/100493
4 Confidential - DA10.2021.212.1 Pre-lodgement Community Consultation_PAN-90848, E2021/63920
35 5 DA10.2021.212.1 LUCRA revised final V4.0_AI-351741, E2022/30642 

Report

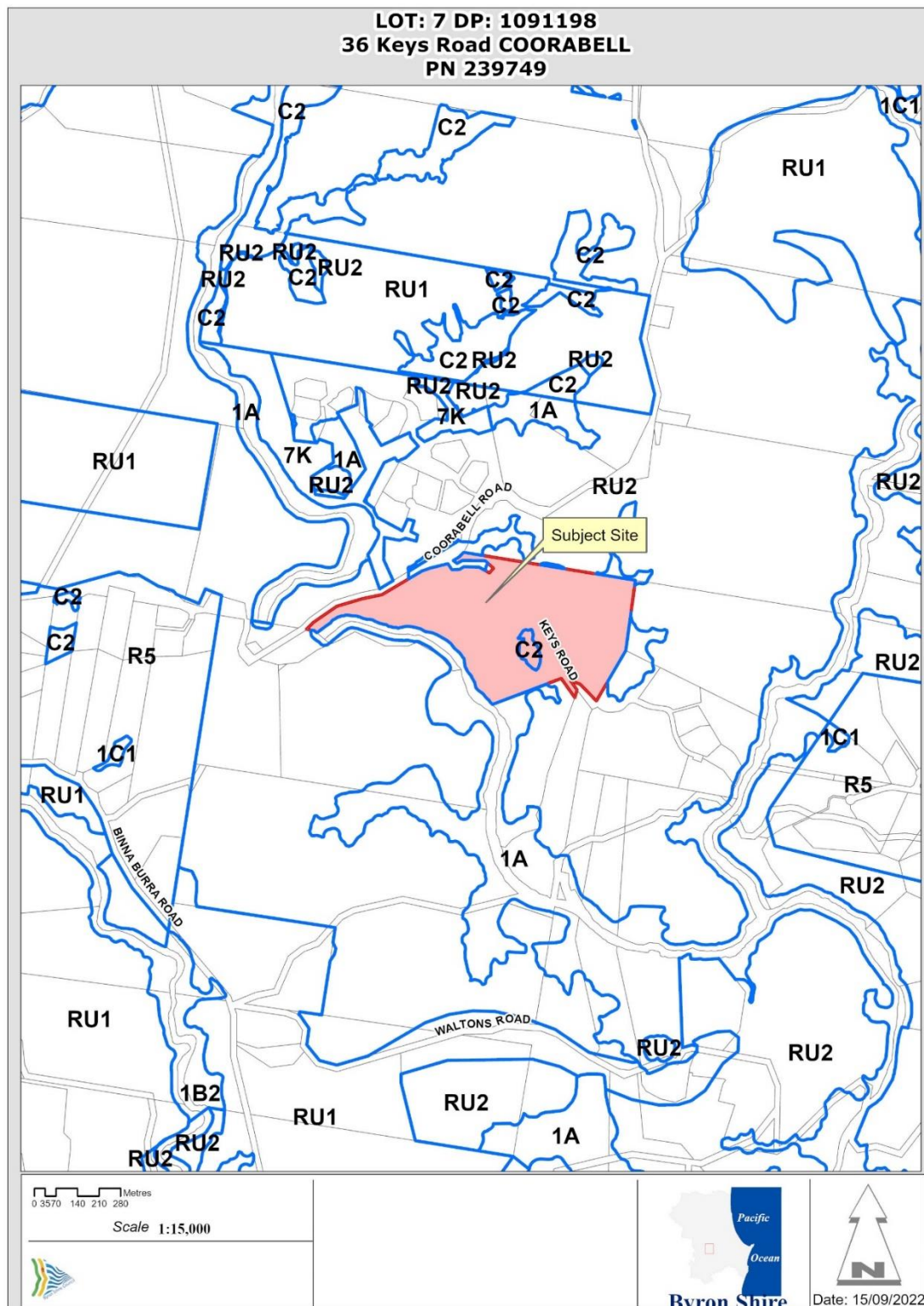


Figure 1: Locality Plan

Assessment:

1. INTRODUCTION

History/Background

5 There has been a number of subdivision/boundary adjustments to enable creation of functional rights of way to service a number of properties.

Previous development history of the site is as follows:

Historial Parcel No. 37450 / LOT: 1 DP: 738086

005.1993.00000511.001	Development Applications	Studio	02/05/1994	Approved Delegation
005.1993.00000233.001	Development Applications	Boundary Adjustment	18/11/1993	Withdrawn/Cancelled
005.1992.00000270.001	Development Applications	Studio	12/11/1992	Refused Delegated
006.1998.00002154.001	Building Applications	Rural Shed	01/04/1998	Approved Delegation
010.2001.00000426.001	Development Application	New Subdivision - Boundary Adjustment	16/10/2001	Approved Delegation

Current Parcel:

006.1994.00002085.001	Building Applications	Rural Shed	10/03/1994	Approved Delegation
010.2003.00000613.001	Development Application	Boundary adjustment to transfer an a...	03/05/2004	Approved
010.2003.00000613.002	Development Application	S96 Modification to 10.2003.613.1 - T...	01/12/2004	Approved
010.2011.00000538.001	Development Application	Rural Tourist Facility & holiday cabins ...	29/03/2012	Approved
010.2015.00000176.001	Development Application	Rural Landsharing Community (multipl...	24/09/2015	Approved
010.2015.00000176.002	Development Application	S96 To Relocate Three (3) Multiple Oc...	20/06/2017	Approved
010.2015.00000176.003	Development Application	S4.55 to modify Condition 10 relating ...	15/10/2018	Approved
010.2022.00000125.001	Development Application	Change of use of existing structures t...	18/05/2022	Application returne

10

15

The rural tourist facility and holiday cabins comprising dwelling/manager's residence, recording studio and associated infrastructure for 'Garage Band Holidays', to be constructed in four stages was approved 29 March 2012. The approved plans are as follows:

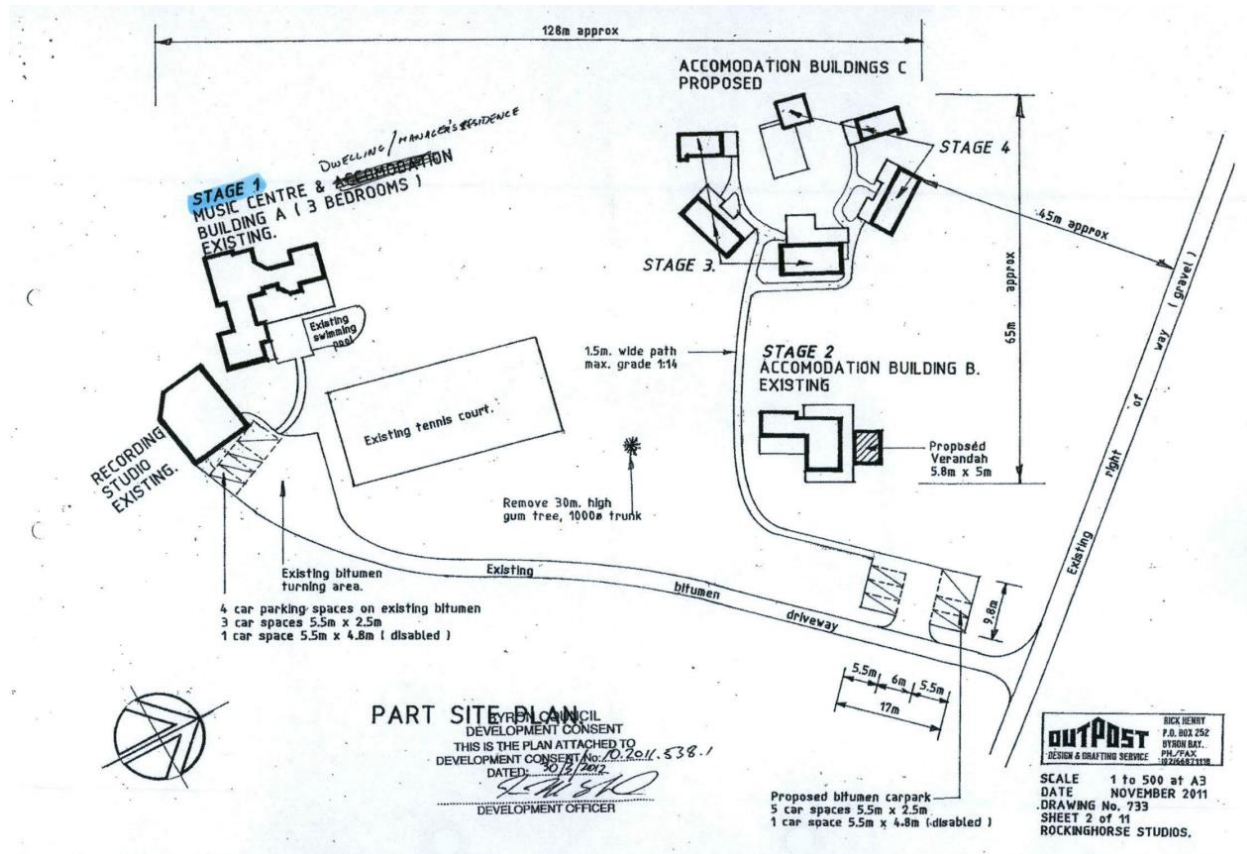


Figure 2: Approved Plan DA 10.2011.538.1

5 The following two separate DA's are currently under assessment, noting that DA 10.2022.305.1 was lodged following compliance investigation recently being undertaken:

Formatted Account	Document Type	Precis	Received Date
010.2022.00000305.001	Development Application	Change of Use of Existing Structures t...	28/07/2022
010.2021.00000559.001	Development Application	Additional Dwelling Site & Community...	21/12/2021

Description of the proposed development

10 The application was lodged pursuant to Clause 6.11 of Byron Local Environmental Plan 2014 and seeks approval for the temporary use of the land for the purpose of a rural function centre for up to 20 events in any 12 months, with not more than 1 event on any given weekend and to operate for a 3 year period.

Functions on the site will involve three distinct phases:

- Phase 1 - Bump-in (1-2 days prior to function);
- Phase 2 – Function day; and
- 15 • Phase 3 – Bump-out (within 2 days of function).

The application states that up to 150 guests will be at each function and that whilst guests will move through various parts of the landscaped grounds in the vicinity of the dwelling and studio, it is expected that the main focus of the temporary use will be confined to the

tennis court and cleared level area north-west of the tennis court as detailed in NDC Plans 2 and 3 (see Figures 2 and 3 below).

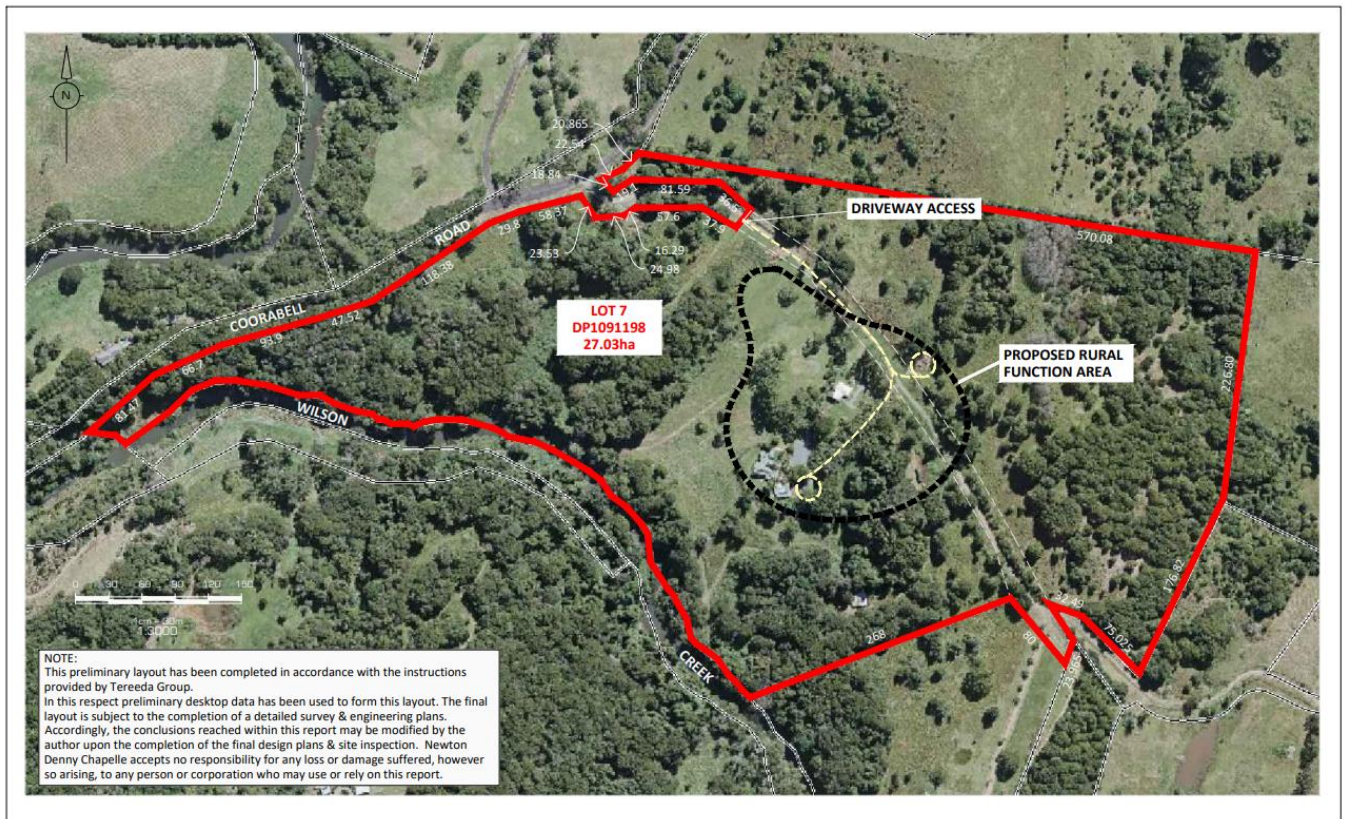


Figure 3: Site Overview



Figure 4: Site Layout Detail

Figure 4 illustrates where vehicles associated with the function will park. More than six spaces are available for private vehicles in close proximity to the studio to be utilised by the wedding party and guests. All other vehicles remaining on site during the function will park in the overflow area located east of the driveway access or within the existing designated staff parking area.

The proposed temporary function centre will operate in accordance with an Events Management Plan (EMP), which requires for all functions to engage an approved wedding or event planner who will be responsible for overseeing the operation of the function in accordance with the EMP. The application states that future clients will be required to sign contracts to ensure each event operates in compliance with the EMP.

The EMP requires that vast majority of guests to the functions will be required to travel to or from the event via mini bus (coaster or the like). A small number of guests for whom this transport is not suitable (older persons or parents with young children) may access the site via taxi. The wedding party is permitted to access the site via private vehicle. All access associated with the operation of the function centre is to be obtained from the internal driveway which connects to Keys Road.

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Functions will be held on a 'pop-up' basis, with all infrastructure required to support the event being transported to the site as required and includes items such as marquees, furnishings, catering equipment and portable toilets.

Functions will typically be held in the afternoon on weekends, with a focus on weddings.

- 5 Wedding ceremonies typically commence no earlier than midday and then the reception follows.

- 10 The application states that the dwelling on the land will not be accessed by function guests (other than any guests staying in the dwelling). A condition of consent is recommended to prohibit any guests staying in the main dwelling house / on-site manager's residence (approved under DA 10.2011.538.1). All amplified music must cease no later than 10:00pm and all attendees will be off-site no later than 11:00pm (other than those staying overnight on the premises in the approved tourist accommodation). Other functions (such as corporate events) will occur on a similar basis, with the exception of the ceremony component.

15 Description of the site

A site inspection was carried out on 8 July 2022

Land is legally described	LOT: 7 DP: 1091198	
Property address	36 Keys Road COORABELL	
Land is zoned:	C2 Environmental Conservation / PART RU2 Rural Landscape	
Land area is:	27.03 hectares	
Property is constrained by:	Bushfire prone land; High Conservation Value; High Environmental Value.	
	Is a BDAR required due to the location of the proposed development?	<input checked="" type="checkbox"/> Yes* <input type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input 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

- 20 A Biodiversity Development Assessment Report (BDAR) was required due to parts of the site mapped on the Biodiversity Values Map in the vicinity of the old Tennis Courts and towards the edge of the C2 zoned land. This is addressed by Council's Natural Resources Planner in the Ecological Assessment under Section 2 of this report.

There is a VMP underway on the lot associated with the approved Multiple Occupancy on the eastern side of Keys Road.



Figure 5: Zoning Map



5

Figure 6: Site photo - location of proposed larger temporary structures.



Figure 6: Tennis Court – location of proposed smaller temporary structures



Figure 7: Conservation Zone edge – not impacted by the proposal.

- 5 A BDAR was provided in response to a Council request for further information and has been assessed by Council's Natural Resources Planner, summarised in Section 2 below.

2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
Building Surveyor	No objections subject to conditions.
S64 / Systems Planning Officer	No objections or conditions.
Natural Resource Planner	No objections subject to conditions.
Resource Recovery	No objections subject to conditions.
Rural Fire Service (4.14)	No objections subject to conditions.
Police	See Comments below.

NSW Police Requirements

- 5 In accordance with Development Application protocols established between New South Wales Police - Tweed Byron Police District & Byron Shire Council to facilitate Crime Prevention through Environmental Design (CPTED) principles. Tweed Byron Police District wish to make comment in relation to the above development application.
 - 10 The 'Proposal' is for a pop-up events & functions centre to be situated on a rural property at 36 Keys Road, Coorabell NSW. Event/Function Frequency The 'Statement of Environmental Effects' proposes a maximum of 20 functions/events per year, also limits functions/events to 1 per weekend.
 - 15 Whilst seeming modest Police are cautious of the development's potential to negatively impact its neighbours with the proposed activities being untested/untried in a remote/rural setting. Should Council approve this development it is asked that conditions stipulating event/function frequency be imposed.
 - 20 Condition: The sale, supply and/or consumption of liquor shall be prohibited, unless an appropriate 'Liquor Licence' is in force.
- Condition: 'Events/Functions' shall be limited to a maximum of twenty (20) per year & not more than one (1) event/function per week.

25

Condition: A register specifying the event/function type, date, trading hours & expected patron numbers shall be kept on the premise at all times. This register must be immediately produced to Council Inspector and/or Police Officer on request.

- 5 Condition: The Proponent must provide Council and Local Police District Commander with written notice of any event/function at least seven (7) days prior. This notice must specify event/function type, date, trading hours & expected patron numbers.

Hours of Operation

- 10 The 'Statement of Environmental Effects' indicates events/function will commence midday 12:00pm & conclude by 10:00pm ('commence no earlier than midday, all amplified music ceases no later 10:00pm'). Again, Police are cautious of the negative impacts (particularly noise & traffic) the proposal presents. Should Council approve this development it is asked that a condition stipulating the hours of operation be imposed.

- 15 Condition: 'Hours of Operation' shall be 12:00pm until 10:00pm seven (7) days, hours of operation shall be reviewable after twelve (12) months of operation.

Venue Capacity

- 20 The 'Statement of Environmental Effects' indicates patron capacity shall be limited to one hundred & fifty (150). Police are not opposed to this capacity, however asks that Council ensures adequate amenities/toilets, car parking spaces etc are available to cater for such patron numbers.
- 25 Condition: 'The maximum number of patrons permitted on the venue at any one time shall not exceed one hundred & fifty (150).'

Entertainment & Noise Emissions

- 30 'Statement of Environment Effects' indicates entertainment/amplified music shall ceases no later than 10:00pm. Considering the development's locality (isolated/rural setting) & potential to disturb the quiet and good order. Police suggest conditions denoting permitted types/styles of entertainment & standard noise pollution conditions be imposed.

- 35 Condition: Entertainment shall be restricted by type - the type of entertainment permitted shall be restricted to acoustic soloists & duos and/or low background amplified music only.

- Condition: 'The LA10* noise level emitted from the premises shall not exceed the background noise level in any Octave Band centre Frequency (31.5Hz - 8kHz inclusive) by more than 5dB between 07:00am and 12:00 midnight at the boundary of any affected residence.
- 40

- Notwithstanding compliance with the above, the noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00 am.'
- 45

Building Inspector

Council's Building inspector has commented:

No details on the size of the any temporary structures associated with this proposal. Assumed the temporary structures will be limited to the exempt development provisions of the Codes SEPP in force at time of each event otherwise a separate DA/CDC will be required for the temp structures.

Response: Applicant confirmed that any proposed structures, being a marquee, portable toilets and possibly a platform / stage, will meet the exempt provisions of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP). In particular, Subdivision 1, Subdivision 6 and Subdivision 8 of Division 3 - Temporary Uses and Structures Exempt Development Code of the Codes SEPP.

Natural Resources Planner Ecological Assessment

Flora

The following broad vegetation classes/types are mapped across the site:

- Subtropical rainforest – isolated patches in varying conditions across the site.
- Derived camphor laurel forest – much of this has been cleared since the mapping was undertaken, and some has been regenerated to early stage native subtropical rainforest.
- Planted sclerophyll – noted as including *Eucalyptus microcorys*.

The site contains patches of high value lowland rainforest and several individuals of the threatened plant species *Hicksbeachia pinnatifolia*. There is also at least one individual of *Acalypha* species 'Big Scrub'. This species has not yet been formally named but should be listed as threatened. A comprehensive vegetation survey was not carried out on the site.

Much of the camphor laurel-dominated areas have been cleared since the mapping was undertaken. Some, but not all, of this area has been subject to bush regeneration works associated with the existing VMP.

Land on the site is identified on the Biodiversity Values Map, including part of the proposed temporary function area (Figure 8 in this report).

Fauna

Threatened fauna species recorded in the surrounding area include many *Phascolarctos cinereus* (koala) and *Ptilinopus magnificus* [a type of fruit dove].



Figure 8: Biodiversity Values Map



Figure 9: High Environmental Value mapping.

The proposal was assessed using the streamlined (small area) module of the Biodiversity Assessment Method. The BDAR stated that the proposal does not require any clearing of native vegetation but elsewhere refers to clearing of approximately 1900 m². It states this is in an area which has been previously cleared and it is presumed that this was part of the derived camphor laurel forest that was cleared in recent years. This appears to be supported by the plot data but the plot location and area of cleared land are not mapped in the BDAR. Despite this lack of information, it appears that the proposal as described in Illustration 9.1 (shown in Figure 10 in this report below) is within already established garden areas with a mown understorey or existing tennis court. It therefore appears there would be minimal direct biodiversity impacts.



Figure 10: Proposal footprint (as depicted in BDAR)

- 5 The most notable biodiversity impacts would likely be the increased traffic movements during functions which could potentially result in additional vehicle strike on fauna, as well as the increase in artificial noise and light impacts. The BDAR proposed the following mitigation measures:

11.1 Mitigation measures

Mitigation and management measures have prepared to address and minimise the biodiversity impacts associated with the proposal.

The proposal is unlikely to adversely affect any threatened species or communities within the site or locality. The following measures are recommended for the site:

- Continuation and implementation of the approved Vegetation Management Plan within the site in order to management the spread of weeds, improvement of existing rainforest patches through restoration and rehabilitation
- Weed control and management will be undertaken in accordance with the Biosecurity Act 2015 surrounding the proposal area
- Low speed limits ($\leq 50\text{km/hr}$) would be implemented in the site to reduce the potential of vehicle strike to fauna
- Recommendations provided by the Noise Impact assessment (Tim Fitzroy & Associates 2020) will be adhered too
- Road signage along access road to raise awareness of wildlife corridor and potential koala occurrence

It is recommended that all these measures are implemented. It is understood that the Traffic Management Plan conditioned in the Engineering Referral will include requirements for low speed limits in the site. The Environmental Health Referral included a recommended condition for an Events Management Plan to include the Noise Management Plan.

Additionally, there is a separate DA currently under assessment for an additional dwelling site and conversion of an approved MO to a CT, which will include a condition for a new five-year Vegetation Management Plan (VMP). Although beyond the powers of this particular DA, the separate VMP is considered to constitute an improvement to the biodiversity values of the site (including by improving habitat connectivity within the broader landscape) and provides some compensation for the cumulative impacts of development on the site, including the proposed temporary function activities.

The BDAR was also referred to the Biodiversity and Conservation Division of the NSW Department of Industry and Environment (DPIE) who provided the following recommendations:

1. The proposed mitigation measures in section 11 of the BDAR be required as conditions of consent, including installing road signage along the access road to raise awareness of wildlife corridor and potential Koala occurrence.
2. The conditions require an extension period for the Vegetation Management Plan to cover a further five year period to ensure ongoing weed management and maintenance of restoration plantings to enhance the connectivity values over the site.

Recommended conditions, to the extent where applicable to the temporary function use are included in the attachment to this report. The VMP is a separate matter and is being addressed under the separate application for community title subdivision and modification to the approved multiple occupancy on the same lot:

The most notable biodiversity impacts would likely be the increased traffic movements during functions which could potentially result in additional vehicle strike on fauna, as well as the increase in artificial noise and light impacts. The BDAR proposed mitigation measures.

State Environmental Planning Policy (Koala Habitat Protection) 2020

The BDAR included a section addressing the Koala SEPP 2020 (note: this SEPP has been consolidated into the Biodiversity and Conservation SEPP 2021). It determined that no potential koala habitat is present on the site:

Is the Land 'potential Koala habitat'?

The Koala SEPP 2020 defines potential Koala habitat as "areas of native vegetation where Schedule 2 trees constitute at least 15% of the total number of trees in the upper or lower strata of the tree component". With regard to potential and core Koala habitat assessment, Section 1.5 of Circular B35 states that:

- "In relation to affected DAs it is the intention of the policy that investigations for 'potential' and 'core' koala habitats be limited to those areas which it is proposed to disturb habitat."

On this basis, Koala SEPP 2020 assessment pertains to the development area on the site. The proposal does not remove any native trees or vegetation that would be associated with koala habitat or schedule 2 trees. Therefore, the development area would not constitute at least 15% of the total number of trees in the upper or lower strata of the tree component. On this basis, 'potential Koala habitat' does not occur within the development area and therefore Koala SEPP 2020 is not considered further.

It should be noted that within the site, two Schedule 2 tree species occur – *Eucalyptus microcorys* (Tallowwood) and *Eucalyptus robusta* (Swamp Mahogany). These trees likely to be planted trees surrounding the existing dwelling and driveway, these trees do not correspond to any mapped PCT within the site and these trees would not be impacted as a result of the proposal.

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 2019'. The site is bush fire prone land. The development application was referred to the NSW Rural Fire Service, which provided conditions which are reflected in the Recommendation of this Report

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

5 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.

