



## Agenda

### Planning Meeting

Thursday, 20 June 2019

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

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

Mark Arnold  
General Manager

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## CONFLICT OF INTERESTS

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

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

**Non-pecuniary** – a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the Local Government Act (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 Section 448 of the Local Government Act.

**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.

### Participation in Meetings Despite Pecuniary Interest (S 452 Act)

A Councillor is not prevented from taking part in the consideration or discussion of, or from voting on, any of the matters/questions detailed in Section 452 of the Local Government Act.

**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 if the provisions in S451 of the Local Government Act apply (particularly if you have a significant non-pecuniary interest)

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## RECORDING OF VOTING ON PLANNING MATTERS

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

- (1) In this section, **planning decision** means a decision made in the exercise of a function of a council under the Environmental Planning and Assessment Act 1979:
  - (a) including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but
  - (b) not including the making of an order under Division 2A of Part 6 of that Act.
- (2) The general manager is required to keep a register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.
- (3) For the purpose of maintaining the register, a division is required to be called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- (4) Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations.
- (5) This section extends to a meeting that is closed to the public.

# BYRON SHIRE COUNCIL

## PLANNING MEETING

### **BUSINESS OF PLANNING MEETING**

1. **PUBLIC ACCESS** (only on items on the agenda)
2. **APOLOGIES**
3. **DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY**
4. **ADOPTION OF MINUTES FROM PREVIOUS MEETINGS**
  - 4.1 Planning Meeting held on 16 May 2019
5. **RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS**
6. **STAFF REPORTS**

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

- 6.1 Net Zero Emissions Strategy for Council Operations 2025 - update on public exhibition submissions and final Strategy ..... 4
- 6.2 26.2016.4.1 - Rural Event Sites Planning Proposal - Submissions Report and Next Steps..... 9
- 6.3 PLANNING - 24.2018.64.1 - Submissions Report for DCP 2014 and 2010 Amendments - Community Significant Development ..... 31
- 6.4 Integrated Pest Management Strategy for Public Exhibition ..... 35
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- 6.9 Rural Tourism Accommodation Development ..... 71
- 6.10 PLANNING - 10.2018.384.1 Use of existing structure as a Dwelling House and Alterations and Additions to create Dual Occupancy (detached), Alterations and Additions to existing Dwelling House including Expanded Dwelling Module, Tree Removal and Upgrade existing Wastewater System at 183 Coopers West Lane Main Arm..... 82
- 6.11 PLANNING - 10.2018.466.1 Demolish Existing Dwelling House and Construct New Dwelling House and Swimming Pool at 61 Kingsley Street Byron Bay ..... 95
- 6.12 PLANNING - 10.2017.399.2 - S4.55 to permit use of Cavanbah Centre carpark for the Byron Farmers Market at 249 Ewingsdale Road Byron Bay ..... 110
- 6.13 PLANNING -10.2018.486.1 Redevelopment of Brunswick Heads Surf Life Saving Club including Demolition works and Construction of New Surf Club Building containing Training Rooms, Storage Areas, Canteen, Amenities and Foyer at Ground Level and an Additional Training Room, Bar Areas, Kitchen, Amenities, Storage Areas, Cool Rooms, Function Area and Deck Areas within the Upper Floor at South Beach Road Brunswick Heads ..... 118
- 6.14 PLANNING - Proposed Amendments to Byron LEP 2014 and Byron DCP 2014 to incorporate controls for manors houses and multiple dwelling houses (terrace houses) in response to the Low Rise Medium Density Development Code ..... 131

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

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 6.1 Net Zero Emissions Strategy for Council Operations 2025 - update on public exhibition submissions and final Strategy**

5 **Directorate:** Sustainable Environment and Economy  
**Report Author:** Coral Latella, Sustainability Officer  
 Julia Curry, Sustainability and Emissions Reduction Officer  
**File No:** I2019/599

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**Summary:**

15 At the Ordinary Meeting of 23 March 2017 Resolution **17- 086** was adopted and included two specific targets:

- *Council commits to achieving 100% net Zero Emissions by 2025 in collaboration with Zero Emissions Byron (ZEB).*
- *Council commit itself to source 100% of its energy through renewable energy within 10 years (2027).*

20

On 2 August 2017, the Executive Team considered a follow up report to Resolution **17-086** and considered the delivery of an Emissions Reduction Strategy for Council, to meet these targets.

25 At the Ordinary Meeting of 13 December 2018, Council resolved to *endorse the draft Strategy for public exhibition (Res-18-841)*. The draft was placed on public exhibition for six weeks from 27 February to 10 April 2019 and only one submission was received from Zero Emissions Byron.

This report presents:

- 30 1) A summary of the submission received during the public exhibition period on the draft Strategy, and how comments have been incorporated (or not), into the final version.
- 35 2) Two major additions to the Strategy since the Draft Strategy went to Council. These are the addition of the trajectory model created by Sustainability Consulting Group *Point Advisory* and a brief acknowledgement of Council's responsibility to report Scope 3 emissions.
- 3) The final emissions reduction strategy, titled *Net Zero Emissions Strategy for Council Operations 2025* (the Strategy), for Council's endorsement.

40 The overall aim of the Strategy is to map a path for Council action to achieve net zero emissions for Council operations.

**RECOMMENDATION:**

**That Council endorse the attached final emissions reduction strategy, titled *Net Zero Emissions Strategy for Council Operations 2025 (E2019/37526)*.**

**Attachments:**

- 45 1 Final\_Net Zero Emissions Strategy for Council Operations 2025, E2019/37526 
- 50 2 Zero Emissions Byron Submission to the Emissions Reduction Strategy - May 2019 Public Submission, E2019/40535 

**REPORT**

At the Ordinary Meeting of 23 March 2017 Resolution **17- 086** was adopted, and included two specific targets:

- 5     ▪     *Council commits to achieving 100% net Zero Emissions by 2025 in collaboration with Zero Emissions Byron (ZEB).*
  
- 10    ▪     *Council commit itself to source 100% of its energy through renewable energy within 10 years (2027).*

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*Table 1 Summary of comments on the draft Strategy from public submission.*

<b>Comment</b>	<b>Incorporated into final Strategy?</b>	<b>Reason for inclusion / exclusion</b>
Chapter 3. Section 3.2: Caution against using the term "Carbon Neutral" unless they are committed to carbon neutral certification under the National Carbon Offset Standard to ensure accountability and avert reputational risk of 'greenwashing'. Fourth point refers to "potentially NCOS but other options will also be explored" - ZEB recommends NCOS as the most appropriate and consistently applied way to demonstrate carbon neutrality as it is already being used by many local governments in Australia.	Changes included in Strategy	Recommendation will be considered when deciding on our course of action for certification of Council's carbon neutrality.
Chapter 4. Section 4.2.5. Council has been using 100% offset electricity since January this year. Currently that outcome is barely listed - hidden in the text of Table 6. Recommend moving this from Table 6 (Projects in the Pipeline) to section 4.2.5 (Completed actions).	Changes included in Strategy	Agree and recommendation included.
Chapter 4. Section 4.2.6. Please add link to ZEB website <a href="http://www.zerobyron.org">www.zerobyron.org</a> . Could we have the opportunity to add some copy to indicate the need for community support to ensure the success of ZEB's targets and how people could be involved (donations and volunteering)?	Unable to include.	Recommendation not included as this Strategy focusses on Council operations.
Chapter 6. Section 6.3. Table 6. Recommend adding new column "by when" to provide better indication on time frames (even by year would suffice) of the projects listed. Also outlined above, either remove the Electricity Contract as a completed action, or reword to state what element of the procurement is a "Project in	Changes included in Strategy and timelines included within the main project description rather than as a separate column.	This recommendation provides more clarity surrounding specific projects, and enables the reader to gain a better understanding of how Council will reach net zero emissions by 2025.

Comment	Incorporated into final Strategy?	Reason for inclusion / exclusion
the Pipeline".		
Chapter 6: Step 3 and Step 4. Recommend more active commitment to action. Step three: replace "research potential new projects and explore implementation plan outcomes" with "research and implement new projects". "Step four: replace "research potential funding opportunities for new projects" with "identify and apply for funding opportunities".	Unable to include.	Council cannot commit to implementing projects without a Council resolution. We have worded the actions listed in the Strategy deliberately to reflect this.
Chapter 6. Section 6.6. Recommend adding "at least annually" to the second dot point about updating the community emissions profile - currently listed "as needed". Annually is appropriate to take into account changes in grid emissions that are published at least once per year.	Unable to include.	<i>Ironbark Consulting</i> (who were contracted to measure the community emissions) recommended that community emissions be tracked on an as-needed basis, at most every two years and Council has included bi-annual tracking in the forward budget.
One point I would like to make is that the Council needs to engage and communicate with the community a lot more to promote and really demonstrate what projects and plans they are undertaking in this area. I have spoken to quite a number of people in the shire and many have little or no idea the fantastic projects completed or underway. perhaps this could be achieved online, be it on council's webpage under 'latest news' as well as social media post with regular updates	Changes included in Strategy.	The Sustainability Team will work with the Communications Team to improve the promotion of Council's sustainability initiatives and projects.

**Key Issues**

5 There are two major additions to the Strategy since the Draft Strategy went to Council. These are the addition of the trajectory model created by Sustainability Consulting Group *Point Advisory* and a brief acknowledgement of Council's responsibility to report Scope 3 emissions.

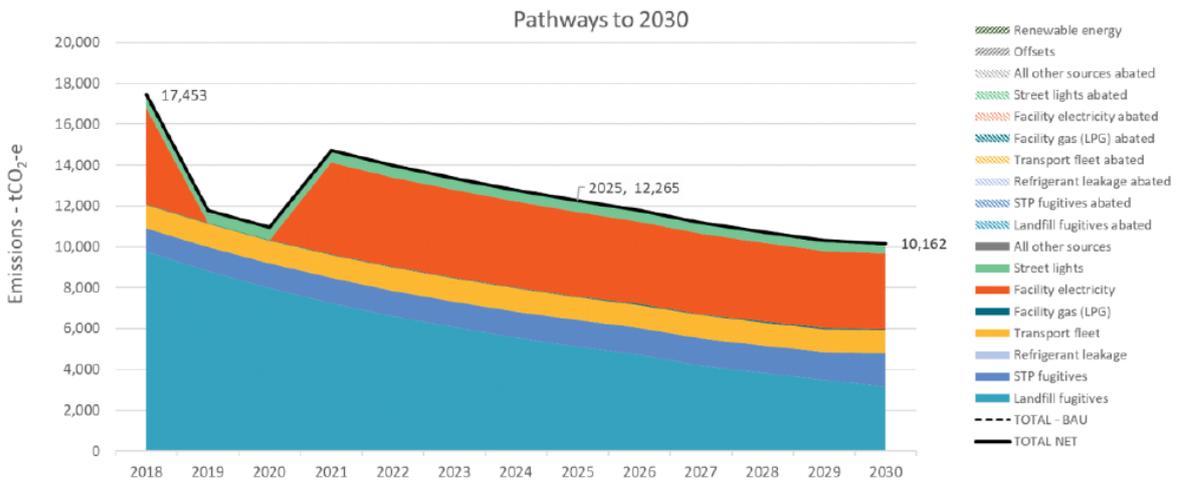
1. BSC Trajectory Model

10 Byron Shire Council (BSC) engaged consultants from *Point Advisory* to analyse and project BSC's published greenhouse gas inventory. This included landfill fugitive emissions, general electricity, Sewage Treatment Plant fugitive emissions, fleet, street light electricity and bottled gas. Using this information, *Point Advisory* built a trajectory model enabling BSC to visualise its path to net zero emissions, through emissions tracking and projection towards 2050. This model is a workable and  
15 interactive trajectory tool that Council will use to workshop potential sources of emissions reductions and theoretically examine different options to achieving the 2025 target.

*Point Advisory* built two different versions of the model to aid Council in its mission to reach net zero emissions by 2025:

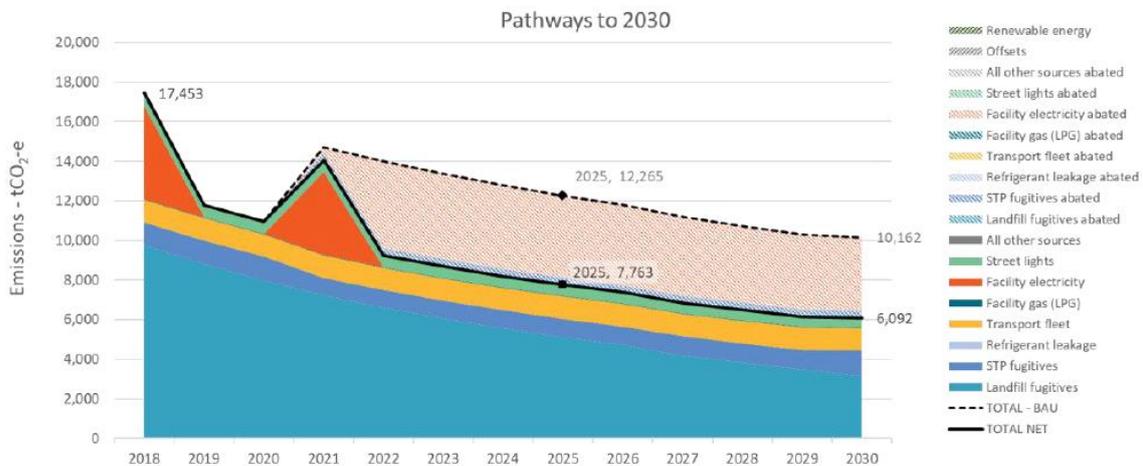
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Figure 1: BAU pathway showing BSC emissions to 2030



- 5 • Business-as-usual model – this model shows Council what future projected emissions will look like if no further actions are taken to reduce CO<sub>2</sub> emissions (compared to March 2019). The emissions decrease that occurs from 2019 to 2030 is mainly due to decrease in landfill fugitive emissions and the decarbonisation of the NSW electricity grid. *Note the significant drop in facility electricity from 2019-2020 – this difference represents emissions reduction from one year of purchasing renewable energy ('GreenPower') from Powershop for 100% of Council's total electricity use from facilities.*

Figure 2: Opportunity scenario showing BSC emissions to 2030 after actions have been implemented



- 10
- 15 • Opportunity model – This alternative model projects BSC's emissions if Council-specified actions are implemented, such as a continuing the contract with Powershop to source 100% GreenPower. This model also illustrates the level of emissions that **will still need to be reduced or offset if Council wants to achieve net zero emissions from 2025**. This is known as the 'abatement gap'.

Of note, the following planned opportunities have been included in the model:

- 20 • Sewage Treatment Plant (STP) fugitives reduced by installing a bioenergy plant at West Byron STP in 2021.
- Reductions in facility electricity use through the installation of solar PV at four sites by 2021, and an offset from the installation of a 5 MW solar PV installation at Dingo Lane, Myocum.

- Upgrading select street lighting to LEDs, thus reducing streetlight electricity emissions.

2. Acknowledgement of Scope 3 emissions

5 The decision to endorse the gradual inclusion of missing Scope 1 and Scope 3 emissions into Council’s emissions inventory for Council operations has been made in response to a number of recommendations made by the Sustainability Team. The following wording has now been included in the Strategy to clarify the importance of measuring Scope 3 emissions, and what that means for Council –

10  
15  
15 *“The main standard to certify carbon neutrality in Australia is the National Carbon Offset Standard for Organisations (NCOS). NCOS acknowledges that building a comprehensive Scope 3 inventory is a ‘work-in progress’ for most councils, and provides some leniency on current claims of ‘net zero emissions’. Councils that have achieved ‘net zero’ status typically report on Scope 1 and 2, and the more common and easily measured Scope 3 sources such as paper usage, employee commuting and business travel.”*

**STRATEGIC CONSIDERATIONS**

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

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 3: We protect and enhance our natural environment</b>	3.2	Strive to become a sustainable community	3.2.1	Work towards Council's zero-emissions target	3.2.1.1	Prepare Emissions Reduction Strategy
<b>Community Objective 3: We protect and enhance our natural environment</b>	3.2	Strive to become a sustainable community	3.2.1	Work towards Council's zero-emissions target	3.2.1.4	Implement actions to achieve zero emissions by 2025

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

Council has no statutory obligations to produce an emission reduction strategy.

***Financial Considerations***

30 The cost of preparing the draft Strategy is included in the 2018/19 budget.

Emissions reduction and the transition to 100% renewable energy can both cost effective and save Council depending on the project. Projects listed in the Strategy will need to be assessed for financial viability on a case by case basis.

35 ***Consultation and Engagement***

As per the project engagement plan.

**Report No. 6.2                    26.2016.4.1 - Rural Event Sites Planning Proposal - Submissions Report and Next Steps**

**Directorate:** Sustainable Environment and Economy

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

Isabelle Hawton, Planner

**File No:** I2018/2399

**Theme:** Sustainable Environment and Economy  
Planning Policy and Natural Environment

**Summary:**

At the ordinary meeting of 21 June 2018, Council considered a report summarising the results of preliminary community engagement regarding a potential approval mechanism for weddings and events in the rural parts of the shire. The report noted division within the community as to the best ways to deal with issues associated with rural events.

At the meeting, Council resolved **(18-404)** to proceed with a Planning Proposal to introduce a new local provision within BLEP 2014 relating to land zoned RU2 Rural Landscape and forward the planning proposal to the Department of Planning and Environment for a Gateway Determination.

The aim of the proposal is to find a balance with events and weddings occurring in the rural areas of the shire, whereby they can be approved on suitable sites with a range of controls to limit the scale and intensity of individual events.

Gateway was subsequently received and a six week engagement/ exhibition exercise was undertaken in November/ December 2018.

There was significant community interest in the engagement activities, resulting in good attendance numbers at workshops held across the Shire and numerous submissions and phone contact. In particular, community members directly involved in the wedding/ events industry were well represented.

Workshop summaries and submissions received are attached to this report.

Overall, it is apparent that people involved in this industry are supportive of a regulated approach that provides an approval mechanism for events in the rural area.

It is also clear that divided opinions remain; some respondents being of the view that the wedding industry is an important part of the Shire that can be managed to avoid disturbance to neighbours; while others are strongly opposed to such activities in the rural hinterland, concerned that the approval mechanism will lead to a proliferation of event sites and that it will not be possible to ensure that disturbance is avoided or minimised.

Submissions in support included suggestions that:

- there is definite merit in restricting events to sites that are demonstrably suitable for such use;
- applications should, however, be assessed on their individual merits, rather than be controlled by arbitrary numerical standards; and
- management of events, and event attendees, is the key to avoiding disturbance, requiring profession oversight.

In response to the suggested 8:00pm 'curfew', industry representatives were united in their response that this would not work and would decimate the industry or result in a continuation of the status quo whereby wedding venues operate outside to the law.

Opposition submissions generally raised a lack of trust in the ability of the Council and the industry to adequately manage disturbance. Other issues raised included:

- objection to ‘commercialisation’ of the rural hinterland;
- concern that an approval mechanism would lead to a proliferation of events in the hinterland beyond Council’s ability to oversee and enforce;
- the quietness of rural areas makes it virtually impossible to manage noise such that it does not disturb neighbours.

Other feedback included:

- concerns that the use of the standard definition of *function centre* is inappropriate as it includes a wide range of uses that have the potential to be more intensive than weddings and low scale events;
- suggestions that a DA process is not appropriate and that prospective sites should be considered by way of individual Planning Proposals for site-specific LEP amendments; and
- the approval mechanism should not be restricted to land zoned RU2 Rural Landscape, and should also be considered for land zoned RU1 Primary Production and R5 Large Lot Residential.

Based on the engagement results, changes are proposed to the draft clause as exhibited.

The primary recommendation is to proceed with a new land use definition, avoiding the standard definition of *function centre*.

It is recommended that the term **Rural Event Site** be used and that it be defined specifically for and within the proposed new LEP clause to mean:

*the temporary use of a building or defined area within a property zoned RU2 Rural Landscape, where weddings and other similar gatherings/ events are held for commercial purposes for a maximum number of events in a three (3) year period, with a maximum of 150 attendees per event, but does not include convention centres or exhibition centres or music festivals.*

Key aspects of this recommended definition include:

- limiting the use to the RU2 Rural Landscape zone;
- clearly establishing that the LEP provision is targeting a temporary use, with both a maximum number of annual events and a restricted 3-year approval; and
- specifying a maximum number of event attendees.

This report recommends that the proposed approval mechanism not be extended to the RU1 Primary Industry or R5 Large Lot Residential zones, for reasons outlined in this report.

Establishing the approval mechanism by way of a limited three-year approval provides Council and the community an opportunity to ensure that event use at an approved site continues in a manner that does not disturb neighbours.

Approved sites would be able to apply toward the end of the three year approval period, for another three years, thereby providing an element of certainty for the industry.

This “rolling approval” system provides a balanced approach, addressing the issues and concerns raised through the engagement process and can provide a “win-win” situation that provides for continuation of the industry, but within strict parameters and controls that ensure minimal local disturbance.

Staff have obtained external legal advice regarding the proposed new local LEP provision, which concludes that it is a reasonable approach to the issue and is set out in a form that can be legally made and enforced.

- 5 Given the changes recommended to the proposed LEP amendment as exhibited, it is anticipated that an amended Gateway Determination will be required, including a requirement for another round of community consultation.

10 Implementing a strict approval mechanism for rural event sites could result in an unintentional consequence of increasing applications for restaurants in the RU2 zone. Restaurants are permissible with consent in the zone, and there are currently few controls/ provisions relating to that use.

15 Consent is not required to use a legally approved restaurant for the purposes of an event such as a wedding (as long as the primary use remains a restaurant as opposed to a function centre).

20 Given this, it is also recommended that staff undertake a review of existing planning controls (LEP & DCP) relating to restaurants in the rural zones, with a view to ensuring that these controls adequately protect rural amenity and prevent disturbance to neighbours.

**RECOMMENDATION:**

1. **That Council forward the amended Planning Proposal (Attachment 1 E2019/23021) to NSW Department of Planning, Industry and Environment for an amended Gateway Determination, to provide an approval mechanism for rural event sites in the RU2 Rural Landscape Zone.**
2. **That, following Gateway, if required, the Planning Proposal be publicly exhibited for a period of 28 day and; following this time a further report be put to Council.**
3. **That Council review existing planning provisions relating to restaurants in the rural zones, to ensure that the controls adequately protect rural amenity and prevent disturbance to neighbours.**

**Attachments:**

- 25
- 1 26.2016.4.1 Planning Proposal v 6 - New Definition Temporary Approval and Alteration to Planning Proposal Post Public Exhibition, E2019/31936 
  - 2 Community Workshop Notes - Rural Function Centre, E2019/4423 
  - 3 Combined Submissions - Rural weddings and events Planning Proposal - 26.2016.4.1, E2019/4100 

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  - 4 Form of Special Disclosure of Pecuniary Interest, E2012/2815 

REPORT

**Background**

5 At the ordinary meeting of 21 June 2018, Council considered a report summarising the results of preliminary community engagement regarding weddings and events in the rural parts of the shire. The report noted division within the community as to the best way to deal with issues associated with rural events and recommended that Byron Local Environmental Plan 2014 (LEP 2014) be amended by inserting a new local clause establishing an approval mechanism for function centres on land zoned RU2 Rural Landscape.

10 The recommended local clause contained draft controls aimed at defining characteristics that would determine the suitability of sites for rural events and other controls relating to the management of events.

15 At the meeting, Council resolved **(18-404)** to proceed with the Planning Proposal to implement the approval mechanism forward it to the Department of Planning and Environment for a Gateway Determination.

20 Gateway was subsequently received and a six week engagement/ exhibition exercise was undertaken in November/ December 2018.

Engagement

25 The Planning Proposal was on exhibition for a 6 week period from November 7 until December 21. Advertisements went out in the Echo, via the E-news, media release, in school newsletters of the rural primary schools, on social media and via email to all those who expressed interest in the project earlier in the year (approximately 200 people).

30 During the exhibition period, four community workshops were held across the Shire to give opportunity for people to have their say regarding the suggested LEP amendment and allow staff to obtain community feedback in testing the draft controls.

35 Approximately 20-40 people attended each of the workshops, with each one having a majority of industry related personnel in attendance – i.e. caterers, sound technicians, wedding planners, celebrants etc.

Attachment 2 contains notes taken at the workshops.

40 Council staff also attended a Community Alliance Byron Shire meeting to raise awareness of the exhibition and held one-on-one meetings with individuals who could not attend workshops.

Submissions

56 written submissions were received in total (see Attachment 3).

45 29 of the submissions clearly indicated a direct link with the wedding and event industry.

Nine submissions were completely against the LEP being amended to allow weddings and events in the RU2 zone. The remaining 47 were either in favour of the amendment or at least gave productive feedback towards the contents of the draft clause.

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The following table summarises some of the key themes and comments:

<b>Theme</b>	<b>Varying opinions</b>
Distance – from wedding venue to the nearest neighbour	The distance should be flexible based on site conditions, such as topography, vegetation and building structure. If a venue were to build a soundproof building, the distance could potentially be reduced. Basing controls on an arbitrary separation distance has no scientific basis and therefore is not an ideal solution.  <i>13 of the written submissions would like more flexibility around separation distance.</i>
	The separation distance needs to be at least 500m if not more and the option for 250m needs to be removed.  <i>4 of the written submissions agree with this</i>
	The distance should be a minimum of 1km.  <i>3 of the written submissions agree with this.</i>
Curfew – the time the music ceases, and the time the guests and staff leave the venue	8pm is far too early. The industry will collapse because couples do not want to finish a wedding this early and many months of the year it is too hot for a day wedding.  <i>28 of the written submissions agree with this</i>
	8pm is fine and is respectful of the rural residents.  <i>5 of the written submissions agree with this.</i>
	Given that approval would depend on an independent site-specific acoustic assessment, a 10pm curfew is more suitable.  <i>15 of the written submissions agree with this. A majority of workshop participants also support a 10pm curfew.</i>
Employment	The industry brings great benefit to the region and this should be considered and supported.  <i>13 of the written submissions agree with this.</i>
Event Management	Having a planner on site and a plan of management is critical.  <i>6 of the written submissions agree with this. A majority of the workshop participants also agree with this.</i>
Capped Number of Events	The number of events at an approved site should be restricted to minimise disturbance on neighbours.  <i>4 written submissions agree with this. Some workshop participants also agree with this.</i>
	The number of events at an approved site should not be restricted. Only sites deemed suitable by the acoustic assessor will gain approvals so therefore the neighbours shouldn't be disturbed in the first place.  <i>1 written submission agrees with this. Some workshop</i>

<b>Theme</b>	<b>Varying opinions</b>
	<i>participants also agree with this.</i>
Capped Number of Guests	The number of guests attending an approved site should be restricted. This could be done by the Council planner based on studies the development application, including acoustic assessment, traffic study etc.  <i>4 written submissions agree with this. A majority of workshop participants also agree with this</i>
Three Strikes for Consent Withdrawal – three substantiated complaints would result in the development consent being withdrawn.	This suggestion within the draft clause was strongly supported by a majority of participants.

**Key Issues**

A. Function Centre Definition

5 Within Byron LEP 2014, a *Function Centre* means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.

This is a Standard Template definition, therefore included in all LEPs across the State.

10 Concerns were raised that the nature and scale of uses permissible under this definition, particularly *conferences, convention centres*, are too broad and incompatible with the intentions of the Planning Proposal.

Options:

	<b>Pros</b>	<b>Cons</b>
1. Continue with the Standard Template definition of <i>function centre</i>	Consistency of terminology	Potential to allow a range of uses that are of a larger scale than the rural weddings we are addressing with the draft Planning Proposal.
2. Incorporate a stand-alone definition of <i>Rural Event Site</i>	Allows for a more specific land use definition tailored for the particular circumstances of the rural weddings/ events industry.  Can specify within the definition that the use is temporary, with a limited number of annual events, a limited number of guest and a three-year approval	The Department of Planning & Industry generally require LEP provisions that deal with the standard suite of land use definitions

15 Recommendation:

The use of a definition that is specific to the recommended LEP provision will aid clarity and avoid unanticipated consequences that could arise from the broad nature of the *function centre* definition.

20 There is precedent for the use of a specific land use definition that is relevant for a specific purpose and it is recommended in the current circumstances.

It is recommended therefore, that, rather than listing *function centres* as a permissible use on the RU2 Rural Landscape zone, the draft clause be amended to include a new land use special-purpose definition of **Rural Event Site**, to mean:

- 5        *the temporary use of a building or defined area within a property zoned RU2 Rural Landscape, where weddings and other similar gatherings/ events are held for commercial purposes for a maximum number of events in a three (3) year period, with a maximum of 150 attendees per event, but does not include convention centres or exhibition centres or music festivals.*

10      Key aspects of this recommended definition include:

- limiting the use to the RU2 Rural Landscape zone;
- clearly establishing that the LEP provision is targeting a temporary use, with both a maximum number of annual events and a restricted 3-year approval; and
- specifying a maximum number of event attendees.

15      Establishing the approval mechanism by way of a limited three-year approval provides Council and the community an opportunity to ensure that event use at an approved site continues in a manner that does not disturb neighbours.

20      Approved sites would be able to apply toward the end of the three year approval period, for another three years, thereby providing an element of certainty for the industry.

This “rolling approval” system provides a balanced approach, addressing the issues and concerns raised through the engagement process.

25      **B. Minimising Disturbance**

A primary objective of the proposed LEP amendment has been to allow approval for event sites only where it can be demonstrated that the approved use will not result in disturbance to neighbours; with noise and traffic being the main risks in this regard.

30      As exhibited, the main recommended controls included:

- separation distance – the suggested exhibited control was that Council could not consent to an application unless:
  - 35        *events will occur in a location that is a minimum of 500m from an existing dwelling house on an adjoining property. Council will consider a variation to the minimum separation distance, but not less than 250m, only where:*
    - *existing topography and vegetation on the land is such that there is not a clear line of sight between the event site and adjacent dwellings; and*
    - 40        *an acoustic assessment conclusively demonstrates that event use will not result in unacceptable noise impacts at the neighbouring dwelling;*
- acoustic assessment – a requirement for a site-specific assessment, prepared by an appropriately qualified person, to accompany every application;
- buses – use of buses to transport patrons to and from sites for each event; and
- curfew – all amplified music to cease by 8:00pm with all attendees off site by 8:30pm.

45      **Separation:**

Many people attending the engagement workshops expressed concern about the arbitrary nature of the 500m separation distance.

50      Industry supporters were concerned that the distance would be, in many cases, too great. Most expressed the opinion that if the acoustic assessment demonstrates that the site-specific

circumstances are such that neighbours will not be disturbed by noise, a separation distance need not be arbitrarily set in the LEP.

5 Others suggested that 500m may not be enough separation, citing the quiet nature of the rural hinterland.

10 The distance that noise can be/ will be carried is dependant on a range of factors, including topography, weather, existing background noise and the like. There is no 'science' to establish 500m as 'the best' distance. While it may be adequate in some locations, it could also be insufficient in different circumstances.

Options:

	<b>Pros</b>	<b>Cons</b>
1. Rely solely on acoustic assessment, with no specified separation distance	Provides maximum flexibility to account for site conditions	Potentially invites proposals on sites where neighbours are too close
2. Specify a minimum separation distance of 500m with no opportunity to reduce or vary	Establishes a 'bench-mark' that can prevent applications on sites that are clearly unsuitable	Does not account for variability across the hinterland, where topography and site circumstances play a role in the 'travel' of noise. Allows for almost no sites to gain approval.
3. Specify a minimum separation distance of 500m with clearly described opportunity to reduce or vary	Allows the potential for some approved activities that are suitable to the individual circumstances of a property.	Allowing a separation distance below 500m may not be acceptable to some in the community.  There is no 'science' to the numbers and sites that are suitable may be ruled out as a consequence of arbitrary numbers.

Recommendation:

15 Feedback from the community workshops, and deliberation and research by Council staff, have led to the conclusion that any specified distance would be an arbitrary number that does not serve to accurately predict the impacts of noise from Rural Event Sites on neighbours.

20 Therefore, it is recommended that Council proceed without a specified distance, but instead rely on the acoustic assessment and the introduction of a possible "trial period" that would allow the retraction of the consent in the event that noise and traffic impacts exceeded acceptable levels. This is also reinforced by the provision that the consent will be for a time limited period of a maximum of three years.

25 In addition, it is recommended that approvals be conditioned to require annual compliance/ monitoring reports to be submitted to Council, which would allow collation of event data about events and their local impacts.

30 It is strongly recommended that a site-specific acoustic assessment be required in all cases, and that approval would only be granted where the findings of that assessment demonstrate conclusively that holding events at the site in the manner proposed will not result in offensive noise, as defined in the *Protection of the Environment Operations Act 1997*.

In that Act, *offensive noise* means:

*noise*:

- 5 (a) *that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances:*
  - (i) *is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or*
  - (ii) *interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or*
- 10 (b) *that is of a level, nature, character or quality prescribed by the regulations or that is made at a time, or in other circumstances, prescribed by the regulations.*

The draft LEP amendment has been modified to make it clear that approval will only be possible where it can be demonstrated that event use will not result in *offensive noise*.

15 Curfew:

Responses from representatives of the wedding industry were unanimous that the 8:00pm curfew would not be workable. Some industry representatives suggested that an 8pm curfew would result in a continuance of the status quo, whereby wedding venues are operating outside of approval, as the regulation would be too prohibitive and would put venues off seeking a legitimate pathway for approval. Industry representatives indicated that they supported the previously suggested curfew of 10:00pm for amplified music and 11:00pm for attendees to leave the site.

25 There were submissions from rural residents supporting the 8:00pm curfew. There were also submissions from residents indicating acceptance of a 10:00pm curfew, including a submission from a neighbour of an authorised wedding venue indicating that the 10.30pm curfew established for that venue works well for him.

Options:

	<b>Pros</b>	<b>Cons</b>
1. Continue with a clause that requires amplified music to cease at 8:00pm, with attendees off site by 8:30pm	Minimises the potential disturbance to neighbours associated with noise and traffic	Industry representatives are adamant that the curfew is too early and will effectively end demand for rural events or that the approval mechanism will be too prohibitive and operators will not seek approval but continue to operate illegally thus making the process of seeking an approval mechanism null and void.
2. Establish the curfew of 10:00pm for amplified music, with attendees off site by 11pm	10:00pm is considered by many in the community to be 'reasonable'	A curfew of 10:00pm will not be acceptable to all residents

30 Recommendation:

Given that any application for event sites will need to be supported by a site-specific acoustic assessment that demonstrates that neighbours will not be affected by unacceptable noise impacts, and the ability to limit the number of events and/ or the number of attendees, it is considered that a curfew of 10:00pm will be acceptable.

*Acoustic assessment & buses:*

5 There was general agreement with the requirement to have a site-specific acoustic assessment for each rural event site application and to require buses to transport guests to minimise the number of cars.

It is recommended, therefore, that these requirements remain in the draft LEP provision.

C. Compliance/ Enforcement

10 The ability to enforce planning controls and/ or conditions of approval is an issue of concern for the community. Many of the submissions and comments opposing the proposed LEP amendment were from rural residents who had previously experienced negative impacts from neighbouring unauthorised events.

15 In addition to outlining the nature and severity of disturbance from those experiences, many of the objectors indicated frustration that Council had been unable to take immediate, or in some case any, action to stop events.

20 Enforcement actions and infringements are governed by the provisions of the *Environmental Planning and Assessment Act 1979*. Under this Act, Council does not have the authority to 'shut down' a venue. Council can, however, issue orders to stop unauthorised use of a venue or in respect to compliance with conditions.

25 For 'development without consent' Council has authority to issue fines of up to \$3,000 for individuals or \$6,000 for companies, if sufficient evidence is collected. For continuing offences or serious issues, Council can issue Court Attendance Notices.

30 The current situation, where there is continued strong demand for rural weddings and events, but a significantly limited ability to approve such land uses, has led to the proposal to provide a controlled approval mechanism.

There has been, and continues to be, regular community complaints arising from weddings and events on rural properties.

35 In order for Council to take enforcement action regarding these complaints, evidence needs to demonstrate a breach of the LEP. For example, evidence needs to demonstrate that the event was commercial in nature rather than a family event. This can be difficult to prove.

40 Anecdotally, it has also been suggested that some venues have been "building in" the potential for a \$3,000 fine into their site fees, to address the risk of infringement action.

45 A number of the engagement attendees, both residents and industry, expressed the views that fines could be increased. This, however, is not possible as the amount of the fines is set in State legislation.

Recommendation:

50 Establishing the approval mechanism as a "rolling approval" system provides that approved sites would need to apply, toward the end of the three year approval period, for a further three year approval. In doing so, they would need to demonstrate that events at the site have operated without creating unacceptable neighbourhood impacts.

This "rolling approval" system provides a balanced approach, addressing the issues and concerns raised through the engagement process. It also avoids the potential whereby Council is required to

continually act against an operator with a “permanent” approval who does not comply with conditions of that approval.

Requiring annual compliance reporting will also allow Council to collate data regarding events.

5

D. Restricting approval pathway to RU2 zone

Submissions were received strongly suggesting that the scope of the proposed clause should be widened to include land zoned RU1 Primary Production and/or R5 Large Lot Residential.