State Environmental Planning Policies (SEPP)

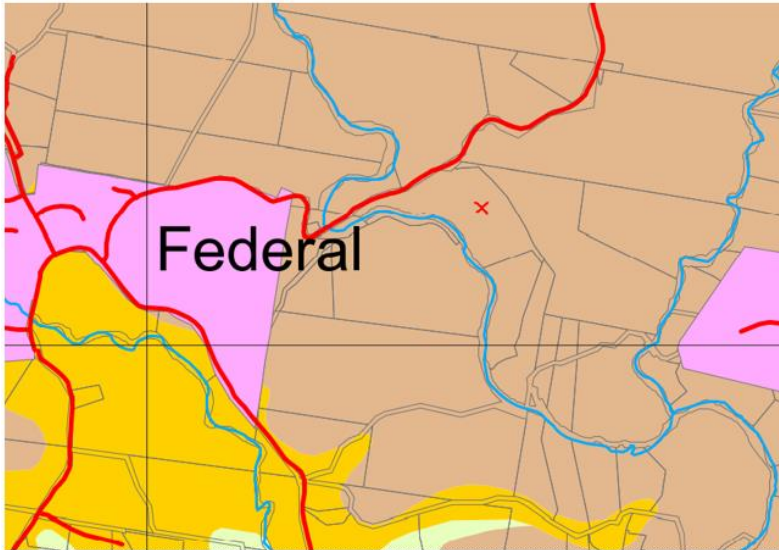
Consolidated SEPPs 2021

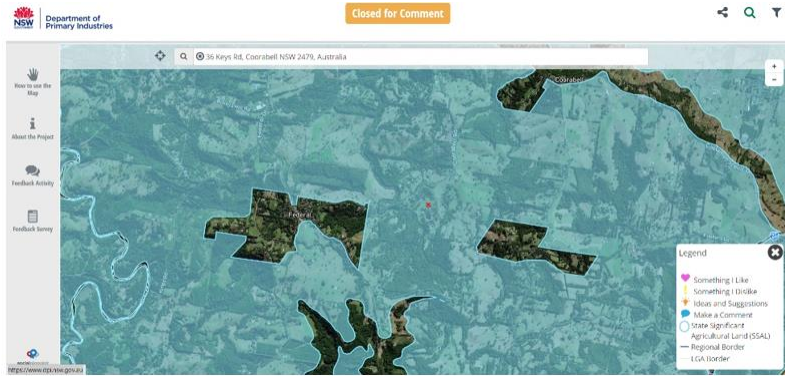
Considerations	Satisfactory	Unsatisfactory
<p><i>Biodiversity and Conservation SEPP 2021</i></p> <p>Consideration:</p> <p>The BDAR included a section addressing the Koala SEPP 2020 (note: this SEPP has been consolidated into the Biodiversity and Conservation SEPP 2021). It determined that no potential koala habitat is present on the site:</p> <p>Is the Land 'potential Koala habitat'?</p> <p>The Koala SEPP 2020 defines potential Koala habitat as "areas of native vegetation where Schedule 2 trees constitute at least 15% of the total number of trees in the upper or lower strata of the tree component". With regard to potential and core Koala habitat assessment, Section 1.5 of Circular B35 states that:</p> <ul style="list-style-type: none"> "In relation to affected DAs it is the intention of the policy that investigations for 'potential' and 'core' koala habitats be limited to those areas which it is <u>proposed to disturb habitat</u>." <p>On this basis, Koala SEPP 2020 assessment pertains to the development area on the site. The proposal does not remove any native trees or vegetation that would be associated with koala habitat or schedule 2 trees. Therefore, the development area would not constitute at least 15% of the total number of trees in the upper or lower strata of the tree component. On this basis, 'potential Koala habitat' <u>does not</u> occur within the development area and therefore Koala SEPP 2020 is not considered further.</p> <p>It should be noted that within the site, two Schedule 2 tree species occur – <i>Eucalyptus microcorys</i> (Tallowood) and <i>Eucalyptus robusta</i> (Swamp Mahogany). These trees likely to be planted trees surrounding the existing dwelling and driveway, these trees do not correspond to any mapped PCT within the site and these trees would not be impacted as a result of the proposal.</p>	☒	☐
<p><i>Resilience and Hazards SEPP 2021</i></p> <p>Consideration:</p> <p>Chapter 4 Remediation of Land</p> <p>Preliminary Contaminated Land investigation reports provided with previous DA's concludes remediation and validation are required and a satisfactory validation report has been provided (Council Record # E2022/40719)</p>	☒	☐

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13.3

Considerations	Satisfactory	Unsatisfactory
<p><i>Primary Production SEPP 2021</i></p> <p>Consideration: The proposed development is suitably clustered in a location close to existing buildings that does not undermine the overarching purpose of the site for agricultural use and avoids impacts on native vegetation and biodiversity. The remainder of the site is available for agricultural purposes and the proposed use would not restrict viability of the site for agriculture. It is noted that at the time Chapter 2 of this SEPP was made, Schedule 1 State significant agricultural land (Section 2.8) was blank.</p> <p>It is further noted that the site is identified as regionally significant farmland* on the Northern Rivers Farmland Protection Project Final Map 2005 (Section 117(2)Direction), prepared by the NSW Government.</p> 	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Considerations	Satisfactory	Unsatisfactory
<p>LEGEND</p> <ul style="list-style-type: none"> State Significant Farmland Regionally Significant Farmland Significant Non-Contiguous Farmland Other Rural Land Committed Urban Uses and Rural-Residential Zones National Parks, State Forests Land outside Northern Rivers Catchment Management Area <ul style="list-style-type: none"> Highways Major Roads Railways Watercourses Land Parcel Boundary Catchment Management Board Boundary Local Government Boundary <p>Source: map-queensland-northern-rivers-farmland-protection-project-final-map-section-117-2-direction-2-of-4-2005.pdf (nsw.gov.au)</p> <p>*site marked with an X above.</p> <p>The site is also mapped* on the draft State Significant Agricultural Land (SSAL) Map exhibited from 1 Nov 2021 till 31 Jan 2022:</p>  <p>Source: SSAL Social Pinpoint (mysocialpinpoint.com)</p> <p>*site marked with an X above.</p> <p>The proposed development is not inconsistent with the relevant aims and objectives of the SEPP, as follows—</p> <p>(a) to facilitate the orderly economic use and development of lands for primary production,</p> <p>(b) to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,</p>		

Considerations	Satisfactory	Unsatisfactory
<p>(c) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations...</p> <p>(e) to encourage sustainable agriculture</p> <p>It is considered that Byron Shire LEP 2014 permits the proposed uses and Council, being the consent authority can be satisfied that the temporary use does not undermine the viability of land for primary production subject to the development operating in compliance with recommended conditions of consent.</p>		

4.2 Byron Local Environmental Plan 2014 (LEP 2014)

- 5 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 function centre (subject to provisions under Clause 6.11 *Temporary use of land in Zone RU2 for purpose of function centre*);
- 10 (b) The land is within the Part C2 Environmental Conservation / Part RU2 Rural Landscape according to the Land Zoning Map;
- (c) The proposed development is permissible with consent in accordance with Clause 6.11 *Temporary use of land in Zone RU2 for purpose of function centre*; and
- (d) Regard is had for the Zone Objectives as follows:

Zone Objective RU2 Rural Landscape	Consideration
<ul style="list-style-type: none"> To encourage sustainable primary industry production by maintaining and enhancing the natural resource base. 	<p>The temporary use is not inconsistent with the objectives of the zone.</p> <p>The temporary use of the land for occasional events will be subject to conditions of consent and management measures to ensure the use will be consistent with the rural character of the land and is consistent with Clause 6.11 of</p>
<ul style="list-style-type: none"> To maintain the rural landscape character of the land. 	
<ul style="list-style-type: none"> To provide for a range of compatible land uses, including extensive agriculture. 	

<ul style="list-style-type: none"> • 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. 	<p>the Byron LEP 2014 to allow holding of events in rural areas that does not adversely impact the rural amenity, agricultural production, scenic or environmental values of the surrounding lands.</p>
<ul style="list-style-type: none"> • To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality. 	<p>Note. All temporary structures are Exempt development that do not require development consent and these structures do not form part of the development consent being sought from Council, being the consent authority.</p>

The remaining checked 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 including Clause 6.11 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

5 **6.5 Drinking Water catchments**

The proposal will not have an adverse impact on the drinking water catchment from effluent disposal runoff, solid and liquid waste generations, or from the storage and use of chemicals.

6.6 Essential Services

- 10 The proposal has adequate access to the local road network and all necessary services to service the development.

6.11 Temporary use of land in Zone RU2 for purpose of function centre

(1) The objectives of this clause are to ensure that—

- 15 (a) development is compatible with the primary production potential, rural character and environmental capabilities of the land, and
- (b) development for the occasional holding of events in rural areas does not adversely impact the rural amenity, agricultural production, scenic or environmental values of the surrounding lands.

- 20 (2) Despite any other provision of this Plan, development consent may be granted for development on land within Zone RU2 Rural Landscape for the purpose of a function centre for a maximum period of 3 years from the date of consent.

- (3) Development consent must not be granted to development for the purpose of a function centre on land within Zone RU2 Rural Landscape unless the consent authority is satisfied that—

- (a) the development is not for the purpose of a convention centre, exhibition centre or for music festivals, and
- (b) the development is small scale and low impact, and
- (c) the development will not generate noise, traffic, parking or light spill that will significantly impact on surrounding residential areas, and
- (d) the development will not impair the use of the surrounding land for agriculture or rural industries, and
- (e) no more than 1 event will be held at the function centre on any one weekend, and
- (f) no more than 20 events will be held at the function centre in any period of 12 months, and
- (g) no more than 150 guests will be permitted to attend an event at the function centre at any one time.

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

To some extent the proposed agritourism provisions under the exempt and complying development codes which will come into force on December 1 2022 could apply in the RU2 zone to enable events or functions which meet the definition of farm experience premises for 100 guests as exempt or complying development up to 52 times a year.

As the events patron capacity exceeds 100, development consent would be required in this instance.

4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

Chapter B1 Biodiversity

The Biodiversity Development Assessment Report (BDAR) submitted by the applicant included a section addressing Chapter B1 of the DCP, noting that the proposal does not meet some of the prescribed ecological setbacks, including for the following ecologically significant areas:

- Threatened Ecological Communities (TECs)
- Over-cleared vegetation types and over-cleared landscapes
- Areas within a fauna habitat corridor

A variation was requested for these non-compliances, with the following justification:

A reduced setback is proposed for the above red flagged areas as the dimensions of the site do not permit any increase in this setback. No further increase in setback is possible given the nature of the proposal further movement of the proposal may trigger subsequent red flag areas.

-
- a. refer to item 6 (above)
 - b. alternative layouts were considered however it is not possible to increase the setback of the proposal further due to spatial constraints at the site.
 - c. The planning principles and objectives of Chapter B2 are broadly met through the proposal having negligible impacts on vegetation/habitat by siting the proposed function sites on historically cleared land.

5 The variation was assessed by Council's Natural Resources Planner and is considered to be generally reasonable provided the mitigation measures provided in the BDAR are implemented. The BDAR proposed the following mitigation measures:

11.1 Mitigation measures

Mitigation and management measures have prepared to address and minimise the biodiversity impacts associated with the proposal.

The proposal is unlikely to adversely affect any threatened species or communities within the site or locality. The following measures are recommended for the site:

- Continuation and implementation of the approved Vegetation Management Plan within the site in order to management the spread of weeds, improvement of existing rainforest patches through restoration and rehabilitation
- Weed control and management will be undertaken in accordance with the Biosecurity Act 2015 surrounding the proposal area
- Low speed limits ($\leq 50\text{km/hr}$) would be implemented in the site to reduce the potential of vehicle strike to fauna
- Recommendations provided by the Noise Impact assessment (Tim Fitzroy & Associates 2020) will be adhered too
- Road signage along access road to raise awareness of wildlife corridor and potential koala occurrence

10 It is recommended that all these measures are implemented. It is understood that the Traffic Management Plan conditioned in the Engineering Referral will include requirements for low speed limits in the site. The Environmental Health Referral included a recommended condition for an Events Management Plan to include the Noise Management Plan (which is contained within the Land Use Conflict Assessment to be approved under recommended condition of consent no.1. A copy of the LUCRA is in Attachment 5 of this report.

Chapter B3: Services

15 The site is serviced by road access and power. All events will require the installation of portable toilets for ablution purposes. All catering and food preparation will be brought on the site for each event. A NSW Health approved private water supply quality assurance program (or drinking water management system) must be approved. The existing on-site

sewage management systems (OSMS's) are not to be used for any other purpose than that approved i.e. waste water generated by the proposal has to be managed offsite.

Chapter B4: Traffic Planning, Vehicle Parking, Circulation and Access

Council Development Engineer has assessed the proposed temporary use:

- 5 The site has ample space to accommodate parking without spilling outside the development site. The site currently has a well establish access and internal circulation roadway. The site has ample space to accommodate coach parking site. There is ample space within the site to accommodate a forward entry and exit. There is ample space within the site to accommodate a forward entry and exit of an MRV Vehicle for loading of equipment.
- 10

The conclusion in the submitted Road Efficiency Assessment and Road Safety Assessment is considered satisfactory "the risk level at the intersection will not increase as a result of the proposed development"

Parking is assessed as follows:

15 Parking Provision

- 8 spaces provided in accordance with AS2890.1:2004.
- informal parking area situated at the opposite side of the road
- Staff Parking
- 2 x bus turnaround area

20 Parking Analysis

No of Persons = 150

Minibus

= 22-person capacity x 6 trips

= 132 people

25 Private Vehicle

= 8 cars x 1.5 capacity

= 12 people

Taxi

= 5 trips x 1.5 capacity

30 = 8 people

Total = 152

There is ample area for overflow parking on the opposite side of the road within the lot.

Chapter B5: Buffers and Minimising Land Use Conflict

- 5 A revised Land use conflict risk assessment dated 28 March 2022 provided by the applicant in response to a Request for Further Information by Council is considered to be satisfactory and the LUCRA including management measures is recommended for approval in condition 1 of this report. The revised LUCRA considers impacts of lighting.

Chapter B8: Waste Minimisation and Management

- 10 All waste generated by catering is to be removed from the site by caterer.

Chapter C4: Development in a Drinking Water Catchment

- 15 The proposal will not result in any major earthworks or activities likely to affect the nearest watercourse (Wilson River). It is an offence under the provisions of the Protection of the Environment Operations Act 1997 to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ("on-the-spot fine") or prosecution. Erosion and sediment controls are recommended as part of the conditions of consent including the temporary structures must not redirect the flow of any surface water or ground water, or cause sediment to be transported, onto an adjoining property,
- 20 and other standard erosion and sediment controls are recommended to apply, as required.

Chapter D9 Rural Function Centres

Section D9.4 Provisions

D9.4.1 Site Suitability

Objective

1. To ensure that rural functions and/ or events are held on sites that are suitable to such activities, particularly in relation to the ability to avoid or manage disturbance to the amenity of the neighbourhood.

Performance Criteria

1. Use of the property for functions and/ or events will not result in offensive or intrusive noise at neighbouring residences.
2. The local road network has the capacity to accept the additional traffic associated with function and/ or event use at the site without compromise to safety or efficiency.
3. Functions or events at the site will not result in land use conflicts with neighbours, particularly in respect of local farming activities.

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13.3

Consideration of Prescriptive Measures: Development consent must not be granted for a function centre unless the consent authority is satisfied that:	All comply in some cases subject to compliance with recommended conditions of consent.
1. the proposal is supported by a site specific acoustic assessment, prepared by a suitably qualified person, quantifying existing background noise levels and noise levels predicted for functions and/ or events in relation to all nearby dwellings, and demonstrating that the use of the property for functions and/ or events will not result the generation of offensive noise, as defined in the Protection of the Environment Operations Act 1997	Complies. Noise Impact Assessment Proposed Rural Function Centre Lot 7 DP1091198 No 36 Keys Road, Coorabell Revised Final V2.0 prepared by Tim Fitzroy & Associates, dated 13 April 2021 (Council Record #E2021/63918)
2. a Traffic Impact Assessment has been prepared, addressing traffic numbers, impact on local roads, access and on-site parking, demonstrating that the use of the site for a function centre will not result in unacceptable adverse impacts on the safety or efficiency of local traffic or the amenity of the neighbourhood	Complies. Traffic Impact Assessment for the proposed Rural Function Centre, prepared by Rytenskild (Ref: 20286), dated 10 December 2020. (Council Record #E2021/63916)
3. a Land Use Conflict Risk Assessment has been prepared demonstrating that the use of the site for a function centre will not result in any land use conflict in relation to adjoining or nearby farming activities or preclude future farming activities	Complies. Land Use Conflict Risk Assessment Proposed Rural Function Centre Lot 7 DP1091198 No 36 Keys Road, Coorabell Revised final, prepared by Tim Fitzroy & Associates, dated 28 March 2022 (Council Record #E2022/30642) Identifies: The area comprises predominantly rural lifestyles properties. The closest commercial agribusiness containing cattle beef grazing is located some 240 metres to the north east of the closest point of the proposed rural function centre. Conditions apply related to biosecurity requirements to be included in every contract for events.

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13.3

<p>4. no clearing of native vegetation is required for the development;</p>	<p>Complies.</p> <p>No clearing of vegetation is required.</p> <p>Note. The site is mapped on the Biodiversity Values Map. The applicant provided a Biodiversity Development Assessment Report Temporary Rural Function Centre: 36 Keys Road, Coorabell 4252-1001 Version 1, prepared by David Havilah Biodiversity Accredited Assessor (BAAS18129) of GeoLink Consulting Pty Ltd dated 15/06/2022 (Council Record #E2022/55667)</p>
<p>5. the function centre is not located in or immediately adjacent to areas of high Aboriginal cultural heritage significance.</p>	<p>Complies.</p> <p>The SEE states that An AHIMS Search completed in November 2020 did not identify any items of Aboriginal Cultural Heritage on or in the vicinity of, the subject site. A more recent AHIMS search confirms site including a buffer of 1 km is not known to be located in or immediately adjacent to areas of high Aboriginal cultural heritage significance.</p>
<p>D9.4.2 Management of Functions and Events</p> <p>Objective</p> <p>1. To ensure that functions and events held on approved sites do not disturb the amenity of the neighbourhood.</p> <p>Performance Criteria</p> <p>1. Use of the property for functions and/ or events will not result in offensive or intrusive noise at neighbouring residences.</p> <p>2. Functions and/ or events at the site will not result in land use conflicts with neighbours, particularly in respect of local farming activities.</p>	
<p>Consideration of Prescriptive Measures</p> <p>Applications for development consent for a temporary use of land for a function centre must include an Events Management Plan, which contains (as a minimum) provisions that:</p>	<p>Draft Events Management Plan provided minimum provisions. A Final EMP is required to be approved by council prior to the first event.</p>

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13.3

1. provide for all function/ event guests (other than the bridal party) to be transported to and from the site by bus, suitable to the road network to be utilised for transportation to the site; and	Complies. Condition recommended. Noted All guests are to arrive by mini bus (with provision to be made for a small number of guests to arrive via taxi (such as elderly and/or families with small children).
2. ensure that all amplified music will cease no later than 10:00pm; and	Complies. Condition recommended.
3. ensure that all attendees will be off-site no later than 11:00pm, other than those staying overnight on the premises; and	Complies. Condition recommended.
4. outline measures that will be in place to ensure predicted noise levels are not exceeded at nearby dwellings; and	Complies. Noise impact assessment also provided. Noise management included in LUCRA. Condition recommended.
5. provide for the monitoring of noise generated at functions and/ or events and annual compliance reporting to Council; and	Noise management included in LUCRA. Complies. Condition recommended.
6. provide for the notification of nearby residents, including contact details for an appropriate management person who must be on-site and contactable during each function and/ or event and provision of a sign, located so that it can be viewed from a public space outside of the property notifying the name and contact phone number of the management person; and	Complies. Condition recommended.
7. ensure that adequate arrangements are in place to manage wastewater and general waste for each function and/ or event; and	Complies. Portable toilets to be installed at each event.
8. manage the potential noise/ amenity impacts associated with any persons staying overnight at the site at the conclusion of the function/ event; and prohibit the use of fireworks, helicopters and/or other comparable activities known to cause disturbance to livestock and/or farming activities.	Complies. Overnight guests only to comply with any approved tourist accommodation. Conditions recommended to address this and prohibit the use of fireworks, helicopters and/or other comparable activities known to cause disturbance.
In deciding whether to grant consent for a temporary function centre, the consent authority must consider: 1. the maximum number of functions and/	Complies: 1. No of events limited to 20 per calendar year. Condition of consent requires: Events/Functions shall be

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<p>or events permitted in any calendar year; and</p> <p>2. the potential loss of farming on the property, particularly where part or all of the site is mapped as State and / or Regionally Significant Farmland; and</p> <p>3. the potential impact on areas of environmental value, whether on the property the subject of the function centre or on adjacent and nearby land, including koala habitat; and</p> <p>4. whether a trial period is appropriate; and</p> <p>5. the need for a biosecurity management plan.</p> <p>A condition of approval will be applied for all development consents for a function centre in Zone RU2 specifying that development consent would cease if three substantiated complaints were received in relation to functions and/ or events at the site within a twelvemonth period</p>	<p>limited to a maximum of twenty (20) per year & not more than one (1) event/function per week. No more than one (1) event will be held at the function centre on any one weekend (Friday to Sunday). Only one (1) function can occur at any given time</p> <p>2. The site is mapped on the 2036 North Coast Regional Plan as Important Farm land and on council mapping as regionally significant farm land (farmland Protection S117.. The proposal does not involve any permanent works that would impede the potential use of the land for farming. The LUCRA submitted with the application has considered the potential impacts of the development. (Attachment 5 of this report) The proposal will not result in loss of farming.</p> <p>3. There are parts of the property mapped as C2 Environmental Conservation No vegetation is required to be removed as a result of the proposed temporary use. No works are proposed on land mapped C2 and there will be no direct or indirect impacts on vegetation or habitats. There is no Koala Habitat or potential Koala Habitat likely to be affected by the development.</p> <p>4. A review period of 12 months is recommended in the conditions of consent.</p> <p>5. There is no need for a biosecurity management plan. Detailed conditions of consent require patrons to remain within the vicinity of the approved development and must not enter another property The nearest operating farm is 220 metres from the property according to the submitted Land Use Conflict Risk Assessment.</p> <p>Other</p> <p>Condition of consent is recommended that</p>
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	development consent would cease if three substantiated complaints were received in relation to functions and/ or events at the site within a twelve month period.

4.5 Environmental Planning and Assessment Regulation 2000

	Applicable to the proposal:	Considered the control as it relates to the proposal:	If this control is applicable, does the proposal comply?
Clause 92 - Additional matters that consent authority must consider	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Clause 93 Fire safety and other considerations	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Clause 94 - Consent authority may require buildings to be upgraded	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Clause 94A - Fire safety and other considerations applying to erection of temporary structures	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA

5 ** 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

5 4.6.1

Impact on:	Likely significant impact/s?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.
Construction Impacts	The development will generate minor impacts during its construction. Conditions of consent recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.

4.7 The suitability of the site for the development

The site is a serviced, unconstrained property and is suitable for the proposed development subject to recommended conditions of consent.

4.8 Submissions made in accordance with this Act /Regs

- 10 The development application was publicly exhibited. There were **35** submissions made on the development application:
- 7 For
 - 28 Against

- 15 Issues raised are addressed in the body of this report and in the attached recommended conditions of consent. Summarised below:

Issue raised	Consideration
Noise from outdoor events - impact on residents' rights to quiet enjoyment of their property & amphitheatre effect of	Noise assessment and management measures in the LUCRA recommended for

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topography.	approval must be complied with at all times.
Light impacts on rural dark sky and concerns events will illuminate valley in direct view of living and sleeping areas.	Light management measures have been addressed and recommended conditions of consent require each event to manage lighting to avoid impacts on residents, agricultural activities and wildlife habitat.
Wildlife habitat - ecological assessment insufficient	A detail Biodiversity Development Assessment has been prepared and assessed as satisfactory by Council's Natural Resources Planner.
<p>Trial period:</p> <p>Some suggest trial will occur at a time when Lots in Coorabell Springs (105 Keys Road) will still be vacant – period should be longer than 12 months as breaches and noise issues will be undetected - too late to have an impact on the trial,</p> <p>Others request that trial period should be shorter than 12 months to address non-compliance sooner</p>	The recommended trial period is in accordance with Byron DCP 2014 and supported by NSW Police and Council staff. Conditions recommended.
<p>Traffic, safety & access including concerns about:</p> <ul style="list-style-type: none"> • private road surface • guests will drive their private cars to the venue, parking on side of private road (Keys Road) and not use required mini-bus • impeding Right of way/easement on Keys Road • traffic will impact Coorabell Road safety, Federal Village and wider road network • multiple truck movements to bring temporary structures to site 	The traffic impacts including safety, frequency and types of vehicles have been assessed by Council's development engineer and are considered to be satisfactory subject to compliance with recommended conditions of consent.
Lack of amenities	All ablution facilities must be brought onto the site for each event and removed for off site waste to be removed. Conditions recommended.
Proximity to Wilsons River & drinking water	The site of exempt temporary structures is more than 130 metres distance to the river

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catchment - water quality	and not in proximity to the riparian zone. Erosion and sediment controls are recommended as part of the conditions of consent including temporary structures must not redirect the flow of any surface water or ground water, or cause sediment to be transported, onto an adjoining property, and other standard erosion and sediment controls are recommended to apply, as required.
Compliance & monitoring of events	Noise and anti-social behaviour complaints are a matter for NSW Police. Otherwise, people can ring council's general number and lodge non-life threatening compliance complaints. If the complainant considers the issue to be an urgent (life threatening) event they can flag this on the out of hours number at Council and calls are directed accordingly. Non urgent compliance complaints can be submitted to pes@byron.nsw.gov.au Council enforcement staff will investigate any non-compliance of events .
Cumulative uses on lot	The site history of approvals detailed in the background section to the report has been considered. The occasional temporary use is not considered to be incompatible with the approved uses on the lot, subject to conditions of consent.
Not "small scale and/or low impact". Frequency of events not temporary	The Byron LEP and DCP prescribes controls that must be met to be considered small scale and low impact. The proposal is in accordance with the applicable strategic planning policies and controls to permit temporary use of the site for a rural function centre up to 20 times per year for a maximum 150 patrons.
Insufficient community engagement & concerns the pre consultation document is a misrepresentation.	The applicant undertook pre lodgement consultation as required under Byron Shire Community Participation Plan for Community Significant Development. This is documented in Attachment 3 of this report. All public submissions are also

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	attached to this report for Councillors consideration (Attachment 4).
Venue will alter the character of the local area	The proposal does not require consent for proposed temporary structures as these are exempt development. The temporary use of the site for occasional events is not considered to alter the rural character of the site or surrounding areas.
NSW State Government agritourism legislation	<p>This is considered in section 4.3 of this report. In summary, agritourism provisions under the exempt and complying development codes which will come into force on December 1 2022 could apply in the RU2 zone to enable events or functions which meet the definition of farm experience premises for 100 guests as exempt or complying development.</p> <p>It is understood however that uses must be undertaken on land <i>that is a primary production business as defined under the Income Tax Assessment Act 1997 (Cth), or which is rated 'farmland' by the council under the Local Government Act 1993</i>. The site is not rated farmland and the events patron capacity exceeds 100, therefore development consent is required.</p> <p>In general, it is considered that events that occur under these provisions are much more likely to result in the potential impacts raised by the community. Exempt and complying developments are beyond the powers of Council, are not required to be publicly exhibited or assessed by Council and will be subject to minimal restrictions to manage potential impacts.</p>

Objections raised the following matters beyond the powers of the DA (ultra vires) and as such are not relevant matters for consideration in the particular circumstances of this temporary use proposal:

5

- Affordable Housing
- Concerns that the property will be sold
- Financial liability of wear and tear on a shared private road

- Should not be approved until the Federal Village Masterplan is completed
- Previous compliance action not directly related to the proposal including concerns about unauthorised helicopters
- Visual impact – not applicable to exempt development of temporary structures that do not require development consent

5

Relevant matters for consideration in this report are assessed as being satisfactory in the professional opinion of the relevant Council planner, ecologist, engineer and environmental health officer. The recommendation for approval in this report has been made with regards to the likely impacts of the temporary use of part of the site for a rural function centre and subject to compliance with recommended conditions of consent including a trial period and substantiated complaints procedure.

10

4.9 Public interest

15

The proposed development is unlikely to prejudice or compromise the public interest or create an undesirable precedent subject to compliance with recommended conditions of consent including a trial period and substantiated complaints procedure.

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

20

No Section 64 levies will be required. The site is not connected to Council water and sewer.

5.2 Developer Contributions

Cost of works (capital investment value) is less than \$100,000. Therefore, no Section 7.12 Levy will be payable.

25

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Disclosure details	Response
Has a Disclosure Statement been received in relation to this application? If Yes, Provide Disclosure Statement register reference: 91.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

7. CONCLUSION

The DA proposes Temporary Use - Rural Function Centre.

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

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- Submissions received: Twenty (20) objections.
- Submissions acknowledged: ☒ Yes ☐ No ☐ N/A

Estimated cost of works \$1,338,000

Delegation to determine Council

Summary:

5 This development application seeks consent for twelve (12) tourist and visitor accommodation cabins (five with swimming pools), ancillary recreation building, earthworks, roads, associated infrastructure, and environmental enhancement works on a rural property at 72 Lawlers Lane, Bangalow.

10 The application was notified and advertised for a period of 14 days between 26 April 2022 to 9 May 2022 in accordance with the Byron Shire Community Participation Plan. Twenty (20) submissions were received during the notification period objecting to the proposed development. The application is referred to the Council for determination due to number of submissions received and the perceived public interest in the proposal.

The proposed development raises a number of significant issues, primarily relating to the scale of the development and potential impact on the character and amenity of the surrounding area.

15 In summary, key issues include:

- Inconsistency with Clause 6.8 of Byron LEP 2014 which provides that rural tourism can only be approved if it is small scale and low impact. Small scale is defined in the LEP as “a scale that is small enough to be generally managed and operated by the principal owner living on the property”.
- 20 • Inconsistency with Byron DCP 2014, Chapter D3 Tourist Accommodation, Parts D3.2.3 and D3.3.4. In particular, Part D3.2.3 calls up Chapter 7 Byron Rural Settlement Strategy 1998 which limits holiday cabins to a maximum of 6 per property. This maximum number of cabins is a long-standing convention of Councils and a recent proposal at Montecollum for 8 cabins was reduced back to 6 cabins following a S8.2 review of determination.
- 25 • Inconsistency with Byron DCP 2014 Chapter B10 in relation to the maximum depth of excavation.
- Potential amenity and land use conflict issues associated with noise and spray drift.

30 For reasons discussed further in the body of this report, the proposal is considered to be excessive in scale and fails to comply with Council's standard approach to limit rural tourist

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accommodation to no more than six holiday cabins per property. The applicant was invited to amend the development application but did not take up that opportunity.

- 5 Twelve tourist accommodation cabins, in combination with a large recreation building (and a potential future function centre), is inconsistent with what Council recognises as small-scale rural tourism. The development application is therefore recommended for refusal on the grounds listed in the Reasons for Refusal in the recommendation below.

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.

RECOMMENDATION:

It is recommended that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2022.36.1 for Tourist and Visitor Accommodation comprising Twelve (12) Cabins and Ancillary Recreation Building, be refused for the following reasons:

1. The application is not satisfactory having regard to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979* because the proposed development is incompatible with the Objectives of the RU2 Rural Landscape zone given the proposal is not small scale and will adversely affect the rural landscape character of the land.
2. The application is not satisfactory having regard to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposed development does not comply with the requirements of Clause 6.8 Rural and nature-based tourism development in *Byron Local Environmental Plan 2014*. The proposed development is not considered to be low scale or low impact and is not complementary to the rural and environmental attributes of the land given the excessive scale and density of the proposal.
3. The application is not satisfactory having regard to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, because the proposed development fails to satisfy the Performance Criteria and Objectives of Byron DCP 2014, Parts D3.2.3 and D3.3.4.
4. The application is not satisfactory having regard to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, because the proposed development fails to satisfy the Performance Criteria and Objectives of Byron DCP 2014, Part B14.2 Excavation and fill in all zones and Clause 6.2 Earthworks of Byron LEP 2014. The depth and extent of earthworks is likely to detract from the existing and future character, and amenity of the surrounding rural area.
5. The application is not satisfactory having regard to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development fails to satisfy Byron DCP 2014, Chapter B8 Waste Minimisation and Management. Insufficient information has been provided to demonstrate how waste can be stored and collected from the development in an efficient and orderly manner.
6. The application is not satisfactory having regard to Section 4.15(b) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided to demonstrate that the development is capable of operating without adversely affecting the amenity of the area as a result of noise.