10

*R5 Zone:*

A key objective of this zone is to provide residential housing in a rural setting, while minimising environmental and scenic impacts and land use conflicts.

15

At the commencement of this project, a cursory review of R5 zoned land suggested that the density of existing (and likely future) dwellings is such that adequate separation distances would be very unlikely to be achieved.

20

Following the recent community engagement, further assessment of recent (2015) aerial photography has been undertaken to review the assumption above.

Across the Shire, there are a number of separate areas of R5 zoned land, with a total of approximately 1,000 individual lots. Of those lots, aerial photo review indicates that there are only around 12 lots which have an existing separation of 250m (or more) to neighbouring dwellings.

25

While this separation distance alone does not conclusively indicate that sites in the R5 land are unsuitable, it is clear that, with neighbouring houses this close, it would be difficult for acoustic assessments to be able to demonstrate that offensive noise would not result from events.

30

Given that, rather than establishing an approval mechanism on R5 land that has criteria that are unlikely to met, it is recommended that the LEP continue to apply only to the RU2 zone.

*RU1 Zone:*

The primary objective of the RU1 zone is to encourage sustainable primary industry production by maintaining and enhancing the natural resource base.

35

A number of participants at the community engagement workshops expressed a view that the proposed approval mechanism should be extended across all of the rural hinterland, particularly including land zoned - RU1 Primary Production.

40

Reasons included:

- the ability to hold rural events could allow farmers to diversify and value add to their agricultural business through a secondary income;
- not all properties within the RU1 zone are actually suitable for agricultural production;
- land zoning is not as relevant as the suitability of the site and the management of events.

45

Council’s *Rural Land Use Strategy* (adopted July 2018) establishes the following policy directions relating to rural economy:

50

1. *Future rural development will avoid identified state or regionally significant farmland*
2. *Future rural development will be located to ensure the protection of existing agricultural land uses and to protect viability of high quality agricultural land.*
3. *The planning framework will encourage a viable and diverse agricultural industry through appropriate zoning provisions, allotment size and buffers.*

4. *The planning framework will provide flexibility for our farmers to diversify their income sources where ancillary to farming operations.*
5. *Future rural tourist development will build on and complement our agricultural industry, reinforcing the predominant use of the rural area for agricultural production while maintaining the rural character and take into consideration increased road traffic impacts.*
6. *Future rural tourist development will be located and designed to avoid adverse visual or noise impacts.*
7. *The planning framework will encourage rural based tourism that is committed to the use of ecologically sustainable management practices.*

While the directions provide for rural tourism, it is clearly Council's preference that farming be protected, facilitated and enhanced, with other land uses being secondary to that aim.

In responding to the exhibited draft Planning Proposal, the NSW Department of Primary Industries has advised of a preference to *avoid these types of development in RU1 Primary Production and RU2 Rural Landscape zones*. They acknowledge, however, the demand for events in the rural hinterland and Council's intention to provide a controlled approval pathway. In that context, the Department does not object to the proposal to allow an approval mechanism for events within the RU2 zone, but supports the *continued prohibition of function centres in RU1 zone*.

The basis of this position reflects both the State Government and Council's support for the right to farm and ongoing concerns regarding rural land use conflicts.

It was also suggested during the engagement that, if there remains a reluctance to extend the approval mechanism to the RU1 or R5 zones, it could be applied to individual properties within those zones which have existing approvals in place for tourist and visitor accommodation.

This submission raises an issue as to whether event use at an existing lawful tourist and visitor accommodation property would be either ancillary to that approved use or an intensification of the accommodation use.

In the case where an event use approval would be sought as an additional use or an intensification of an existing accommodation use, the issues raised in this report regarding potential conflicts and impacts on farming are the same as if this were a 'new' proposed use.

Small-scale, irregular events could be considered as ancillary to the approved tourist accommodation, for example where people who have booked the accommodation hold a wedding or gathering with a small number of guests.

There are, however, no clear guidelines to clarify the circumstances under which such an activity could legitimately be considered as ancillary to another approved land use. It is not based solely on the number of people, number and frequency of events, or scale of events, although those matters are relevant in considering the question.

Guidelines issued by the Department of Planning describe ancillary use as *a use that is subordinate or subservient to the dominant purpose*. In other words, if a use serves the dominant purpose, it is ancillary to that purpose. If it serves its own purpose, it is not ancillary, but a separate use requiring its own approval.

In relation to an approved tourist accommodation site, therefore, the dominant purpose would need to remain accommodation, with very limited ability to host events. Certainly, if the approved premises are advertised as a wedding or event venue, such use could not be considered as ancillary to the accommodation.

In that case, event use would require its own approval.

It is not possible to be more prescriptive regarding ancillary development, as each site/ circumstance will differ. Each, therefore, should be looked at on its merits, based on the activities ordinarily undertaken on the property.

5 There is also the issue of restaurants in rural zones. Restaurants are permissible with consent in the zone, and there are currently few controls/ provisions relating to that use.

10 Consent is not required to use a legally approved restaurant for the purposes of an event such as a wedding (as long as the primary use remains a restaurant as opposed to a function centre).

15 Given this, it is also recommended that staff undertake a review of existing planning controls (LEP & DCP) relating to restaurants in the rural zones, with a view to ensuring that these controls adequately protect rural amenity and prevent disturbance to neighbours.

Options:

	<b>Pros</b>	<b>Cons</b>
1. Continue with the proposal as advertised – i.e. applying only to land zoned RU2 Rural Landscape	Avoids land identified as the best land for farming. Allows areas within the rural hinterland where event use will not occur.	Potentially inequitable, in that sites within zones other than RU2, which may be suitable for events based on the circumstances of the land, are prevented from obtaining development consent.
2. Extend the provision allowing applications for event sites to the RU1 and R5 zones, in addition to the RU2 zone	Provides a consistent approach across the rural hinterland	In respect to the RU1 zone, potentially weakens Council's stated direction to protection, facilitate and enhance farming as a critically important rural land use. Creates potential for impacts on farming. In respect to the R5 zone, it is unlikely that any more than a small handful of sites could meet the recommended planning criteria that would allow approval for an event site.

Recommendation:

20 It is recommended that the Planning Proposal continue only in relation to land zoned RU2.

Based on the review of R5 zoned land in the shire, extending the approval opportunity to this zone will create a situation where only a very small number of properties have the potential to be favourably considered. It is not reasonable to raise expectations in this way.

25 For the small number of sites that may have potential, it could be possible for them to seek approval by way of a site-specific LEP amendment, establishing events as an additional permitted use on the property, subject to demonstrating that such use will not result in unacceptable disturbance to the rural amenity.

30 In the context of the R5 zone, this is considered to be a more reasonable process.

It is recommended that the approval mechanism not be extended to the RU1 Primary Production zone. The strong message contained in the Rural Land Use Strategy is to protect and enhance farming in the Shire and this should remain an important focus of Council.

5

It is also noted that the State Government, through Department of Primary Industries is of the same view and have indicated that they would not support a Planning Proposal to extend the events site approval mechanism to the RU1 zone.

10 ***Other issues raised***

A. Fees/ Contributions/ Registration

Many submissions suggested that Council should implement a fee/ contribution, payable per event, that could be used to maintain upgrade rural infrastructure (mainly roads).

15 Under current developer contribution arrangements, any approval for the establishment of an event site would be subject to a Developer Contribution, in the form of a fixed levy in accordance with Section 7.12 of the Act.

20 The levy is a sliding scale, based on the estimated cost of development, based on the following table:

<b>Estimated cost of the development</b>	<b>Maximum percentage of the levy</b>
Up to \$100,000	Nil
\$100,001–\$200,000	0.5 percent
More than \$200,000	1.0 percent

For most event site applications, the cost of set up would be minimal. The levy, therefore, is unlikely to yield significant contributions.

25 Apart from the developer contributions, Council has only limited ability to charge or levy a fee or payment, primarily restricted to requiring a fee for the provision of a service. Under current legislation, therefore, Council could not impose an event fee or levy.

30 Some respondents suggested that Council introduce a registration ‘service’, requiring approved rural event sites to register each event, with a fee charged for this ‘service’. Research into registration undertaken in relation to short-term holiday let indicates that there are legislative impediments to introducing such a scheme, given limitations of the Local Government Act. In any case, any fee charged for a registration service would need to be ‘reasonable’, demonstrated to be appropriate to the services provided.

35 It would be more appropriate for Council to require, as a condition of approval, the submission of annual compliance/ monitoring reports for each approved site, which would provide a record of events held at approved properties and data relating to events, to assist with understanding complaints. An administration fee could be paid for the submission of each annual report, although  
40 it would need to be reasonable based on the service provided.

B. Impacts on local roads:

Community input confirmed support for controls intended to minimise impact on local rural roads including:

- 45 • requirement for applicants to confirm that the site is accessed by way of a sealed road with sufficient capacity for the traffic volumes and types generated by the function centre, and that buses are able to access and exit the property in a forward direction; and

- requiring that the majority of event attendees will be transported to and from each event by bus as deemed appropriate to the applicable road network.

C. Limit on numbers:

5 A number of inputs suggested a need to limit the number of events allowable and/ or the number of attendees permissible at any event, as a way to ensure that event use remains small scale.

This has been incorporated into the proposed provisions in the following manner:

- including a limit of 150 people per event in the recommended definition of Rural Event Site; and
- specifying a limit to the number of events held in a calendar year (maximum 20).

D. Code of conduct:

15 The Byron Event Industry Association (BEIA) has been established to represent the various professionals who work in the industry. BEIA advise that they are working on the development of a Code of Conduct, which shares Council's primary objective of managing events to ensure that rural neighbours are not disturbed by events.

Some attendees at the engagement events suggested that Council's LEP amendment could 'call up' the industry's code of conduct, mandating compliance with it.

20 This approach is not recommended at this time.

E. Potential for large number of approved venues

25 Concern was expressed that allowing event sites in the RU2 zone will 'open the gates' and allow the rural hinterland to 'be swamped' with commercial venues. This is not the intention of the Planning Proposal, and, as explained above, the controls have been drafted in a way to give multiple layers of protection to the rural amenity and to ensure that only a limited number of venues would gain approval.

30 Council is aware of approximately 25 venues that have previously operated as event sites in the rural zones (without approval).

A number of these sites and others could be eligible to apply for consent to operate as a rural event site, based on the recommended approach, with the likelihood of success dependant primarily on the outcomes of site-specific acoustic assessment. It is unknown how many other sites within the RU2 zone, that aren't currently operating as event sites, or that are unknown to Council, might be suitable.

40 Given the controls recommended, it is unlikely that there will be a significant number of properties in the rural hinterland that could satisfactorily address the requirements. It would therefore not be expected that the LEP amendments would lead to a high number of applications/ approvals.

***Recommended Updates to Exhibited Draft***

45 Based on the discussion above, the recommended LEP amendment is outlined in full below:

***6.11 Temporary Use - Rural Event Site in RU2 Rural Landscape Zone***

- (1) *Despite any other provision of this Plan, development consent may be granted for development on land within Zone RU2 Rural Landscape for a Rural Event Site, up to a maximum of 20 events per calendar year over a period of three (3) years.*
- (2) *Development consent must not be granted for a Rural Event Site unless the consent authority is satisfied that:*

- 5 (a) *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 events in relation to all nearby dwellings, and demonstrating that the use of the property for events will not result in the generation of offensive noise, as defined in the Protection of the Environment Operations Act 1997;*
- (b) *the use of the site for a Rural Event Site will not result in unacceptable adverse impacts on any adjoining land or the amenity of the neighbourhood, particularly in relation to noise and traffic;*
- 10 (c) *the use of the site for a Rural Event Site will not result in any land use conflict in relation to adjoining or nearby farming activities or preclude future farming activities;*
- (d) *no clearing of native vegetation is required for the Rural Event Site;*
- (e) *the Rural Event Site is not located in or immediately adjacent to areas of high Aboriginal cultural heritage significance.*
- 15 (3) *Applications for development consent for a temporary Rural Event Site must include an Events Management Plan, which contains (as a minimum) provisions that:*
- (a) *provide for all event guests (excluding bridal party) to be transported to and from each event by bus, suitable to the road network to be utilised for transportation to the event; and*
- (b) *ensure that all amplified music will cease no later than 10:00pm; and*
- 20 (c) *ensure that all event attendees (other than those residing on site) will be off-site no later than 11:00pm, other than those staying overnight on the premises; and*
- (d) *outline measures that will be in place to ensure predicted noise levels are not exceeded at nearby dwellings; and*
- 25 (e) *provide for the monitoring of noise generated at events and annual compliance reporting to Council; and*
- (f) *provide for the notification of nearby residents, including contact details for an appropriate management person who must be on-site and contactable during each 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*
- 30 (g) *ensure that adequate arrangements are in place to manage wastewater and general waste for each event; and*
- (h) *manage the potential noise/ amenity impacts associated with any persons staying overnight at the site at the conclusion of the function; and*
- 35 (i) *prohibit the use of fireworks, helicopters and/or other comparable activities known to cause disturbance to livestock and/or farming activities.*
- (4) *In deciding whether to grant consent for a temporary Rural Event Site, the consent authority must consider:*
- (a) *the maximum number of events permitted in any calendar year; and*
- 40 (b) *the potential loss of farming on the property, particularly where part or all of the site is mapped as Regionally Significant Farmland; and*
- (c) *the potential impact on areas of environmental value, whether on the property the subject of the Rural Event Site or on adjacent and nearby land, including koala habitat; and*
- 45 (d) *whether a trial period is appropriate; and*

- (e) *the need to impose a condition specifying that development consent would cease if three substantiated complaints were received in relation to functions at the site within a twelve-month period; and*
- (f) *the need for a biosecurity management plan.*

5 (5) *In this clause:*

**Rural Event Site** means the temporary use of a building or defined area within a property zoned RU2 Rural Landscape, where weddings and other similar gatherings/ events are held for commercial purposes for a maximum number of events in a three (3) year period, with a maximum of 150 attendees per event, but does not include convention centres or exhibition centres or music festivals.

The table below provides a comparison of the draft controls as exhibited with the provisions now recommended, and provides commentary to clarify the recommended changes:

15 **Proposed LEP provisions:**

<b>Provisions as exhibited</b>	<b>Proposed Changes</b>	<b>Comments</b>
Add <i>function centre</i> to the list of land uses that are permissible with development consent in the RU2 zone.	No longer proposed. New definition of <i>rural event site</i> to be included in proposed LEP clause (see below)	<i>New definition is tailored to the circumstances of the rural events happening in Byron Shire. Function centre definition too broad; potentially allowing more intense land uses.</i>
<b>6.10 Function Centres in RU2 Rural Landscape Zone</b>	<b>6.11 Temporary Use - Rural Event Sites in RU2 Rural Landscape Zone</b>	<i>Rural event sites as opposed to function centres. New clause number because new 6.10 will be inserted by imminent completion of LEP amendment relating to activation of rail corridor in Byron Town Centre.</i>
	1. Despite any other provision of this Plan, development consent may be granted for development on land within Zone RU2 Rural Landscape for a Rural Event Site, up to a maximum of 20 events per calendar year over a period of three (3) years.	<i>Temporary approval description added – not included in exhibition version.</i>
1. Development consent must not be granted for a function centre on land zoned RU2 Rural Landscape unless the consent authority is satisfied that:	2. Development consent must not be granted for a Rural Event Site on land zoned RU2 Rural Landscape unless the consent authority is satisfied that:	<i>Rural Event Sites as opposed to function centres.</i>
a. events will occur in a location that is a minimum of 500m from		<i>Provision removed.</i>

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

6.2

<b>Provisions as exhibited</b>	<b>Proposed Changes</b>	<b>Comments</b>
<p>an existing dwelling house on an adjoining property. Council will consider a variation to the minimum separation distance, but not less than 250m, only where:</p> <ul style="list-style-type: none"> <li>existing topography and vegetation on the land is such that there is not a clear line of sight between the event site and adjacent dwellings;</li> <li>and</li> <li>an acoustic assessment conclusively demonstrates that event use will not result in unacceptable noise impacts at the neighbouring dwelling;</li> </ul>		
<p>b. 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 events in relation to all nearby dwellings;</p>	<p>a. 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 events in relation to all nearby dwellings, <b>and demonstrating that the use of the property for events will not result in the generation of offensive noise, as defined in the Protection of the Environment Operations Act 1997;</b></p>	<p><i>Additional text added to ensure that applications demonstrate that events will not result in offensive noise.</i></p>
<p>c. the subject site is accessed by way of a sealed road with sufficient capacity for the traffic volume and type generated by the function centre, and that buses are able to access and exit the property in a forward direction;</p>		<p><i>Provision removed – traffic assessment would be a standard consideration in the assessment of any application.</i></p>
<p>d. the use of the site for events will not result in</p>	<p>b. the use of the site for events will not result in</p>	<p><i>No change</i></p>

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

6.2

<i>Provisions as exhibited</i>	<i>Proposed Changes</i>	<i>Comments</i>
unacceptable adverse impacts on any adjoining land or the amenity of the neighbourhood, particularly in relation to noise and traffic;	unacceptable adverse impacts on any adjoining land or the amenity of the neighbourhood, particularly in relation to noise and traffic;	
e. the use of the site for events will not result in any land use conflict in relation to adjoining or nearby farming activities or preclude future farming activities; and	c. the use of the site for events will not result in any land use conflict in relation to adjoining or nearby farming activities or preclude future farming activities; and	<i>No change</i>
f. no tree clearing is required for the function centre.	d. no clearing of <b>native vegetation</b> is required for the function centre;	<i>Native vegetation as opposed to trees. Recommended by OEH.</i>
	e. the Rural Event Site will not be located in or immediately adjacent to areas of high Aboriginal cultural heritage significance.	<i>New provision as suggested by OEH</i>
2. Applications for development consent for a function centre must include an Events Management Plan, which contains (as a minimum) provisions that:		<i>No change</i>
a. ensure that the majority of event attendees will be transported to and from each event by bus as deemed appropriate to the applicable road network; and	a. provide for <b>all event guests (other than the bridal party)</b> to be transported to and from each event by <b>bus, suitable to the road network to be utilised for transportation to and from the event;</b> and	<i>Change ensure to provide. Change "majority of event attendees" to "all event guests (other than the bridal party)"</i>
b. ensure that all amplified music will cease no later than 8:00pm; and	b. ensure that all amplified music will cease no later than 10:00pm; and	<i>8:00pm changed to 10:00pm</i>
c. ensure that all event attendees will be off-site no later than 8.30pm;	c. ensure that all event attendees <b>(other than those residing on site)</b> will be off-site no later than 11:00pm, other than those staying overnight on the premises;	<i>8:30pm changed to 11:00pm. Insertion of "(other than those residing on site)" for clarity.</i>
d. outline measures that will be in place to ensure predicted noise levels are not exceeded at nearby dwellings; and		<i>No change</i>
e. provide for the	d. provide for the monitoring of	<i>Minor change – requiring</i>

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

6.2

<b>Provisions as exhibited</b>	<b>Proposed Changes</b>	<b>Comments</b>
monitoring of noise generated at events and six-monthly reporting of results to Council; and	noise generated at events and annual compliance reporting to Council;	<i>annual compliance reporting</i>
f. provide for the notification of nearby residents prior to each event, including contact details for an appropriate management person who must be on-site and contactable during each event; and	f. provide for the notification of nearby residents, including contact details for an appropriate management person who must be on-site and contactable during each event <b>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;</b>	<i>Add requirement for visible sign providing contact details of management person.</i>
g. ensure that adequate arrangements are in place to manage wastewater and general waste for each event; and		<i>No change</i>
h. manage the potential noise/ amenity impacts associated with any persons staying overnight at the site at the conclusion of the function; and		<i>No change</i>
i. the use of fireworks, helicopters and/or other comparable activities known to cause disturbance to livestock and/or farming activities will be prohibited.	i. <b>prohibit</b> the use of fireworks, helicopters and/or other comparable activities known to cause disturbance to livestock and/or farming activities.	<i>Minor wording change</i>
3. In deciding whether to grant consent for a function centre on land zoned RU2 Rural landscape, the consent authority must consider:	4. In deciding whether to grant consent for a Rural Event Site on land zoned RU2 Rural landscape, the consent authority must consider:	<i>Rural event sites as opposed to function centres.</i>
a. the need for a development consent to be limited to a particular period and/or number of events;	a. the maximum number of events permitted in any calendar year	<i>Allows consideration of the need to further limit event numbers</i>
b. the potential loss of farming on the property, where part or all of the site is mapped as	b. the potential loss of farming on the property, particularly where part or all of the site is mapped	<i>Addition of word particularly, suggested by Dept Primary Industry</i>

<b>Provisions as exhibited</b>	<b>Proposed Changes</b>	<b>Comments</b>
Regionally Significant Farmland;	as Regionally Significant Farmland;	
c. the potential impact on areas of environmental value, whether on the function centre site or on adjacent and nearby land, including koala habitat; and	c. the potential impact on areas of environmental value, whether on the Rural Event Site or on adjacent and nearby land, including koala habitat; and	<i>Rural Event Sites as opposed to function centres.</i>
	d. whether a trial period is appropriate	<i>Addition of need to consider whether a trial period is appropriate to give further security to surrounding residents.</i>
d. the need to impose a condition specifying that development consent would cease if three substantiated complaints were received in relation to functions at the site within a twelve-month period.	e. the need to impose a condition specifying that development consent would cease if three substantiated complaints were received in relation to functions at the site within a twelve-month period.	<i>No change</i>
	f. the need for a biosecurity management plan	<i>Additional provision suggested by farmers</i>
	2. In this clause: <b>Rural Event Site</b> means the temporary use of a building or defined area within a property zoned RU2 Rural Landscape, where weddings and other similar gatherings/ events are held for commercial purposes for a maximum number of events in a three (3) year period, with a maximum of 150 attendees per event, but does not include convention centres or exhibition centres or music festivals.	<i>New provision outlining the definition recommended for the clause.</i>

**Conclusion:**

From the outset, the intention of this project has been to provide an approval mechanism that balances allowing the industry to continue with rural events with the protection of rural amenity.

5

The current proposal establishes a mechanism for a 'rolling approval' of the temporary use of rural land for up to 20 events per annum over a three-year period, with an ability to re-apply at the end of the three years.

This will allow the behaviour of event operators to be assessed on a regular basis, which is desirable given that the potential for amenity impacts is high and largely dependent on the individual operator.

5 It is considered that the amended proposal provides the intended balance, and it is recommended that Council proceed with the process of amending the LEP in this way.

External legal advice confirms that the proposed LEP amendment provides an effective approach to the rural events issue in a manner that can be implemented legally.

10

**STRATEGIC CONSIDERATIONS**

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

Objective: 3:	We protect and enhance our natural environment
Strategy 3.4:	Support and secure our farming future
Action	Develop and implement strategies to support agriculture, agri-business and farmers
Activity:	Implement priority actions of the Rural Land Use Strategy

15

Objective: 4:	We manage growth and change responsibly
Strategy 4.5	Work to improve community resilience in our changing environment
Action 4.5a)	Develop and implement strategies for our community's needs
Activity:	Prepare planning controls to facilitate Rural Events

This Planning Proposal also supports Objective 4 – We Manage Growth and Change Responsibly, Strategy 4.3 – Promote and support local business development, education and employment opportunities and action 4.3 – Facilitate and support sustainable development of our business community.

20

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

This Planning Proposal has already received Gateway from the NSW DPE. Given the changes recommended in this report, it is likely that an amended Gateway Determination will be required.

25

***Financial issues***

Relevant financial considerations have been discussed above.

***Environmental Considerations***

30

Relevant environmental controls have been included in the proposed provisions.

***Community Consultation***

35

Relevant community consultation has been discussed above.

**Report No. 6.3**                    **PLANNING - 24.2018.64.1 - Submissions Report for DCP 2014 and 2010 Amendments - Community Significant Development**

**Directorate:**                    Sustainable Environment and Economy

**Report Author:**                Sam Tarrant, Planning Support Officer

5    **File No:**                         I2019/392

**Summary:**

10    At the 21 June 2018 ordinary meeting, Council resolved **(18-358)** to prepare a draft amendment to the Byron DCP 2010 and 2014 requiring developers to consult with members of the community who are likely to be affected by a proposed 'major development' prior to lodgement of a development application.

15    After the DCP amendments were drafted, they were reported back to Council at the 13 December 2018 meeting where Council resolved **(18-838)** to exhibit the amendments for a 6 week period.

20    This report explains the final changes to the DCP chapters proposed as a result of public exhibition.

25    It is recommended that the DCP chapters be adopted in accordance with the attachments to this report.

**NOTE TO COUNCILLORS:**

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

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**RECOMMENDATION:**

**That Council adopt the amended Development Control Plan chapters in 2010 and 2014 (Attachments 1 E2019/28781, 2 E2019/28779 and 3 E2019/28771) and notify the public as required by the Regulation.**

**Attachments:**

- 1        24.2018.64.1 Draft Byron DCP 2010 - Chapter 17 Advertising and Notification of Development Applications, E2019/28781 
- 2        24.2018.64.1 Draft Byron DCP 2010 Chapter 1 Part A - General, E2019/28779 
- 40    3        24.2018.64.1 Draft Byron Shire DCP 2014 Part A Preliminary, E2019/28771 
- 4        4        24.2018.64.1 Submission, E2019/32566 
- 5        5        Form of Special Disclosure of Pecuniary Interest, E2012/2815 

45

REPORT

Background

5 At the 21 June 2018 ordinary meeting, Council resolved (**18-358**) to prepare a draft amendment to the Byron DCP 2010 and 2014: 1. Requiring developers to consult with members of the community who are likely to be affected by a proposed ‘major development’ prior to lodgement of a development application; 2. A requirement for site notification to be added to level 2 of the public exhibition and notification table in the DCP.

10 The above changes were a direct result of feedback from the community roundtable members, other community groups and councillors; and are consistent with what other states like Queensland do.

15 Other changes to the DCPs included by resolution **18-838**, were amendments to the levels of public exhibition and notification table, specifically to remove “*change of use of shop to restaurant or café and change of use from shop to takeaway food shop from level 0 and place it into level 2*”.

20 Further to the above, the term ‘major development’ has been replaced by staff with the term ‘community significant development’ for the purpose of public exhibition and amendment, to encompass a wider range of development that might be seen as significant to the community, but that may not be otherwise be considered ‘major development’ purely by virtue of scale.

25 The definition of ‘community significant development’ that was exhibited is shown below:

**Community significant development**

- a building with a **gross floor area** of 5,000m<sup>2</sup> or more in a residential, rural or commercial zone; or
- any development that will be referred under the Act to the Joint Regional Planning Panel; or
- 30 • any subdivision resulting in 50 lots or more; or
- **residential flat buildings** or **multi dwelling housing** resulting in 10 or more dwellings; or
- any development that proposes demolition of a heritage listed item; or
- **pubs**; or
- small bars (nightclubs) within the meaning of the *Liquor Act 2007*; or
- 35 • **function centres**; or
- **restaurants** in rural areas; or
- **offensive industries**; or
- **telecommunications facility**.

40 **Public exhibition**

The three chapters (listed below) of the DCPs were placed on exhibition for a 6 week period from 13 February to 27 March 2019.

- 45 - Byron DCP 2014: Part A Preliminary  
 - Byron DCP 2010: Chapter 1 Part A General  
 - Byron DCP 2010: Chapter 17 Public Exhibition and Notification of Development Applications

50 The amendments to the 2014 and 2010 DCPs were accessible on Council’s website and the public exhibition was advertised in the Echo and on Council’s Facebook page. Community groups were also notified.

During the 6 week exhibition period one submission was received. The issues raised in the submission and the staff responses are shown in the table below.

Issues raised about 'community significant development' definition	Staff response
5000m <sup>2</sup> is too high of a trigger point for gross floor area in the residential and rural area and should be reduced to 2500m <sup>2</sup>	5000m <sup>2</sup> is a high trigger point for gross floor area in the residential zone but is acceptable in the commercial, industrial and rural zone. Residential has been removed from this trigger.
Residential flat building or multi dwelling housing resulting in 10 or more dwellings is too high of a trigger point and should be reduced to 5 or more dwellings	10 is considered to be a fair trigger for residential development. 10 dwellings in the residential zone including multi dwellings houses and unit style housing would cover developments even if the gross floor area is less than 5000m <sup>2</sup> . The term "residential flat building or multi-dwelling housing" has been replaced with the term "Residential Accommodation" to be more inclusive of different types of development and as defined in the LEP.

5

Changes to the 'community significant development' definition as per the table above are highlighted below:

**Community significant development**

- 10 • a building with a **gross floor area** of 5,000m<sup>2</sup> or more in an **industrial residential**, rural or commercial zone; or
- any development that will be referred under the Act to the Joint Regional Planning Panel; or
- any subdivision resulting in 50 lots or more; or
- 15 • **residential accommodation flat buildings** or **multi-dwelling housing** resulting in 10 or more dwellings; or
- any development that proposes demolition of a heritage listed item; or
- **pubs**; or
- small bars (nightclubs) within the meaning of the *Liquor Act 2007*; or
- **function centres**; or
- 20 • **restaurants** in rural areas; or
- **offensive industries**; or
- **telecommunications facility**.

25 Staff also propose a minor change to the last paragraph of the minimum requirements for pre-lodgement community consultation. This minor change is shown below in red text.

30 "If an applicant would like to alter the required consultation as set out, an engagement plan, stipulating the consultation that would take place instead, must be submitted to Council in writing **for approval**, giving at least 14 days notice prior to the commencement of any consultation." This change will allow for flexibility in the consultation process, however still ensures the engagement plan needs to be to Council's satisfaction.

All other amendments publicly exhibited are supported and retained.

**Options**

There are three options available moving forward with these DCP chapters.

- 5           1) Adopt the 3 DCP chapters with the recommend changes as a result of the public exhibition period and staff comments. **Recommended**
- 2) Adopt the 3 DCP chapters as exhibited with no change.
- 3) Not proceed with the adoption of the 3 DCP chapters

10       **Next steps**

Council must give notice of its decision in the local newspaper. The amended DCP chapters will come into effect on the date it is advertised in the local newspaper.

**STRATEGIC CONSIDERATIONS**

15

**Community Strategic Plan and Operational Plan**

<b>Community Objective 4: We manage growth and change responsibly</b>	4.5	Work to improve community resilience in our changing environment	4.5.1	Develop and implement strategies for our community's needs	4.5.1.1	Scope and prepare a comprehensive Development Control Plan (DCP) review
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**Legal/Statutory/Policy Considerations**

- 20       The amendment of development control plans is governed by the Environmental Planning and Assessment Regulation 2000 (Part 3 – Development Control Plans).

**Financial Considerations**

Nil

25

**Consultation and Engagement**

Addressed in the report.

**Report No. 6.4**                    **Integrated Pest Management Strategy for Public Exhibition**  
**Directorate:**                    Sustainable Environment and Economy  
**Report Author:**                Karen Love, Research Officer – Integrated Pest Management  
**File No:**                            I2019/644

5

**Summary:**

10    On 23 August 2018, Council adopted the Integrated Pest Management (IPM) Policy (Res 18-565) for all Council owned and managed land. The objectives within the IPM Policy informed the development of the Integrated Pest Management Strategy which outlines how invasive pests are to be controlled on our land.

15    This report provides information on the development of the IPM Strategy, its actions and timeline and recommends endorsement of the IPM Strategy - Attachment 1 (E2019/40598) to go to public exhibition for six weeks from Monday 24 June 2019 to 2 August 2019.

**Please note** that the attached document will be updated to include:

- 20    1. The 'Mayors Message'  
         2. Incorporation of an action to include 'roadside vegetation management trials for community volunteers based on the Goonengerry Landcare model' within the roll out action table  
         3. The control method icons currently being developed for Council that represent different pest control methods.

25

All content and layout will otherwise remain the same.

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**RECOMMENDATION:**

30    **That Council endorse public exhibition of the draft Integrated Pest Management Strategy for six weeks from 24 June to 2 August 2019.**

**Attachments:**

- 35    1    Byron IPM Strategy DRAFT 8, E2019/40598 

REPORT

**Background:**

5 Council resolved in 2013 (**Res 13-621**) to develop an Integrated Pest Management (IPM) Policy (adopted by Council on 23 August 2018 - **Res 18-565**) and IPM Strategy for Council owned and managed land. Since passing the 2013 resolution, pesticide use by Council staff has ceased in all children’s playgrounds, formal bus stops, town and village centres, on roadsides and 15 of 23 sports fields. This significant achievement has been realised through the adoption of IPM principles and continues to be integrated and improved upon in Council practices.

10 The development of the IPM Strategy delivers the three objectives within the IPM Policy and outlines the actions required to deliver these objectives within a five and ten year timeframe.

15 **Objective 1.** *Provide guidance for the development of an Integrated Pest Management Strategy (IPM Strategy) that will optimise efficient and effective resolution of pest problems while avoiding adverse impacts upon human health and the environment.*

20 **Objective 2.** *Establish decision-making tools to underpin and inform Integrated Pest Management. These tools include (but are not limited to):*

- (i) a digital map – pesticide exclusion/minimisation zones
- (ii) a set of protocols – Managers Pesticide Use Decision Tree

25 **Objective 3.** *Provide impetus for Council to build, improve and maintain employee and contractor knowledge and skills for selecting the lowest risk methodologies, including but not exclusively applying non-pesticide methods, for attaining the desired pest management outcome on Council-managed land.*

30 The table below summarises the key project deliverables thus far with the next steps for adoption of the IPM Strategy outlined in grey.

Milestone	Description	Date
Staff Strategic Planning Workshop- Depot staff/ Biodiversity Officer, research officer & consultant	Engage with on-ground crews to establish priorities and actions in the IPM Strategy. Information sharing across divisions. Scope of the IPM strategy/ concerns for implementation.	Oct-18
A set criteria for areas of Pesticide Exclusion Zone & Pesticide Minimisation Zone mapping and discretionary use of pesticides complete	Audit of all council owned and managed land and current pest management practices.	Nov-18
Risk matrix enabling streamlined decision making – development of the Pesticide Use Decision Tree	Pesticide Use Decision Tree - developed with the Working group utilising the information from the exclusion and minimisation zone mapping.	Dec-18
Utilise criteria and map proposed Pesticide Exclusion and Minimisation Zones	Finalise mapping and present to working group/put into Council's GIS system as a draft	Dec-18
Field visit with Rob King & council staff- Wilsons creek	Discussion of Pesticide exclusion / minimisation zones and roadside implementation on-site	Dec-18
Action tables for implementation of strategy	Consult with each division representative on key deliverables of the strategy - 5 yr & 10 yr.	Jan-19

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

6.4

Milestone	Description	Date
Present Draft IPM Mapping & Pesticide Use Decision Tree to the Biodiversity Advisory Committee	Include the data analysis of each zone & results - discussion of the Decision tree	Feb-19
First Draft review	Collaboration with Consultant and editing / presentation to the Working group for comments	Feb/Mar-19
On-site visit with Rob King & Council Staff re- Roadside spray implementation - Hinterland Way	Collaboration regarding timing and techniques for spray trials.	Mar-19
Second Draft technical review to go out to confidential Peer review	Seeking confidential peer review of Draft IPM Strategy before presenting to Council. Sent to four reviewers, Rous and internally for comment.	Mar/Apr-19
Peer review comments integrated	Consolidate comments and answer within context/ additions from editing and internal Working group.	Apr-19
Prepare Draft for graphic/ SPW & Council for Public Exhibition	Set overview and provide detail on aim of the final edit & pictures in large format for graphics	May-19
Presentation to Directors	Timeline Table & Summary	9-May-19
Presentation to ET	Summary / purpose & delivery table	22-May-19
SPW presentation	Summary, discussion and feedback on IMP Strategy	6-Jun-19
<b>Report to Council (this report)</b>	<b>Report to Council for Public Exhibition</b>	<b>20-Jun-19</b>
<b>Public Exhibition</b>	<b>6 weeks of public exhibition</b>	<b>24-Jun-19 to 2-Aug-19</b>
<b>Collate, interpret and integrate comments</b>	<b>Submissions report to Council on comments</b>	<b>28-Aug-19</b>
<b>Present for adoption to Council Planning Meeting</b>	<b>Final ready for adoption</b>	<b>19-Sep-19</b>

### STRATEGIC CONSIDERATIONS

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

5

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 3: We protect and enhance our natural environment</b>	3.1	Partner to protect and enhance our biodiversity, ecosystems and ecology	3.1.1	Protect and enhance our natural environment and biodiversity	3.1.1.4	Prepare a Shire Wide Integrated Pest Management Strategy

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

##### **Related Legislation:**

- 10
- Agricultural and Veterinary Chemicals Administration Act 1992
  - Agricultural and Veterinary Chemicals Code Act 1994
  - Biodiversity Conservation Act 2016
  - Biosecurity Act 2015 & Biosecurity Regulations 2017

Companion Animal Act 1998  
 Crown Land Management Act 2016  
 Crown Land Legislation Amendment Act 2017  
 Environmental Planning and Assessment Act 1979  
 5 Forestry and National Park Estate Act 1998  
 Game and Feral Animal Control Act 2002 & Game and Feral Animal Control Regulations 2012  
 Local Government Act 1993  
 Local Land Services Act 2013  
 National Parks & Wildlife Act 1974  
 10 NSW Pesticide Act 1999 & Pesticide Regulation 2017  
 Prevention of Cruelty to Animals Act 1979  
 Protection of the Environment Operations Act 1997  
 Roads Act 1993  
 Work Health and Safety Act (2011) & Work Health and Safety Regulations (2017)

**Related Council Policies**

Integrated Pest Management Policy 2018  
 Personal Protective Equipment Policy 2016  
 Byron Shire Work Health & Safety Policy  
 20 Planting and Landscaping on Footpaths and Nature Strips within Road Reserves and Drainage Easements Policy 4.16

**Related Plans/ Standards and Registers**

Byron Shire Pest Animal Management Plan 2018-23  
 25 Byron Shire Council Pesticide Use Notification Plan  
 Byron Shire Roadside Vegetation Management Plan 2012  
 Byron Shire Tree and Vegetation Removal Procedure 2017  
 Byron Shire Chemical Sensitive Residents and Organic Growers Register  
 National Standards for Ecological Restoration In Australia 2017  
 30 North Coast Regional Strategic Weed Management Plan 2017-2022  
 North Coast Regional Strategic Pest Animal Management Plan 2018-2023  
 Strategic Asset Management Plan 2016-2026  
 AS 4373-2007 Pruning of amenity trees - SAI Global

**Financial Considerations**

A budget of \$14,100 to progress the IPM Strategy through the public exhibition period to Council adoption has been incorporated in FY 2019/20.