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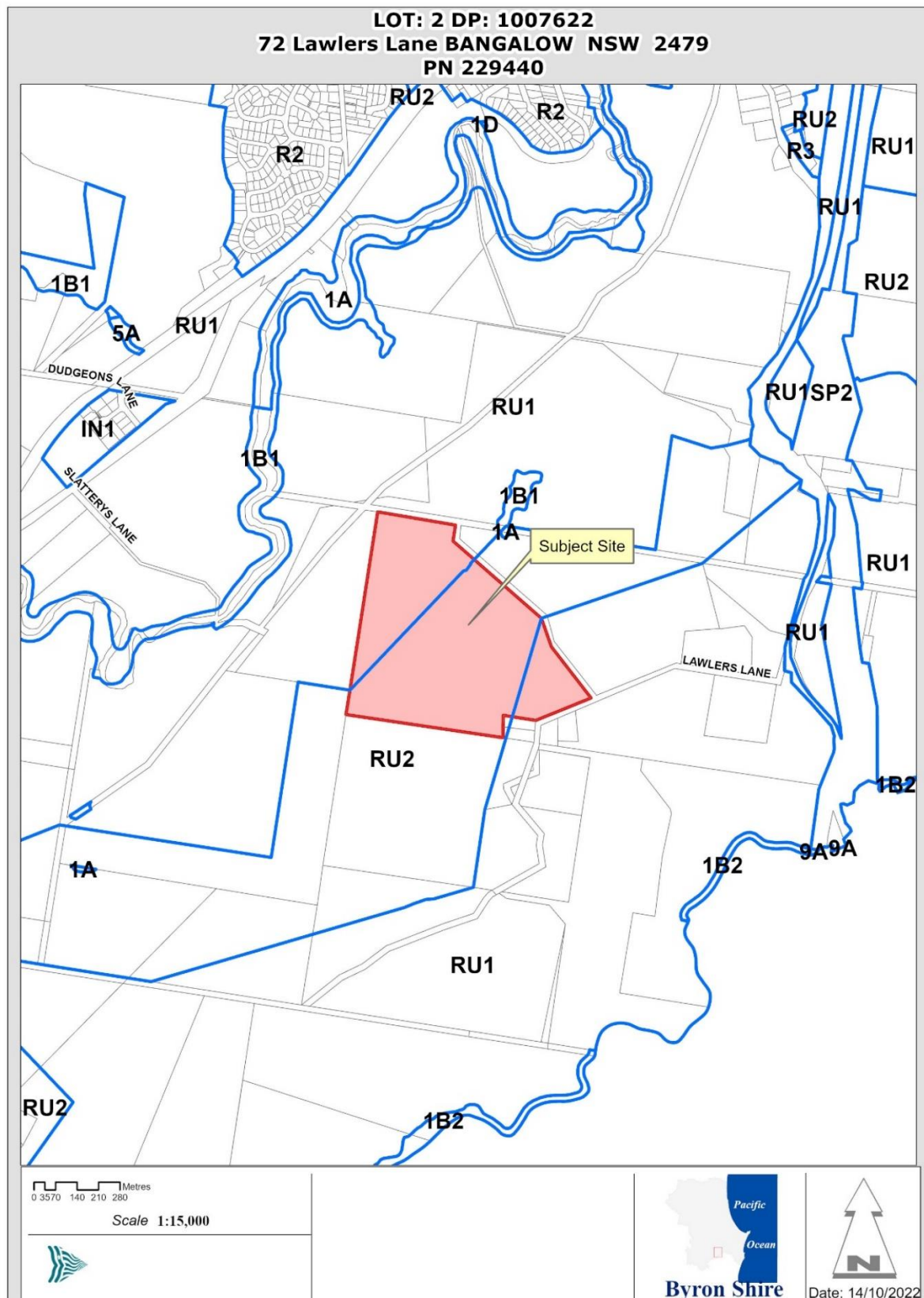
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- 5 7. **The Application is not satisfactory having regard to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 as the development is not in the public interest because the proposed development is inconsistent with the provisions of Byron Local Environmental Plan 2014 and Byron Development Control Plan 2014 which have been the subject of extensive community consultation. Approving the application in such circumstances is likely to set an undesirable precedent.**

Attachments:

- 10 1 DA10.2022.36.1 Reasons for refusal, E2022/100889 
2 DA10.2022.36.1 Architectural Plans, E2022/101796 
3 Confidential - DA10.2022.36.1 Submissions, E2022/102072

Report



Assessment:

1. INTRODUCTION

1.1 History relevant to the development application

A search of Council records identified the following determinations for the property:

- 5 • **10.2000.61.1** – Development Consent for a dwelling and shed Issued 20 April 2000.
- **10.2003.81.1** – CDC for a swimming pool issued 10 June 2003.

1.2 Compliance actions

10 Several moveable dwellings were transported to the property in April 2021. The landowner advised Council that the buildings would be used as part of a forthcoming development proposal. No further action was taken at the time.

1.3 Further information

Council requested further information in relation to landscaping, public art, visual impact, water supply and other matters relating to the scale of the development on 24 June 2022. Additional information was received addressing some of these matters on 11 August 2022.

15 1.4 Description of the proposed development

20 This application seeks approval for twelve (12) tourist and visitor accommodation cabins (five with swimming pools), ancillary recreation building, earthworks, roads, associated infrastructure, and environmental enhancement works. The Statement of Environmental Effects states on page (8) that the landowner may potentially seek a separate approval for the use of the recreation building as a rural function centre in the future.

The following is proposed in detail:

(1) Twelve rural tourist cabins

25 Construction of twelve (12) tourist cabins located in a circular cluster around a central facility building. Each cabin will be single storey with a floor area of ~40m² and will contain one-bedroom, open plan kitchen/dining room plus a combined bathroom/laundry. Five of the cabins of the northern side of the facility will have swimming pools.

(2) Central facility building

30 A central recreation building that is intended to be ancillary to the tourist and visitor accommodation. The building has a floor area of 512m² and contains a large central recreation space with toilet facilities and storage spaces on the eastern and south-

western wings. As noted in the SEE, the building has been designed to potentially cater for rural functions and events in the future subject to development consent being obtained.

5 **(3) Earthworks, roads, and ancillary infrastructure**

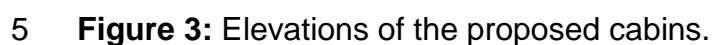
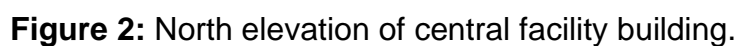
A new internal access road and bus turnaround facility will be constructed to provide vehicular access, along with earthworks, ancillary infrastructure, and a new on-site sewage management facility.

10 **(4) Environmental enhancement works**

A Vegetation Management Plan has been submitted to restore approximately five hectares of Camphor laurel dominated forest to subtropical rainforest and control exotic and invasive species.



15 **Figure 1:** Site plan extract illustrating the development layout.



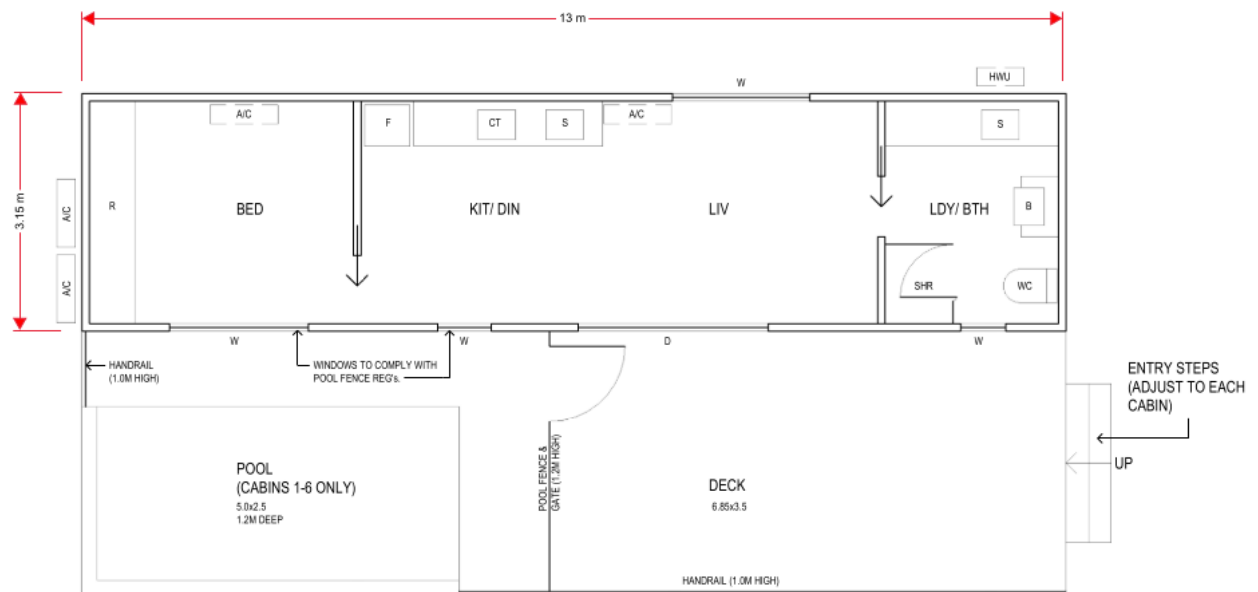


Figure 4: Floor plan of proposed cabin with swimming pool.

1.4 Description of the site

A site inspection was carried out on 28 April 2022

Land is legally described	LOT: 2 DP: 1007622	
Property address	72 Lawlers Lane BANGALOW	
Land is zoned:	RU1 Primary Production / PART RU2 Rural Landscape	
Land area is:	36.07 hectares	
Property is constrained by:	Bushfire Prone Land, High Environmental Value Vegetation	
	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

The site is a 36-hectare property located 2km south of Bangalow township, situated in a rural area characterised by grazing land, orchards, and rural dwellings on lots with varying size and area.

- 5 The western half of the property is covered by a mixture of Camphor Laurel dominated regrowth rainforest, while the western side contains cleared pasture.

Existing development comprises a single storey dwelling house, sheds, and a swimming pool. The site is surrounded by several macadamia and fruit orchards and a handful of residential dwellings on small lots between 1 to 2 acres in size.



10 **Figure 4:** Aerial image of the site.



Photo 1: View of the site, looking north-west.



Photo 2: View of the site, looking north-east towards Bangalow.



Photo 3: View of Lawlers Lane.



Photo 4: Existing mobile buildings to be used as cabins.

2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	Council's Environmental Health Officer commented that additional information was required in relation to noise impacts and waste management if the application was to be approved.
Development Engineer	Council's Development Engineer commented that the proposal was acceptable on engineering grounds. Should the application be approved, conditions are recommended to seal Lawlers Lane for 20 metres past the property boundary to reduce the effect of dust and noise on nearby residences.
Rural Fire Service (s4.14)	Referral returned with no comment. The proposal was not located on bushfire prone land at the time of lodgement and a Bush Fire Safety Authority is not required.

3. SECTION 4.46 INTEGRATED DEVELOPMENT

5 At the time of lodgement, the western half of the property was identified as bush fire prone land on the Byron Shire Bushfire Prone Land Map. The eastern half of the property containing the proposed development and existing dwelling house was not identified as bushfire prone land.

10 As lodged, the proposal does not require a Bush Fire Safety Authority given the cabins, access road and all associated infrastructure are not directly located on bush fire prone land. The application was referred to the NSW RFS for advice under s4.15 of the Act however the RFS returned the referral and declined to comment.

Further consideration of bushfire hazard is addressed in Section 4.6 of this report.

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

15 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.

State Environmental Planning Policies (SEPP)

Considerations	Satisfactory	Unsatisfactory
<p>State Environmental Planning Policy (Resilience and Hazards) 2021</p> <p><u>Chapter 4 Remediation of land</u></p> <p>Council's Environmental Health Officer commented that the site was previously assessed for contamination during the assessment of DA 10.2000.61.1. Based on the previous assessment it is concluded that the site is suitable for the proposed tourism use in its current state and does not require remediation. It is noted however that soil testing around the envelope of the development has not been undertaken.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>State Environmental Planning Policy (Biodiversity and Conservation) 2021</p> <p><u>Chapter 3 Koala habitat protection 2020</u></p> <p>Section 4 of the Vegetation Management Plan included a flora survey to determine the vegetation communities present on the site.</p> <p>A field survey identified only one vegetation community, being Camphor Laurel dominated regrowth rainforest. The upper, middle, and lower stratum of the tree component of this vegetation community comprise less than 15% koala feed tree species listed in schedule 1 of the SEPP.</p> <p>In accordance with ss. 3.6 and 3.7 of this policy, the site is not considered to be a potential or core koala habitat.</p>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

- 5 (a) The proposed development is defined in the LEP 2014 Dictionary as tourist and visitor accommodation and central recreation facility being ancillary to tourist and visitor accommodation.

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- (b) The land is zoned part RU1 Primary Production and part RU2 Rural Landscape. The proposed development is located entirely in the RU2 zone.
- (c) The proposed development is permitted with consent; and
- (d) Regard is had for the Zone Objectives as follows:

5

Zone Objective RU2 Rural Landscape	Consideration
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.	<p>The proposed development does not achieve the zone objectives for the following reasons:</p> <ul style="list-style-type: none"> The proposed development does not involve 'small scale' rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality. The design and siting of the proposal does not protect the scenic landscape and scenic qualities of the locality. The proposed development may inhibit agricultural operations of neighbouring macadamia orchards due to insufficient buffers needed for spray drift.
To maintain the rural landscape character of the land.	
To provide for a range of compatible land uses, including extensive agriculture.	
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.	
To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.	

Part 4 – Principal Development Standards

Provision	Compliance	Comment
4.3 Height of Buildings	Yes	<p>A maximum height of 9m is permitted.</p> <p>A height of 4m is proposed for the cabins.</p> <p>A height of 8.98m is proposed for the central facility building.</p>

Part 6 – Local Provisions

Provision	Compliance	Comment
6.2 Earthworks	Yes, subject to conditions	The site is separated from downstream watercourses by approximately 500m and

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	of consent	<p>the proposed earthworks are unlikely to have a detrimental impact on soil stability or drainage patterns in the area.</p> <p>Not withstanding the level of earthworks proposed is excessive and</p>
Clause 6.5 Drinking water catchments	Yes	<p>The development and associated wastewater system will be located approximately 600m from Byron Creek and will not have an adverse impact on the quality or quantity of water entering the drinking water storage.</p>
Clause 6.6 Essential services	Yes, subject to conditions	<p>Adequate services can be made available to the development subject to conditions of consent. The proposed vehicular access is adequate for the development.</p>
Clause 6.8 Rural and nature-based tourism development	No	<p>The proposed development does not comply with the requirements of Clause 6.8 for the following reasons:</p> <ul style="list-style-type: none"> • The development is not small scale and low impact. Twelve tourist accommodation cabins, in combination with a large recreation building (and a potential future function centre), cannot be reasonably managed by the principal owner living on the property. • The scale of the development could potentially constrain agricultural operations on neighbouring properties, particularly fruit and macadamia orchards that need large buffers to spray pesticides. • The excessive scale and density of the development, combined with the extensive excavation and filling required for the building pads, access road and bus turn-around bay will result in a built form that is not complementary to the rural character or environmental attributes of the land.

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

There are no draft EPIs that apply to the proposal.

5 4.4A Byron Shire Development Control Plan 2014 (DCP 2014)

Chapter B1 Biodiversity

Provision	Compliance	Comment
B1.1.5 Biodiversity Planning Principles B1.2.1 Development Envelope Controls	Yes	The proposed development is located on cleared land, with nearby vegetation comprising mostly Camphor laurel and other non-native weed species. The development footprint is clear of any ecological 'red flagged areas' such as threatened ecological communities, wetlands, or old-growth forest. A vegetation management plan has been provided in accordance with the requirements of Part B1.2.5.

Chapter B3 Services

Provision	Compliance	Comment
B3.2.1 Provision of Services Water supply	Yes, subject to conditions	Potable water for the cabins will be provided via 3 20kL rainwater tanks located in the subfloor of the central facility building. If Council resolves to approve the application, it is recommended that at least 120kL of tank storage be provided.
B3.2.2 On-site Sewage Management	Yes	The application proposes tertiary wastewater treatment via three separate AWTs systems and a Taylex ABS 5000 system for the proposed amenities building. The proposed irrigation field will be located ~60m from the nearest gully and ~ 600m

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Provision	Compliance	Comment
		<p>from Byron Creek.</p> <p>The site is capable of accommodating wastewater from the proposed tourist facility.</p>

Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access

Provision	Compliance	Comment
B4.2.1 Traffic Impact	Yes, subject to conditions	<p>Council's Engineer assessed traffic generation at a rate of 0.4 Peak Hour Trips (PHT's) and 3 Daily Vehicle Trips (DVT's) per holiday cabin. Total traffic for the development is estimated to be 36 DVT's and 4.8 PHT's.</p> <p>The use of the recreation building for any separate purpose was not assessed.</p> <p>Traffic generated by the proposal is likely to have a low impact on the surrounding road network (in terms of its capacity to accommodate increased traffic) but could generate direct environmental impacts from increased dust and noise, particularly on the unsealed section of road at the western end of Lawlers Lane.</p> <p>Council's Development Engineer noted that the unsealed section of Lawlers lane should be upgraded to meet the requirements of the Northern Rivers Local Government Design and Construction Guidelines which specifies a 6.0m wide seal and 1.0m wide shoulder.</p>

Chapter B6 Buffers and Minimising Land Use Conflict

Provision	Compliance	Comment
B6.2.2 Conflict Risk Assessment (CRA)	Yes	<p>A Land Use Conflict Risk Assessment (LUCRA) has been submitted in accordance with the provisions of Part B6.2.2.</p> <p>Findings of the report are discussed below.</p>
B6.2.4 Buffers	Yes, subject to conditions	<p>The proposed cabins will have a 90m buffer from a neighbouring stone fruit plantation to the east.</p> <p>In accordance with B6.2.4, a LUCRA was submitted due to non-compliance with the 200m recommended buffer between horticulture and rural tourist accommodation.</p> <p>Spray drift from the neighbouring stone fruit orchard was identified as the main potential land use conflict and was given a risk rating of 9 out of 25 on the risk ranking matrix (i.e., medium risk). Other issues such as noise, dust and odour were given low risk ratings of between 1 and 4 out of 25.</p> <p>To manage the risk of spray drift, the report recommends the following precautionary measures be employed, including:</p> <ul style="list-style-type: none"> • Retain vegetation on the eastern boundary. • Undertake additional planting on the eastern boundary. • Use first flush divertors on all tanks if roof water is collected. • Use a filtration system for all drinking water. • Use a drinking water quality assurance program to be prepared and approved by Council of NSW health for the site.

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		<ul style="list-style-type: none">• Establish neighbourly communication. <p>Council's Environmental Health Officer generally agreed with the finding of the report noting that the main risk for guests is contamination of drinking water and this would need to be addressed through the use of first flush devices and water filtration systems.</p> <p>It is further noted that reducing the scale of development and/or location development further from neighbouring farms would be a preferred outcome for managing land use conflict in this location.</p>
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Chapter B9 Landscaping

Provision	Compliance	Comment
B9.2.2 Landscape Plans for Development Applications	Yes, subject to conditions	A concept landscaping plan was submitted with the applicant's further information on 11 August 2022.

Chapter B8 Waste Minimisation and Management

Provision	Compliance	Comment
B8.4.3 Tourist Accommodation and Commercial and Retail Development	Further information required	<p>A waste management plan was submitted with the application.</p> <p>Council's Environmental Health Officer commented that further information was required in relation to the amount of general and recyclable waste generated by the proposed development as well as details of the waste storage container points and how waste collection vehicles will service the site.</p>

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Chapter B14 Excavation and Fill

Provision	Compliance	Comment
B14.2 Excavation and Fill in all Zones	No	<p>Prescriptive measure B14.2(1) limits excavation and fill to a maximum depth of 1m.</p> <p>The civil engineering plans indicate that ~1700m² of excavation is proposed up to 2.6m in depth for the access road and bus turn around bay.</p> <p>The depth and extent of earthworks is likely to detract from existing and design future character of the surrounding rural area and is therefore inconsistent with the Performance Criteria and Objectives of Part B14.2.</p>

Chapter C3 Visually Prominent Sites, Visually Prominent Development and View Sharing

Provision	Compliance	Comment
C3.2.1 Visual Impact Assessment	No	<p>A Visual Impact Assessment was provided in the applicant's further information.</p> <p>The VIA addressed most of the requirements of Part C3.2.12 but did not include any photomontages or illustrations of the proposed development in situ as required by Prescriptive Measure 4.</p> <p>Such information is necessary to properly understand the potential impact of the proposal on the surrounding landscape.</p>

Chapter D3 Tourist Accommodation

Provision	Compliance	Comment
D3.2.1 Location and Siting	Yes	<p>The subject property comprises a mix of cleared farmland and regrowth vegetation including Camphor laurel and native rainforest species.</p> <p>The proposed development is not located near any ecologically sensitive areas or areas with high environmental values.</p>
D3.2.3 Character and Design in Rural Zones	No	<p>The proposed development fails to satisfy the Performance Criteria and Objectives of Part D3.2.3 for the following reasons:</p> <ol style="list-style-type: none"> 1. The scale and density of development is inconsistent with the character and amenity of the surrounding rural and natural landscape, and with development in the locality. 2. The development is not low scale and is inconsistent with the relevant Aims, Guiding Principles, Best Practice Guidelines and Performance Standards contained in Chapters 7 and 8 of the Byron Rural Settlement Strategy 1998. <p>In particular:</p> <ul style="list-style-type: none"> • The proposal is inconsistent with the overall objective for Chapter 7 which seeks to encourage a 'low scale' form of rural tourist accommodation. • The proposal is inconsistent with Guideline 2 which provides that no more than six (6) holiday cabins may be constructed within the site area. • The proposal does not incorporate centralised carparking but instead provides Individual carparking for each cabin off a loop road.

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Provision	Compliance	Comment
		<ul style="list-style-type: none">Insufficient information has been provided to demonstrate that the proposal will not detract from the rural character of the surrounding landscape. A Visual Impact Statement was provided however there are no photomontages or illustrations of the development to properly assess the impacts of the proposal.
D3.3.4 Rural Tourist Accommodation and Farm Stay Accommodation	No	<p>The proposed development fails to satisfy the Performance Criteria and Objectives of Part D3.3.4 for the following reasons:</p> <ol style="list-style-type: none">The proposal detracts from the rural and natural character of the locality.The development is not low scale and is not designed and located to be compatible with the surrounding rural environment.

Chapter D8 Public Art

Provision	Compliance	Comment
D8.2.1 Provision of Public Art	Yes	The applicant submitted a Planning Agreement for public art with their further information. Conditions would apply if the application was to be approved.

4.5 Environmental Planning & Assessment Regulation 2000 Considerations

Clause	Compliance	Comment
Clause 61 Additional matters that consent authority must consider	N/A	No demolition is proposed.
Clause 62 Consideration of fire safety	N/A	A change of use is not proposed.
Clause 64 Consent authority may require upgrade of buildings	Yes	The existing dwelling does not require upgrading.

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

5

Impact on:	Likely significant impact/s?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	The scale and density of the development, combined with the extensive excavation and filling required for the building pads, access road and bus turn-around bay will result in a built form that is not complementary to the rural character or environmental attributes of the land.
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.

4.7 The suitability of the site for the development

The site characteristics are not suitable to support a rural tourism development of the scale proposed. The site may be capable of supporting a smaller tourist development of six cabins or less subject to conditions of consent.

5 4.8 Submissions made in accordance with this Act or the regulations

10 The development application was publicly exhibited and notified for a period of 21 days in accordance with Byron DCP 2014. There were **12** submissions made on the development application. Issues raised in the submissions have been summarised and assessed in the table below.

Issue	Comment
<p>Traffic generation and road condition</p> <p>Lawlers Lane does not cope with the existing level of traffic and is in constant need of repair.</p> <p>The increased traffic along Lawlers Lane, particular from buses would adversely affect the condition of the lane and would affect safety for road users. There is also a problem of dust contamination of water tanks of surrounding homes.</p> <p>Visitors may park on the verge outside the property and in front of neighbouring properties.</p> <p>The turn off from Hinterland Way into Lawlers Lane occurs between two blind bends and is already dangerous. Often cars will tailgate as you are required to brake heavily from 80kph to 30 kph to make the 90-degree turn.</p>	<p>Council's Development Engineer recommended that the unsealed portion of Lawlers Lane, up to the property boundary, be upgraded and sealed to reduce environmental impacts on surrounding residences from noise and dust should the application be approved</p>
<p>Noise</p> <p>Any noise from the development will be exacerbated by the topography of the land, its situation within the Bangalow valley and the sensitive peaceful nature of the surrounding area.</p> <p>The use of the central facility building as a recreation or function centre will produce a substantial increase in noise.</p>	<p>Noted</p>

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Issue	Comment
<p>Noise from said development, especially stage 2 with weddings and other events will badly impact neighbours and (especially) at night as noise travels throughout the lane and surrounds.</p> <p>Inevitably, people will spill over from the recreation facility back to the cabins with pool side parties running long into the night. This will be difficult to enforce as Council and police are not available late at night or on weekends in rural areas of the Shire. Having a manger on site will not stop that scenario eventuating.</p>	
<p>Visual impact</p> <p>12 cabins and a function centre seem excessive relative to the size of the land and its elevated location above a scenic valley. The buildings will be highly visible across the valley.</p>	<p>Acknowledged. The proposed development will be visible in views from Lismore Road and the southern end of Bangalow.</p>
<p>Security and safety</p> <p>Issues around security and trespass have not been addressed.</p>	<p>Trespassing is considered a low risk given the location of the cabins and lack of clear access to neighbouring land.</p>
<p>Excessive scale – overdevelopment of site</p> <p>Twelve cabins and a function centre is an overdevelopment of the site. The existing dwelling is also used for short-term rental accommodation.</p> <p>The proposal of 12 cabins, together with those staying in the existing house, could potentially result in as many 30 persons arriving in Lawlers Lane on the weekend. This is greater than the number of people that actually live in the lane. If a wedding is held this number could swell to as many as 150 persons.</p> <p>An enterprise of this scale is neither considered small, low impact or complementary to the rural environment and</p>	<p>Agreed. The scale of the proposal does not comply with the requirements of LEP Clause 6.8 which requires development to be small scale and low impact.</p> <p>The proposal is inconsistent with Councils standard requirements for a maximum of Six cabins.</p>

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Issue	Comment
locality and as a result is non-complying. It is inconsistent with the provisions of LEP Clause 6.8.	
Previous unauthorised activity The site has allegedly been used for unauthorised weddings and there were noise complaints.	No evidence of previous compliance actions was identified in Council's records in relation to weddings. It is acknowledged however that the property is currently advertised online for weddings and tourist accommodation.
Drinking water catchment The headwaters of Byron Creek are near this property. A development of this scale poses a risk of contamination to the water catchment.	The proposal involves ecological restoration of the riparian corridor feeding into Byron Creek. The proposed OSMS has adequate separation distance from the creek to avoid adverse impacts on the drinking water storage.
Impacts on wildlife Koalas have been observed on this property using it as a movement corridor. Koalas recently listed as endangered species. The impact on animals and birdlife will be severe due to the amount of noise, people, cars and lights. At present we see wallaby, koalas, many species of birds, echidna, lizards, snakes, brush turkeys and bandicoot.	Koalas are known to existing within the Bangalow area however this property is not identified as potential or core koala habitat.
Undesirable precedent An excessive development of this scale would set an undesirable precedent. The maximum amount of past approved cabins is 7 and this proposal is nearly double this figure.	Agreed. Approving the application in its current form is likely to set an undesirable precedent.
Rural amenity Lawlers Lane is a quiet, rural environment. The proposal is considered likely to have a significant adverse impact on the rural amenity of the locality due to increased traffic and noise.	Noise and dust impacts from traffic are a concern. Council's Development Engineer commented that the Lawlers Lane should be sealed to the property entrance should the application be approved.

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Issue	Comment
<p>Public interest</p> <p>A development of this scale that does not comply with the planning rules is not in the public interest and should be rejected.</p>	<p>Approving the proposal in its current form would be likely to set an undesirable precedent and is not in the public interest.</p>
<p>Buffers and land use conflict</p> <p>There is only 90 meters between the eastern most cabin and the custard apple plantation which requires spray. Lawlers Lane has many and varied agricultural pursuits which have been operating in the lane for many years. These pursuits employ numerous people in the area and provide income to the area. It would be wrong for an approval to be given which curtails these activities.</p> <p>We air spray up to 6-7 times per year using highly poisonous insecticides and fungicides. This is an unavoidable and essential part of maintaining a pest and disease-free orchard even though we are now utilising regenerative farm practices. Spraying is conducted preferably in the evenings between sundown and about midnight (to protect pollinators) and we are careful to manage drift of the sprays and sound.</p> <p>We note the planning guidance states that dwellings should not be approved within 200m from an orchard which is sprayed. With respect this guideline does not take into account the high powered air spraying machinery and spray patterns utilised to spray trees which are up to 15m tall.</p>	<p>Council's Environmental Health Officer did not raise specific objections to the proposal in relation to land use conflict but noted that first flush devices and water treatment would be required for the facility should it be approved.</p>
<p>Inconsistent with strategic vision for rural tourist accommodation</p> <p>The proposed development does not reflect the vision of the Byron Shire council as communicated in their Residential Strategy dated Dec 2020, as it contravenes:</p> <p>a. Policy 4 "Make our neighbourhoods</p>	<p>It is acknowledged that the proposal is inconsistent with Council's likely future planning controls for rural tourist accommodation. Refer to Part 4.6 of this report for further discussion.</p> <p>Further Council is drafting controls to further</p>

Issue	Comment
<p>local” - by proposing a large resort style development in a rural/residential area</p> <p>b. Priorities guiding the strategy’s development by “managing tourism in a way that has a positive impact for locals”.</p> <p>Proposed planning controls will limit bedrooms to eight and cabins to four. This proposal is inconsistent with the intended strategic planning for the area.</p>	<p>limit cabins back to a maximum of four.</p>
<p>Characterisation</p> <p>The recreation facility for which approval is sought seems to be a precursor to a further application to run this facility as a wedding venue. That possibility is disclosed in the proposal and gives clear insight into the Applicant’s future intentions.</p>	<p>The SEE states that the recreation building may potentially be used as a wedding venue/function centre in the future subject to obtaining approval for such a use.</p>
<p>Location</p> <p>The resort is located on a ridge above Bangalow town, which is ~4 km away and therefore too far to walk, especially up the steep incline that is the Hinterland hwy.</p> <p>There is no public transport and Ubers and taxis are already very difficult to get.</p>	<p>Acknowledged. The facility will only be accessible by bus or private vehicle.</p>

4.9 Public interest

The proposal is substantially non-compliant with Council’s planning controls for rural tourist accommodation which have been the subject of significant community consultation.

- 5 Approval of the development application in its current form would be contrary the public interest.

Consideration of Council resolution 20-691

At the Planning Meeting of 10 December 2019, Council resolved (20-691) to prepare new planning controls for rural tourist accommodation as follows:

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20-691 Resolved that Council:

1. Requests staff to prepare a planning proposal to amend Byron Local Environmental Plan 2014 and a draft amendment to Byron Development Control Plan 2014, to accord with the recommendations of the Review of Planning Controls for Rural Tourist Accommodation in Attachment 1 (E2020/94209).
2. Authorises staff to submit the planning proposal to the Department of Industry and Environment for Gateway determination.
3. Pending gateway determination, undertakes public exhibition of the planning proposal and development control plan amendment and consult with government agencies as required by the gateway determination; and
4. Receives a report outlining the public exhibition outcomes.
5. Supports the use of the amendments in point 1 as drafted by staff as guiding principles for assessment of Rural Tourist Accommodation until such time as the amendments are finalised.
6. Requests staff to complete a review of the current developer contributions regime as it applies to Rural Tourist Accommodation and receive a report on the outcomes.