The budget is presently on public exhibition and will be adopted on 27 June 2019.

**Consultation and Engagement**

- IPM Working Group who comprise representatives across three divisions within the Infrastructure Services Directorate and an external consultant.
- 45 ➤ Staff strategic planning workshop with approximately 30 field and office staff at the depot.
- Two field visits with staff on roadsides.
- Presentation to the Biodiversity Advisory Committee on the Pesticide Use Decision Tree and IPM Mapping.
- 50 ➤ Confidential peer review to four members of the public and Rous County Council including two representatives of 'chemical free land care' and two local ecologists to inform the Draft IPM Strategy.
- Integrated peer review Draft IPM Strategy distributed to Managers for comment.
- IPM Strategy Presented to the Director's - Infrastructure Services and Sustainable Environment and Economy.
- 55 ➤ Strategic Planning Workshop with Councillors.

**Report No. 6.5**                    **PLANNING - Employment Lands Strategy - Submissions Report**  
**Directorate:**                    Sustainable Environment and Economy  
**Report Author:**                Natalie Hancock, Senior Planner  
    Steve Daniels, Project Officer - Planning Reforms  
5    **File No:**                        I2019/533

10    **Summary:**

15    Council is preparing an Employment Lands Strategy (ELS) that will guide business and industrial land development over the next 20 years in Byron Shire. For purposes of the strategy, 'employment land' is land predominantly used for retail, commercial or industrial activities resulting in employment.

20    Council in June 2018 resolved (**resolution 18-354**) to exhibit a draft Employment Land Strategy (ELS) and Employment Land Strategy Background Report for a period of six weeks. The engagement undertaken was designed to inform the community about the content and direction of the ELS and seek feedback on the development of a final Strategy. This report provides an overview of the engagement process and key issues raised in submissions. It also makes recommendations as part of the pathway forward to finalising the strategy.

25    The most significant recommendations are in response to matters raised in the Department of Planning & Environment (DPE) submission, as these are considered necessary to enable the DPE's endorsement of a draft Employment Lands Strategy.

30    In addition, a number of landowners expressed an interest in having their land designated for industrial/business park purposes in the ELS. The report includes a summary of the assessment outcomes for these sites.

35    Subject to Council supporting the recommendations contained in this report, a final strategy incorporating the necessary edits would be reported back to Council for adoption before the end of the year.

NOTE TO COUNCILLORS:

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

**RECOMMENDATION:**

1.    **That the Employment Lands Strategy be updated to incorporate:**
  - a)    **a State Policy Compliance Check (see Attachment 3 E2019/38001);**
  - b)    **an overarching servicing and infrastructure delivery framework for industrial and business land;**
  - c)    **business centre urban design principles and industrial land 'physical form' principles, including a requirement for a structure and staging plan for new release areas; and**
  - d)    **an ongoing review of strategy actions in terms of their need, priority and clarity.**

2. That at the request of the State government:
  - a) Site 5 Bangalow East be deleted from the Employment Lands Strategy as a Possible Investigation Area;
  - b) Lot 181 DP 755695 - 268 Ewingsdale Road be included in the Employment Lands Strategy as a Possible Investigation Area.
3. That the Employment Lands Strategy be renamed to 'Business and Industrial Lands Strategy'.
4. That the format of the Employment Lands Strategy be refined to generally align with the template in Annexure 1 of the 'Community Engagement and Submissions Summary Report' (Attachment 2 E2019/19253).
5. That both the Employment Lands Strategy and Background Report data be updated to:
  - a) correct or update relevant technical data to inform policy directions and/or intended outcomes over the Strategy's 20-year timeframe;
  - b) include clarifying statements as required to improve readers understanding of the documents;
  - c) refine the mapping of Industrial Precinct Investigation areas to exclude pending Environmental Zone areas.
6. That the Employment Lands Strategy actions relating to the Mullumbimby, Bangalow and Brunswick Heads business centres be revised to:
  - a) remove any references to (i) investigating an increase in building height up to 11.5m' and (ii) the words '*consistent with the Byron Town Centre*'; and
  - b) insert a new action '*to undertake an urban design review to determine appropriate building heights*'.
7. That the potential expansion area as shown on 'Figure 17: Bangalow town centre capacity analysis' of the Employment Lands Strategy be deleted due to the limited number of submissions, lack of clear direction in the submissions, heritage designation and adopted Village Plan.
8. That the potential southern expansion area as shown on 'Figure 24: Mullumbimby town centre capacity analysis' of the Employment Lands Strategy be deleted due to the limited number of submissions, lack of clear direction in the submissions and heritage designation.
9. That a new Employment Lands Strategy action be inserted to investigate opportunities for use of the Mullumbimby surplus rail corridor lands for mixed use purposes.
10. That the site specific request for 5 & 7 Browning Street Byron Bay not be included as a potential business centre expansion area, as inconsistent with the Byron Town Centre Master Plan.
11. That the Sand Hills potential expansion area as shown on 'Figure 20: Byron Bay town centre capacity analysis' of the Employment Lands Strategy be deleted as inconsistent with the Byron Town Centre Master Plan.
12. That a new Employment Lands Strategy action be inserted to update Development Control Plan provisions for business and industrial land requiring landscaped buffers along roadways to mitigate the negative visual impacts of industrial development — particularly along the Highway frontage and gateways to towns.
13. That the Employment Lands Strategy Action 2.1 be amended to replace words "*Commence planning for the release of Gulgan east and west as new employment precincts for industrial purposes*" with:

***“Commence planning investigations for the Employment Strategy Site 3 - Gulgan East and Site 4 - Gulgan West Investigation Areas and a new Gulgan North Precinct ‘A’ & ‘B’ (part of Lot 2 DP 1159910, 66 The Saddle Road, Brunswick Heads) for industrial and supporting business purposes as follows:***

- i. community engagement on Gulgan North only (as not previously exhibited)***
- ii. business case viability and modelling (including examination of the potential for food manufacturing anchor location).***
- iii. flood management***
- iv. infrastructure and access (road, rail and pedestrian/cycling) servicing***
- v. environmental rehabilitation, enhancement and landscaping***
- vi. cultural heritage and social impact assessment”***

**14. That Council adopt recommendations 14.(a) – 14.(e) in ‘Table 1 Summary of Site Specific Assessment Outcomes - Employment Precincts (industrial areas)’ of this report.**

**15. That a new section be inserted in the Employment Lands Strategy, along with supporting criteria/principles to guide ‘Potential Anchor Location Activities’ associated with:**

- i health services**
- ii knowledge and creative industries**
- iii co-operative business and innovation hubs.**

**Attachments:**

- 1 State government agency submissions, E2019/38166 
- 5 2 Community Engagement and Submissions Summary Report, E2019/19253 
- 3 State Government Policy Compliance Check 2019, E2019/38001 
- 4 Copy of submissions from the public, E2019/38165 
- 5 Special disclosure of pecuniary interest annexure, E2012/2815 

10

## REPORT

### Background and Purpose

- 5 Council is preparing an Employment Lands Strategy (ELS) that will guide business and industrial land development over the next 20 years in Byron Shire. For purposes of the strategy, 'employment land' is land predominantly used for retail, commercial or industrial activities resulting in employment.
- 10 The Employment Land Strategy Background Report identified Byron Shire as having:
- a medium to long short-fall of employment lands
  - limited scope to secure new land unconstrained by environmental, flooding, significant farmland, infrastructure delivery and highway access/upgrade issues
  - 15 • increasing competition for business and industrial space.

These findings point to a need to improve the utilisation of existing employment lands and secure a sustainable long-term supply of land best suited to those businesses that work well with the constraints and opportunities of the Shire.

20 The draft ELS and more recent Northern Rivers Regional Economic Development Strategy 2018 - 2022 (adopted late last year by the NSW government) promote Byron Shire as an attractive business environment for diverse high yield low impact, innovator and incubator business and industries within a larger collective economic region.

25 Council in June 2018 resolved (**resolution 18-354**) to exhibit a draft Employment Land Strategy (ELS) and Employment Land Strategy Background Report for a period of six weeks. The engagement undertaken was designed to inform the community about the content and direction of the ELS and seek feedback on the development of a final Strategy. This report provides an overview of the engagement process and key issues raised in submissions. It also makes

30 recommendations as part of the pathway forward to finalising the strategy.

### Overview of engagement

35 This engagement builds on earlier targeted engagement that helped inform the preparation of a draft Employment Lands Strategy (ELS), namely:

- Enterprising Byron 2025 - Economic Development Strategy adopted by Council in 2016  
40 <https://www.byron.nsw.gov.au/Business/Research-reports-and-news/Economic-Development-Strategy-Enterprising-Byron>
- Byron Shire Council Business Survey conducted from October - November 2017  
45 <https://www.byron.nsw.gov.au/Business/Research-reports-and-news/Business-Survey>
- Meeting with land owners of potential employment (industrial) lands
- State government agency and internal stakeholder workshop - May 2018.

50 An Engagement Plan for the ELS, endorsed by Council' Communications Panel on 8 May 2018, identified a need for this engagement to inform and build awareness on:

1. the process, need for and rationale behind an ELS.
2. the analysis that informed the ELS
3. the recommendations (actions) of the draft ELS

4. the ability for the community/business sector to provide feedback on the analysis and recommendations of the draft ELS.

5 A structured engagement program was undertaken over a 12-week period (9 August - 1 November 2018). This followed early feedback from community groups attending a Business Roundtable meeting, in which management decided to extend the initial 6-week exhibition period. The program involved the following activities and methods of communication outlined below:

- Initial consultation with the Chambers of Commerce and Guidance Groups at a Business Roundtable
- 10 • Notification letters to surrounding Councils, Tweed Byron Local Aboriginal Land Council, Arakwal, state government agencies, landowners of areas of possible strategic business centre land use designation change and the Ocean Shores, Sunrise and Suffolk Park retail centres
- 15 • Public media, Council website, Facebook page and an e-newsletter to advertise engagement
- Provision of information including the ELS and Background Report, FAQ and fact sheets, and information on how to lodge a submission
- One-on-one meetings and responses to emails & phone calls
- Additional meetings with Chambers/guidance groups held on request with:
  - 20 • Byron Chamber
  - North Byron Chamber
  - Bangalow Chamber & Guidance group
  - Brunswick Heads Chamber.

25 The recommendations in this report respond to:

- matters raised in submissions during exhibition
- regular discussions (post exhibition) with Council's place planning team and guidance groups regarding delivery and/or implementation of the place plans for Byron Town Centre, Bangalow Village, Mullumbimby and the Byron Arts and Industrial Estate
- 30 • recent discussions with the Department of Planning, Industry and Environment (formerly Department of Planning and Environment and referred to in this report as 'DPE').

35 The report recommendations were workshopped with Councillors at a strategic planning workshop on 6 June 2019.

### **Submission Profile**

A total of 43 submissions were received and have been grouped into two categories:

- 40 • State government agency response
- Community groups and broader community response.

The following State government agency submissions are provided in Attachment '1'.

- 45 — NSW Department of Planning and Environment (DPE)
- Department of Transport Road and Maritime Services (RMS)
- Office of Environment and Heritage (OEH)

— Department of Primary Industries (DPI).

The Community Engagement and Submissions Summary Report is contained in Attachment '2'.

5 Key issues raised in submissions are summarised below.

**State government agency response**

DPE

10 The DPE submission identified the need for the ELS to be consistent with state policy positions under:

- State environmental planning polices (SEPP)
- *Environmental Planning and Assessment Act 1979* Section 9.1 Directions
- North Coast Regional Plan 2036 (NCRP).

15 In response, a State policy compliance check has been undertaken (Attachment '3'). This compliance review found the ELS to be generally consistent with state policy with a need for the final ELS to address:

- proposed servicing and infrastructure programing
- 20 • matters requiring further investigation at the planning proposal or development assessment stage

The DPE also stated that:

- Site 5 Bangalow East (Possible Investigation Area) was identified by Roads and Maritime Services as unsuitable and to be removed as a Possible Investigation Area. The removal of Site 5 is supported due to the site's rehabilitation as farmland and site constraints.
- 25 — Lot 181 DP 755695 - 268 Ewingsdale Road (more commonly referred to as the 'Sunnybrand' site) be included Employment Lands Strategy as a Possible Investigation Area.

DPI

30 Matters raised by DPI raised were largely consistent with DPE. Of note was a preference to avoid investigation areas on significant farmland and where such land was impacted, the inclusion of measures to address avoidance of speculation and/or increased land use conflict. These requirements make it difficult for Council to address the challenge of providing new and innovative ways to promote farming-related industry and business opportunities in Byron Shire.

35 RMS

The RMS submission identified the importance of a coordinated response to infrastructure planning and funding for roads. This included a comment that additional land releases that directly impact on the Ewingsdale interchange are unlikely to be supported until medium to longer term road improvements have been delivered.

40 OEH

The OEH and Tweed Byron Local Land Council submission identified a need for detailed site specific investigations. As more detailed site-specific investigations would be undertaken at the planning proposal or development application stage, a set of Suitable-for-use principles can be included in the ELS to provide guidance around key matters requiring further assessment at these stages.

45 The following recommended changes to the ELS are in response to State government agency and traditional owner input:

1. That the Employment Lands Strategy be update to incorporate:

- 5 a) a State Policy Compliance Check (see Attachment '3')
- b) an overarching servicing and infrastructure delivery framework for industrial and business land;
- 10 c) business centre urban design principles and industrial land 'physical form' principles: including a requirement for a structure and staging plan for new release areas; and
- d) an ongoing review of strategy actions in terms of their need, priority and clarity.
2. That at the request of the State government:
- 15 a) Site 5 Bangalow East be deleted from the Employment Lands Strategy as a Possible Investigation Area
- b) Lot 181 DP 755695 - 268 Ewingsdale Road be included in the Employment Lands Strategy as a Possible Investigation Area.

**Community groups and broader community response**

- 20 Submissions indicated general support for the ELS. Strong messaging focused on the process and providing opportunities for communities to have direct input in developing a shared vision for their business centres and industrial areas. It was clear that the community seeks a strategy focused on the uniqueness of each of our towns and villages and one that works with local communities to:
- address 'perceptions' of the capacity for towns/villages to cope with additional employment
  - 25 • respond to associated issues such as climate change, biodiversity, schools, traffic, age of servicing infrastructure, housing for workers and tourism impacts.

30 This feedback aligns with ELS Action 6.1 '*In consultation with the community, develop local character statements that define the values and identity of each business centre*', as well as Council's current place planning projects.

35 However, responses also indicated mixed awareness amongst the business and community sectors as to how the various Council studies, projects and strategies pertaining to the land use, economy and employment interconnect. Taking into consideration community feedback and State government agency input, it is important for the ELS to clarify:

- i. that it is a Business and Industrial Lands Strategy
- ii. why Byron Shire needs a land use strategy for business and industrial zoned land
- iii. what is the overall vision for business and industrial zoned land
- 40 iv. the planning framework in which the strategy operates including state government policy.

To this end the following is recommended:

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3. That the Employment Lands Strategy be renamed to 'Business and Industrial Lands Strategy'.

5 4. That the format of the Employment Lands Strategy be refined to generally align with the template in Annexure 1 of the 'Community Engagement and Submissions Summary Report' (Attachment '2').

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10 A number of submissions also raised matters concerning the focus, currency, accuracy and presentation of the data in the background report and ELS. These are summarised in 'Table 2 – Key matters on analyses' in the Community Engagement and Submissions Summary Report (Attachment '2'). Amongst the key matters raised is a need to correct or update relevant technical data that informs policy directions and/or deliver of long term outcomes, one such example being the inaccurate classification of hotels and motels as a 'residential' land use within the business centres.

The following recommended changes to the ELS are in response to the above matters.

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20 5. That both the Employment Lands Strategy and Background Report data be updated to:

a) correct or update relevant technical data to inform policy directions and/or intended outcomes over the Strategy's 20-year timeframe;

25 b) include clarifying statements as required to improve readers understanding of the documents;

c) refine the mapping of Industrial Precinct Investigation areas to exclude pending Environmental Zone areas.

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### **Business centres**

30 The draft ELS actions attracted mixed views for both the business centres and employment (industry) precincts.

Business centre actions to investigate increasing height and floor space ratio (FSR) in centres other than Byron Bay were met with concern regarding:

- 35 – a desire not to replicate the Byron Bay Town Centre template
- need for more targeted consultation to determine the level of support for change to the existing zonings and FSR
- desire to retain maximum building heights outside Byron Bay Town Centres at 9m
- need for any changes in planning regulations to be consistent with the role and identity of a centre and to consider the effects on urban design, traffic, trade and tourism as well the need to house workers.

40 In regard to concerns about maximum building height, it is important to retain some scope to change density controls in towns and villages where such change would support better built designed built environments. For this reason, it is recommended that ELS actions to investigate an "increase in building height up to 11.5m" should be deleted and instead replaced with words supporting an urban design review to determine appropriate building heights.

There were also mixed views about the expansion of business centres in proposed locations. Feedback included the need to be clear about the priority type(s) of development in proposed expansion areas (i.e. residential or commercial, or a mix of both).

- 5 For all centres, integration with travel and movement was identified as important with a number of submitters raising support for activation of the rail corridor for people movement. For Mullumbimby this also included a desire for any surplus rail corridor land to be addressed as part of this strategy.