Point 5 of the resolution requires Council planning staff to use to the recommendations of the Council report as a guideline in the assessment of development applications for rural tourist accommodation. A summary of the proposal against the report recommendations is given below.

Recommendation	Proposal
Maximum 4 accommodation buildings and 8 bedrooms.	Inconsistent. The proposal is for 12 cabins with 12 bedrooms in total.
Minimum lot size 20 hectares	Consistent. Lot size is ~36 hectares.
Clearer controls for clustering of cabins	Generally consistent. The proposed cabins are arranged in a cluster pattern with an average diameter of approximately 80m.
Traffic Impact Statement for >3 cabins.	Inconsistent. A Traffic Impact Statement was not provided. Council's Development Engineer commented that the unsealed portion of Lawlers Lane would need to be sealed and upgraded to reduce dust and noise impacts.
Improved requirements for water supply and rainwater storage.	Consistent. The proposal includes rainwater harvesting and storage for the cabins.
Single driveway per development	Complies. The site is accessed by a single driveway.

The proposal is inconsistent with two of the key amendments outlined in the Council report, particularly in relation to the scale and density of development. Given the scale of the proposal and the extent of non-compliances with the current planning framework, approval of the application in its current form would be contrary to the public interest.

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

The site is not connected to reticulated water or sewer services. Section 64 levies are not required.

5.2 Developer Contributions

- 10 The development is commercial in nature and has a cost of more than \$100,000. Section 7.12 Contributions will be payable should the application be approved.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Disclosure details	Response
Has a Disclosure Statement been received in relation to this application? If Yes, Provide Disclosure Statement register reference: 91.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

15 2. CONCLUSION

- 20 The proposal is considered excessive in scale and fails to comply with Council's adopted planning controls that generally limit rural tourist accommodation to no more than six holiday cabins per property. Twelve tourist accommodation cabins, in combination with a large recreation building (and a potential future function centre), is of a scale that cannot be reasonably managed by the principal owner living on the property and is likely to have an adverse impact on the character and amenity of the surrounding area if approved.

The development application is therefore recommended for refusal on the grounds listed in **Attachment 1**.

Report No. 13.5 PLANNING - Report of the Planning Review Committee held 6 October 2022

Directorate: Sustainable Environment and Economy

Report Author: Shannon Burt, Director Sustainable Environment and Economy
Noreen Scott, EA Sustainable Environment and Economy

File No: I2022/1424

Summary:

This report provides the outcome of the Planning Review Committee (PRC) held on 6 October 2022.

NOTE TO COUNCILLORS:

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

RECOMMENDATION:

That Council endorses the outcomes of the Planning Review Committee meeting held on 6 October 2022.

Report

The Planning Review Committee meeting was held on 6 October 2022. The meeting commenced at 12.10pm and concluded at 12.35pm.

Councillors: M Lyon (Mayor), A Hunter, A Pugh, P Westheimer S Ndiaye, D Dey.

Apologies: Nil

Staff: Shannon Burt (Director Sustainable Environment and Economy)

Conflict of Interest: None declared

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

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13.5

DA No. / Applicant	Property Address / Proposal	Consultation / Submissions	Reason/s / Outcome
10.2021.699.1 Mrs L Hancock	441 Federal Drive FEDERAL Use of Structure as a Secondary Dwelling	Level 1 8/12/21 to 11/1/22 4 submissions against	Staff Delegation
DA No. / Applicant	Property Address / Proposal	Consultation / Submissions	Reason/s / Outcome
10.2022.372.1 Planners North	61 Bayshore Drive BYRON BAY Small Festivals - Craft Beer & Cider comprising two (2) year trial period with a maximum of three (3) festivals in each twelve (12) month period	Level 2 13/10/22 to 26/10/22	Staff Delegation

Report No. 13.6 PLANNING - 10.2021.752.1 - Demolition of Existing Dual Occupancy and Ancillary Structures, New Dual Occupancy (Attached), Two (2) Swimming Pools, Removal of Two (2) Trees and Strata Subdivision - 140 Alcorn Street, Suffolk Park

Directorate: Sustainable Environment and Economy
Report Author: Dylan Johnstone, Development Investigations Lead
File No: I2022/1436

Proposal:

DA No: 10.2021.752.1

NSW PP PAN-168854

Proposal description: Demolition of Existing Dual Occupancy and Ancillary Structures, New Dual Occupancy (Attached), Two (2) Swimming Pools, Removal of Two (2) Trees and Strata Subdivision

Property description: LOT: 14 SEC: 5 DP: 11632
 140 Alcorn Street SUFFOLK PARK

Parcel No/s: 1860

Applicant: Ms R Heath

Owner: Mr D N & Ms M A Randerson

Zoning: R2 Low Density Residential

Date received: 25 November 2021

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

Concurrence required No

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Public notification or exhibition: – Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications

– Exhibition period: 09/12/21 to 12/01/22

– Submissions received: 3

– Submissions acknowledged: ☒ Yes ☐ No ☐ N/A

Other approvals ☒ N/R ☐ W & S (68) ☐ OSMS (68) ☐ ST (68) ☐ RA (138)

Other:

Variation request to Development Standards under an EPI (eg clause 4.6) Clause 4.6 – LEP 2014 Clause 4.1E Minimum lot size for Dual Occupancy (attached)

Delegation to determine Council

Issues:

- Clause 4.6 variation to minimum lot size for Dual Occupancy Clause 4.1E LEP 2014
- Existing consent rights

Summary:

- 5 This development application seeks consent for the demolition of existing dual occupancy (attached) and ancillary structures, new dual occupancy (attached), two (2) swimming pools, removal of two (2) trees and strata subdivision. The application proposes a variation to a development standard in accordance with clause 4.6 Byron LEP. The development standard to be varied is the minimum lot size of 800 square metres for a dual occupancy (detached) in zone R2 Low Density Residential prescribed by clause 4.1E. The subject lot has an area of 698 square metres which represents a 12.75% variation and any variation greater than 10% must be determined by Council.
- 10 The application was advertised and notified between 9 December 2021 to 12 January 2022 in accordance with the Byron Community Participation Plan and three (3) submissions were received from the public, primarily about redeveloping the site for a larger dual occupancy, overshadowing, car parking, colour scheme and privacy. The proposal however is considered acceptable subject to conditions of consent including
- 15 lowering one of the dwellings by 600 mm and the use of a matt colour scheme to limit reflectivity.

The application is recommended for approval subject to the conditions listed in Attachment 4.

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NOTE TO COUNCILLORS:

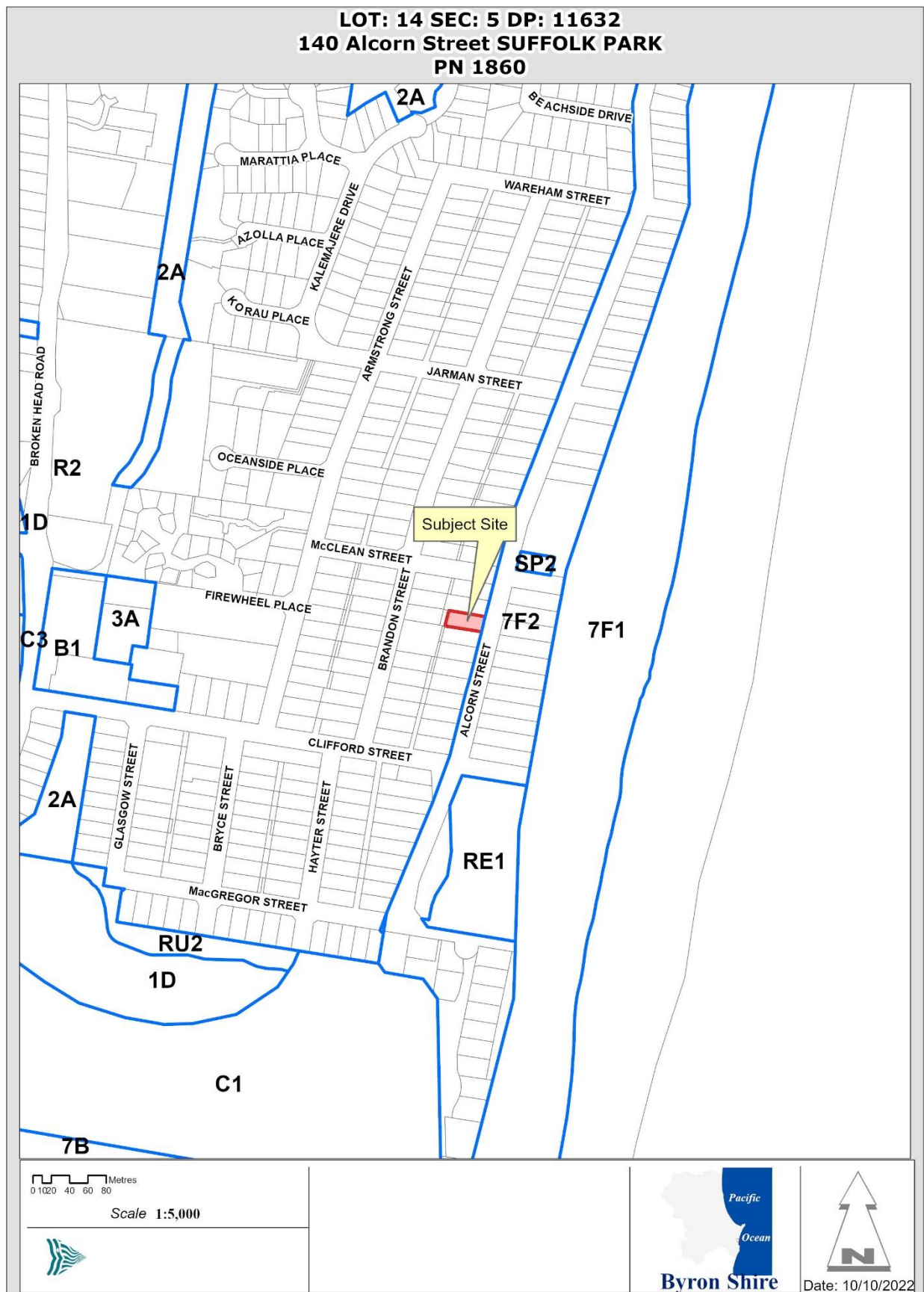
- 5 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes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

10 **RECOMMENDATION:**

Demolition of Existing Dual Occupancy and Ancillary Structures, New Dual Occupancy (Attached), Two (2) Swimming Pools, Removal of Two (2) Trees and Strata Subdivision, be granted consent subject to the conditions in Attachment 4 (#E2022/101359).

15 **Attachments:**

- 1 DA10.2021.752.1 - Plans, E2022/101458 
2 DA10.2021.752.1 - Variation request, E2022/101354 
3 Confidential - DA10.2021.752.1 - Submissions, E2022/102042
20 4 DA10.2021.752.1 - Recommended conditions, E2022/101359 



Assessment

1. INTRODUCTION

History/Background

5	BA 68/2065	Two flats (Dual Occupancy)	Approved	31/12/1968
	BA 72/2129	Storage shed	Approved	27/10/1972

10.2008.744.1 – Demolition of existing dual occupancy development and the erection of a new dual occupancy development with associated tree removal and strata subdivision - approved by Council 09/04/09

- 10 Note 10.2008.744.1 included an objection to the development standard set by Clause 17(5)(b) of Byron LEP 1988 that the area of an allotment for a Dual Occupancy must be no less than 800m². This application also included an objection to the maximum floor space ratio (FSR) of 0.5:1 permitted by Clause 17(6) of LEP 1988 (the application proposed a FSR of 0.54:1). Both of these objections to development standards were approved at the
- 15 Ordinary Council meeting on 9 April 2009.



Elevations of previously approved Dual Occupancy under DA10.2008.744.1
New Proposal not dissimilar to previous approval.

Description of the proposed development

This application seeks approval for Demolition of Existing Dual Occupancy and Ancillary Structures, New Dual Occupancy (Attached), Two (2) Swimming Pools, Removal of Two (2) Trees and Strata Subdivision

The application proposes demolition of an existing single storey dual occupancy development built in the late 1960's and existing ancillary structures located in the rear yard.

The proposed new Dual Occupancy (attached) consists of two two-storey dwellings containing three bedrooms each.

The construction materials include colour bond roofing, a combination of metal (white metal cladding for one dwelling and black metal cladding for the second dwelling) and timber batten wall cladding constructed on concrete slab floors.



Artist Impression of the proposal

Each dwelling includes a swimming pool and spa in the rear yard.

The application also proposes the removal of two trees (a juvenile fig and a dead tuckeroo) to facilitate the development. The trees appear to be landscaping trees that have been planted and are not mapped as having any ecological significance.

The application includes Strata subdivision of the finished dual occupancy therefore the development consent, if approved, will be for a staged consent with the strata title not to be undertaken prior to the issue of an occupation certificate.

Description of the site

The subject site has an area of 698m² and is located on the western side of Alcorn Street, Suffolk Park. The lot is a regular rectangular configuration with a 17m road frontage. The site is relatively flat and abuts a landlocked Council road reserve to the west.

The site contains an existing dual occupancy that was constructed in the late 1960's in accordance with approval BA 68/2065. Existing vegetation consists of planted landscaping.

- 5 Surrounding development to the north, south and west is residential in nature with a mix of dwelling houses and dual occupancy. There are no known covenants or restrictions on use affecting the property currently.

The land is subject to coastal erosion risk and acid sulfate soils but is not mapped as bushfire prone or flood prone land.



- 10 Figure 1: Aerial photo with land zoning overlay. Subject property identified by yellow polygon



Figure 2: Existing Dual Occupancy viewed from Alcorn Street looking West

Land is legally described	LOT: 14 SEC: 5 DP: 11632	
Property address	140 Alcorn Street SUFFOLK PARK	
Land is zoned:	R2 Low Density Residential	
Land area is:	698.1 m ²	
Property is constrained by:	Acid Sulfate Soils Class 3 Coastal Erosion Precinct 3	
	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
Development Engineer	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to conditions.
S7.11 / Contributions Officer	No objections subject to condition for developer contributions.
Essential Energy	No objections subject to recommendations.

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
 5 *'Planning for Bush Fire Protection 2019'*. The site was not identified as bush fire prone land at the time of lodgement of the application.

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
 10 Environmental Planning & Assessment Act 1979 (EP&A Act), the following is a summary of the evaluation of the issues.

4.1 State Environmental Planning Policies (SEPP)

Considerations	Satisfactory	Unsatisfactory
<i>SEPP No 55—Remediation of Land</i> Comment: A Preliminary Contaminated Land Assessment was submitted to support DA 10.2008.744.1 which was approved by Council on 09/04/09. This report confirmed that all contaminants of concern are below threshold limits and, as such, the land is suitable for the proposed development. No further information is required.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>SEPP (Building Sustainability Index: BASIX) 2004</i> Comment: BASIX Certificate required for: <ul style="list-style-type: none"> • New dwellings • Alterations > \$50,000.00 • Pools > 40,000 kl A Multi Dwelling BASIX certificate has been provided	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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Considerations	Satisfactory	Unsatisfactory
consistent with the SEPP. Proposal complies.		
<p><i>SEPP (Coastal Management) 2018</i></p> <p><u>Clause 11 – Development on land in proximity to coastal wetlands or littoral rainforest</u></p> <p>Comment: The subject site is located within 100 metres to littoral rainforest which sits opposite the site on the beach front. The application proposes only residential works. All stormwater from the development is to be appropriately managed and disposed of. The proposal is consistent with the provisions of Clause 11 of the Coastal Management SEPP.</p> <p><u>Clause 13 – Development on land within the coastal environment area</u></p> <p>Comment: The application does not propose any significant 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, and is located on the landward side of Alcorn Street, as opposed to the beachfront. The proposal is consistent with the provisions of Clause 13 of the Coastal Management SEPP.</p> <p><u>Clause 14 – Development on land within the coastal use area</u></p> <p>Comment: The subject site is located within the coastal use area. The dual occupancy is consistent with the provisions of Clause 14 of the Coastal Management SEPP, and raises no issues.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>SEPP (Infrastructure) 2007</i></p> <p>Comment: The application proposes development within 5m of an exposed overhead electricity power line</p> <p>In accordance with Clause 45(2) the application was referred to Essential Energy whose comments have been adopted as recommended conditions and/or</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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Considerations	Satisfactory	Unsatisfactory
advisory notes where appropriate.		

4.2 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 Dual Occupancy (attached);
- 5 (b) The land is within the R2 Low Density Residential according to the Land Zoning Map;
- (c) The proposed development is permitted with consent; and
- (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
encourage a range of housing types	The proposed Dual Occupancy (detached) adds to the range of housing types in the locality
ensure non-residential uses have a domestic scale and character.	The proposal is for residential use only

10 Clause 4.3 Height of Buildings

Building height is measured as the vertical distance from ground level (existing) to the highest point of the building. LEP 2014 permits a maximum building height of 9.0m in the subject location.

Submitted plans have demonstrated that the proposed maximum building height is 7.69m.

15

Clause 4.4 Floor Space Ratio

Submitted plans have demonstrated that the proposed development has a FSR of 0.49:1 which complies with the maximum 0.5:1 permitted.

- 20 Recommended conditions include the requirement for basement storage areas to have a 2.1m ceiling height to prevent their use for habitable purposes.

Clause 4.6 Exceptions to Development Standards

- 25 The applicant has sought a variation to Clause 4.1E by proposing a Dual Occupancy (attached) on a lot with an area of 698m² which does not comply with the minimum 800m² development standard.

The applicant has submitted a written request that strict compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental grounds to vary the controls as follows:

- 5 • *Compliance with the numerical standard is considered unnecessary in the circumstances, given the site has twice been approved for and currently contains a dual occupancy development. This demonstrates that the site has previously been determined to be suitable for accommodating this form of density and in effect, has an 'existing use right' for this development type.*
- 10 • *This is further demonstrated when considering the relevant considerations established under Wehbe v Pittwater Council [2007] NSWLEC 827 (Wehbe) at [42] – [48]. We note these considerations also form the 'five part test' referred to under the NSW Planning Department's 'Varying development standards: A Guide, 2011'.*
- 15 • *Despite not meeting the minimum lot size, the proposed development maintains the dual occupancy density without variations to other LEP standards including height of buildings and floor space ratio, while also achieving the DCP standards. As such, it is considered unnecessary in the circumstances to enforce the minimum numerical standard given the proposed development achieves the development*
- 20 *standards and objectives of the zone.*

25 It is considered that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental grounds to vary the development standard for the following reasons:

30 The site contains an existing dual occupancy building which was approved by Council in 1968. The Objective of the Minimum lot size clause (4.1E) for dual occupancy dwellings is to achieve planned residential density. As the subject site is currently occupied by a Dual occupancy, enforcing compliance with the development standard is unreasonable as it would not acknowledge the existing and historic approved use of the site for two dwellings; and is unnecessary, as the proposal will maintain the existing density of the allotment, and strict application of the standard would not reduce the existing yield of the site.

35 The development proposes to replace an existing approved dual occupancy at the subject site. The existing dual occupancy contravenes the minimum lot size development standard and the proposed redevelopment will provide for the housing needs of the community via an improved use of the site while maintaining the low density residential character of the locality.

40 There are sufficient environmental planning grounds to justify the contravention of the standard as the variation allows for the continued use of the site as a dual occupancy and providing for the housing needs of the community within a low density residential environment.

Further the proposal is in the public interest having regards to the objectives of the development standard being "to achieve planned residential density in certain zones" as

the site already contains an approved dual occupancy and therefore does not increase the existing density within the R2 Low Density Residential Zone.

The concurrence of the Planning Secretary is not required. Concurrence may be assumed by Council (but not a delegate of Council) under Planning Circular PS 20-002.

5 It is recommended that the development standard can be varied in this instance.

- a) The development is satisfactory having regard to the requirements outlined in clause 4.6;
- 10 b) The development is satisfactory having regard to applicable Department of Planning, Infrastructure and Environment Circulars;
- c) The development is satisfactory having regard to relevant caselaw;
- d) The DA demonstrates that compliance is with the development standard is unreasonable and unnecessary;
- 15 e) The DA demonstrates that there are sufficient environmental planning grounds to justify contravening the standard;
- f) The DA demonstrates that that the development in the public interest;
- g) The DA demonstrates that the development is consistent with the objectives of the standard and the zone;
- 20 h) The DA demonstrates how the development produces a better planning outcome than one that strictly complied with the development standard; and
- i) The DA demonstrates what it is about the grounds of the request that are particular to the proposed development on this site, and that there has to be something particular to the development on this site to justify the variation.

Clause 6.1 Acid Sulfate Soils

- 25 The land is mapped as Class 3 acid sulfate soils and works more than 1 metre below the natural ground surface require a preliminary assessment. The application proposes excavation works to a depth of 2.0m for the proposed swimming pools and basement storage areas. A preliminary assessment was submitted with application 10.2008.744.1 (DM822285) which included borehole sampling to a depth of 3.0m. Sampling
- 30 demonstrated that there was no actual or potential acid sulfate soil located within the borehole. Therefore no further assessment is required.

Clause 6.6 Services

- 35 Sewer – A sewer main is located in the rear laneway (Council road reserve) and recommended conditions will ensure that an appropriate buffer distance is maintained between the pipeline and construction works and an easement is created to protect Council's sewer infrastructure.

- 40 Stormwater drainage – All stormwater drainage for the development must be conveyed by a gravity system to the kerb and gutter at the street frontage and recommended conditions will ensure this is provided.

Water – The site is serviced by reticulated water supply.

Electricity – the site is provided with overhead mains electricity.

- 5 Vehicular access – the site has access via frontage to Alcorn Street.

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

Not applicable.

10

4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

B1 Biodiversity

- 15 The application proposes the removal of two trees to facilitate the development. The two trees (one located in the front setback and one located in the rear yard) are planted landscaping trees and are not mapped as having any ecological significance. Recommended condition for landscaping will include the requirement for appropriate compensatory replanting.

B3 Services

- 20 Sewer – A sewer main is located in the rear laneway (Council road reserve) and recommended conditions will ensure that an appropriate buffer distance is maintained between the pipeline and construction works and an easement is created to protect Council's sewer infrastructure.

- 25 Stormwater drainage – All stormwater drainage for the development must be conveyed by a gravity system to the kerb and gutter at the street frontage and recommended conditions will ensure this is provided.

Water – The site is serviced by reticulated water supply.

Electricity – the site is provided with overhead mains electricity.

Vehicular access – the site has access via frontage to Alcorn Street.

- 30 B4 Traffic Planning, Vehicle Parking, Circulation and Access

Each dwelling provides a double garage which complies with the car parking requirements of DCP 2014. Planning and engineering staff have determined that on-street car parking is available within close proximity to the development and as such formal visitor car spaces are not required onsite.

- 35 Proposed garages are each located with a minimum front setback of 7.2m allowing space in front of the garages to accommodate any informal spill over car parking.

B9 Landscaping

Submitted landscaping plans demonstrate that each proposed dwelling has a minimum landscaped area of 90m² with 25% of the site consisting of deep soil areas. Recommended conditions will require appropriate landscaping of the site.

5

D1.2.1 Building Height Plane

Plans submitted with the application demonstrate compliance with building height plane requirements of the DCP. Notwithstanding the proposal due to its height still overshadows the neighbouring dwelling to the south. Conditions of consent recommended to reduce the height of the southern dwelling by 600 mm to limit the overshadowing.

10

D1.2.2 Setbacks from Boundaries

The proposal provides the following building setbacks from boundaries:

Eastern (front) boundary to Alcorn Street

- 15
- Each of the proposed dwellings are setback a minimum 7.265m from the front boundary which complies with the required 4.5m minimum.

Northern boundary

- 20
- The proposed northern dwelling is setback a minimum 2.463m from the northern boundary while the proposed swimming pool / spa is setback 1.5m from the northern boundary. This complies with the required 900mm setback to the dwelling and 1m required setback for swimming pools and spas.

Western boundary

- 25
- The proposed swimming pools are both located 1.3m from the western boundary which complies with the required 1m setback for swimming pools and spas.

Southern boundary

- 30
- The proposed southern dwelling is setback a minimum 2.463m from the southern boundary while the proposed swimming pool / spa is setback 1.5m from the northern boundary. This complies with the required 900mm setback to the dwelling and 1m required setback for swimming pools and spas.

D1.2.5 Fences

35

The application proposes fencing on the northern, southern and western boundaries to a maximum height of 1.8m. It is also proposed to have a blockwork fence and timber gate (both 1.8m high) behind the front building line with a minimum setback of 7.265m from the front boundary. All fencing complies with DCP requirements.

D1.5 Dual Occupancy and Semi-Detached Dwellings

D1.5.1 On-Site Car Parking

The application proposes a double garage for each dwelling which complies with the requirement to provide two (2) car parking spaces for each dwelling.

5

D1.5.2 Character

Building articulation along the lower and upper levels and use of different materials and finishes ensure long solid walls are avoided and contribute to the locale's character and architectural detailing.

- 10 The use of different colour and roof lines for each dwelling also helps break up the appearance between the dwellings along the Alcorn Street frontage.

Private open space areas have been designed for ease of access of occupants while not significantly impacting upon the amenity of adjoining land. All outdoor living spaces are delivered on the ground, with the exception of small balconies facing Alcorn Street which help to deliver passive surveillance of the public areas.

15

Visual privacy to adjoining parcels is retained through provision of generous setbacks, orientation of spaces towards the onsite private open space areas and incorporation of timber battens to shield first floor windows.

20 **D1.5.3 Adjoining and Adjacent Development**

Visual privacy to adjoining parcels is retained through the design, scale and form of the proposed development, providing generous setbacks, landscaping and use of fixed timber battens on all upper floor windows.

- 25 The shadow diagrams submitted demonstrate that there will be some overshadowing on the adjoining dwelling to the south. Recommended conditions include the requirement for the roof ridge of the proposed southern dwelling to be lowered by 600mm to minimise overshadowing impacts.

D1.5.4 Private Open Space

- 30 Plans submitted with the application demonstrate the provision of private open space located behind the front building setback having a minimum area of 30m² and a minimum length and width each of 4m for each dwelling.

D1.5.5 Landscaping

- 35 Submitted landscaping plans demonstrate that each proposed dwelling has a minimum landscaped area of 90m² with 25% of the site consisting of deep soil areas. Recommended conditions will require appropriate landscaping of the site.

D1.5.6 Sound Proofing

The Building Code of Australia requirements ensure that appropriate sound proofing is provided between the proposed dual occupancy (attached).

What Section and prescriptive measure does the development not meet?	Does the proposed development meet the Element Objectives of this Section? Address.	Does the proposed development meet the Performance Criteria of this Section? Address.
<p><u>B14 Excavation and Fill</u></p> <p>The application proposes excavation to a depth of 2.0m for the proposed swimming pools and basement storage areas in each dwelling. Excavation of 2.0m depth for the swimming pools complies with the prescriptive measures of “B14.2 – Excavation and Fill in all Zones” for swimming pools however the basement storage areas do not comply with the maximum 1.0m depth for general excavation.</p> <p>The proposal satisfies the Objectives of 14.2 as the basement excavation works do not present any compatibility issues with the historical built character of the area and does not detract from the existing and desired future character of Alcorn Street or Suffolk Park. As the proposed basement storage areas will not be visible, there will not be any impact on the landscape and streetscape.</p>	<p>The proposed development complies with the Objectives of the Section because:</p> <p>The proposal satisfies the Objectives of 14.2 as the basement excavation works do not present any compatibility issues with the historical built character of the area and does not detract from the existing and desired future character of Alcorn Street or Suffolk Park. As the proposed basement storage areas will not be visible, there will not be any impact on the landscape and streetscape.</p>	<p>The proposed development complies with the Performance Criteria of this Section because:</p> <p>The proposal satisfies the Performance Criteria as the basement storage areas will not have any adverse visual impacts, will not overshadow or impact on the privacy of any adjoining land, does not present any risk of geotechnical instability / landslip and any resulting stormwater will be appropriately disposed of.</p>
<p><u>E1.3.9 Development and servicing of land affected by</u></p>	<p>The proposed development complies with the Objectives</p>	<p>The proposed development complies with the</p>

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What Section and prescriptive measure does the development not meet?	Does the proposed development meet the Element Objectives of this Section? Address.	Does the proposed development meet the Performance Criteria of this Section? Address.
<p><u>predicted coastal hazards</u></p> <p>The land is currently, and proposed to continue to be largely serviced, from Alcorn Street being the seaward side of the land. The site is serviced by electricity, water and stormwater from Alcorn Street while sewer infrastructure is provided via a pipeline located in a disused Council road reserve adjoining the western boundary of the site.</p> <p>This doesn't comply with the prescriptive measure that all services must be provided from the landward side of the development such that the building is between the services and the erosion escarpment.</p>	<p>of the Section because:</p> <p>The site is currently serviced from the street as are all properties along the western side of Alcorn Street. Given that the land is already serviced from the seaward side of the land, the proposed development will not increase potential impacts of coastal hazards on public utility services.</p> <p>Recommended conditions will ensure that any consent granted must cease if at any time the coastal erosion escarpment comes within 50 metres of the building subject of the consent. The development the subject of the consent must be demolished and removed immediately if this scenario eventuates.</p>	<p>Performance Criteria of this Section because:</p> <p>The site is currently serviced from the street as are all properties along the western side of Alcorn Street. Given that the land is already serviced from the seaward side of the land, the proposed development will not increase potential impacts of coastal hazards on public utility services.</p> <p>Recommended conditions will ensure that any consent granted must cease if at any time the coastal erosion escarpment comes within 50 metres of the building subject of the consent. The development the subject of the consent must be demolished and removed immediately if this scenario eventuates.</p>

The proposed development is demonstrated to meet the relevant Objectives of DCP 2014.

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4.5 Environmental Planning and Assessment Regulation 2021 considerations

	Applicable to the proposal:	Considered the control as it relates to the proposal:	If this control is applicable, does the proposal comply?
Clause 92 - Additional matters that consent authority must consider	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA
Clause 93 Fire safety and other considerations	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Clause 94 - Consent authority may require buildings to be upgraded	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Clause 94A - Fire safety and other considerations applying to erection of temporary structures	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA

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?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.
Construction Impacts	The development will generate minor impacts during its construction. Conditions of consent recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.

4.7 The suitability of the site for the development

The site is a serviced, generally unconstrained property and is suitable for the proposed development subject to conditions of consent.

4.8 Submissions made in accordance with this Act or the regulations

- 5 The development application was publicly exhibited

There were **3** submissions made on the development application:

Issue - Objections	Comment
The lot is not large enough to have a dual occupancy approved.	The site contains an existing dual occupancy building which was approved by Council in 1968. The Objective of the Minimum lot size clause (4.1E) for dual occupancy dwellings is to achieve planned residential density. As the subject site is currently occupied by a Dual occupancy, enforcing compliance with the development standard is unreasonable as it would not acknowledge the existing and historic approved use of the site for two dwellings; and is unnecessary, as the proposal will maintain the existing density of the allotment, and strict application of the standard would not reduce the existing yield of the site.
<p>Impact of the development on the streetscape and amenity of neighbours with two driveways, two garages side by side, infrastructure for two dwellings, four car spaces rather than two and increased waste and services to the street.</p> <p>It is not appropriate in this location and would set an undesirable precedent in terms of impacts on amenity and streetscape.</p>	<p>The site already contains an approved dual occupancy with each dwelling containing two bedrooms. Therefore, the proposal for 2 x 3 bedroom dwellings presents a minimal impact in terms of increased demand for services and vehicular movements.</p> <p>The application proposes generous front boundary setbacks of a minimum 7.265m which far exceed the required 4.5m setback to minimise visual impact on the streetscape.</p> <p>It is considered the proposal will not have a detrimental impact on the streetscape nor set an undesirable precedent.</p>
The two new dwellings will have a much larger footprint than the existing one and will have an even larger upper storey. The units will have	The gross floor area of the proposed dual occupancy (detached) was calculated to be 344m ² . The land has an area of 698m ² giving a floor space ratio of 0.49:1. This complies with the maximum permitted 0.5:1.

Issue - Objections	Comment
82.5m ² ground floors and 87.2m ² upper floors or a total of 169.7x2 = 339.4m ² .	The development footprint is considered satisfactory.
The plans show large windows on the upper floor that will overlook adjoining land and will substantially affect neighbouring privacy. Suggest that, at least, the proposed sills are raised to increase privacy.	The original plans proposed operable timber screen battens over the second storey windows on the north and south elevations. Staff raised the issue of privacy with the applicant who has since amended the design so that the proposed timber screen battens are now fixed. Staff consider that this amendment, combined with 3.7m side setbacks, has now minimised any potential privacy issues presented by second storey windows.
Overshadowing impacts on existing development on adjoining land	Recommended conditions include the requirement for the roof ridge of the proposed southern dwelling to be lowered by 600mm to minimise overshadowing impacts.
Visual impact of white metal cladding	Recommended conditions include the requirement for colours and finishes to be matte / non-reflective.
Parking – request that proposed driveways are wide enough to accommodate 2 x visitor parking spaces	Each dwelling provides a double garage which complies with the car parking requirements of DCP 2014. Formal visitor car spaces are not required onsite. With a minimum front setback of 7.2m to each garage further informal overflow parking is available in the driveway of each dwelling for at least one vehicle each.

4.9 Public interest

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

5

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

Section 64 levies will be payable.

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5.2 Developer Contributions

Section 7.11 Contributions will be payable.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Disclosure details	Response
Has a Disclosure Statement been received in relation to this application? If Yes, Provide Disclosure Statement register reference: 91.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

5

7. CONCLUSION

10 The DA proposes Demolition of Existing Dual Occupancy and Ancillary Structures, New Dual Occupancy (Attached), Two (2) Swimming Pools, Removal of Two (2) Trees and Strata Subdivision. The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The application is recommended for approval.

Report No. 13.7 PLANNING - Quarter 3 SEPP Variations July to September 2022

Directorate: Sustainable Environment and Economy

Report Author: Chris Larkin, Manager Sustainable Development

5 **File No:** I2022/1487

Summary:

This report is provided as a requirement of the NSW Department of Planning Circular PS17-006, for reporting on exceptions to development standards for applications made under clause 4.6 of the Standard Instrument LEP and Clause 6 of SEPP 1.

10 **NOTE TO COUNCILLORS:**

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

RECOMMENDATION:

20 **That Council adopts the report on exceptions to development standards for the period July to September 2022.**

Report

This report is provided as a requirement of the NSW Department of Planning Circular PS17-006, for reporting on exceptions to development standards for applications made under Clause 4.6 of the Standard Instrument LEP and Clause 6 of SEPP 1.

- 5
- SEPP 1 applies to development applications submitted under Byron Local Environmental Plan 1988.
 - Clause 4.6 applies to development applications submitted under Byron LEP 2014.

10 The period of reporting is for the July to September 2022 Quarter for the following DAs:

Quarter 3 – July to September 2022

DA No.	10.2021.754.1
Property:	17 Argyle Street, Mullumbimby
Development Category	Residential - New second occupancy
Environmental planning Instrument	Byron LEP 2014
Zoning:	R2 Low Density Residential
Development Standard being varied:	Clause 4.1E - 800m2 minimum lot area for dual occupancy (detached)
Justification Summary	Clause 4.6 Variation - Environmental planning grounds supported due to minimal variation required (<1%), not possible to achieve compliance, no significant environmental benefit to requiring compliance, achieves broader residential density and lesser size of the variation compared to the smallest room size in the dwelling.
Extent of variation	0.9%
Concurring Authority	Council (Delegation)
Determined Date	29/7/22
DA No.	10.2021.511.1
Property:	865 Broken Head Road, Broken Head
Development Category	Residential - New second occupancy
Environmental planning Instrument	Byron LEP 2014 / Byron LEP 1988
Zoning:	<ul style="list-style-type: none"> • Split Byron LEP 1988 1a (General Rural) Zone • Byron LEP 2014 RU2 Rural Landscape / PART DM Deferred Matter
Development Standard being	40 (2) (b) height of upper floor

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varied:	
Justification Summary	<p>Clause 64A Variation for minor part of the upper most floor of one dwelling exceeding 4.5 metre development standard by 900mm (20%) - LEP 1998 Clause 40 Height.</p> <p>It is noted the proposal complies with the overall 9 metre height standard under the BLEP 1988 and had the E Zoning review for the property been finalised the subject proposal in terms of height would have been considered as complying under the BLEP 2014.</p> <p>No environmental planning impacts and meets objectives of zone and development standard.</p>
Extent of variation	20%
Concurring authority	Council
Determined Date	11/08/2022
DA No.	10.2021.553.1
Property:	155 Main Arm Road, Mullumbimby
Development Category	Residential - New second occupancy
Environmental planning Instrument	Byron LEP 2014
Zoning:	RU1 Primary production
Development Standard being varied:	Clause 4.2D of Byron LEP 2014 – dual occupancy (detached) dwellings to be within 100m of each other
Justification Summary	Clause 4.6 Variation - Environmental planning grounds supported due to siting to reduce risk of flooding/ inundation with building on elevated part of site and separated from intermittent stream/ drainage line on a flood affected site.
Extent of variation	7%
Concurring authority	Council (Delegation)
Determined Date	29/08/2022
DA No.	10.2021.683.1
Property:	1156 Main Arm Road, Mullumbimby
Development Category	Tourist
Environmental planning Instrument	<ul style="list-style-type: none"> Byron LEP 2014 Byron LEP 1988
Zoning:	<ul style="list-style-type: none"> RU2 Rural Landscape 1(a) General Rural, 7(k) Habitat
Development Standard being	Clause 40 of Byron LEP 1988

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varied:	
Justification Summary	Clause 4.6 Variation - Environmental planning grounds supported due to siting to reduce risk of flooding/ inundation with building on elevated part of site and separated from intermittent stream/ drainage line on a flood affected site.
Extent of variation	24%
Concurring authority	Council
Determined Date	08/09/2022

Strategic Considerations

Community Strategic Plan and Operational Plan

5

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
4: Ethical Growth We manage growth and change responsibly	4.1: Manage responsible development through effective place and space planning	4.1.1: Development assessment - Manage development through a transparent and efficient assessment process	4.1.1.1	Assess and Determine DA's accordance with the relevant legislation

Legal/Statutory/Policy Considerations

10

The report is provided as a requirement of [NSW Department of Planning circular PS 17-006](#).

Report No. 13.8 PLANNING - 10.2021.425.1 Community Title Subdivision Twenty (20) Lots, Multi-Dwelling Housing comprising of Twenty (20) Dwelling Houses

5 **Directorate:** Sustainable Environment and Economy

Report Author: Ivan Holland, Planner
Noreen Scott, EA Sustainable Environment and Economy

File No: I2022/1491

Proposal:

Proposal description:	Community Title Subdivision Twenty (20) Lots, Multi-Dwelling Housing comprising of Twenty (20) Dwelling Houses and Tree Removal One (1) Tree		
Property description:	LOT: 1 DP: 1261870, LOT: 2 DP: 1261870, LOT: 3 DP: 1261870, LOT: 4 DP: 1261870, LOT: 5 DP: 1261870, LOT: 6 DP: 1261870		
	24 - 34 Bayside Way BRUNSWICK HEADS		
Parcel No/s:	270091, 270092, 270093, 270094, 270095, 270096		
Applicant:	Planners North Pty Ltd		
Owner:	Mr J E & Mrs G M Mills		
Zoning:	R3 Medium Density Residential		
Date received:	25 July 2021		
Integrated / Designated Development:	<input checked="" type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input type="checkbox"/> Not applicable
Public notification or exhibition:	<ul style="list-style-type: none"> – Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications – Exhibition period: 6/8/21 to 2/9/21 – No Submissions received. 		
Delegations	Council		

Issues:

- Removal of a mature gum tree

Summary:

The DA proposes Community Title Subdivision Twenty (20) Lots, Multi-Dwelling Housing comprising of Twenty (20) Dwelling Houses and Tree Removal One (1) Tree.

- 5 Proposed dwelling houses will be two storey with three or four bedrooms, with indoor and outdoor living spaces and a double garage with a combination of gable and skillion roofs. The community title lots are to range in size between 190m² and 394m² with the residual land to be contained in a community lot that includes the shared access road/driveway, parking and vehicle manoeuvring areas. Considering the medium density zoning of the land and the size of the property the proposed yield of 20 dwelling is acceptable.
- 10 The application addresses the relevant constraints applying to the site and raises no issues other than a mature gum tree is proposed to be removed. However, the tree adds to the streetscape, appears healthy and it is recommended that it be retained with the siting of proposed dwelling 1 to be amended to increase the setback to this tree. All other trees on the property are to be retained.
- 15 The application is recommended for approval subject to conditions of consent.




NOTE TO COUNCILLORS:

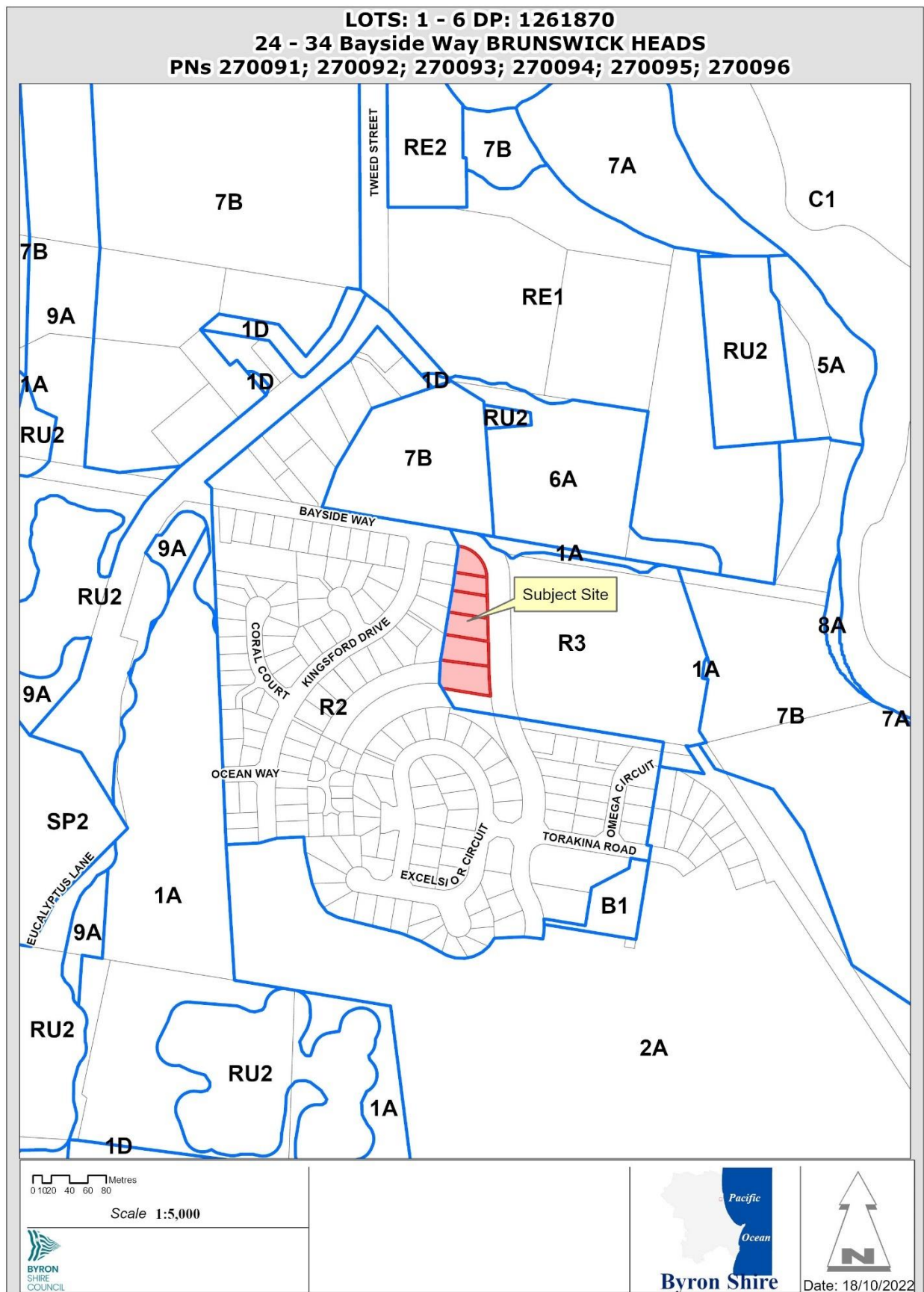
- 20 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes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

RECOMMENDATION:

- 25 **That pursuant to Section 4.16 of the *Environmental Planning & Assessment Act 1979*, Development Application No. 10.2021.425.1 for Community Title Subdivision Twenty (20) Lots, Multi-Dwelling Housing comprising of Twenty (20) Dwelling Houses, be granted consent subject to the conditions of approval in attachment 3.**

Attachments:

- 30 1 DA10.2021.425.1 - Consolidated plans of development, E2022/101339 
- 2 DA10.2021.425.1 - Subdivision layout, E2021/97038 
- 3 DA10.2021.425.1 - Recommended conditions, E2022/101320 



Assessment:

1. INTRODUCTION

History/Background

Council's records indicate the following development approval history for the property:

Application No.	Description	Determination	Determination date
DA 10.2015.795.1	Staged Development Comprising: a) Concept proposal for a subdivision to create 47 Residential lots and associated Urban Infrastructure; and b) Stage 1 Development proposal for a Subdivision to create Forty (40) Residential Lots, One (1) Residue Lot, Public Roads and Associated Urban Infrastructure.	Approved	23/2/2017
DA 10.2015.795.2	S4.55 to Delete Condition 35(c) Relating to Right of Footway	Approved	22/5/2019
DA 10.2015.795.3	S4.55 to Modify Numbering of Conditions of Consent	Approved	12/6/2019

- 5 The subject lots were created under the above 2015 development consent.

The applicant was requested to provide further information on 30 July 2021 in relation to access and mobility, solar access impacts and public art. Additional information was provided on 8 September 2021 which included a public art plan which was subsequently referred to the Public Art Panel.

- 10 The applicant was requested to provide further information on 16 May 2022 being a traffic impact assessment, a stormwater concept plan and amended plans that demonstrate compliance with the requirements for on-street parking, access and footpath extension and reconstruction. Additional information was provided on 13 July 2022.

Description of the proposed development

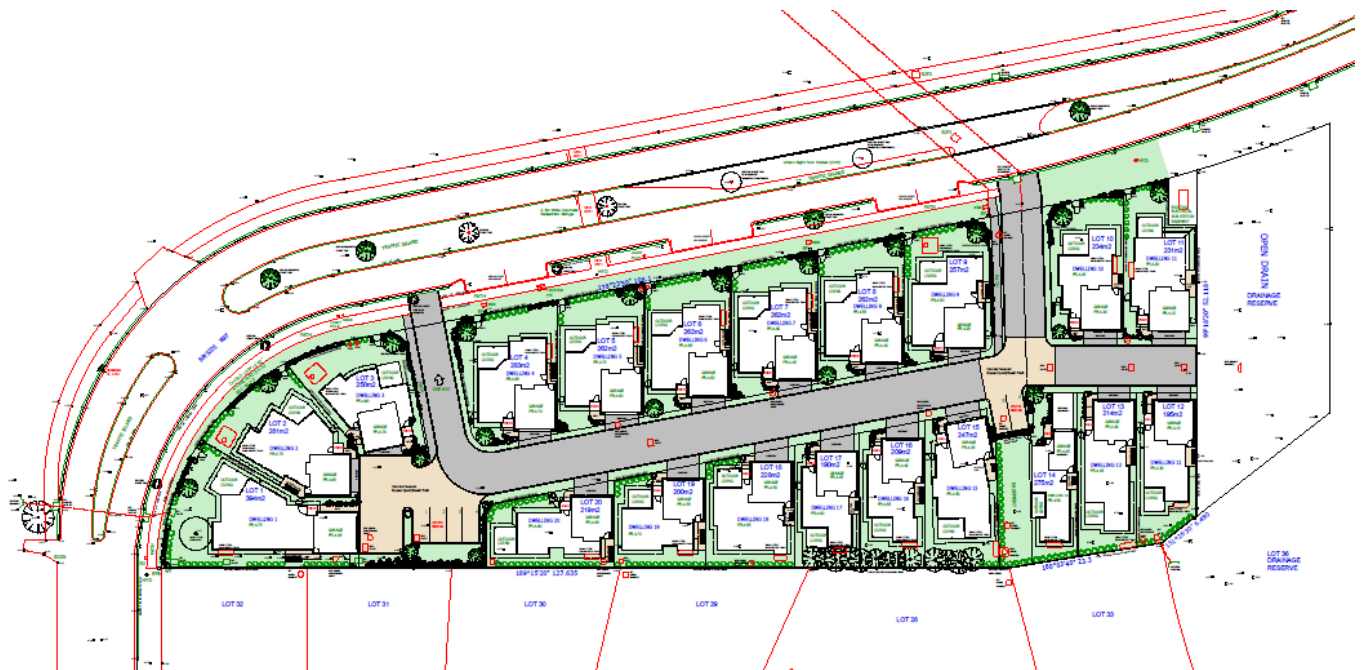
- 15 This application seeks approval for (see Figure 1):
- A twenty (20) lot community title subdivision, with community land to be in a single community lot, and consolidation of the current six (6) Torrens Title lots;
 - Vehicular access, utilities and drainage for the subdivision and proposed dwelling houses;
- 20
- Multi-dwelling housing comprising twenty (20) detached dwelling houses with one dwelling house to be located on each community title lot;
 - Removal of one (1) tree; and

- The modification of the concept approval (DA 10.2015.795.1) that includes the development site to ensure consistency with this development, should it be approved.

5 Community title lots are to range in size between 190m² and 394m² with most lots being less than 265m². The residual land will be contained in a community lot, being 1625m² in area, and including the shared access road/driveway, parking and vehicle manoeuvring areas.

10 Proposed dwelling houses will be two storey with three or four bedrooms, at least two bathrooms, indoor and outdoor living spaces and a double garage with a combination of gable and skillion roofs.

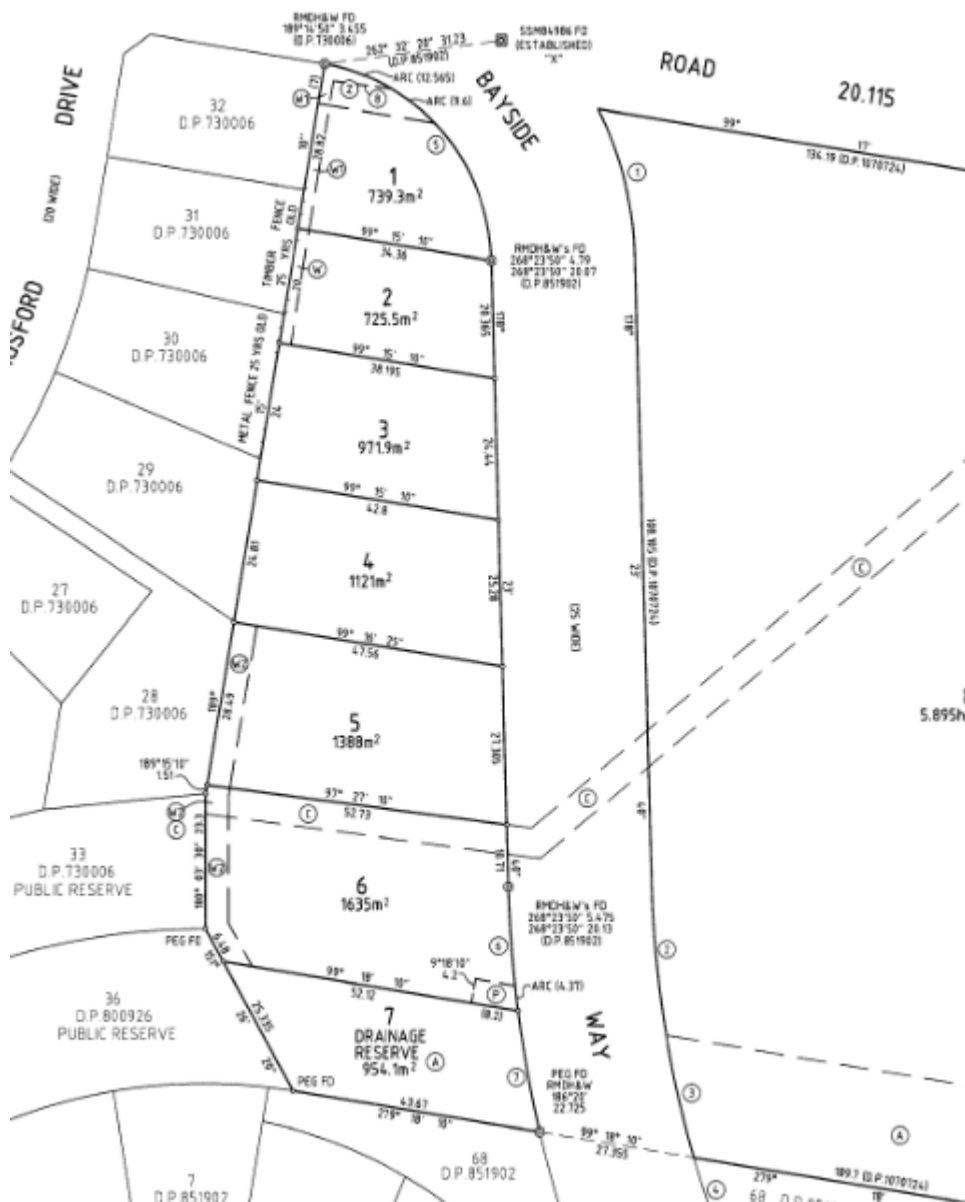
The application includes a construction staging plan (CSP1) that proposes construction of the development in four (4) stages.



Description of the site



Land is legally described	LOT: 1 DP: 1261870, LOT: 2 DP: 1261870, LOT: 3 DP: 1261870, LOT: 4 DP: 1261870, LOT: 5 DP: 1261870, LOT: 6 DP: 1261870	
Property address	24 – 34 Bayside Way BRUNSWICK HEADS	
Land is zoned:	R3 Medium Density Residential (see Figure 2)	
Land area is:	6580.7 m ² (combined)	
Property is constrained by:	Bushfire prone land Acid Sulfate Soils Class 3	
	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? (see Figure 3)	<input checked="" type="checkbox"/> Yes <input 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



View southwest over development site from Bayside Way	View northwest over development site from Bayside Way
	
View west over development site from Bayside Way. Photo shows existing vegetation along western boundary of site	View west over northern end of development site from Bayside Way. Photo shows mature tree vegetation adjacent to western boundary of site

2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to conditions.
S7.11/ Contributions Officer	No objections subject to conditions.
Rural Fire Service (100B)	General terms of approval and Bush Fire Safety Authority issued.
Essential Energy	No objections subject to conditions and general comments.
Department of Primary Industries – Office of Water/ Natural Resources Access Regulator (NRAR)	General terms of approval issued for controlled activity.

Referral	Issue
Tweed Byron Land Council	No response received.

3. SECTION 4.15C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

- 5 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.

State Environmental Planning Instruments (SEPP)

Considerations	Satisfactory	Unsatisfactory
<p><i>SEPP (Resilience and Hazards) 2021</i></p> <p><u>Chapter 2 Coastal management</u></p> <p>Consideration: The development site is located within the mapped coastal environment area. The property is largely grassed, has previously been approved for subdivision into six lots, is separated by Bayside Way from high environmental value vegetation and is over 350m from Simpsons Creek. As such, adverse impacts on the listed matters are not expected (cl.2.10).</p> <p><u>Chapter 4 Remediation of land</u></p> <p>Land contamination was assessed within DA 10.2015.795.1 The Preliminary Groundwater Sampling and Testing Report (Coffey, 29 July 2016) concluded that there was no evidence of groundwater contamination and no link between the observed elevated metals concentrations in the groundwater and current horticultural practices involving application of fertilisers. As noted above, the property has previously been approved for subdivision into six lots. Consequently, the site is considered suitable for the proposed development with respect to contamination (cl.4.6).</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>SEPP (Building Sustainability Index: BASIX) 2004</i></p> <p>Consideration: The proposal is BASIX affected development and a BASIX Certificate was provided with the application.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Considerations	Satisfactory	Unsatisfactory
<p><i>SEPP (Transport and Infrastructure) 2021</i></p> <p><u>Chapter 2 Infrastructure</u></p> <p>Elements of the proposed development (particularly at the north of the site) are proximate to electricity transmission and distribution infrastructure and consequently the application was referred to Essential Energy for comment (cl.2.48). Essential Energy responded with conditions and general comments.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>SEPP (Biodiversity and Conservation) 2021</i></p> <p><u>Chapter 4 Koala habitat protection 2021</u></p> <p>The subject property is located within the koala planning area covered by the Byron Coast Comprehensive Koala Plan of Management (BCKPoM) and consequently, determination of the development application must be consistent with the BCKPoM (cl.4.4, 4.8 and Schedule 2).</p> <p>The subject property is greater than 1ha but does not contain any mapped koala habitat and consequently the BCKPoM does not apply (See Figure 10 Development Assessment Flowchart).</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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 EP&A Act 1979 as subdivision of land and in the LEP 2014 Dictionary as multi dwelling housing;
- 5 (b) The land is within the R3 Medium Density Residential according to the Land Zoning Map;
- (c) The proposed development is permitted with consent; and
- (d) Regard is had for the Zone Objectives as follows:

Zone Objectives – R3	Consideration
<ul style="list-style-type: none"> • To provide for the housing needs of the community within a medium density residential environment. • To provide a variety of housing types within a medium density residential environment. • To enable other land uses that provide facilities or services to meet the day to day 	<p>The development has the potential to provide for the housing needs of the community through the introduction of twenty new dwellings.</p> <p>The dwellings proposed do not provide a variety of housing types with all proposed dwellings being detached, relatively similar</p>

needs of residents.	in size and style. None of the dwellings are proposed as affordable housing.
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4.1 Minimum subdivision lot size

The minimum lot size for the development site is 450m² however this condition does not apply to community title subdivisions.

4.1E Minimum lot sizes for certain residential accommodation

- 5 The minimum lot size for the multi dwelling housing in the R3 zone development is 800m². This application seeks to consolidate the current lots as part of the development with the combined lot size being 6580.7 m².

4.3 Height of buildings

- 10 The maximum building height for the development site is 9m. Based on the drawings provided, the proposed dwellings range in maximum height from 6.5m to 7.7m (Dwelling 2).

4.4 Floor space ratio

- 15 The maximum floor space ratio (FSR) for the development site is 0.6:1. The application states that the FSR for the development is 0.41:1 which has been confirmed using the provided floor areas.

6.1 Acid sulfate soils

- 20 Majority of the site is mapped as overlying category 3 acid sulfate soils. In response to a Council information request on 22/8/22, the application submitted an Acid Sulfate Management Plan (Planners North, August 2022, Ref. 1241.4161). Council's Environmental Health Officer is satisfied that the mitigation and management measures proposed in the plan are adequate subject to recommended conditions.

6.2 Earthworks

- 25 The dwelling cross-sections provided indicate that earthworks will be largely limited to footings. Earthworks will also be required for construction of infrastructure (e.g., driveway and services). Management of earthworks is expected to be straightforward owing to the required earthworks being minor and the site being largely level. Nevertheless, conditions have been recommended relating to the relevant listed matters particularly management of potential impacts of the earthworks and construction phase stormwater runoff.

6.6 Essential services

- 30 The property is expected to have access to necessary essential services as it is in an established residential area and has previously been approved for a subdivision into six lots. Council's Engineers are satisfied the development can be adequately serviced subject to recommended conditions.

6.7 Affordable housing in residential and business zones

- 35 This clause requires that prior to granting consent to development on land zoned Zone R3 Medium Density Residential, the consent has considered— the need for providing, maintaining, or retaining affordable housing, and the need for imposing conditions relating to providing, maintaining, or retaining affordable housing including, but not limited to, imposing covenants and the registration of restrictions about users.

While the proposal does not provide for affordable housing as defined by the clause, it instead seeks to respond to this clause through provision of new supply and diversity of housing stock. It is understood that the dwelling houses will be offered for purchase and or long-term rental over short term holiday letting. To ensure this outcome, a condition has been recommended to preclude use of the dwellings for short-term rental accommodation and/or holiday letting.

Without an appropriate legislative mechanism in place, Council is unable to require anything further of a proponent currently. To this aim, staff are reviewing this clause to encompass wording in line with the on exhibition [Affordable Housing Contribution Scheme - Byron Shire Council \(nsw.gov.au\)](#) to provide greater guidance on the application of Byron LEP 2014 - Clause 6.7.

Clause 4.6 Exceptions to Development Standards

Not applicable.