10 A site-specific submission for 5 & 7 Browning Street requested inclusion as an expansion of the Byron Bay business centre (i.e. rezone to B2). An assessment of potential land suitability determined that expansion in this area would be inconsistent with the Byron Town Centre Master Plan, as the plan recommends ' *the western residential precinct should retain its role as an area for residential living ensuring a local resident population within the town centre.*

15 A submission was also received regarding Sand Hills estate that this land is a community hub and inappropriate for centre expansion. A discussion with the Place Planning team confirmed this to be the case.

20 The following recommended changes to the ELS are in response to community input on business centres:

All business centres:

- 25 **6. That the Employment Lands Strategy actions relating to the Mullumbimby, Bangalow and Brunswick Heads business centres be revised to:**
- a) remove any references to (i) investigating an increase in building height up to 11.5m' and (ii) the words '*consistent with the Byron Town Centre*'; and
- 30 b) insert a new action 'to undertake an urban design review to determine appropriate building heights'.

Bangalow:

- 35 **7. That the potential expansion area as shown on 'Figure 17: Bangalow town centre capacity analysis' of the Employment Lands Strategy be deleted due to the limited number of submissions received, lack of clear direction in the submissions, heritage designation and adopted Village Plan.**

Mullumbimby

- 40 **8. That the potential southern expansion area as shown on 'Figure 24: Mullumbimby town centre capacity analysis' of the Employment Lands Strategy be deleted due to the limited number of submissions received, lack of clear direction in the submissions and heritage designation.**

- 45 **9. Insert a new Employment Lands Strategy action to investigate opportunities for use of the Mullumbimby surplus rail corridor lands for mixed use purposes.**

Byron Bay

- 50 **10. That the site specific request for 5 & 7 Browning Street Byron Bay not be included as a potential business centre expansion area, as inconsistent with the Byron Town Centre Master Plan.**

11. That the Sand Hills potential expansion area as shown on 'Figure 20: Byron Bay town centre capacity analysis' of the Employment Lands Strategy be deleted as inconsistent with the Byron Town Centre Master Plan.

5

**Employment precincts (industrial areas)**

Submissions relating to employment precincts generally indicated:

- 10 – support for the need to identify additional industry land
- need for land to accommodate large warehouses with easy access to B-double trucks off the highway
- industrial land opportunities should be consistent with the rural land use strategy policy for protecting agriculture and supporting local food production and process industries
- 15 – preference for light industry due to environmental constraints and community values
- need for regulations to prevent new industrial areas becoming de facto residential areas (ie. strictly ancillary to industrial use), as has happened in the Byron Arts and Industrial Estate
- need for character statements and design principles for new industrial areas so that buildings are sensitively designed and create a sense of place
- 20 – need for planted landscaped buffers along roadways to mitigate the negative visual impacts of industrial development – particularly along the Highway and in gateway to town locations
- need for actions to deliver and better manage infrastructure demands.

25 The following recommended changes to the ELS are in response community input on employment (industrial) precincts:

30 **12. Insert a new Employment Lands Strategy action to update Development Control Plan provisions for business and industrial land requiring landscaped buffers along roadways to mitigate the negative visual impacts of industrial development — particularly along the Highway frontage and gateways to towns.**

35 **13. Amend Employment Lands Strategy Action 2.1 to replace words “Commence planning for the release of Gulgan east and west as new employment precincts for industrial purpose” with:**

- “Commence planning investigations for the Employment Strategy Site 3 - Gulgan East and Site 4 - Gulgan West Investigation Areas and a new Gulgan North Precinct ‘A’ & ‘B’ (part of Lot 2 DP 1159910, 66 The Saddle Road, Brunswick Heads) for industrial and supporting business purposes as follows:***
- 40 ***i. community engagement on Gulgan North only (as not previously exhibited)***
  - ii. business case viability and modelling (including examination of the potential for food manufacturing anchor location)***
  - iii. flood management***
  - iv. infrastructure and access (road, rail and pedestrian/cycling) servicing***
  - 45 ***v. environmental rehabilitation, enhancement and landscaping***
  - vi. cultural heritage and social impact assessment.”***

50 In addition, a number of landowners expressed an interest in having their land designated for industrial/business park purposes in the ELS. A detailed assessment of these requests is

contained in the Community Engagement and Submissions Summary Report (Attachment '2') together with recommendations for each site. Table 1 below provides a summary of the assessment outcomes.

5 **Table 1 – Summary of Site Specific Assessment Outcomes - Employment Precincts (industrial areas)**

1. Site	2. Request	4. Recommendation
<p>5. 1. Precinct A' &amp; 'B – LOT 2 DP 1159910, 66 The Saddle Road, BRUNSWICK HEADS</p> <p>6.</p> <p>7. (Area – 4.5ha)</p>	<p>8. Proposed Business Park.</p> <p>9.</p> <p>10. 'Precinct A' is marked in light blue on the map below:</p>  <p>11.</p> <p>12.</p>	<p>13. Supported subject to further investigations consisting of:</p> <ul style="list-style-type: none"> <li>• <i>community engagement</i></li> <li>• <i>business case viability and modelling (including examination of the potential for food manufacturing anchor location).</i></li> <li>• <i>flood management</i></li> <li>• <i>infrastructure and access (road and pedestrian/cycling) servicing</i></li> <li>• <i>environmental rehabilitation, enhancement and landscaping</i></li> <li>• <i>cultural heritage and social impact assessment'</i></li> </ul> <p>14.</p> <p>15.</p>
<p>16. 2. 'Precincts C &amp; D' – LOT 2 DP 1159910, 66 The Saddle Road, BRUNSWICK HEADS</p> <p>17.</p> <p>18. (Area – 7.3ha)</p> <p>19.</p>	<p>20. Proposed Industrial Estate</p> <p>21.</p> <p>22. Precincts B &amp; C' marked in dark blue, and 'Precinct D' marked in green (refer to above map).</p> <p>23.</p>	<p>24. 14 (a)</p> <p>25. <b>Not</b> supported due to combined site constraints and isolation from other employment areas (both existing and proposed).</p>
<p>26. 3. Proposed Service Station</p> <p>27. LOT 1 DP 940938</p> <p>28. Mullumbimby Road, MULLUMBIMBY</p> <p>29.</p> <p>30. (Area – 1ha)</p> <p>31.</p>	<p>32. Proposed Service Station</p>  <p>33.</p> <p>34.</p>	<p>35. 14 (b)</p> <p>36. <b>Not</b> supported due to combined site constraints and isolation from the existing Mullumbimby urban area.</p> <p>37.</p>

**BYRON SHIRE COUNCIL**

1. Site	2. Request 3.	4. Recommendation
<p>38. 4. 150 Lismore Road 39. Lot 4 DP 635505 40. 41. (Area – 1.37ha) 42.</p>	<p>43. Proposed Industrial Area Extension 44.</p>  <p>45. 46.</p>	<p>47. 14 (c) 48. Supported based on the logical agglomeration of industrial land uses, suitable site topography, potential to connect to existing internal road network and to utilise existing access to/from Lismore road. 49. 50.</p>
<p>51. 5. 204 Lismore Road 52. - western part of Lot 7 DP 626084 53. 54. (Area – 2.3ha) 55.</p>	<p>56. Proposed Industrial Area Extension</p>  <p>57.</p>	<p>58. 14 (d) 59. Further expansion of the IN1 zone (industry) to the subject land is <u>not</u> supported until such time as the landowner can demonstrate legal access off Bugam Place and subdivision development has commenced on undeveloped IN1 zoned land. 60. 61. 14 (e) 62. If a subdivision development application has not been lodged by 1 July 2020, Council commence a process to rezone the undeveloped IN1 zoned land to RU1 to enable agricultural use of land consistent with the important farmland designation under the North Coast Regional Plan 2036.</p>

The following recommended changes to the ELS are in response to landowner request for industrial land.

5

**14. Adopt recommendations 14.(a) – 14.(e) in ‘Table 1 Summary of Site Specific Assessment Outcomes - Employment Precincts (industrial areas)’ of this report.**

10

**Proposed new section in the Strategy – ‘Potential Anchor Location Activities’**

A number of submissions raised the strategy should contain actions to support wellbeing and health sector, educational, cultural, historical, incubator and creative “industries”. The DPE submission also identified a need for the draft ELS to align with Northern Rivers Regional Economic Development Strategy 2018 -2022 [dpc.nsw.gov.au/assets/REDS/6004f55e44/Northern-Rivers-REDS.pdf](http://dpc.nsw.gov.au/assets/REDS/6004f55e44/Northern-Rivers-REDS.pdf).

15

This document, adopted late last year by the NSW government and prepared in consultation with the local councils in the Northern Rivers area, is designed around one or more local government areas working to function as an economic ‘region’. It notes that:

*'Byron's economy today reflects diverse specialisations like tourism, clothing manufacturing, creative professionals (like advertising and motion picture activities), computer system design, construction services and arts and recreational services.'*

Having regard to this synopsis, as well as:

- 5 • Council's Enterprising Byron - Strategic Direction 2 *'nurture entrepreneurship and innovation for work creation'*;
- the findings in ELS background report site suitability principle to support agglomerations - similar business types providing the opportunity growth of clusters;
- 10 • North Coast Regional Plan – Actions 6.1 and 6.2 to support the identification of industry anchor locations; and
- recent resolutions of Council than support the identification of potential locational hubs;

it is considered appropriate to include a new section in the ELS to guide potential employment anchor location activities in these sectors. Examples of emerging locations in the Shire include Council land – Lot 12 on Bayshore Drive, the old Mullumbimby Hospital site and land surrounding the operational Byron Hospital. The following recommendation is in response to the above feedback.

**15. Insert a new section in the Employment Lands Strategy along supporting criteria/principles to guide 'Potential Anchor Location Activities' associated with:**

- 20 i. **health services**
- ii. **knowledge and creative industries**
- iii. **co-operative business and innovation hubs.**

**25 Summary and next steps**

A number of refinements to the strategy have been identified in response to community and government agency submissions. The most significant are in response to the DPE submission (Attachment '2') as these are considered necessary to enable the DPE's endorsement of a draft Employment Lands Strategy. These include:

- 30 • detailing consistency with State policy positions such as ensuring a framework for servicing and infrastructure delivery to industrial and business land; and
- set of 'suitable-for-use principles' for industrial land and business land to guide future planning proposals or development applications.

35 Subject to Council supporting the recommendations contained in this report, a final strategy incorporating the necessary edits would be reported back to Council for adoption before the end of the year.

**STRATEGIC CONSIDERATIONS**

**40 Community Strategic Plan and Operational Plan**

<b>Community Objective 4: We manage growth and change responsibly</b>	4.5	Work to improve community resilience in our changing environment	4.5.1	Develop and implement strategies for our community's needs	4.5.1.3	Complete and implement a comprehensive Employment Lands Strategy
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***Legal/Statutory/Policy Considerations***

5 The proposed actions to enable finalisation of the Employment Lands Strategy are consistent with the relevant Commonwealth, State and Regional policy frameworks.

***Financial Considerations***

10 The cost of preparing the draft Employment Lands Strategy has been met within Council's budget for this project. Additional funds may be required should Council decide to significantly expand the scope of this project.

**Report No. 6.6**                      **Report of Planning Review Committee held on 9 May 2019**  
**Directorate:**                      Sustainable Environment and Economy  
**Report Author:**                 Noreen Scott, EA Sustainable Environment and Economy  
   Chris Larkin, Manager Sustainable Development  
5 **File No:**                            I2019/735

**Summary:**

10 This report provides the outcome of the Planning Review Committee meeting held on 9 May, 2019.

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  
20 been called by the mover and seconder of all motions relating to this report.

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**RECOMMENDATION:**

**That Council note the report of the Planning Review Committee meeting held on 9 May 2019.**

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

6.6

### REPORT

The meeting commenced at 4:00pm and concluded at 4:40pm.

- 5 Present: Crs Hunter Martin, Lyon, Coorey, Ndiaye  
 Staff: Shannon Burt (Director Sustainable Environment & Economy), Chris Larkin (Manager Sustainable Development)  
 Apologies: Crs Richardson, Cameron

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

DA No.	Applicant	Property Address	Proposal	Exhibition Submission/s	Reason/s Outcome
10.2019.103.1	Newton Denny Chapelle	784 Coolamon Scenic Drive COORABELL	Restaurant and Voluntary Planning Agreement for Upgrade of Public Road and Carpark	Level 2 21/3/19 to 17/4/19  20 submissions	The perceived public significance of the application  Council
10.2019.82.1	Frank Stewart Architect	40 Mullumbimbi Street BRUNSWICK HEADS	Alterations and Additions to Existing Tourist Facility to create Three (3) Serviced Apartments and One (1) Managers Apartment	Level 2 14/3/19 to 27/3/19  3 submissions	The perceived public significance of the application  Council
10.2018.564.1	Ardill Payne & Partners	64 Corkwood Crescent SUFFOLK PARK	Dual Occupancy (Attached), Swimming Pool, Detached Double Garage and Pergola	Level 1 26/11/18 to 9/12/18  3 submission	Staff Delegation
10.2019.161.1	Lismore Venture Pty Ltd	23 Byron Bay Road BANGALOW	Multi Dwelling Housing Comprising Seventeen (17) Dwellings	Level 2 18/4/19 to 8/5/19  5 submissions (as at 03/05/2019)	The perceived public significance of the application  Council
10.2019.102.1	Ardill Payne & Partners	15 Byron Bay Road BANGALOW	Demolition of Existing Dwelling and Construction of Multi Dwelling Housing comprising Three (3) Dwellings	Level 2 21/03/2019 to 03/04/2019  7 submissions	Staff Delegation

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

6.6

Council determined the following original development application. The Section 4.55 application to modify the development consent was referred to the Planning Review Committee to decide if the modification application could be determined under delegated authority.

5

DA No.	Applicant	Property Address	Proposal	Exhibition Submission/s	Reason/s Outcome
10.2018.372.2	E-Synergies.Com Pty Ltd	361 Huonbrook Road HUONBROOK	S4.55 to Modify Condition 2 of Consent to Amend BAL Rating	Level 0	Staff Delegation

**Report No. 6.7**                    **PLANNING - 26.2016.5.1 Environmental Zone Implementation Program: Stage 1 Planning Proposal 'Submissions Report'**  
**Directorate:**                    Sustainable Environment and Economy  
**Report Author:**                Alex Caras, Land Use Planning Coordinator  
5 **File No:**                         I2019/760

**Summary:**

10 Council at its 22 March 2018 Ordinary Meeting resolved (**Res 18-186**) to implement the Department's 'Northern Councils E Zone Review Final Recommendations Report' in several stages to deliver more timely and effective outcomes for affected landowners.

15 The E zone implementation program is being implemented in several stages to deliver more timely and effective outcomes for affected landowners across the Shire. The engagement process to date has been robust, constructive and well received by the majority of those affected. The conciliatory and consistent approach taken by staff to achieve agreed outcomes has also generated a considerable amount of goodwill for Council.

20 Stage 1 Planning Proposal (PP1) applies environmental and non-environmental zones to approximately 60 properties in the Shire based on agreed outcomes. Approximately 400ha of environmental (E2/E3) zones will be applied in PP1. It also amends other LEP 2014 maps such as Minimum Lot Size, Height of Building, Drinking Water Catchment and Acid Sulfate Soils Maps.

25 This report presents:

- a summary of submissions received during exhibition of Stage 1 Planning Proposal; and
- an amended version of the Planning Proposal for adoption.

30 NOTE TO COUNCILLORS:

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

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**RECOMMENDATION:****That Council:**

1. **Adopt the property-specific LEP mapping amendments identified in Table 1.**
2. **Forward Stage 1 E zone planning proposal (as amended and contained in Attachment 3, E2019/38058) to the NSW Parliamentary Counsel's Office requesting that a draft LEP instrument be prepared.**
3. **Liaise with Parliamentary Counsel's Office (PCO) as necessary to finalise the content of the draft LEP and to enable PCO to issue an Opinion that the plan can be made.**
4. **Request that the NSW Department of Planning and Environment, as the plan-making authority in this instance, make the final LEP for notification on the NSW Government legislation website.**

**Attachments:**

- 1 Public Submissions received for Stage 1 E Zone planning proposal, E2019/38045 
- 2 Govt Agency Submissions received for Stage 1 E Zone planning proposal, E2019/38047 
- 5 3 E zone Planning Proposal Stage 1 BLEP 2014 – v4 for Council Adoption, E2019/38058 

REPORT

5 Council at its 22 March 2018 Ordinary Meeting resolved (**Res 18-186**) to implement the Department’s ‘Northern Councils E Zone Review Final Recommendations Report’ in several stages to deliver more timely and effective outcomes for affected landowners. An overview of the current staged implementation program is shown below.