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

No proposed instruments were identified that are apply to this development application.

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

B1: Biodiversity

The subdivision (including required bush fire asset protection zones) is setback ~20m from land mapped as having biodiversity values, high environmental value vegetation and being Koala habitat (see Note). The mapped habitat is to the north and east of the site and in both cases is separated from the site by Bayside Way. In practical terms, the development complies with the required setbacks to ecological 'red flag' areas (B1.2.1).

Note: The mapping indicates the vegetation is closer than 20m to the site, but this appears to be due to the mapping following the canopy rather than the ground – see figure below.



The development site is not located in a designated 10/50 vegetation clearing entitlement area (online tool accessed 13/10/22).

- 5 The application seeks to remove a single mature gum tree located at the north of development site (see site visit photos). Although the tree is not within any mapped 'red flag' areas (B1.2.1), no reason/s have been provided for the removal of this tree and being a mature gum tree which appear healthy, its retention is recommended. If to be retained, the location and/or layout of Dwelling 1 should be altered to increase the setback to this tree. All other trees on the property (see proposed Lots 1, 15-17) are to be retained.

10 B3: Services

The property is expected to have access to necessary essential services as it is in an established residential area with reticulated services and has previously been approved for a subdivision into six lots (see also cl.6.6 LEP 2014 above). In general terms, stormwater from the development will be discharged into drainage channel located to the south of the site and existing pipe culvert to the north with stormwater from impervious areas (mainly road pavement) being treated prior to discharge.

B4: Traffic Planning, Vehicle Parking, Circulation and Access

- 20 The application proposes works in the Bayside Way road reserve including a turning lane in the traffic island and six indented parking spaces on the western side. The subdivision incorporates a through road that provides vehicular access to the dwelling garages and for waste collection and incorporates visitor parking and manoeuvring areas. Council's Development Engineer is satisfied the development has adequate parking, circulation and access and will have an acceptable impact on traffic.

B5: Providing for Cycling

- 25 There currently isn't a designated cycleway along Bayside Way however this development will not prevent installation of a bike path in the future. The application states that all-weather bicycle storage will be in the garages of the proposed dwellings (B5.2.4)

B8: Waste Minimisation and Management

The application did not include a waste minimisation and management plan however, Council's Development Engineer is satisfied that the proposed driveway is adequate for Council's waste collection vehicle to enter and exit the site in a forward direction.

5 B9: Landscaping

The proposed development triggers the requirement for a landscaping plan is required and was provided with the development application (B9.2). The landscaping plan is generally consistent with the design principles (B9.3) and specific requirements for multi dwelling housing (B9.4) but for:

- 10
- existing trees appear to be within 3m of buildings;
 - retention of existing trees (see comments under Chapter B1);

The application states that the dwellings have an average of 106.9m² of landscaped area, being greater than the 90m² per dwelling minimum) however such details are not included on the landscape plan to enable this claim to be verified.

- 15 The landscape plan includes the provision of street trees including the relocation of existing street trees impacted by the proposed changes to the Bayside Way traffic island (B9.11).

B13: Access and Mobility

- 20 In response to Council's further information request, the applicant confirmed that "*at least two (10%) of the dwellings within the development must be "adaptable housing" meaning the housing is designed in such a way that it can be modified easily in the future to become accessible to both occupants and visitors with disabilities or progressive frailties. In answer to this request, please find attached updated drawings for Dwellings 8 and 18. These house designs have been modified involving, inter alia, widening the garage to*
- 25 *6.5m; providing appropriate wheelchair access to the dwelling via the front door and to Bedroom 1 in compliance with AS14-8.1; as well as plan updating has occurred with some minor dimensional changes to Bedroom 1 to ensure the bedroom, ensuite and laundry enjoy satisfactory access. Further, the kitchens for Dwellings 8 and 18 have been modified to comply with AS299*".

- 30 The modified proposal is consistent with the relevant access and mobility requirements (B13.2.2)

D1: Residential Accommodation in Urban, Village and Special Purpose Zones

General Provisions

- 35 The proposed multi dwelling housing complies with the relevant general provisions (D1.2) but for setbacks and fencing as follows (see Note):

- 40
- The setback of Dwelling 12 to the Council reserve to the south which at 200mm is well below the minimum required setback of 900mm (D1.2.2). The setback encroachment does not conflict with the relevant objectives owing to the neighbouring land being a reserve, and a variation is supported to this boundary being a drainage reserve.

- The distance between the dwellings on the site is less than the required minimum of 3m. The reduced setbacks between dwellings reduces privacy but maximises useable private open space at the rear of the dwellings; and

Multi Dwelling Housing

5 The proposed dwelling complies with the multi dwelling housing provisions (D1.6) subject to the following comments:

- The application states that the dwellings each have a ground level courtyard with a minimum area of 30m² and 4m in length/width
- A design verification statement was provided (D1.6.10) with the application.

10 D6: Subdivision

The development application does not include a detailed consideration of the relevant design guidelines (D6.2.1) in relation to the proposed community title subdivision. Many of the proposed lots do not have the preferred north-south axis to minimise overshadowing but living areas are generally oriented north to maximise solar access.

15 The proposed lots are less than the minimum lot size specified in LEP 2014 however have sufficient area for the dwelling, private open space, solar access and vehicle access, subject to recommended conditions (D6.4.1). Other relevant matters such as stormwater management, water, sewer, vegetation/landscaping and access, are discussed above.

D8: Public Art

20 The proposed development triggers the requirement for a public art and a public art plan (Planners North, September 2021) was provided following Council's request for further information (D8.2.1). The public art plan was referred to Council's Public Art Panel who sought further details from the applicant on the proposal. In response, the applicant offered to enter into a planning agreement in lieu of providing the public art. A condition
25 has been recommended to require a planning agreement be entered into.

E4 – Brunswick Heads

The development site is located within Pocket B of Brunswick Heads. The proposed development is consistent with the character narrative in that the dwellings are "*two storey medium density homes*". The area is said to comprise "*typically brick and tile homes*",
30 however, the use of fibre cement cladding and metal roof sheeting is proposed for the dwellings. The setback of the dwellings to Bayside Way is consistent and the fencing along this boundary is not consistent with the following character narrative comment "*Most houses have either no or low front fences and variable front setbacks and streets continue the feeling of openness and community*" (E4.2).

35 **EPA Act 1979 - Integrated development**

The proposal is integrated development (s.4.46 of the EP&A Act) in that authorisation under the *Rural Fires Act 1997* (s.100B) is required in respect of bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes. RFS issued general terms of approval (GTAs) and a bush fire safety authority for the
40 development on 17 September 2021 (ref: DA2021081100335-Original-1).

The proposal is integrated development (s.4.46 of the EP&A Act) in that an activity approval is required under the *Water Management Act 2000*. NRAR issued GTAs for the activity on waterfront land on 27 September 2021 (ref: IDAS-2021-10143).

4.6 Environmental Planning & Assessment Regulation 2000

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

5 4.7 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?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.
Construction Impacts	The development will generate minor impacts during its construction. Conditions of consent recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.

4.8 The suitability of the site for the development

The site is capable of being serviced, has manageable constraints and is suitable for the proposed development.

4.9 Submissions made in accordance with the Act/ Regulations

- 5 The application included a report (Planners North, July 2021) detailing the pre-lodgement community consultation undertaken prior to the lodgement of the development application (A13.4 of DCP 2014 and Community Participation Plan). Issues raised included density, privacy, noise, community facilities, capacity of Bayside Way/Tweed Street intersection, stormwater/flooding and solar access.
- 10 The development application was further exhibited by Council. No submissions were received.

4.10 Public interest

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

15 4. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

Section 64 levies will be payable.

5.2 Developer Contributions

Section 7.11 Contributions will be payable.

20 5. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Disclosure details	Response
Has a Disclosure Statement been received in relation to this application? If Yes, Provide Disclosure Statement register reference: 91.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

6. CONCLUSION

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

Report No. 13.9 Revised Constitution of Climate Change and Resource Recovery Advisory Committee

Directorate: Sustainable Environment and Economy

Report Author: Julia Adams, Sustainability Team Leader

5 **File No:** I2022/1508

Summary:

The Climate Change and Resource Recovery Advisory Committee has not been able to make quorum at either of the last two meetings for this calendar year.

10 Two changes are proposed to the Constitution which are expected to assist with achieving meeting quorum. These are:


- the number of Councillors required for a quorum be amended from two to one, and
- that COREM not be included in the Committee's membership as COREM is yet to respond to either of Council's two invitations to participate.

15 The revised Climate Change and Resource Recovery Advisory Committee's Constitution is provided for Council's consideration and endorsement.

RECOMMENDATION:

20 **That Council adopts the Climate Change and Resource Recovery Advisory Committee constitution at Attachment 1 (E2021/148037).**

Attachments:

25 1 DRAFT Constitution Climate Change & Resource Recovery Advisory Committee 2022, E2021/148037 

Report

Following Resolution **22-026** which resolved that the proposed Resource Recovery Advisory Committee and the Climate Change Advisory Committee be combined, a new Constitution was developed.

- 5 This Constitution was further informed by Resolution **22-098**, which appointed Zero Emissions Byron representative and five community representatives to the Committee. Council also resolved that Resilient Byron and Community Owned Renewable Energy Mullumbimby (COREM) be given another opportunity to nominate a representative.

- 10 Resilient Byron has now nominated their representative and COREM is yet to respond to either of Council's invitations. In order to confirm membership numbers and therefore quorum, it is recommended that the COREM representative not be included as a committee member. The attached draft Constitution has been amended accordingly.

- 15 It is also recommended, that the number of Councillors required for a quorum be amended from two to one, which is in line with other Committees. The wording at Point 7 has changed to:

"A quorum is to constitute at least half the number of members plus one (resulting half numbers go down), one of which is to be a Councillor."

The final meeting for 2022 is scheduled for 17 November 2022.

The draft constitution is included in Attachment 1 for Council's consideration.

20 Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership We have effective decision making and community leadership that is open and informed	1.1: Enhance trust and accountability through open and transparent leadership	1.1.2: Governance - Ensure legislative compliance and support Councillors to carry out their civic duties	1.1.2.3	Provide administrative support to Councillors to carry out their civic duties

Recent Resolutions

- 22-026
- 22-098

Legal/Statutory/Policy Considerations

5 Not applicable.

Financial Considerations

Not applicable.

Consultation and Engagement

Not applicable.

10

Report No. 13.10 PLANNING - 10.2021.619.1 Demolition of Existing Structures and Construction of Multi Dwelling Housing comprising of Four (4) Dwellings and Strata Subdivision at 99 Station Street - Mullumbimby

5

Directorate: Sustainable Environment and Economy

Report Author: Steven Denize, Planner

File No: I2022/1511

Proposal:

DA No:	10.2021.619.1		
NSW PP	PAN-149131		
Proposal description:	Demolition of Existing Structures and Construction of Multi Dwelling Housing comprising of Four (4) Dwellings and Strata Subdivision		
Property description:	LOT: 26 SEC: 4 DP: 2772, LOT: 27 SEC: 4 DP: 2772		
	99 Station Street MULLUMBIMBY		
Parcel No/s:	122830, 122840		
Applicant:	Planners North		
Owner:	East Assets P1 Pty Ltd		
Zoning:	R2 Low Density Residential		
Date received:	18 October 2021		
Integrated / Designated Development:	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input checked="" type="checkbox"/> Not applicable
Public notification or exhibition:	<ul style="list-style-type: none"> – Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications – Exhibition period: 28 October 2021 to 10 November 2021 – Submissions received: Yes, seven (7) submissions of objection 		

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.10

	were received. See summary and discussion / response below. – Submissions acknowledged: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Planning Review Committee:	7 April 2022 the PRC determined that the application should be determined by Council
Delegation to determine	Council
Issues:	Heritage – Mullumbimby Conservation Area (MCA) Minor breaches of BDCP 2014 Prescriptive Measures for front setback and building height plane.
Recommendation:	Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.619.1 for Demolition of Existing Structures and Construction of Multi Dwelling Housing comprising of Four (4) Dwellings and Strata Subdivision, be granted consent subject to the conditions of approval at the end of this report

Summary:

This application seeks approval for the demolition of an existing 132m² dwelling and ancillary structures, including an open carport and single story shed. Post demolition it is proposed to establish, and strata title subdivide a multi dwelling housing development consisting of 4 dwelling units contained in two duplex style structures as follows;

- Single storey 'duplex' accessed from Station Street. Unit 1 (adaptable unit) of 136.4m² with 2 bedrooms. Unit 1A of 76.08m² with 2 bedrooms.
- Two (2) storey 'duplex' accessed from McGoughans Lane. Unit 3 of 129.85m² with 3 bedrooms. Unit 4 of 129.85m² with 3 bedrooms.

The proposed duplex style Multi-Dwelling Housing buildings are centrally located on the 1304m² site. The two 'duplex' structures are set 4.8m apart at ground level and separated by internal privacy fencing. Generous and usable outdoor living / private open space areas are provided at ground level. These spaces are a combination of deck and lawn. The buildings are slab-on-ground construction, finished in a simple mix of heritage appropriate materials and colours i.e., weatherboard, brick, corrugated iron roofs and panel lift doors.

On-site parking is provided in 4 single garages, one internal to each unit. Two stacked spaces, and one visitor space adjoining McGoughans Lane are proposed. The site is generally flat minimising the requirements for earthworks.

The site is zoned R2 Low Density Residential and is within the Mullumbimby Conservation Area, which is predominantly characterised by dwelling houses, specific 'heritage listed' dwellings and emergent low density 'in fill' housing development.

- 5 Submissions received identified a lack of heritage appropriate design, excessive height and building bulk, negative impact on the streetscape, traffic and parking issues, privacy, and overshadowing effects, impacts of demolition, lack of green space and tree removal, lack of demand for the housing typology proposed and the development being generally inappropriate for Mullumbimby.
- 10 Council officers identified similar concerns, and in particular Councils Heritage Advisor initially concluded that; *"Amended plans for a development of less intensity should be sought which respects the pattern of single storey-built form to Station Street, with limited driveway intrusion, and is harmonious with the established pattern of development, setbacks, and landscaping. A design which*
- 15 *retains a projecting gable form or use of gabled forms is appropriate but should avoid heritage replication, and include careful consideration of window design and proportions"*

- The matter was raised with the applicant the plans were amended and a more appropriate development has been proposed. Notable changes were the
- 20 reduction in height of the 'duplex' structure adjoining Station Street from two to single storey, reduced bedroom numbers, reduced hard surface areas replaced by landscaping including the retention and /or relocation of existing trees and the integration of more heritage appropriate elements. Councils Heritage Advisor reviewed these changes and concluded; *"It is considered that the amended*
 - 25 *plans dated 29 June 2022 second issue have addressed the concerns raised and that the proposed development has now satisfactorily addressed the heritage impacts on site, setting, height, bulk and scale and landscaped areas. Approval is supported subject to conditions"*

Details of other amendments are discussed in the assessment below.

- 30 Subject to redesign, in response to feedback from redacted submissions and Council officers and given the size of the development site the proposed development is comparatively restrained as evidenced by general compliance with the relevant development controls. Containing the 4 dwellings within 2
- 35 duplex style structures allows the development to 'read' as two dwellings and be centred on the site thus allowing for setbacks from all boundaries and appropriate landscaped and permeable area.

- 40 Rather than negatively impacting the character, density, and amenity of Mullumbimby this development will make a positive contribution to the towns amenity and sustainability by introducing a mix of low medium density housing typologies which are flood risk responsive and located within easy walking

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distance of many of the town's amenities such as schools, the CBD, and a range of government services etc.

The application is recommended for approval subject to conditions of consent.

NOTE TO COUNCILLORS:

- 5 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.





10

RECOMMENDATION:

- 15 **That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.619.1 for Demolition of Existing Structures and Construction of Multi Dwelling Housing comprising of Four (4) Dwellings and Strata Subdivision, be granted consent subject to the conditions of approval in Attachment 1.**

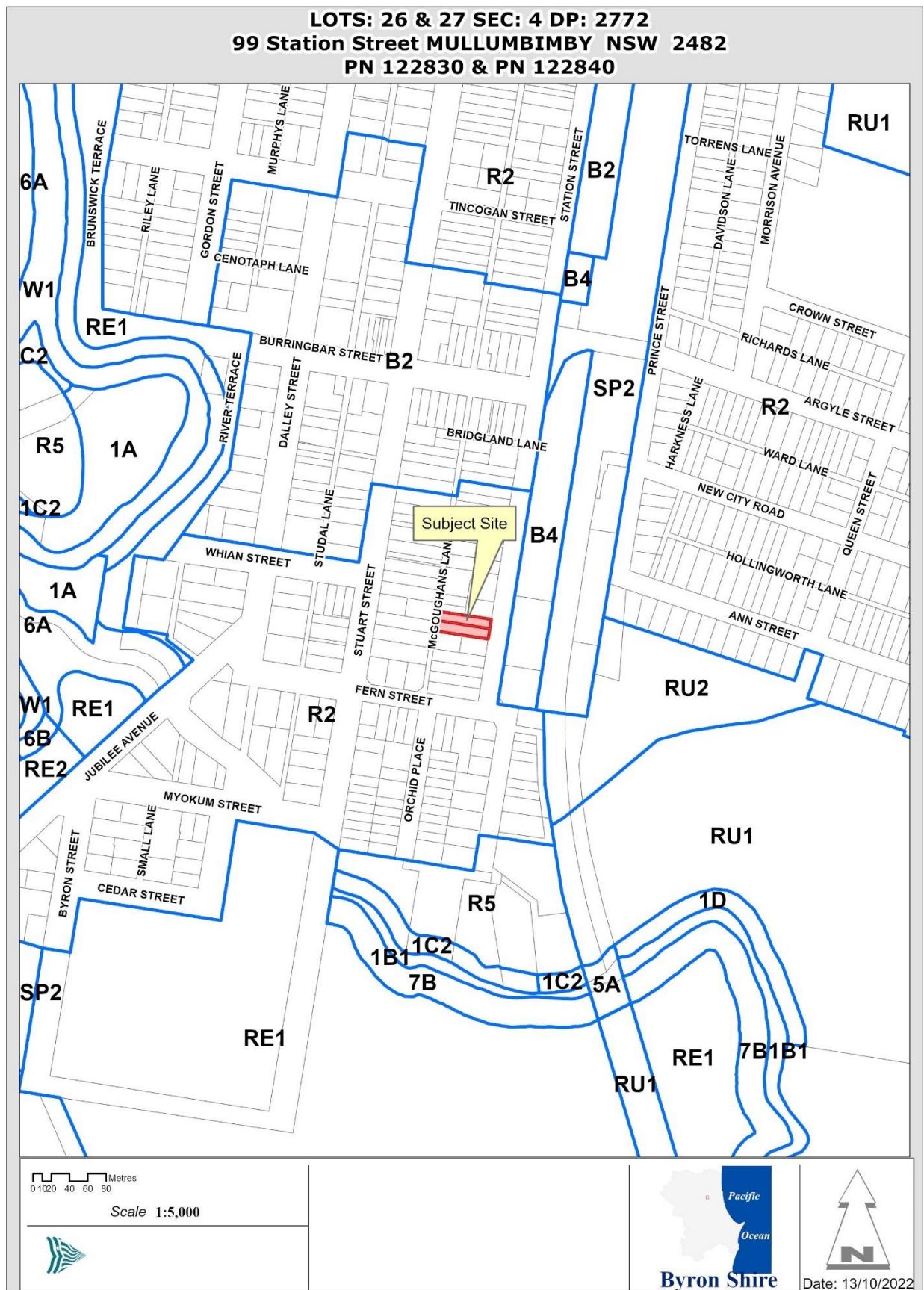
Attachments:

20

- 1 DA10.2021.619.1 Conditions of Consent, E2022/102242 
- 2 DA10.2021.619.1 Proposed Plans for approval, E2022/99502 
- 3 DA10.2021.619.1 - Submissions_Redacted, E2022/102701 
- 4 DA10.2021.619.1 Original DA Plans, E2021/131747 

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Report

Assessment:

History/Background

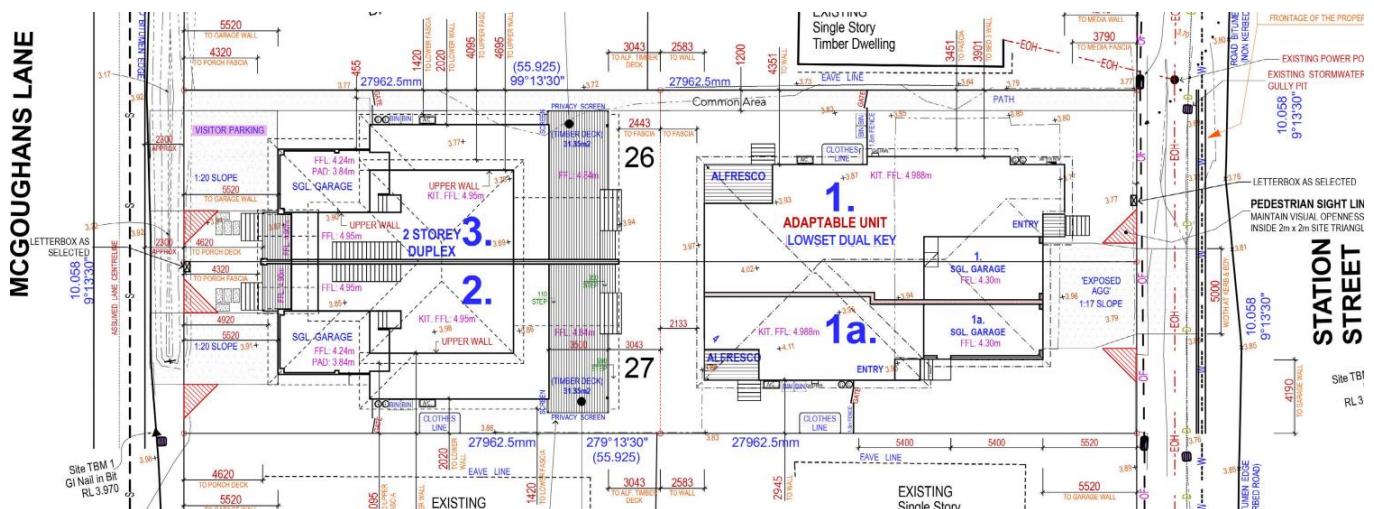
- 5 Building consent for the exiting dwelling on site was granted 15 January 1981; BA 81/2015.

Description of the proposed development

10 This application seeks approval for demolition of an existing 132m² single level unoccupied dwelling in derelict condition and ancillary structures including an open carport and single story shed. Post demolition it is then proposed to establish, and strata title

- subdivide a multi dwelling housing development consisting of 4 dwelling units contained in two duplex style structures as follows;
- Low set single storey duplex accessed from Station Street. Unit 1 (adaptable unit) 136.4m², 2 bedrooms. Unit 1A 76.08m², 2 bedrooms.
 - 15 - Two (2) storey duplex accessed from McGoughans Lane. Unit 3 129.85m², 3 bedrooms. Unit 4 129.85m², 3 bedrooms.

See site plan below



20 The development site is zoned R2 Low Density Residential under the Byron Shire Council Local Environment Plan 2014. (BLEP 2014). Both proposed duplex structures comply with the BLEP 2014 9m height limit. The single storey duplex structure fronting Station Street

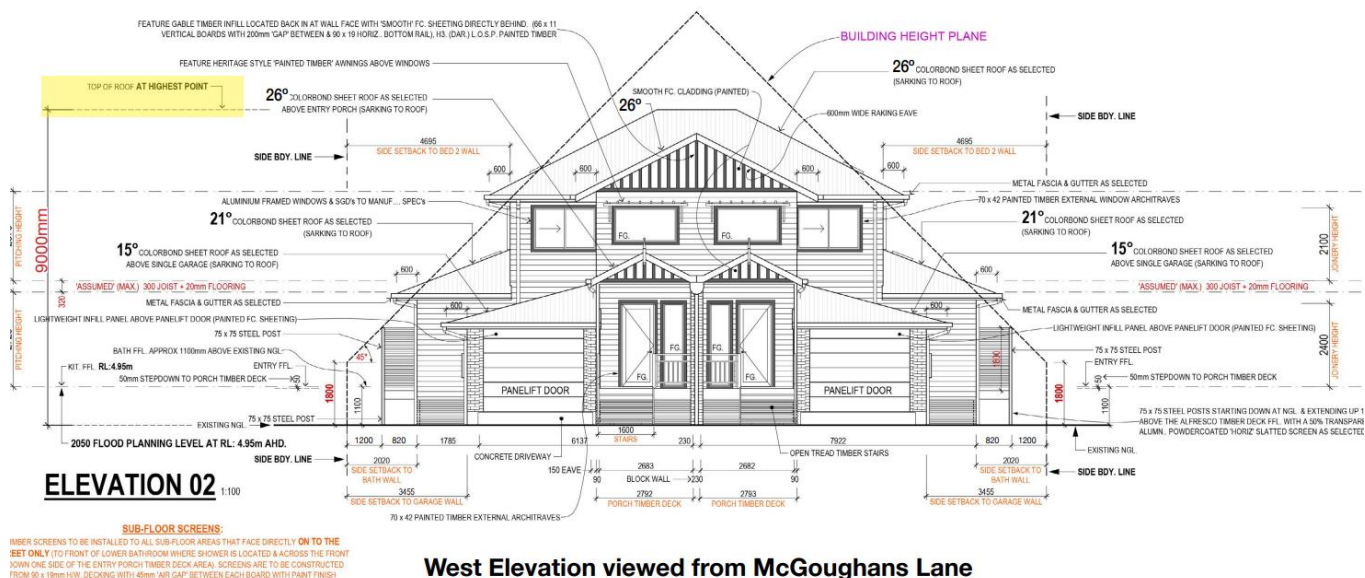
25 complies with the Byron Shire Development Control Plan 2014 (BDCP 2014) Building

Height Plane (BHP) control. The two-storey duplex fronting McGoughans Lane presents eve and associated roof BHP breaches. See elevation details below.



Elevation 1

5



West Elevation viewed from McGoughans Lane

The site will be landscaped, and a landscaping plan has been provided. This plan shows the retention or relocation of as many existing trees as practicable. Required on-site parking is provided in single car garages within each dwelling, stacked 'on drive' parking adjoining McGoughans Lane and one (1) visitor space located in the north-western corner of the site accessed from McGoughans Lane.

A draft strata plan of subdivision has been provided.

A Heritage Impact Assessment Report has been provided.

A full drawing / application document set is appended to this assessment report.

Revised plans provided in response to redacted submissions and Council feedback

Plans initially received with application showed;

- two (2) more bedrooms i.e. 4 x 3-bedroom units, and
- two (2) storey development fronting onto Station Street, thus more BHP breaches, and
- visitor and disabled parking accessed off Station Street hence a wider 'concreted' front setback adjoining Station Street and wider vehicle crossing points,
- a maximum building height of the 9.1m exceeding the 9m permitted by the BLEP 2014, and
- no detailed Heritage Impact Assessment provided.

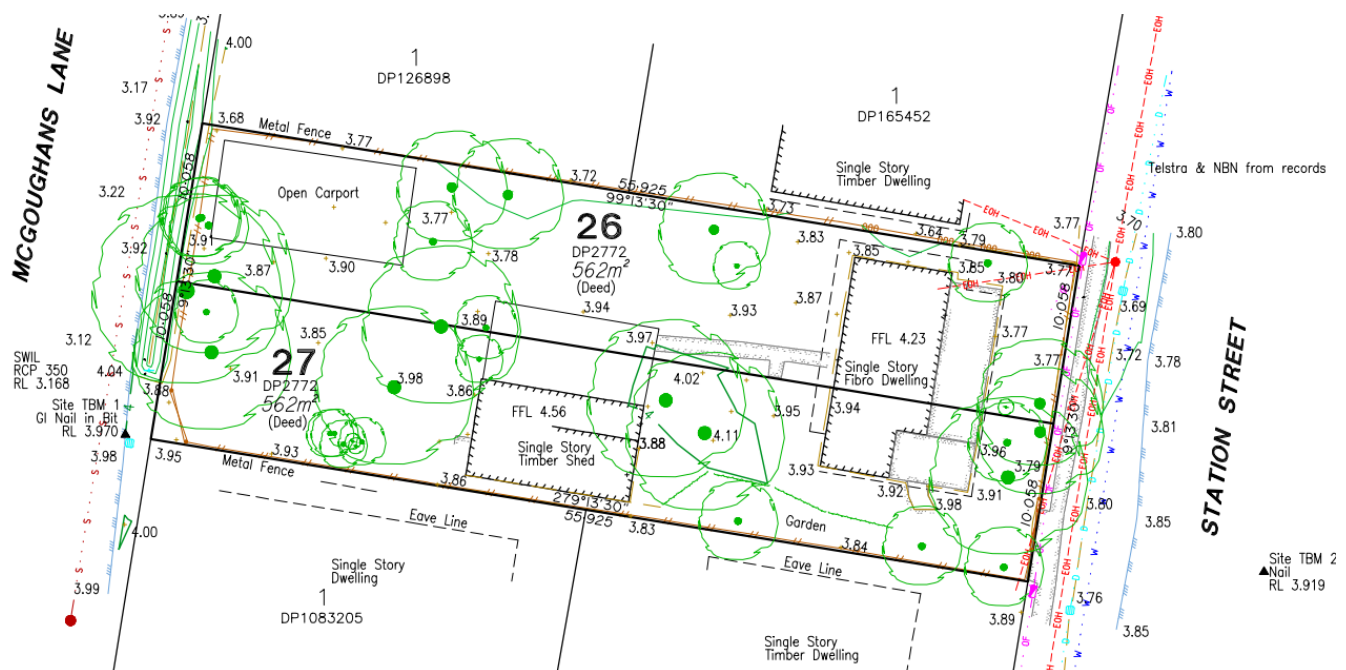
After a review of redacted submissions and feedback from Councils Heritage Consultant, Planner and Development Engineer the current revised plan set, and information was provided.

Description of the site

The subject site is described as Lots 26 and 27 of Section 4 in DP2772. The development site is a combination of 2 lots. Each lot has an area of 652m² giving the site has an overall area of 1304m². The site is rectangular with street and lane frontages of 20.12m and an east / west longitudinal dimension of 57.5m. Access to the site is via Station Street from the east and McGoughans Lane from the west.

The site contains a single storey fibro dwelling house which is derelict and unoccupied, single storey timber shed and an open carport closer to McGoughans Lane. The site is generally flat with a reduced level of approximately 3.9m AHD.