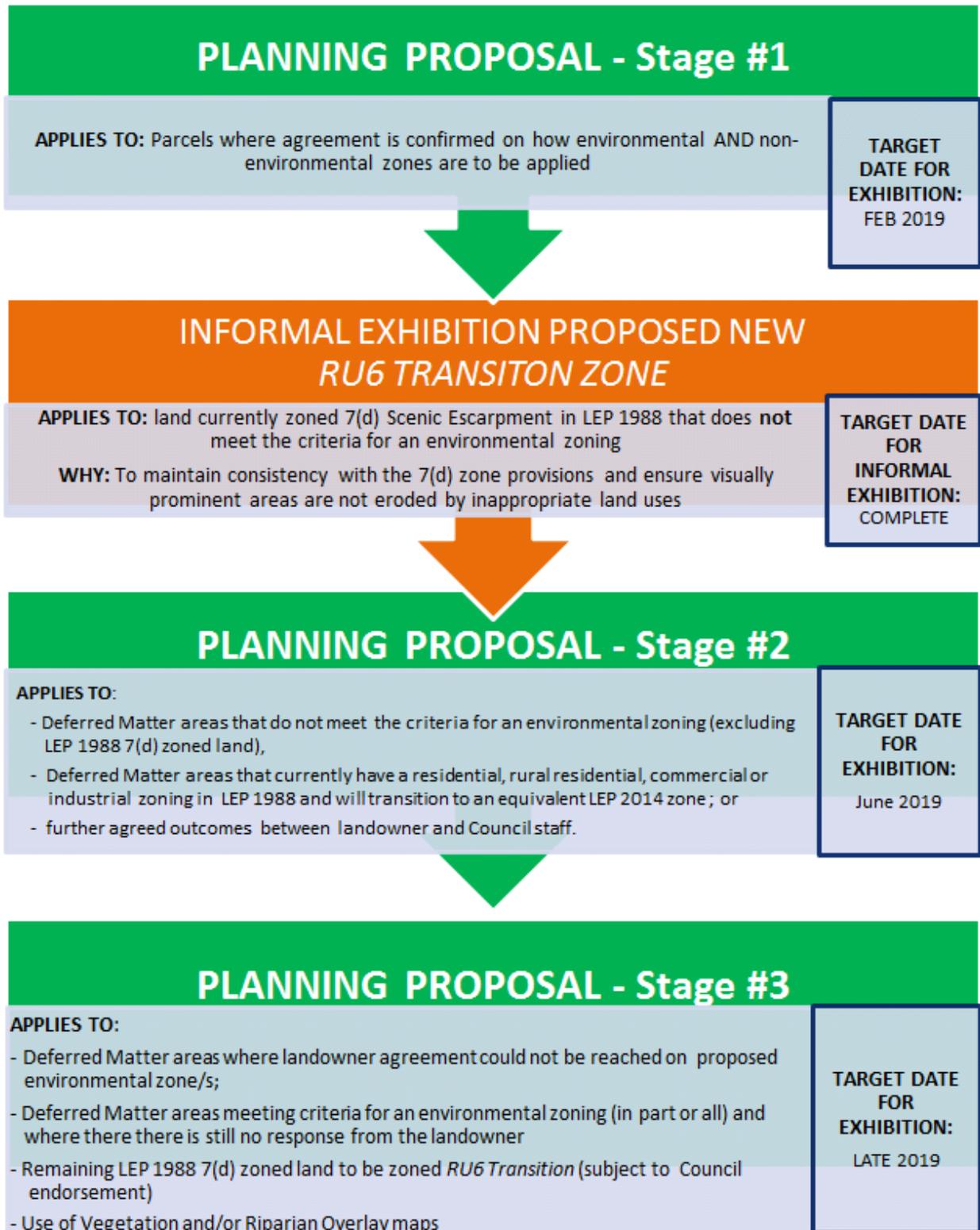


Figure 2: Staging Program to apply environmental and other zones on certain land in Byron LEP 2014

A report on the status of the staged E zone implementation program was considered at the 22 November 2018 meeting where Council resolved to re-allocate funds from other planning projects in order to continue progress the staged E zone implementation program and build on the high level of community goodwill generated through the preparation of Planning Proposals 1 and 2.

5

The purpose of this report is to present:

- a summary of submissions received during exhibition of Stage 1 Planning Proposal; and
- an amended version of the Planning Proposal for adoption.

10

**Planning Proposal #1**

Planning Proposal 1 (PP1) applies environmental and non-environmental zones to approximately 60 properties in the Shire based on agreed outcomes. Approximately 340ha of *E2 Environmental Conservation* zones and 60ha of *E3 Environmental Management* zones will be applied in PP1. It also amends other LEP 2014 maps such as Minimum Lot Size, Height of Building, Drinking Water Catchment and Acid Sulfate Soils Maps.

15

PP1 was submitted to Department of Planning & Environment for gateway determination at the end of June 2018. A positive gateway determination was received in November 2018, which was conditional on Council:

20

- Consulting with following government agencies (prior to exhibition):
  - NSW Rural Fire Service;
  - Office of Environment and Heritage;
  - NSW Department of Primary Industries; and
  - NSW Division of Resources and Geoscience
- Notifying all affected landowners in writing of the planning proposal and the public exhibition arrangements
- Amending the planning proposal as follows:
  - ensuring all polygons which depict proposed zones and development controls are labelled correctly in the maps in Appendix 5
  - removing the "Equivalent Zones Reference Table for Byron LEP 1988 and LEP 2014" in Appendix 5

25

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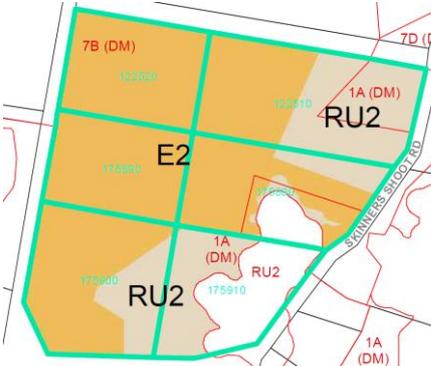
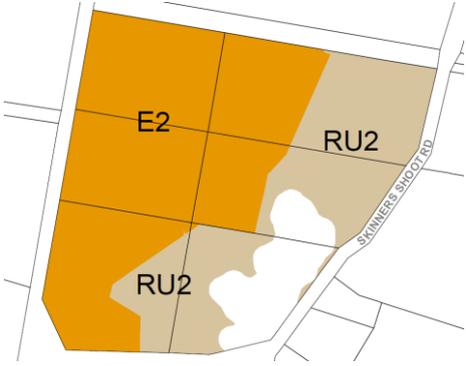
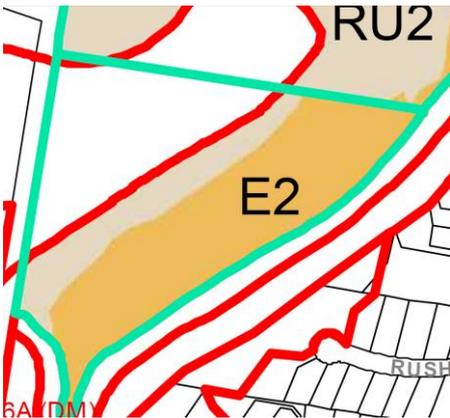
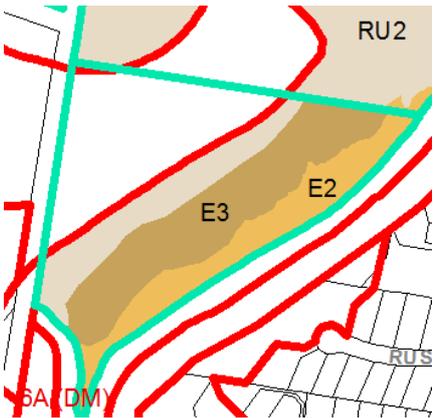
**Public Exhibition and submissions received**

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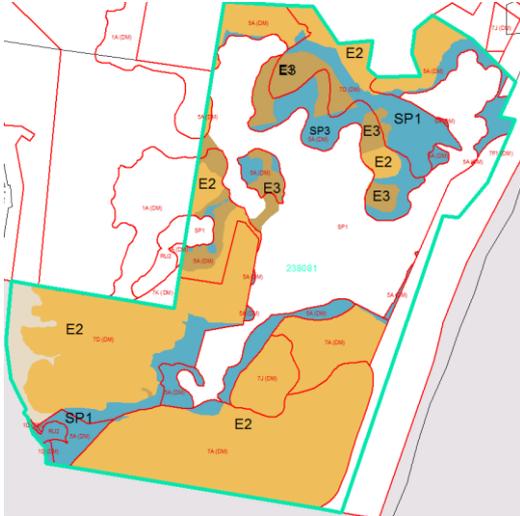
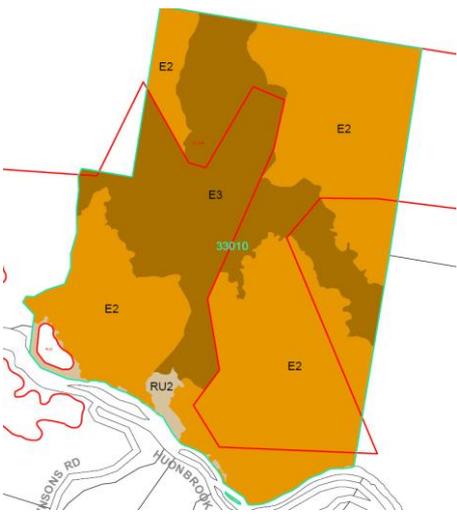
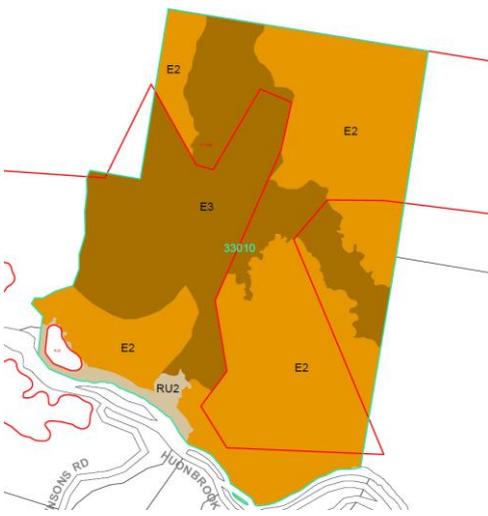
PP1 was exhibited **from 27 February to 29 March 2019**. Seven (7) public submissions were received and these are summarised in Table 1 below. Confidential copies of the submissions are contained in Attachment '1'.

Table 1 – Summary of public submissions received

<b>Subject land (Parcel No)</b>	<b>Issue / Comment</b>	<b>Response</b>
1. 218 Skinners Shoot Rd, Skinners Shoot (PN 175910)	Requests refinement of proposed E2 zone to reflect water easement track and existing uses.	Agreed. <b>Map LZN_003CC_020 amended accordingly.</b>

Subject land (Parcel No)	Issue / Comment	Response
	<p><u>LZN 003CC – ‘As Exhibited’</u></p> 	<p><u>LZN 003CC – ‘As Amended’</u></p> 
<p>2. 36 Lomandra Lane, Mullumbimby (PN 16880)</p>	<p>Following further consideration, has concerns about application of <i>E2 Environmental Conservation Zone</i> across all of the riparian area on this land.</p>	<p>Although the area adjacent to the Brunswick river satisfies the following E2 criteria:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Threatened flora species.</li> <li><input type="checkbox"/> Threatened fauna species</li> <li><input type="checkbox"/> Riparian corridor</li> </ul> <p>further discussions with the landowner resulted in agreement to confine E2 zoning to the most heavily vegetated parts of the riparian corridor, with E3 zoning to apply over the remainder.</p> <p><b>Map LZN_002BA_020 amended accordingly.</b></p>
	<p><u>LZN 002BA – ‘As Exhibited’</u></p> 	<p><u>LZN 002BA – ‘As Amended’</u></p> 
<p>3. 951 Broken Head Rd, Broken Head (PN 238081)</p>	<p>Request very minor changes to proposed E2/SP3 zonings to better align with existing buildings and roads.</p>	<p>Agreed. <b>Map LZN_003D_030 amended accordingly.</b></p>

**BYRON SHIRE COUNCIL**

Subject land (Parcel No)	Issue / Comment	Response
	<p><u>LZN 003D – ‘As Exhibited’</u></p> 	<p><u>LZN 003D – ‘As Amended’</u></p> 
<p>4. 95 Blackbutt Lane, Broken Head (PN 239456)</p>	<p>Supports proposed zones.</p>	<p>Noted. No mapping changes required.</p>
<p>5. 526 Huonbrook Road, Huonbrook (PN 33010)</p>	<p>Requests refinement of proposed E2 zone in western part of site by consolidating proposed E3 zone below the 350m contour, to more accurately reflect existing uses on this part of the land (ie. environmental management).</p>	<p>Agreed. <b>Map LZN_001B_010 amended accordingly.</b></p>
	<p><u>LZN_001B – ‘As Exhibited’</u></p> 	<p><u>LZN_001B – ‘As Amended’</u></p> 
<p>6. 230 Seven Mile Beach Rd, Broken Head (PN 81710)</p>	<p>Supports proposed zones.</p>	<p>Noted. No mapping changes required.</p>

<b>Subject land (Parcel No)</b>	<b>Issue / Comment</b>	<b>Response</b>
7. 219 The Saddle Road, Brunswick Heads (PN 137160)	Requests amendment to LEP acid sulfate soils map to reflect previous assessment undertaken on this property.	A LEP 2014 housekeeping amendment is considered the appropriate mechanism to change the ASS Map, with the next one scheduled in early 2020. No mapping changes required to PP1.

**RECOMMENDATION: That Council adopt the property-specific LEP mapping amendments identified in Table 1.**

- 5 Four (4) government agency submissions also were received. These are summarised in Table 2 below. Copies of the actual submissions are contained in Attachment '2'.

Table 2 – Summary of government agency submissions received

<b>Agency Name</b>	<b>Comments</b>	<b>Response</b>
1. NSW Rural Fire Services	<p>Has no objection to the planning proposal and provides the following comment:</p> <p>“Future development applications for all development on bush fire prone lands will be required to comply with either 84.14 of the <i>Environmental Planning and Assessment Act 1979</i> or S100B of the <i>Rural Fires Act 1997</i>, depending upon the nature of the proposed development, and the relevant provisions of <i>Planning for Bush Fire Protection</i>.”</p>	Noted.
2. Office of Environment and Heritage (OEH)	<ul style="list-style-type: none"> <li>• Supports Council's approach to determine the appropriate zoning for deferred matter lands, given it is consistent with the Northern Councils E Zone Review Final Recommendations Report;</li> <li>• Supports proposal to zone 7D (scenic escarpment) zoned lands to E2 or E3 where relevant E zone criteria are verified as being present;</li> <li>• Recommends that Council engage with the relevant local Aboriginal knowledge holders and land managers to determine whether 7D areas are of cultural significance, so that an appropriate E zone can be applied to protect the inherent Aboriginal cultural heritage values of these areas</li> </ul>	<p>Noted.</p> <p>Noted</p> <p>The additional engagement recommended by OEH represents a large body of work that falls outside the scope of the E zone review program. Such engagement is best suited to a Shire wide study of Aboriginal cultural heritage values, which in turn would inform preparation of an</p>

Agency Name	Comments	Response
		'Aboriginal Cultural Heritage Management Plan' (similar to Tweed Shire), subject to future inclusion in Council's Delivery/ Operation Plan. In the meantime, applying the <i>E2 Environmental Conservation Zone</i> to vegetated areas meeting E2 criteria (ie. in the current 7D zone) will provide greater protection of Aboriginal cultural heritage values from future development proposals.
3. NSW Division of Resources & Geoscience (GSNSW)	GSNSW advises that it has no resource sterilisation issues for consideration under section 9.1 of the Environmental Planning and Assessment Act 1979, Direction 1.3 – <i>Mining, Petroleum production and Extractive industry</i> .	Noted.
4. NSW Department of Primary Industries	DPI has no objection to the integration of land identified as "deferred matters" into Byron Local Environmental Plan (LEP) 2014, and the application of environmental zones to certain "non-Deferred Matter" areas already included in LEP 2014 as identified in the Planning Proposal.	Noted.

**Conclusion**

5 The low number of public submissions received is a reflection of the conciliatory and consistent engagement approach taken by staff to achieve agreed outcomes. Such agreements are either 'explicit' (ie. confirmed by landowner email, letter or a signed zoning map) or 'implicit' (ie. where a zone has been removed on affected land in accordance with submission). Inevitably there will be a minority of landowners where there's been (i) a change of mind about what was originally agreed to on their land, (ii) a change in ownership since an agreed outcome was reached or (iii) the accuracy of transposing zone boundaries from a hard copy map to an electronic LEP map (by staff) has been questioned. These circumstances form the basis for the minor mapping amendments identified in Table 1 and incorporated into the amended planning proposal (Attachment 3).

**Financial Implications**

15 The remaining 2018/19 budget for the E zone Implementation program will be exhausted by 30 June 2019. As a result \$25,000 has been requested in the 2019/20 budget to assist with exhibition of Stage 2 and/or finalisation of Stage 3 (for Gateway lodgement) of the E zone Implementation program. A further update on the E zone budget will be included in the Stage 3 planning proposal report to Council later this year.

20

**Statutory and Policy Compliance Implications**

5 The process of applying E zones and mapped overlays in Byron LEP 2014 is being undertaken in accordance with Section 117 Direction 2.5 – *Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs*. This direction specifically requires that a planning proposal that introduces or alters an *E2 Environmental Conservation* or *E3 Environmental Management Zone*, or an overlay and associated clause must be consistent with the *Northern Councils E Zone Review Final Recommendations*.

**Report No. 6.8**                      **Lot 130 Tallowood Estate Mullumbimby**  
**Directorate:**                      Sustainable Environment and Economy  
**Report Author:**                  Christopher Soulsby, Development Planning Officer S94 & S64  
**File No:**                              I2019/771

5

**Summary:**

10    The purpose of this report is to seek guidance from Council on the desired use of proposed lot 130 as approved in development consent 10.2017.406.3.

15    Lot 130 is an approved residential lot in the Tallowood Estate. There is a large tallowood tree located in the eastern portion of the lot. A section of the community has requested that Council purchase this lot to protect a tree on the lot. There has been negotiations between staff and the developer on the available mechanisms to bring this lot into Council ownership. This report will set out those mechanisms as options and discuss the consequences of those options.

20    It is the opinion of staff that the tree is adequately protected by existing conditions of development consent and that the lot does not need to be bought into public ownership in order to protect the tree.

25    Purchase of the lot for a public reserve (park) is not consistent with the Community Strategic Plan, Delivery Plan, Operational Plan, and the Contributions Plan. The purchase of the lot is not consistent with Council's strategic planning documents the purchase is not supported.

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**RECOMMENDATION:**

**That Council note the report and take no further action.**

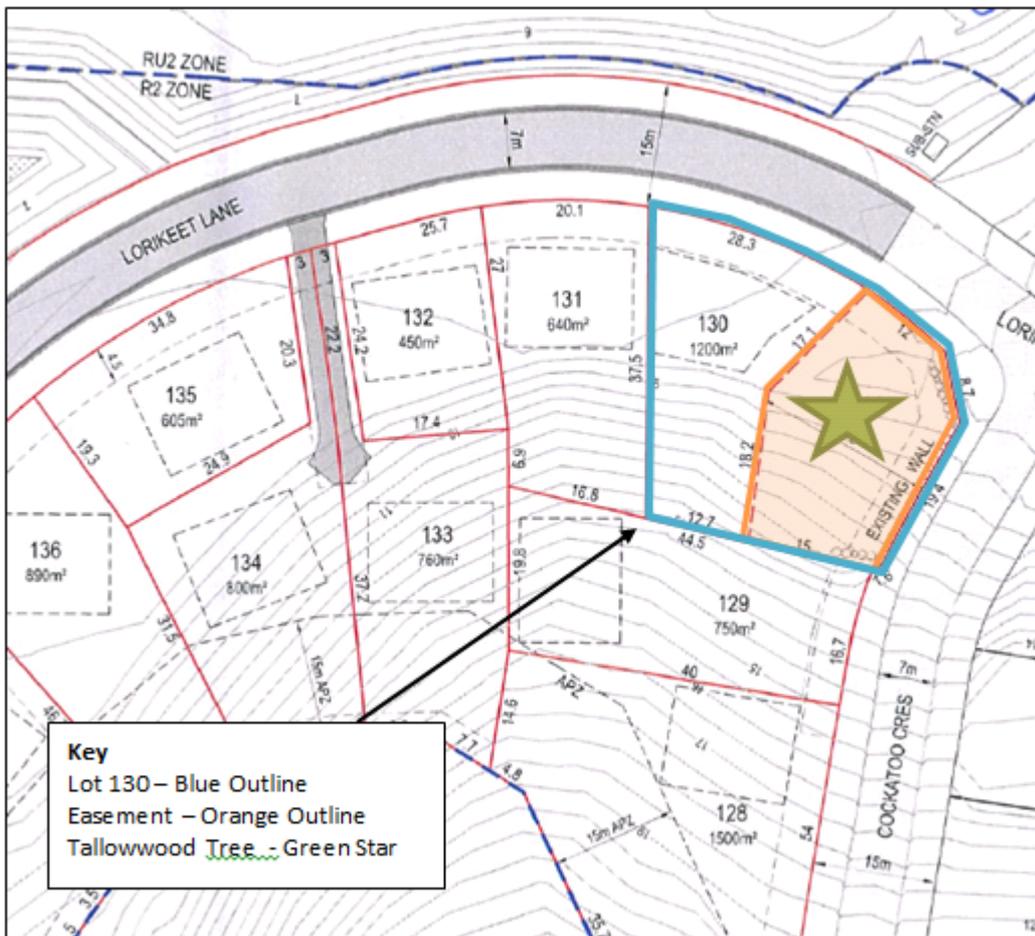
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REPORT

The purpose of this report is to seek guidance from Council on the desired use of proposed lot 130 and the large tree on this lot as approved in development consent 10.2017.406.3.