See existing site plan below;



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- 5 There are a number of established trees on the site with the balance of the site being unkept grass. The northern boundary of the site is fenced with a 1-metre-high galvanised post and wire fence. The southern boundary features a close boarded unpainted timber paling fence approximately 1m in height 6m into the site from its Station Street. This same fence then steps up to 1.8m along most of the southern boundary before returning into a 1.8m high galvanised wire and post fence which then extends along the sites McGoughans Lane boundary.

The site is approximately 250m from Mullumbimby's Burringbar Street CBD, via McGoughans Lane.

10



Plan above shows R2 Low Density Residential zoning, existing development / vegetation on site and location of adjoining dwellings

- 15 Several site visits have been made since the application was lodged and changes to design etc made.

Land is legally described	LOT: 26 SEC: 4 DP: 2772 and LOT: 27 SEC: 4 DP: 2772
Property address	99 Station Street MULLUMBIMBY
Land is zoned:	R2 Low Density Residential

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Land area is:	1304m2 development site area	
Property is constrained by:	Flood Liable Land 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

1. SUMMARY OF REFERRALS

Referral	Issue
Development Engineer	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to conditions.
S7.11 / Contributions Officer	No objections subject to conditions.
Councils Heritage Advisor	No objections subject to conditions.

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

Issues:

Councils Heritage Consultant reviewed the *initial application, all subsequent amendments and submissions received*, and concludes as follows;

- 10 As regards the initial application; *Amended plans for a development of less intensity should be sought which respects the pattern of single storey built form to Station Street, with limited driveway intrusion, and is harmonious with the established pattern of development, setbacks and landscaping. A design which retains a projecting gable form or*

use of gabled forms is appropriate but should avoid heritage replication, and include careful consideration of window design and proportions.

After a review of redacted submissions, feedback from Councils Heritage Advisor, Planner and Development Engineer the applicant provided amended plans and further information. Councils Heritage Advisor reviewed these and concluded;

Amended plans have now been submitted to provide two single storey units fronting Station Street and two x two storey units at the rear facing McGoughans Lane. Works to reduce hard standing and carparking of the front gardens have also been addressed. Amended Plans East Assets Group Issue DA 2nd Issue 26 June 2022 (21 sheets) Heritage Impact Statement Graham Hall 2 August 2022.

It is considered that the amended plans dated 29 June 2022 second issue have addressed the concerns raised and that the proposed development has now satisfactorily addressed the heritage impacts on site, setting, height, bulk and scale and landscaped areas. Approval is supported subject to conditions.

2. 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 2019'. The site is not bush fire prone land.

3. 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.

State Environmental Planning Policies (SEPP)

Considerations	Satisfactory	Unsatisfactory
<p><i>Resilience and Hazards SEPP 2021</i></p> <p>Consideration: As regards SEPP Chapter 4 Remediation of land – Councils Environmental Health Officer has assessed the application and advises as follows.</p> <p><u>History</u></p> <p>Council records confirm that the subject site has been occupied by residential development for at least 40 years. A desktop analysis of Council's archive and</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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Considerations	Satisfactory	Unsatisfactory
<p>Geocortex mapping database revealed no evidence of past contaminating activities at the subject site or in neighbouring parcels.</p> <p><u>Risk</u></p> <p>Due to the dwelling age, there are three potential contamination sources of concern within the existing building footprint and soil profile, including:</p> <ul style="list-style-type: none"> - Asbestos material; - Organochlorine pesticide (as a consequence of termiticide use); and - Lead contamination (paint chips). <p>Given the above, to ensure the site soil is suitable and/or disposed of appropriately following the demolition of the existing building. Soil testing is to be undertaken by a suitably qualified person in accordance with <i>NSW EPA Consultants Reporting on Contaminated Land – Contaminated Land Guidelines 2020 investigations, reporting methodology and information sources for obtaining land use history</i> and submitted to Council for approval.</p>		
<p><i>Housing SEPP 2021</i></p> <p>Consideration: The proposed development is consistent with the Principals of the SEPP, particularly because in accordance with;</p> <p>Chapter 3.3.a It enables the development of diverse housing types ie 2x3 and 2x2 dwelling units in two duplex structures, and</p> <p>3.3.c It has been designed in a manner to create a high level of amenity for future residents, and</p> <p>3.3.d It will make efficient use of existing infrastructure, and</p> <p>3.3.f It has a design appropriate to the locality.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>SEPP (Building Sustainability Index: BASIX) 2004</i></p> <p>Consideration: appropriate BASIX certification has been provided with the application.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

- 5 (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 according to the Land Zoning Map.
- (c) The proposed development is permitted with consent in the R2 zone and
- (d) The proposed multi dwelling housing development is satisfactory having regard to the R2 Zone Objectives as follows:

10

R2 Low Density residential Zone Objectives;

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

20 The proposed multi housing development will provide for the housing needs of the community within a low-density residential environment. This is particularly so because the development will provide a mix of housing typologies, being two and three bedrooms of different floor areas within easy walking distance of Mullumbimby's CBD. Further, the proposed development complies with the BLEP's building height and gross floor area principal development standards and generally with BDCP requirements which further define the scale and location of dwellings within the R2 Low density Residential Zone.

4.1E Minimum lot sizes for certain residential accommodation.

- 25 Requires a site size of greater than 1000m² for 'multi dwelling housing' in the R2 Low Density Residential Zone. The site is 1304m².

4.3 Height of buildings.

- 30 The BLEP 'Height of Buildings Map' requires that buildings on this site be no greater than 9m. Both proposed structures comply with this control. The duplex fronting Station was storey and 9.1m high. Subject to a review of redacted submissions and feedback from Councils Heritage Advisor it has been reduced to 6.545m. Likewise the duplex fronting McGoughans Lane, which remains 2 storey has been reduced from 9.1m to 9m.

4.4 Floor Space Ratio.

The BLEP 'Floor Space Ratio Map' (FSR) requires that buildings on this site not exceed an FSR of 0.5:1. The cumulative FSR of the proposed development is 0.43:1.

5.10 Heritage Conservation

As described above, the application includes the required Heritage Impact Statement which supports the demolition of the existing dwelling to be replaced by a multi dwelling housing development. The application has been assessed by Councils Heritage Advisor who found that the proposal was satisfactory. It is therefore considered that the proposed development will not have an adverse impact on the Mullumbimby Conservation area (MCA) and the proposed dwellings are compatible with the character of the MCA. It is therefore considered that the proposal is acceptable under the heritage provisions of the BLEP 2014.

10 ***Revised plans provided in response to redacted submissions and Council feedback***

The initial proposal featured a two storey two x three-bedroom duplex structure adjoining Station Street and requisite 'hard stand' parking and access within the sites Station Street setback area, to the detriment of a landscaped front yard. This design was of concern to submitters, Councils Heritage Consultant, Planner and Development Engineer. Councils Heritage Advisor stated;

20 *"Amended plans for a development of less intensity should be sought which respects the pattern of single storey-built form to Station Street, with limited driveway intrusion, and is harmonious with the established pattern of development, setbacks, and landscaping. A design which retains a projecting gable form or use of gabled forms is appropriate but should avoid heritage replication, and include careful consideration of window design and proportions"*

After a review of redated submissions and feedback from Councils Heritage Advisor etc the revised plans described above were received, supported by a Heritage Impact Statement. Councils Heritage Advisor concluded;

25 *"Amended plans have now been submitted to provide two single storey units fronting Station Street and two x two storey units at the rear facing McGoughans Lane. Works to reduce hard standing and carparking of the front gardens have also been addressed. It is considered that the amended plans dated 29 June 2022 second issue have addressed the concerns raised and that the proposed development has now satisfactorily addressed the heritage impacts on site, setting, height, bulk and scale and landscaped areas"*

Heritage is also discussed in greater detail under the BDCP analysis below.

5.21 Flood Planning.

35 The required minimum Flood Planning Level is 4.95 AHD for all habitable rooms. The duplex structure fronting Station Street provides an FFL of 4.988m AHD. The duplex structure fronting McGoughans Lane provides an FFL of 4.95m AHD. The proposal complies.

6.1 Acid Sulfate soils.

The site is identified as having Class 4 Acid Sulfate Soils. As part of demolition and construction earthworks will be minimal and shallow and therefore not likely to create any hazard relating to acid sulfate soil.

5 **6.2 Earthworks.**

The dwelling cross-sections provided indicate that the earthworks will be largely limited to footings. Earthworks will also be required for construction of infrastructure eg driveways and services. Management of earthworks is therefore expected to be straightforward because the required earthworks are relatively minor, and the site is largely flat.

- 10 Nevertheless, conditions have been recommended relating to the relevant listed matters, particularly the management of potential impacts of the earthworks and construction phase stormwater runoff.

6.6 Essential Services.

- 15 The proposed development will have access to necessary essential services as it is located in an established urban residential area and has previously been approved for residential development. Councils Development Engineer is satisfied that the development can be adequately serviced subject to recommended conditions of consent, which include the need for upgrades etc.

6.7 Affordable Housing in residential and business zones.

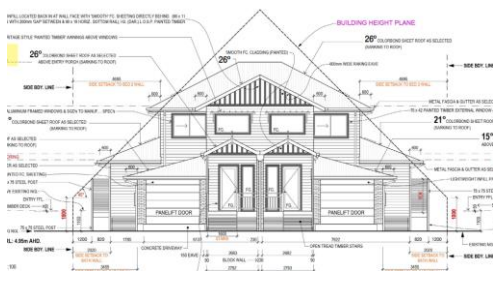

- 20 This clause requires that prior to granting consent to development on land zoned Zone R2 Low Density Residential, the consent has considered— the need for providing, maintaining, or retaining affordable housing, and the need for imposing conditions relating to providing, maintaining, or retaining affordable housing including, but not limited to, imposing covenants and the registration of restrictions about users.
- 25 While the proposal does not provide for affordable housing as defined by the clause, it instead seeks to respond to this clause through provision of new supply and diversity of housing stock. It is understood that the dwelling houses will be offered for purchase and or long-term rental over short term holiday letting. To ensure this outcome, a condition has been recommended to preclude use of the dwellings for short-term rental accommodation
- 30 and/or holiday letting.

- Without an appropriate legislative mechanism in place, Council is unable to require anything further of a proponent at this time. To this aim, staff are reviewing this clause to encompass wording in line with the on exhibition [Affordable Housing Contribution Scheme - Byron Shire Council \(nsw.gov.au\)](https://www.byrongov.au/affordable-housing-contribution-scheme) to provide greater guidance on the application of Byron
- 35 LEP 2014 - Clause 6.7.

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

No proposed instruments were identified that are apply to this development application.


5 4.4A Byron Shire Development Control Plan 2014 (DCP 2014)

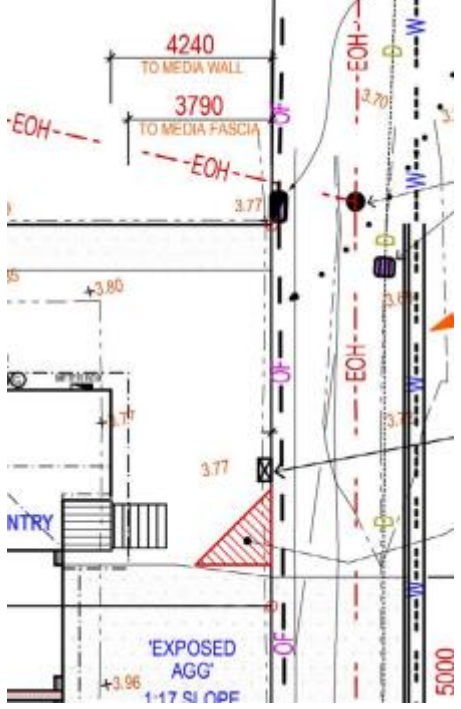
What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Objectives of this Section? Address.	Does the proposed development comply with the Performance Criteria of this Section? Address.
<p>D1.2.1 Building Height Plane (BHP) Control</p> <p>The triangular hatched line 'building envelope' shown on the plan below details the proposed 4 points of BHP breach.</p>  <p>Plan detail below shows northern and southern elevation of proposed 2 storey duplex structure. Note ensuite and stairwell void glazing only.</p> 	<p>Yes:</p> <ol style="list-style-type: none"> The development has been designed to minimise impacts on solar access. In this regard the proposed breaches of the BHP relate to comparatively minor eve and gutter / roof components only. They will have no discernible impact on solar access to adjoining properties compared to an otherwise complying development. The second storey of the proposed 2 storey duplex has been designed with no bedroom windows overlooking adjoining properties to the north or south. The proposed ensuite windows will be finished in 'obscure glass'. Major north / south facing glazing services stairwell voids only. <p>West facing second storey bedroom windows, looking towards McGoughans Lane is set back behind the stairwell voids and is therefore approximately</p>	<ol style="list-style-type: none"> The proposed development has been set back progressively from the site boundaries as height increases such that it will not adversely affect existing or future development on adjoining properties by way of overshadowing, impinging on privacy or obstructing views. On the matters of impact on privacy and view obstruction note the assessment under Objective1. Any potential overshadowing impact created by the proposed BHP breaches will be less than minor compared to the shadow cast from an otherwise compliant development. This is because the breaches of the BHP are minor only and limited to eve, gutter, and roof points. The proposed development has been designed to promote energy efficiency and such that residents will enjoy

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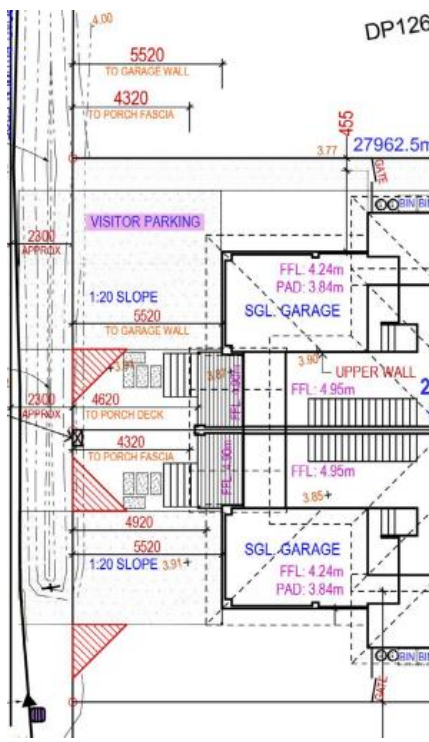
What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Objectives of this Section? Address.	Does the proposed development comply with the Performance Criteria of this Section? Address.
 <p>D1.2.2 Setbacks from Boundaries. Prescriptive Measure</p> <ol style="list-style-type: none"> 1. Minimum Street Frontage Setbacks 1 a) to Local Road (Station Street) 4.5m required. <p>The proposed media room wall of the single level duplex structure is 4.24m from the sites Station Street boundary, and the fascia of this same room is 3.79m from the boundary. See plan extract below</p>	<p>14.5m from adjoining property boundaries on the eastern side of McGoughans.</p> <p>East facing second storey bedroom glazing will have no discernible privacy or overlook impact on properties on the opposite side on Station Street. Overall, the proposed development will not have an adverse effect on the privacy of adjoining properties, or on the views from adjacent existing buildings.</p> <ol style="list-style-type: none"> 1. The proposed development will achieve a varied and interesting streetscape that complements and harmonises with existing and planned streetscapes and development in the locality. 2. The proposed development will result in 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 	<p>optimum use of winter sunlight and summer shade.</p> <p>3. The proposed development demonstrates 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 9.00am to 3.00pm on any day. This is achieved because the development is set back from side boundaries further than required by Councils DCP and, both duplex structures 'recede' inwards from side boundaries as they increase in height such that any BHP breaches are minor only.</p> <ol style="list-style-type: none"> 1. The proposed development will achieve the above Objectives and Performance Criteria relating to building setbacks. The proposed setback breaches are minor, and the development has been redesigned to maximise front setback landscaping adjoining Station Street such that it will be visually like other street front 'yard' environments along Station Street. Building breaches of the McGoughans Lane setback are minor (0.18m)

What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Objectives of this Section? Address.	Does the proposed development comply with the Performance Criteria of this Section? Address.
 <p>2. Minimum Street Front Setback 1 e) to Rear Lane (McGoughans Lane) 4.5m required and no DCP required parking to be 'stacked' in this setback.</p> <p>The proposed timber posts supporting the outer perimeter of the porch veranda will be 4.32m from the sites McGoughans Lane boundary with low set stairs, accessing the porch extending approximately 1m forward from the porch and into the required 4.5m setback. It is also proposed to 'stack' 2 of the required 4 car parking spaces in front of the individual single car garages servicing the 2-dwelling unit duplex. These carparking spaces and a visitor car parking space will sit within the required 4.5m setback from McGoughans</p>	<p>development.</p> <p>3. To achieve effective use of allotments to create useable and liveable private open space and courtyards.</p> <p>4. The proposed development has been designed to provide flexibility in siting and design of dwelling house development in urban residential areas.</p> <p>5. The proposed development has been designed to minimise any negative impacts on neighbours caused by siting. A review of redacted submissions etc resulted in changes to the scale of the development, in particular the reduction of the duplex structure adjoining Station Street from two storey to single storey.</p>	<p>and result from post supports for front verandas. Stacked car parking along McGoughans Lane is common and Councils Development Engineer is satisfied that these spaces can be appropriately accessed. 'Stacking' these required car parking spaces on driveway space necessary to access the single car garages reduces the need for more hard stand area which is otherwise utilised for lawn and landscaping. This is a preferred visual and amenity outcome for occupants of the development as well as properties, and users of McGoughans Lane.</p> <p>2. The street façade of the proposed duplex structures, and any open space between them and the street will contribute to the general attractiveness of the streetscape by means of good design, appropriate materials, and effective landscaping. The proposed duplex structures will result in a reasonable degree of integration with the existing patterns of setbacks along Station St and McGoughans Lane while also contributing to variety in the streetscape.</p> <p>3. The proposed development has been</p>

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What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Objectives of this Section? Address.	Does the proposed development comply with the Performance Criteria of this Section? Address.
<p>Lane. See plan extract below.</p>  <p>The plan extract shows a site layout with several key features: <ul style="list-style-type: none"> Visitor Parking: A designated area with a 1:20 slope, setbacks of 5520m to the garage wall and 4320m to the porch fascia. SGL Garages: Two single-car garages, each with a finished floor level (FFL) of 4.24m and a pad of 3.84m. Upper Wall: A wall with an FFL of 4.95m and a setback of 4620m to the porch deck. Setbacks and Slopes: Various setbacks (5520m, 4320m, 4920m) and slopes (1:20, 3.91%) are indicated throughout the plan. Other Features: A 27962.5m dimension is shown along the top edge, and a 3.77m dimension is shown near the top right. </p>		<p>designed such that the private open space and common landscaped areas of the site will be useable as part of the living environment available for the occupants of the development. The open spaces between buildings and the street will be unusable because of a combination of lawn areas, landscaping, and access paths and where practicable they will provide for the retention or relocation of existing trees. As such these spaces will provide private areas appropriately treated for climate control.</p> <p>4. In forming the view that the proposed building setbacks from the sites Station Street and McGoughans Lane frontage is appropriate the following matters have been had regard to as part of a merits based assessment : a) the Objectives; b) any provisions of this DCP applying to the specific location; Byron Shire Development Control Plan 2014 – Chapter D1 – Residential Accommodation in Urban, Village and Special Purpose Zones Adopted 17 September 2020 Effective 28 September 2020 10 c)</p>

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What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Objectives of this Section? Address.	Does the proposed development comply with the Performance Criteria of this Section? Address.
		<p>the position of any existing buildings in the locality; d) the size and shape of the allotment; e) the effect on vehicular safety and visibility, particularly on corner sites; f) the orientation of the allotment and the proposed dwelling with regard to the sun and prevailing winds; g) the proposed location of any private open space, courtyard or landscaped areas; h) the facade of the proposed building or buildings which will face the street and the proposed landscape treatment of that part of the allotment which is visible from the street; i) the location and treatment of any car parking areas or car parking structures on the site.</p> <p>5. The proposed duplex structure adjoining Station Street complies with the building height plane (BHP) as detailed in Section D1.2.1. The proposed duplex structure fronting McGoughans Lane breach the BHP. These breaches are discussed above, and it has been determined that they are minor and not contrary to the Objectives and Performance Criteria used to assess breaches of the BHP prescriptive measure.</p> <p>6. Dwelling house</p>

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What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Objectives of this Section? Address.	Does the proposed development comply with the Performance Criteria of this Section? Address.
		<p>development may be permitted to encroach into the side setback and building height plane where they enhance the design of buildings, complement the streetscape, and do not adversely affect privacy, solar access, microclimate, traffic safety or amenity of adjoining development. The proposed development does not breach side setback prescriptive measures. As described above, the proposed 2 storey duplex will result in minor BHP breaches, and these have been assessed to be acceptable against the required Objectives and Performance Criteria.</p> <p>7. In considering the applications request for variations to minimum setback Prescriptive Measures, Council has had regard to: a) the Objectives; b) compliance with the Performance Criteria; c) the visual impact of the variation on the streetscape; d) the impact of the variations on the amenity, privacy, views and access of surrounding properties; e) the existing and future status of the road / Laneway; f) potential traffic impacts and required sight lines as per AS2890; and g) compliance with the Building Code of Australia.</p>

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What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Objectives of this Section? Address.	Does the proposed development comply with the Performance Criteria of this Section? Address.
		8. The proposed development must have demonstrably sought to minimize any impacts on neighbouring properties through considerate siting and design. This outcome was the result of an iterative design process informed by feedback via submissions and from Councils Planner, Development Engineer, and Heritage Advisor.

B2 Tree and Vegetation Management.

- 5 The proposed development will require the removal of some trees. However, it is proposed to retain, in situ or relocate as many existing trees as practicable. This outcome is detailed in a landscape plan. The implementation of this plan is recommended as a condition of consent.

B3 Services.

- 10 The proposed development will have access to necessary essential services as it is located in an established urban residential area and has previously been approved for residential development. Councils Development Engineer is satisfied that the development can be adequately serviced subject to recommended conditions of consent, which include the need for upgrades etc.

15 B4 Traffic Planning, Vehicle Parking, Circulation and Access.

- 20 The proposed development generates the need for 6 on-site parking spaces to service the proposed dwellings and 1 on site visitor parking space. These required spaces are provided. Four (4) of these spaces will be provided in single car garages, within each dwelling unit. Note the discussion above regarding the (uncovered) 'stacking' of two of these spaces and the visitor space on the driveway access from McGoughans Lane and therefore partially in the front setback required from the sites McGoughans Lane boundary.
- Cycle parking can be provided in the single car garages or elsewhere within the curtilage of the dwelling. Subject to conditions the development can be appropriately accessed by vehicles and pedestrians.

The laneway behind the site is sealed to the nearest street (Fern Street)

B5 Providing for Cycling.

- 5 Note comment above under B4 regarding the provision of bike parking. The proposed development is ideally suited for cycle and pedestrian access to the Mullumbimby CBD, and a wide range of services and facilities within Mullumbimby Town and environs.

B8 Waste Minimisation and Management.

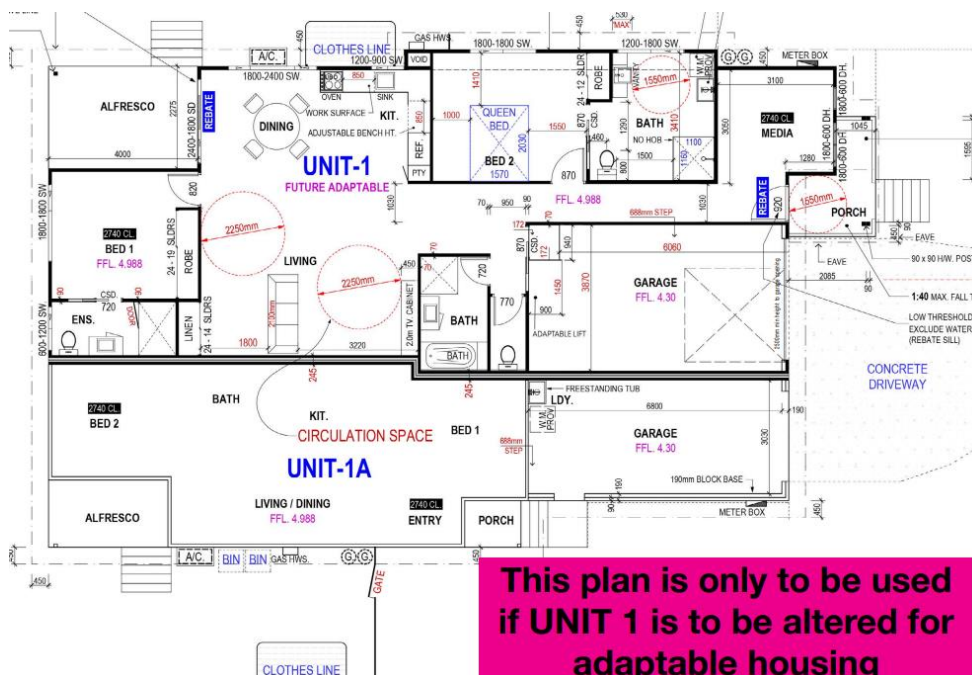
Conditions of consent are recommended to insure waste minimisation and management during demolition and construction.

B9 Landscaping.

- 10 In accordance with the requirements of this chapter a landscaping plan has been provided with the application. Other than driveways and dwellings the balance of the site will be finished in lawn which will provide good living amenity for future residents. The implementation of this landscaping plan is recommended as a condition of consent.

B13 Access and Mobility

- 15 The application includes an Access and Mobility Statement and detail of a 'Future Adaptable Unit' (see plan detail below) which, subsequent to feedback from Council was redesigned to include an internal garage of sufficient width to accommodate an adaptable lift/platform area. The dwelling is single storey. Councils Development Engineer has reviewed the design / specifications of the adaptable unit. Overall, the development achieves the requirements of this Chapter and AS1428.1.
- 20



Part C1 Non-Indigenous Heritage Provisions

- 25 C1.2 – Development Application (DA) Requirements

C1.2.1 What Development Requires Consent?

In accordance with the requirements of C1.2.1 a DA has been lodged seeking consent for the demolition of a dwelling at 99 Station Street, within the Mullumbimby Conservation Area (MCA) and the erection and strata titling of four (4) new dwellings, contained within two (2) duplex structures.

C1.2.2 Assessment Requirements

In accordance with the requirements of C1.2.2 the application has been supported by a Heritage Impact Statement, including an assessment of the demolition of the existing dwelling prepared by an appropriately qualified heritage practitioner.

C1.3 Conservation Guidelines and Requirements – Heritage Items, Heritage Conservation Areas, and Development in their Vicinity

C1.3.1 General Streetscape Context

The proposed development achieves the relevant objectives of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor it will;

1. promote development that complements the existing heritage character and amenity of the area and the heritage significance of the Heritage item or Heritage Conservation Area being the Mullumbimby Conservation Area (MCA), and
2. it will maintain and enhance the heritage character of the streetscape of MCA, and
3. it will ensure that new development respects the established patterns and visual setting in the streetscape including setbacks, siting, landscape settings, car parking and fencing, and
4. it will retain and reflect the character of building frontage design in the streetscape.

The proposed development achieves the relevant performance criteria of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor;

1. The side and front setbacks will be typical of the spacing of existing buildings both from each other and from the street, such that the streetscape will be retained. This is particularly the case in relation to the developments Station Street frontage where, post submissions and feedback from Councils Heritage Consultant the duplex structure was reduced from 2 x 3 bedrooms to 2 x 2 bedrooms, reduced from 2 storey to single level, redesigned to be more reflective of heritage character including a reduction in vehicle crossing area and parking 'hardstand' and a consequent increase in street front landscaping resulting in a street front presentation more typical of this part of the Mullumbimby Conservation Area. As such Councils Heritage Advisor concluded that *"It is considered that the amended plans dated 29 June 2022 second issue have addressed the concerns raised and that the proposed development has now satisfactorily addressed the heritage impacts on site, setting, height, bulk and scale and landscaped areas"*
2. The established landscape character of the locality including height of canopy and density of boundary landscape plantings will as far as practicable be retained with any temporary change to be addressed via new landscaping. Post a review of redacted submissions and feedback from Councils Heritage Advisor a landscaping plan has been provided showing the retention in situ or relocation of existing trees on

site and, where practicable additional tree planting in keeping with the objectives of the MCA. The implementation of this landscaping plan is a recommended condition of consent.

3. The new dwelling development will respect and complement the existing heritage character of the streetscape by maintaining the general scale, height, articulation, bulk, and proportions of traditional and new buildings in the streetscape.
4. No extensions to the existing dwelling are proposed as it will be demolished. This building has no heritage value.
5. Proposed floor levels will be generally compatible with the floor levels of adjoining buildings. The proposed 2 storey duplex, accessed from McGoughans Lane and to the rear of the site is not atypical of other two-level developments along McGoughans Lane. Both duplex structures (single and two level) that make up the proposed multi dwelling housing development have ground floor levels elevated to be flood hazard resilient. It is reasonable to assume that overtime this type of built response will become will be more prevalent in the Station Street / McGoughans Lane area given the need for flood risk resilient housing and the opportunity of this area's proximity to the CBD.
6. The proposed development presents a sympathetic response to the character of the streetscape and will generally remain subservient to any Heritage or character items, especially in relation to height. Again, the reduction in proposed height from that initially proposed, because of the input of submitters and feedback from Councils Heritage Advisor is noted.

The proposed development achieves the relevant prescriptive measures of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor;

1. The original front facade of the building is part of a structure which has no heritage and will be demolished.
2. The proposed new dwellings do not seek to make replica copies of the existing dwelling and will be larger. The exiting small dwelling, at 132.5m² is an inefficient use of this comparatively large site 1304m² and it is therefore unreasonable to anticipate that any future development would follow its same proportion and scale. It is also noted that the development site is composed of two titles which could, subject to consent be developed with two dwellings.
3. The proposed development does not use a mixture of features from different eras, nor does it add historical features to new buildings that are incompatible with the heritage context.
4. The following components of the streetscape have been illustrated and addressed in detail in the development application, thus demonstrating that the proposed development complements the character and heritage significance of the established streetscape:
 - a) front setback of dwellings
 - b) materials, colours, textures
 - c) roof form and pitch
 - d) scale, height, and proportion of buildings

- e) landscaping and garden treatment
- f) spaces between buildings
- g) facade treatment, verandas, and window placement
- h) floor levels
- 5 i) height and design of fences
- j) placement and design of garages and driveways
- k) existing street trees
- l) balance between solid walls and opening

10 In this regard Councils Heritage Advisor concludes; *"It is considered that the amended plans dated 29 June 2022 second issue have addressed the concerns raised and that the proposed development has now satisfactorily addressed the heritage impacts on site, setting, height, bulk and scale and landscaped areas"*

C1.3.2 Signage and Advertising

15 The proposed development involves no signage or advertising other than the temporary effects of signage associated with construction. These effects will be controlled by appropriate conditions of consent.

C1.3.3 Gardens and Landscape

The proposed development achieves the relevant objectives of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor it will;

- 20 1. Ensure that the development retains the traditional character of gardens and landscapes typical of the MCA. This has been demonstrably achieved via a proposed landscaping plan featuring the retention and / or relocation of existing trees where practicable, the introduction of new planting and generous lawn areas along its Station Street frontage.

25 The proposed development achieves the relevant performance criteria of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor;

- 30 1. The proposed design of gardens and landscaping for development on or in the vicinity of Heritage Conservation Area (MCA) or Heritage items is compatible with the traditional character, layout and species composition of gardens and landscaping in the Heritage Conservation Area.
- 35 2. This application seeks consent for development in a Heritage Conservation Areas (MCA) and includes a proposed landscape plan that identifies the design, layout and species proposed, together which Councils Heritage Advisor has determined to be compatible with the traditional character, layout and species composition of gardens and landscaping in the MCA. This landscape plan has been prepared and reviewed in accordance with the requirements of BDCP 2014 Chapter B9 Landscaping and its implementation will be required as a condition of consent.

40

C1.4 Conservation Guidelines and Requirements – Heritage Items and Conservation Areas

C1.4.1 Roof Form and Chimneys

The proposed development achieves the relevant objectives of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor it will;

1. Retain the characteristic scale and massing of roof forms in the Heritage Conservation Area (MCA).
2. The existing dwelling, which has no chimney will be demolished. The proposed multi dwelling structures also have no chimneys, and the proposed roof elements relate effectively to the existing heritage fabric of the Heritage Conservation Area (MCA). It is noted that this has been achieved while also delivering flood resilient floor levels within the 9m statutory height limit and only minor breaches of the building height plane control. These outcomes can be attributed to the larger scale of the development site and the 'containment' of the 4 proposed dwellings with 2 duplex structures.

The proposed development achieves the relevant performance criteria of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor;

1. The proposed development maintains traditional roof forms and uses materials considered to be compatible in the MCA. Incompatible materials and contemporary colours will not be used.
2. Appropriate gutter profiles will used and finished in MCA appropriate colours.
3. As the proposed development involves the demolition of the existing dwelling no roof extensions are proposed. The proposed roof has been carefully chosen to relate to existing and anticipated roof forms in the MCA as regards materials, shape, and pitch. Proposed replacement materials generally match existing (MCA) in colour, materials, finish, and details. These proposed materials generally minimise large, blank areas of roofing to reduce the impact on adjoining properties.
4. No attic rooms are proposed. The proposed development involves the demolition of the existing dwelling, as such no upper floor extensions altering the overall design of the (existing) building are proposed.
5. The proposed new dwellings will have roofs that generally reflect the orientation, size, shape, pitch, eaves, ridge heights and bulk of existing roofs in the locality and are in proportion with the proposed buildings.
6. The proposed development involves the demolition of the existing dwelling thus no chimneys will be retained, and none are proposed.

C1.4.2 Verandas

The proposed development achieves the relevant objectives of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor;

1. Proposed new veranda elements (or similar) relate to the proportions and scale of the existing heritage fabric of the Mullumbimby Conservation Area (MCA). Proposed veranda spaces facing towards Station St and McGoughans Lane are limited in scale

and have the dual function of covered entrance ways. The larger veranda areas are internal to the development and function as part of the deck and alfresco areas which integrate into and open onto the private open space courtyard areas.

The proposed development achieves the relevant performance criteria of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor;

1. New verandas are acceptable in terms of the requirements and expectations of new development in the MCA, as assessed by Councils Heritage Advisor.
2. The proposed new development includes verandas, or similar not atypical with the character of surrounding development.
3. The proposed development involves the demolition of the existing dwelling. Hence the retention of original verandas is not a relevant matter for consideration. However, the proposed new verandas are simple in design and generally compatible with the existing and evolving built environment of the MCA. Note the assessment comment in 1 above under relevant objectives.
4. Proposed new verandas are generally open and considered to fit with the streetscape and are generally compatible with the existing and evolving built environment of the Mullumbimby Conservation Area (MCA).
5. The proposed development includes the demolition of the existing dwelling; hence the reconstruction of verandas is not proposed. However, proposed verandas have been assessed to be consistent with verandas in the existing and evolving MCA built environment.
6. The applicants Heritage Consultant, and Councils Heritage Advisors input to the proposed development have ensured that no 'faux heritage' elements such as the inappropriate use of bullnose style, lace ironwork, decorative fretwork or Federation brackets on posts will be introduced.
7. Proposed new street facing verandas are open and not infilled.

C1.4.3 Windows and Doors

The proposed development achieves the relevant objectives of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor;

1. The proposed development ensures that new door and window openings and their construction are clearly related to the proportions, placement, character, and scale of the existing heritage fabric as evident in the existing and evolving MCA built environment.

It is considered that only Prescriptive Measure C1.4.3.3 is relevant to the proposed development as it involves the full demolition of the existing dwelling. Councils Heritage Advisor considers that the proposed windows and doors are generally compatible with the proportions, position, and size of those typical of the locality, being the Mullumbimby Conservation Area (MCA).

C1.4.4 Building Materials

The proposed development achieves the relevant objectives of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor;

1. The selection of building materials is generally based on an understanding of the original building finishes and maintains the heritage integrity and character of the MCA.

The proposed development achieves the relevant performance criteria of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor;

1. It employs finishes compatible with the heritage significance and character of the Mullumbimby Conservation Area (MCA).
2. The materials to be used will maintain the integrity and character of heritage buildings and streetscapes, as evident in the MCA.
3. The proposed development involves the demolition of the existing dwelling on site, however proposed materials are generally compatible with a frontage (evident in the MCA) dominated by timber buildings and generally lightweight materials such as weather board and brick etc.
4. The proposed development involves the demolition of the existing dwelling on site. However, while this means that the form and materials of the principal (existing) elevations will no longer exist the new proposed materials are considered compatible with the existing and evolving built environment within the MCA. It is noted that the existing dwelling to be demolished has no evident heritage value.
5. The proposed development involves the demolition of the existing dwelling on site; thus, no repairing of existing fabric or external surfaces is proposed.
6. The existing development is not a listed heritage item and has no evident heritage value. However, the new development will use materials compatible with those typical of buildings within the MCA eg horizontal weatherboard, brick, corrugated roofing iron, and traditional fascia, gutters, and down pipes etc.
7. The proposed new development will use heritage complementary materials, as evidenced in the Mullumbimby Conservation Area (MCA).
8. The existing development is not a Heritage item. However, any decorative detailing on the proposed new development has been limited to that assessed to be compatible with the built environment of the MCA.
9. The proposed development involves the demolition of an existing dwelling. Thus, the need for matching of the colour and texture of existing bricks, their jointing profile and mortar colour matching with an existing building as closely as possible to that used in an existing building is not relevant. However, the proposed finish materials to be used on new dwelling have been assessed as being compatible with the materials and finishes of those on original and evolving buildings within the MCA built environment. No white, inappropriately light, multicoloured or double height bricks or imitation sandstone blocks are proposed to be used. Councils Heritage Advisor has reviewed the proposed colour and material swatches and considers them appropriate for the MCA.

10. The proposed new development does not involve the use of textured paint finishes.

C1.4.5 Colours

The proposed development achieves the relevant objectives of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor;

- 5 1. The selection of colours for Heritage items and components of a Heritage Conservation Area are based on an understanding of original finishes.
2. The colours employed in the new development are compatible with the significance and character of the MCA. Councils Heritage Advisor has reviewed the proposed colour and material swatches and considers them appropriate for the MCA.
- 10 3. The proposed development avoids the use of colours that are inappropriate or incompatible with the heritage character of heritage items or the MCC.

The use of colours that are inappropriate or incompatible with the heritage character of Mullumbimby Conservation Area (MCA) has been avoided.

- 15 The proposed development achieves the relevant performance criteria of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor;

1. The proposed new dwellings will be painted in a traditional colour scheme. Colour scheme review and advice was provided by Councils Heritage Advisor and via input from submitters, and this advice was adopted into a revised application.
- 20 2. The proposed colour scheme will respect and enhance the individual architectural details of the building, particularly as regards a colour scheme anticipated to be used on dwellings within the MCA.
3. The proposed colour scheme maintains light colours for walls and roof with dark colours for trims and remains harmonious in the heritage landscape of the locality, being the MCA.
- 25 4. The face brickwork to be used on the new dwellings will not be painted or rendered.
5. Any proposed variations in colour to be used for the new development will be harmonious in the streetscape, as evident in the MCA.
- 30 6. The proposed new dwellings will not use primary colours, black, white, or textured paint finishes on external surfaces. Muted tones are proposed ie Resene Soapstone on the weather board, Resene Shale Grey for roofing iron, tilt garage doors and facias etc, and 'raw' unpainted face brick.
7. The proposed development utilises a traditional colour scheme, as discussed above. The proposed development involves the demolition of the existing dwelling on site, thus negating the need for heritage colour matching with an existing building.
- 35

It is noted that a specific schedule of external finish materials and colours has been provided with revised plans. The use of these colours and materials will be conditioned.

C1.4.6 Parking, Garages and Carports

- 40 The proposed development achieves the relevant objectives of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor;

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1. It allows for reasonable on-site car parking while retaining the character and significance of the Mullumbimby Conservation Area (MCA).
2. Car parking facilities (such as garages, carports, and driveways) are designed to be compatible with the heritage environment and will not have an adverse visual impact on heritage streetscapes and are visually discreet.

The proposed development achieves the relevant performance criteria of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor;

1. Proposed car parking will not interfere with the visual appreciation of the Heritage Conservation Area (MCA).
2. The proposed development involves the demolition of all structures on site, including parking sheds. However, proposed garaging and open car parking etc has been designed and assessed to not detract from and will generally contribute to the character of the MCA.
3. Four (4) single car garages are included in the Station Street and McGoughans Lane street front facades of the new dwelling. These garages will not however dominate their respective façades or the streetscapes as they will be low set and set back behind other more forward facing façade elements. They have been purpose designed to complement the architectural features of the dwelling, which are generally considered acceptable in the MCA. One open visitor car parking space will be located towards the north-western corner of the site and accessed off McGoughans Lane.
4. The proposed garages, to be accessed off Station Street and McGoughans Lane will be 'stepped' back in the street front facing façade of the proposed dwellings. See also discussion in 4 above.
5. The proposed garages are of a simple design, recessed and generally matched to the remaining front façades of the proposed dwellings. The proposed garages will not dominate the proposed dwelling.
6. Proposed garaging and on site (visitor) parking (uncovered) will not be provided in a prefabricated metal shed.
7. The proposed location and scale of garaging, on-site parking and driveways has been through several design changes in response to the review of redacted submissions and input from Council Development Engineer and Heritage Advisor. Consequently, the proposed carparking, and access to it has allowed for the retention or relocation of existing trees on site, where practicable and more landscaped and open lawn as evidenced in the proposed landscaping plan.

C1.4.7 Fences

The proposed development achieves the relevant objectives of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor;

1. The proposed low set 1.2m high flat top picket fence along the sites Station Street boundary is intended to contribute to and be consistent with the heritage significance of the Mullumbimby Conservation Area (MCA). It will define the public and private

realm in a non-obtrusive manner and will generally complement the overall character of the streetscape.

The proposed development achieves the relevant performance criteria of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor;

1. The proposed development involves the demolition of the existing dwelling therefor the existing front fence will be removed to be replaced by a simple 1.2m high timber flat top open picket fence typical of that used in the MCA and other heritage areas.
2. The new proposed picket fence will be of a traditional design, modest height and will not be solid. It will allow views of the garden / lawn and front of the buildings. New fencing will be consistent with traditional fences and other low set fences in this part of Station Street.
3. This is a new development and a simple fence style is proposed that will harmonise with the heritage streetscape evident in the MCA.
4. Proposed new fencing will respect the traditional hierarchy of fences for the front, side, and rear boundaries, as evident in the MCA. The local environs of Station Street and McGoughans Lane present a wide range of fencing types and heights with many not heritage sympathetic. Side boundaries are often demarked by 1.8m high close boarded or solid fences evidently intended to provide security and privacy. Existing fencing on the development site is typical with 1.2m high open galvanised metal fencing along the northern boundary and 1.2m to 1.8m high close boarded timber fencing along the southern boundary which ends in a run of 1.8m high galvanised metal fencing returning along McGoughans Lane. Proposed new fencing will consist of low set 1.2m high flat topped open picket fencing along road and lane frontages returning into 1.8m high side boundary fencing beyond front setback areas. This will be an improvement on the existing situation, while still respecting the heritage expectations of the MCA.
5. Proposed new fence heights will be consistent with the height of existing fences in the street.
6. No metal panel fences, spear tops, and aluminium lace panel fencing is proposed.

C1.4.8 Outbuildings and Swimming Pools

No swimming pool or outbuildings are proposed.

C1.4.9 Subdivision

Relevant Objective 1. To retain the development and subdivision pattern of the Heritage Conservation Areas including their characteristic rhythm and spacings of the built form.

Comment. The proposed development will be strata titled. The four (4) proposed dwellings will be contained within two (2) duplex style structures. The development site is currently composed of two (2) separate lots. The proposed strata title subdivision will change this, but will not materially alter the development and subdivision pattern within the MCA, including the characteristic rhythm and spacings of built forms. This is because of the

containment of the four (4) dwellings within two (2) new moderately sized duplex structures on a 1304m² 'parent' site resulting in built structures that generally comply with the building 'bulk and location' requirements of the BLEP 2014 and BDCP 2014. The proposed development, and subdivision will therefore not materially change the development and subdivision pattern along Station Street and MCGoughans Lane.

Performance Criteria

1. The allotment and building spacing, including frontage widths, side and front boundary setbacks will not impact adversely on vistas and views to and of Heritage items and the wider Mullumbimby Heritage Conservation Area (MCA). The principal elevations of buildings will not be interrupted or obscured.
2. The existing structure to be demolished are not a heritage item. As discussed above, the proposed development including subdivision results in buildings presenting satisfactory curtilage, including important landscape and garden elements ie trees which where practicable are being retained in situ or relocated within the site.
3. The proposed strata title subdivision does not require unreasonably rearranged vehicular access and car parking, on or off site that would adversely affect the principal elevation of any heritage item or components of the MCA. This matter has been reviewed by Councils Development Engineer and, subject to design revisions has been deemed satisfactory.
4. The proposed strata title subdivision will allow the landscape quality of the streetscape in MCA to be retained and enhanced.

C1.4.10 Dual Occupancy, Subdivision and Development on Single Lots

Objectives

1. To retain the traditional relationship between Heritage items or Heritage Conservation Areas and the original subdivision lot pattern and character.
2. To ensure that Heritage items are not dwarfed by new additions or new development.

Performance Criteria

1. Dual Occupancy development on lots that were originally intended to contain a single dwelling house must not create adverse impacts on the traditional relationship between a Heritage item and the original lot boundaries, setbacks, and characteristics.
2. Dual Occupancy development on lots that were originally intended to contain a single dwelling house must not dwarf a Heritage item, nor compromise its heritage values.
3. Applications seeking consent for subdivision of lots on which there is a Heritage item or in a Heritage Conservation Area must include full details of proposed future

development on the land, together with an assessment of potential impacts on heritage values.

5 Comment: The proposed development is not a dual occupancy. It is a however a 'multi dwelling' development and strata title subdivision within a Heritage Conservation Area. In this regard note the comments above in C.1.4.9. It is therefore concluded that the proposed development is not at odds with either the Objectives or Performance Criteria of this section.

C1.5 Special Guidelines – Development in the Vicinity of a Heritage Item

10 C1.5.1 New Development in the Vicinity of a Heritage Item

87 Station Street is a BLEP 2014 heritage listed item (Item;1153 House of local significance) and 93 Station St is also a BLEP 2014 heritage listed item (Item;1154 House and stables of local significance). These dwellings are on the same side of Station Street as the proposed development being 1 and 4 properties north of the site and therefore not
15 adjoining. The proposed development achieves the relevant objectives of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor;

1. It will achieve a sympathetic relationship with nearby heritage listed items in terms of scale, massing, character, setback, orientation, materials, and detailing.
- 20 2. The proposed development has, in response to submissions received and feedback from Councils Heritage Advisor been redesigned to ensure that it respects the established streetscape, and the patterns of development in the vicinity of the listed heritage items.
- 25 3. The proposed development has been carefully sited to retain, and not compromise the integrity and setting of the listed heritage items.

The proposed development achieves the relevant performance criteria of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor;

- 30 1. It will complement, not compete with the elements that contribute to the uniqueness and heritage significance of the heritage items itemised above.
2. It has been located to not overshadow, nor impede existing views of the identified heritage items and it will not visually dominate, compete with or be incompatible with the form of these heritage items.
- 35 3. The scale, form, bulk, and detail of the proposed development will not detract from the scale, form, unity, cohesion, and predominant character of the heritage items in the vicinity of the development. Neither is it a replica copy of any heritage item.
- 40 4. The design of the two proposed duplex structures has been kept appropriately simple, and they do not propose or use a mixture of features from different eras or add heritage features to new buildings. The proposed dwellings are a bespoke architectural response to the site and Councils planning controls and not a contemporary kit/project design which purport to be heritage homes. The development does not propose a poorly integrated mixture of design elements from

different eras that will not fulfil the objectives for new development in the vicinity of heritage items.

5. The proposed development does not include underground parking. Parking will be in single car garages or external, uncovered and on grade.

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C1.6 Special Guidelines – Heritage Conservation Areas

C1.6.1 General policy

The proposed development achieves the relevant General Policy requirements of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor;

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1. It generally respects the scale, density, form, and proportions of existing development, with special attention to the low-set, horizontal emphasis of existing buildings. This is particularly so for the single level duplex structure fronting Station St which, post a review of redacted submissions and input from Councils Heritage Advisor was reduced from 2 storey to single level with other changes made to building setback and street front landscaping etc.
2. The proposed development is characterised by generous setbacks and landscaping consistent with the existing pattern of development in the MCA thus conserving the space between buildings that contribute to the character of the Mullumbimby Conservation Area (MCA).
3. The proposed development will result in a single storey façade presentation in the Station Street streetscape.
4. The proposed duplex structure accessed from and fronting onto McGoughans Lane has 2 x 3-bedroom units, thus requiring 4 on site carparking spaces. Two of these spaces will be provided in single car garages with the remaining two spaces 'stacked' in the access driveway to McGoughans Lane. The required visitor parking space will be located towards the north-western corner of the site and will be within approximately 2.3m of the sites McGoughan St boundary. These spaces will be in the required setback from the sites McGoughans Lane 'rear' boundary. However, this is not an uncommon situation along McGoughans Lane and overall, the development, including this parking arrangement will not detract from the established and evolving heritage character and amenity of McGoughans Lane. No 'stacked' parking is proposed in the street front setback adjoining Station.
5. The proposed fence along the sites Station Street boundary will be a low set 1.2m high traditional flat top picket fence. It will therefore be consistent with other fencing forms along this part of Station Street.

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C1.6.10 Mullumbimby Conservation Area

It is considered the redesigned proposal with two single storey dwellings facing Station Street and through the use of materials, roof pitches, height bulk and scale is a satisfactory response to the Mullumbimby Conservation Area.

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C1.6.11 New Development in Heritage Conservation Areas

Objectives

The proposed development achieves the relevant objectives of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor;

- 5 1. The proposed new development ensures that the siting of new development retains the integrity of the Heritage Conservation Area. Byron Shire Development Control Plan 2014 Chapter C1 Non-Indigenous Heritage Adopted 4 November 2021 Effective 25 November 2021 Page 38
- 10 2. The proposed new development achieves a sympathetic relationship within the Heritage Conservation Area of which it is a part, being the Mullumbimby Conservation Area.
- 15 3. The proposed new development, which has evolved through several design changes because of feedback received from public submissions, assessment from Councils Heritage Advisor and inputs from Councils Planner and Development Engineer respects the established streetscape, and the patterns of development, including setbacks, siting, landscape settings, car parking, height, dominant ridgelines and building envelopes within the Mullumbimby Conservation Area.

Performance Criteria

20 The proposed development achieves the relevant performance criteria of this section because, as demonstrated in the application and as assessed by Councils Heritage Advisor;

- 25 1. The proposed new development respects and utilises the topography and existing vegetation within the Heritage Conservation Area. The proposed development requires minimal earthworks other than those associated with site preparation, flood resilience response and construction. Where practicable the proposed development retains in situ or relocates existing established tree cover on site.
- 30 2. The proposed new development will maintain and/or complement, not compete with, the elements that contribute to the setting, uniqueness, and heritage significance of the Mullumbimby Conservation Area (MCA).
- 30 3. The proposed new development responds to the established development patterns such as subdivision layout, setbacks, and spaces between buildings. The predominant setbacks, as typical along Station Street will be retained ensuring the visual uniformity of the MCA is maintained.
- 35 4. The proposed new development only introduces limited contemporary elements such as tilt garage doors but in general design it maintains reference to heritage character. Therefore in design, scale, form, bulk and detail the proposal does not detract from the scale, form, unity, cohesion, and predominant character of the MCA. The incorporation of basic design elements such as the characteristic roof form and massing, proportions of windows, doors and verandas has been achieved such that

Councils Heritage Advisor comments; *“It is considered that the amended plans dated 29 June 2022 second issue have addressed the concerns raised and that the proposed development has now satisfactorily addressed the heritage impacts on site, setting, height, bulk and scale and landscaped areas”*

- 5 5. The design of the proposed new development is simple and does not use a mixture of features from different eras or add heritage features to new buildings that are incompatible with the heritage context. The proposal is a bespoke design and not a contemporary kit/project designs which purports to be a ‘heritage home’.
6. The proposed development does not include underground car parking.
- 10 7. This proposed new development in the MCA has addressed and is consistent with the statements of Character and Description, Statement of Significance and Policies described in the Sections C1.6.1 – C1.6.8 relevant to the MCA; see assessment in C1.6.10 above.
- 15 8. The development application, being for new development in a Heritage Conservation Area is accompanied by a Heritage Impact Statement prepared by *Graham Hall and Partners - Architects and Heritage Consultants – Trafalgar Street – Annandale – NSW. Dated 2 August 2022.*

D6 Subdivision.

- 20 The proposed development includes a strata title subdivision. Conditions of consent to apply.

Part E – Further Controls Applying to Specific Localities

Chapter E3 – Mullumbimby

- 25 The subject development site is located within Precinct 2 – Central Mullumbimby Residential. See DCP extract below



E3.4 Character, Bulk and Scale of Development

The proposed development will achieve the objectives and performance criteria relating to the general (E3.4) anticipated Character, Build and Scale of Development and (E3.5) Urban Design and Infill outcomes specified for development in Mullumbimby.

- 5 Further the development will achieve the Objectives and Performance criteria for Infill Developments (E3.6) in Precinct 2 – Central Mullumbimby Residential, and (E3.9) Urban Open Space and Recreation including relevant Prescriptive Measures.

- 10 Appendix E3.1 Character Precincts sets out Character of buildings, Height and scale, Materiality, Veranda and Fencing guidelines and expectations for new developments within Mullumbimby's Precinct 2 Central Mullumbimby residential Area. Overall, the proposed residential development embodies and is consistent with this guidance and will achieve the anticipated built form outcomes sought. This is particularly so because the proposed development achieves the heritage expectations of the BLEP 2014 and BDCP 2014 generally, and specifically for new development in this part of Mullumbimby which is also an identified heritage area. The proposal is satisfactory.

15 **4.5 Environmental Planning & Assessment Regulation 2000**

Clause	This control is applicable to the proposal:	I have considered this control as it relates to the proposal:	If this control is applicable, does the proposal comply?
61	Yes	Yes	Yes
62	No	NA	NA
63	No	NA	NA
64	No	NA	NA

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

20 **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?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality.

Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.
Construction Impacts	The development will generate minor impacts during its construction. Conditions of consent recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.

4.7 The suitability of the site for the development

The site is a serviced, and generally unconstrained property and is suitable for the proposed development. The site is affected by flooding, however the proposal satisfies the minimum floor level requirements for residential development

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4.8 Submissions made in accordance with this Act/ Regs.

The development application was publicly exhibited

There were **7** submissions made in objection to the development application: The concerns and issues raised in these objections are grouped and discussed below

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Submission concerns/issues raised:	Council response:
Two storey development exceeding height and building height plane provisions and characteristics of the heritage area. The proposed development will dominate the area. The developments proposed scale and bulk are completely inappropriate for this site with low rise heritage houses surrounding the block. Uses the height of the Council chambers as a precedent.	<p>After a review of submissions and feedback from Councils Heritage Advisor etc changes to the form and scale of the proposed development have been made, these include;</p> <ul style="list-style-type: none"> - The proposed two (2) storey duplex accessed from / fronting Station Street has been reduced to single storey, and - The duplex accessed from / fronting McGoughans Lane has been reduced in height from 9.1m to 9m. - Having reviewed amended plans Councils Heritage Consultant concludes; <i>It is considered that the amended plans dated 29 June 2022 second issue have addressed the</i>

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13.10

Submission concerns/issues raised:	Council response:
	<p><i>concerns raised and that the proposed development has now satisfactorily addressed the heritage impacts on site, setting, height, bulk and scale and landscaped areas.</i></p> <p>Having regards to the size of the land being 1304m² and the amended design the proposal is considered satisfactory</p>
<p>Privacy and overshadowing onto adjoining properties, light and noise impacts</p>	<p>As noted above the development is well setback from side boundaries and intrusions into the BHP are minor and limited to eaves only. Therefor no overshadowing, beyond that anticipated from a complying development will occur.</p>
<p>Overdevelopment, inappropriate and poor development choice impacting on the character, density, and amenity of the town of Mullumbimby. The number of dwellings is greedy.</p>	<p>The proposed development is permitted in the R2 zone, subject to development approval and is an appropriate density for the site considering the four dwellings across 1304m² and its proximity/ walking distance to the towns centre, local schools, the library child care centre, community gardens and other facilities.</p>
<p>The Heritage Impact Statement (HIS) is basic in the extreme and confirms a lack of understanding of the values of the Mullumbimby Heritage Conservation Area (HCA). Even without the HCA constraints, there appears to be no proper site analysis which identifies the positive characteristics and elements which define the locality and the context of the site.</p> <p>The site is in a Heritage Conservation Area that states "low level single storey houses in the style of the early 1950 " is the character of the Area which is outlined in the DCP and Local Character Statement. The building is in no way sympathetic to its surroundings</p>	<p>The applicant provided amended plans showing the duplex facing and accessed off Station Street reduced from two storey to single level. This redesign was supported by a Heritage Impact Statement prepared by Graham Hall & Partners – Architects & Heritage Consultants: Armidale. These documents were reviewed by Councils Heritage Advisor who concluded; <i>It is considered that the amended plans dated 29 June 2022 second issue have addressed the concerns raised and that the proposed development has now satisfactorily addressed the heritage impacts on site, setting, height, bulk and scale and</i></p>

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13.10

Submission concerns/issues raised:	Council response:
on many criteria.	<i>landscaped areas.</i>
Traffic, parking, access problems	The proposal is considered acceptable in terms of parking, access, traffic generation and the like.
Lack of green/open space, vegetation, and gardens	Some 42% of the site will be landscaped in lawn, planter beds and existing trees retained in situ or relocated as far as practicable. The proposal is acceptable
Street frontage is of poor design being garages and peaked entrances. Same with the lane frontage. The scale and proportions of the two storey buildings (including the dominance off garages and driveway crossings) which have no regard to the streetscape and predominant single storey domestic character of the area.	Amended plans with two single storey dwelling facing Station street maintains the heritage character and Rhythm of this side of Station Street, noting the other side of the street contains an affordable housing development of mixed height and the two storey Council Offices.
Air Conditioner Unit and Garbage Bins are next to our bedroom creating noise and smell.	AC units are set against the outer walls of the proposed dwellings at ground level meaning that they are separated by a minimum of 1.8 to 2m from adjoining boundaries, relative to the two-storey duplex and 3.72m and 4.2m relative to the single storey duplex. Garbage bins are similarly located. These separation distances and appropriate fencing will ensure effective noise mitigation and adequate air flow.
1.8m high wood-panel fences — this is going to directly impact lifestyle and health by restricting summer breezes and will shade out north facing vegetable gardens.	The reduction of the Station Street duplex from two storey to single storey combined with the building setbacks described above will ensure good solar access and air movement between properties.
Removal of trees — the two mature and fecund mango trees	The proposed landscaping plan shows the retention, in situ or the relocation on site of as many exiting trees as practicable.
In-sufficient evidence for a demand for the proposed multi-dwelling development, does not meet the lifestyle those who move to Mullumbimby are after.	Mixed typology medium density housing with easy pedestrian access to commercial CBD's and village centres are valuable residential assets for any community. The proposed development makes an important

Submission concerns/issues raised:	Council response:
	contribution to housing choice in Byron Shire and particularly the town of Mullumbimby. The proposed development has been designed to be flood resilient and it increases density in a manner envisaged by State and Council planning instruments. Appropriately increased residential densities, within easy pedestrian access contribute directly to the sustainability and vitality of towns like Mullumbimby as well as offering essential housing choice for growing and evolving communities.
Demolition concerns - demolition of old buildings, and particularly 99 Station Street will result in infestations of cockroaches, rodents etc.	The development site is currently in unkept with the existing dwelling being unoccupied and in derelict condition. Demolition will clear the site, apart from the trees to be retained and / or relocated on site. Standard conditions of consent will be imposed to control the impacts of development during demolition and construction.

4.9 Public interest

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

5 4. DEVELOPER CONTRIBUTIONS

4.1 Water & Sewer Levies

Section 64 levies will be payable.

4.2 Developer Contributions

Section 7.11 Contributions will be payable.

5. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Disclosure details	Response
Has a Disclosure Statement been received in relation to this application? If Yes, Provide Disclosure Statement register reference: 91.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

6. CONCLUSION

- 5 The DA proposes Demolition of Existing Structures and Construction of Multi Dwelling Housing comprising of Four (4) Dwellings and Strata Subdivision.

The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site and the application is recommended for approval.