5 DA 10.2017.406.3 was approved on 22 February 2018 for *Subdivision to create eighteen (18) residential Lots, a public reserve, a drainage reserve, a residual lot and associated roads, earthworks, landscape and infrastructure works (Stage 6 of Tallowood Ridge Estate)*. The consent has been modified twice. The second modification application added additional protections for the tree in the form of condition 31A as discussed below.

15 Lot 130 is a corner residential lot 1,200m<sup>2</sup> in area. It contains a 15m x 12m building envelope and will be accessed from an extension of Lorikeet Lane. There is a large tallowwood tree located in the eastern portion of the lot. An extract from the DA plans shows the lot below with additional markups showing the general location of the tree and the restriction area to protect the tree:



20 In this regard the consent contains condition 31A for a Section 88B Instrument to be placed on the title of the land to protect the tree. Condition 31A is set out as follows:

**31A Restriction for preservation of Tallowwood tree on Proposed Lot 130**

*The final plan of subdivision and accompanying Section 88B Instrument are to provide for the following restriction on the use of land:*

25 *The Owner of the Lot Burdened must prohibit the following within the area denoted on the Plan as being subject to the Restriction on Use “(a)”:*

- a) *The destruction or removal the tallowwood tree.*
- b) *Any act or omission which may adversely affect the tallowwood tree;*
- c) *The removal, introduction or disturbance of any soil, rock, or sand within the marked area;*

5

*Any structures, including dwellings, sheds, car ports and swimming pools.*

10 A community group has made representations to Council and the developer to seek to bring the tree into Council ownership. The developer is willing to sell the lot to Council. The concern from representatives of the community is that should the tree and the land it sits upon be purchased privately and developed for housing the tree is at risk of being removed.

15 The existing conditions imposed on the consent were considered satisfactory to protect the tree. There has been no changes in circumstances with respect to legislation, the consent, or the physical characteristics of the land that would require the land to be bought into public ownership to protect the tree.

**Key issues**

20 **Options**

- 1. Do nothing: Leave the development consent as is with the tree protected by condition 31A; or
- 2. Buy the lot on the open market; or
- 25 3. Buy the lot with developer contributions. This would involve a request to the developer to amend the consent to dedicate the land to Council as open space and offset the cost against future developer contributions.

30 There are no costs or environmental implications associated with option 1. The tree remains protected at no cost to Council.

The owner has stated that the land is for sale at \$380,000.

35 For option 2, Council would need to allocate a budget of \$380,000. In addition to the upfront capital cost Council would have to maintain the land. This would be an ongoing operational cost to Council to mow and maintain the lot. There is no identified source of funds for this budget allocation.

40 In order to use Option 3 would require the developer to apply to amend the consent under section 4.55 of the Environmental Planning and Assessment Act 1979. The modification would require the developer to volunteer to dedicate to the land to Council as a public reserve. Such a dedication would be on the condition that the value of the land is offset against the open space developer contributions.

45 The developer has by email dated 7 May 2019 offer the following: -

- a. *Council to receive Lot 130 Tallowood Ridge Stage 6 as a Public Reserve (Park); and*
- b. *Council to approve increase of our credit balance with Council as compensation for dedication of land as Open Space (such as the sports field) as “works in kind” as offset against Developer Charges on each future lot for Open Space Acquisition and Open Space Embellishment by the amount of \$300,000, which is the net loss Tallowood Ridge group would suffer if we dedicate Lot 130 as a Park instead of selling it for \$380,000.*

55 The lot is not identified in the contributions plan. If Council resolves to accept the land it may offset the value of the land against future developer contributions. In order for this to occur Council would have to form the opinion that the dedication of the land as a public reserve satisfies the

developers obligations to pay the cash contribution and that this benefit received by the dedication outweighs the \$300,000 in open space developer contributions that will not be collected.

For completeness the whole of section 7.11 (formerly section 94) is set out below.

5

**7.11 Contribution towards provision or improvement of amenities or services**

*(cf previous s 94)*

10

*(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*

*(a) the dedication of land free of cost, or*

*(b) the payment of a monetary contribution,*

*or both.*

15

*(2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.*

*(3) If:*

20

*(a) a consent authority has, at any time, whether before or after the date of commencement of this Part, provided public amenities or public services within the area in preparation for or to facilitate the carrying out of development in the area, and*

*(b) development for which development consent is sought will, if carried out, benefit from the provision of those public amenities or public services,*

25

*the consent authority may grant the development consent subject to a condition requiring the payment of a monetary contribution towards recoupment of the cost of providing the public amenities or public services (being the cost as indexed in accordance with the regulations).*

*(4) A condition referred to in subsection (3) may be imposed only to require a reasonable contribution towards recoupment of the cost concerned.*

*(5) The consent authority may accept:*

30

*(a) the dedication of land in part or full satisfaction of a condition imposed in accordance with subsection (3), or*

*(b) the provision of a material public benefit (other than the dedication of land or the payment of a monetary contribution) in part or full satisfaction of a condition imposed in accordance with subsection (1) or (3).*

35

*(6) If a consent authority proposes to impose a condition in accordance with subsection (1) or (3) in respect of development, the consent authority must take into consideration any land, money or other material public benefit that the applicant has elsewhere dedicated or provided free of cost within the area (or any adjoining area) or previously paid to the consent authority, other than:*

40

*(a) a benefit provided as a condition of the grant of development consent under this Act, or*

*(b) a benefit excluded from consideration under section 7.4 (6).*

45

Council would be accepting the dedication of land under section 7.11 (5) (a) in lieu of the payment of a monetary contribution. As the value of the land would exceed the value of the open space contributions for that consent Council would be required take this land value into consideration for future development applications that the applicant makes as per section 7.11 (6). This means that the developer would be able to use this credit against the open space contributions in future stages of the subdivision.

50

The developer is seeking certainty that Council will offset the developer contributions at an agreed value before lodging a modification application.

**Future uses of lot 130**

Option 1 would see the lot in private ownership and may be used for a permissible uses as set out in the R2 Low Density Residential Zone of the Byron Local Environmental Plan 2014 and Development control plan, subject to development consent. The identified building envelope and the restrictions as to uses on the title of the land further limit the development of the lot.

If Council purchases the land under private treaty as per option 2 then the land would be operational land and Council may use it as per the LEP permissible uses described above. An option for such a use would be for the purposes of affordable housing.

If a Council proceeds with option 3 and the developer dedicates the land as a public reserve then the lot would be classified as community land. The probable management objectives for a public reserve of this type would be as set out in section 36G of the Local Government Act 1993. Clause 36G is set out as follows:

**36G Core objectives for management of community land categorised as a park**

*The core objectives for management of community land categorised as a park are:*

- (a) to encourage, promote and facilitate recreational, cultural, social and educational pastimes and activities, and*
- (b) to provide for passive recreational activities or pastimes and for the casual playing of games, and*
- (c) to improve the land in such a way as to promote and facilitate its use to achieve the other core objectives for its management.*

The classification of the land as community land for a park would limit Council’s scope to use this land in other ways.

Council may embellish the park with seats, playground equipment, or other facilities. There is already a high level of service provided to the residents of this estate with a playground, basketball court, tennis court and sports field all provided within easy walking distance of this lot. The provision of additional facilities would mean that this area has a higher level of service than when compared to the rest of the Shire.

**Next steps**

No further action is required if the recommendation is adopted.

**STRATEGIC CONSIDERATIONS**

**Community Strategic Plan and Operational Plan**

Option 1 is consistent with the CSP and Operational plan.

Option 2 would be consistent with the following objective of the CSP and the actions and activity from the Delivery Plan and Operational Plan.

<b>Community Objective 4: We manage growth and change responsibly</b>	4.2	Support housing diversity in appropriate locations across the Shire	4.2.1	Establish planning mechanisms to support housing that meets the needs of our community	4.2.1.2	Identify opportunities and partners to facilitate the provision of housing diversity/affordability in the Shire
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The acquisition of this land for a public reserve is not consistent with the following objective of the CSP nor is it consistent with the Delivery Plan or Operational Plan.

<b>Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community</b>	2.3 Provide accessible, local community spaces and facilities	2.3.5 Maintain Public Open space in a safe and efficient way that provides for both active and passive recreation (SP)	2.3.5.1 Plan and deliver Open Space works programs based on defined levels of service
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**5 Legal/Statutory/Policy Considerations**

If option 1 is adopted then there are no statutory or policy implications.

10 If option 2 is adopted there will be the contractual and land purchase requirements to be undertaken.

If option 3 is adopted then the requirements of section 7.11 of the Environmental Planning and Assessment Act 1979 as outlined above must be complied with.

15 Reviewed by Legal Counsel:

**Financial Considerations**

There are no financial implications if option 1 is adopted.

20 There are significant implications if option 2 is adopted in terms of initial capital outlay and ongoing maintenance. There is no source identified source of funds for this purchase.

25 If option 3 is adopted there are no immediate budget implications. There will be a shortfall in contributions in the Mullumbimby open space catchment. This may adversely impact on Council's ability to deliver other works from the Developer Contributions Plan.

Reviewed by Manager Finance:

**Consultation and Engagement**

30 No public consultation or engagement has been undertaken.

**Report No. 6.9**                      **Rural Tourism Accommodation Development**  
**Directorate:**                      Sustainable Environment and Economy  
**Report Author:**                  Shannon Burt, Director Sustainable Environment and Economy  
**File No:**                              I2019/804

5

**Summary:**

10    A Notice of Motion (NOM) - No. 9.1 Consider removal of 'Rural Cabin' provisions and amendment to 'Farm Stay' provisions in Rural Zones - was included in the ordinary meeting agenda 18 April 2019, but withdrawn on the day.

15    The purpose of this report is to provide further information to Council in response to this NOM about rural tourism accommodation development. In particular:

- What planning controls apply to this type of development;
- Recent development application trends;
- What are the planning controls surrounding councils have in place for this type of development; and
- Options for Shire wide planning controls.

20

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**RECOMMENDATION:**

**That Council endorse Option 2 contained in this report to review and amend Byron Local Environmental Plan 2014 and Byron Development Control Plan 2014 in relation to rural tourism/holiday cabins.**

25

## REPORT

A Notice of Motion (NOM) - No. 9.1 Consider removal of 'Rural Cabin' provisions and amendment to 'Farm Stay' provisions in Rural Zones - was included in the ordinary meeting agenda 18 April 2019, but withdrawn on the day.

*"There has been a notable increase in applications for rural cabins and farm stay accommodation in our rural areas. This has resulted in the further fragmentation (by built form) of our valuable farm land, a rise in land use conflict, visual impacts, and an increase demand on local services and infrastructure from visitor numbers to our hinterland and rural areas.*

*Notably, these development types do not generate additional rates for or pay contributions to Council. A 'rural cabin' is a form of Tourist and Visitor Accommodation and designed to enable rural cabins as a form of tourist accommodation not attached to a working farm. The genesis of rural cabin development is Local Environmental Plan (LEP) 1988, where provisions still remain in place for those rural lands known as 'deferred matters' under Local Environmental Plan (LEP) 2014. In LEP 1988 specific requirements for this type of development are in place under the definition of a 'rural tourist facility'; these being supported also by Development Control Plan 2010 provisions.*

*The other definition for rural Tourist and Visitor Accommodation in the Local Environmental Plan 2014 is 'farm stay'. The 2014 definition of 'farm stay' follows: Farm stay accommodation means a building or place that provides temporary or short-term accommodation to paying guests on a working farm as a secondary business to primary production. Note. See clause 5.4 for controls relating to the number of bedrooms. Farm stay accommodation is a type of tourist and visitor accommodation—see the definition of that term in this Dictionary.*

*The rural zone objectives in the LEPs indicate that rural cabins and farm stay development should only be considered where 'small-scale' and associated with the primary production and environmental conservation of the land consistent with the rural character of the locality.*

*The current controls within the LEPs and DCPs however do not reinforce this objective cogently enough. Perversely, a rural land owner under the current LEP and DCP provisions could conceivably make a development application for a dwelling house, secondary dwelling, dual occupancy dwelling, farm stay and rural cabins on land that meets relevant lot size and permissibility criteria. This has the potential to enable 14 plus buildings for habitation / tourist use on a single lot / holding without a specified minimum lot size in LEP 2014.*

*Different provisions apply to land in LEP 1988 including a 20 hectare minimum lot size requirement. The DCPs provide further controls which although different, fortunately up until now have been upheld by Council (and the Land and Environment Court when challenged).*

*Notwithstanding the above, more recently due to the advent of online platforms like Airbnb, many farm stays and rural cabins are being listed as 'short term holiday lets' in their own right without a host and without any bona-fide primary production being undertaken on the land. Some are also conducting weddings and events (currently prohibited in rural zones), to supplement and or in a majority of cases provide the primary income from the use of the land. This is generally in direct contravention of approvals in place.*

*To address this anomalous situation, Council needs to have consistent and effective controls for all its rural lands to restrict approval of rural cabins and farm stay development to where they can legitimately provide a (minor) secondary source of income for a working farm. To do this we should consider removing the rural cabins provisions from and reviewing the farm stay provisions in both LEP 1988 and 2014 and DCP 2010 and 2014."*

The purpose of this report is to provide further information to Council in response to the NOM about rural tourism accommodation development. In particular:

- 5 • What planning controls apply to this type of development;
- Recent development application trends;
- What are the planning controls surrounding councils have in place for this type of development; and
- Options for Shire wide planning controls.

10 **Key issues**

- **planning controls applying to this type of development**

15 There are two LEPs and DCPs that currently apply to rural land, depending on the zoning, each with different controls for rural tourism accommodation development.

Under LEP 2014, up until 2016, rural tourism accommodation development was generally restricted to farm stay accommodation, bed and breakfast, camping grounds or ecotourist facilities.

20 Each of the above uses has a specific requirement under the LEP:

- Bed and breakfast – to be provided by the permanent residents of a dwelling.
- Farm stay accommodation – to be located on a working farm.
- Ecotourist facility – to be associated with special ecological or cultural values.
- Camping ground – to be for portable temporary structures for short term use.

25 In 2016, amendments to LEP 2014 were made to the RU1 and RU2 land use tables to enable holiday/tourist cabin development that did not have to meet the above LEP development requirements.

30 **Local Environmental Plan 2014 (Applies to RU1 and RU2 land)**

**Definition**

35 **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,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,

but does not include:

- (f) camping grounds, or
- (g) caravan parks, or
- (h) eco-tourist facilities.

45 **bed and breakfast accommodation** means an existing dwelling in which temporary or short-term accommodation is provided on a commercial basis by the permanent residents of the dwelling and where:

- (a) meals are provided for guests only, and
- (b) cooking facilities for the preparation of meals are not provided within guests' rooms, and
- (c) dormitory-style accommodation is not provided.

50 Note. See clause 5.4 for controls relating to the number of bedrooms for bed and breakfast accommodation.

Bed and breakfast accommodation is a type of tourist and visitor accommodation—see the definition of that term in this Dictionary.

55 **camping ground** means an area of land that has access to communal amenities and on which campervans or tents, annexes or other similar portable and lightweight temporary shelters are, or are to be, installed, erected or placed for short term use, but does not include a caravan park.

**eco-tourist** facility means a building or place that:

- (a) provides temporary or short-term accommodation to visitors on a commercial basis, and
  - (b) is located in or adjacent to an area with special ecological or cultural features, and
  - (c) is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.
- It may include facilities that are used to provide information or education to visitors and to exhibit or display items.

Note.

See clause 5.13 for requirements in relation to the granting of development consent for eco-tourist facilities.

Eco-tourist facilities are not a type of tourist and visitor accommodation—see the definition of that term in this Dictionary.

**farm stay accommodation** means a building or place that provides temporary or short-term accommodation to paying guests on a working farm as a secondary business to primary production.

Note. See clause 5.4 for controls relating to the number of bedrooms.

5.4(5) Farm stay accommodation - If development for the purposes of farm stay accommodation is permitted under this Plan, the accommodation that is provided to guests must consist of **no more than 12 bedrooms**.

**Resolution 11-909** in relation to the draft Byron Local Environmental Plan 2011, provided the above parameters for Farm Stay Accommodation in now LEP 2014:

- b) **increase the number of bedrooms for Farm Stay Accommodation from 3 to 12 to facilitate cabin style development under Clause 5.4 (5);**
- c) *include specific numerical controls for Farm Stay Accommodation in a chapter of the Draft Byron Shire-wide Development Control Plan (in preparation) to reflect the maximum number of cabins, the floor area and the size of the land;...*

**holiday / tourist cabin** is not specifically defined, but falls out of the definition of **Tourist and Visitor Accommodation** as a nominated permissible use.

**Relevant clauses of LEP**

**6.8 Rural and nature-based tourism development**

- (1) The objective of this clause is 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.
- (2) This clause applies to land in the following zones:
  - (a) Zone RU1 Primary Production,
  - (b) Zone RU2 Rural Landscape.
- (3) Development consent must not be granted to tourism development on land to which this clause applies unless the consent authority is satisfied that:
  - (a) there is, or will be, adequate vehicular access to and from a road, other than a classified road, taking into account the scale of the development proposed, and
  - (b) the development is small scale and low impact, and
  - (c) the development is complementary to the rural or environmental attributes of the land and its surrounds, and
  - (d) the development will not have a significant adverse impact on agricultural production, amenity or significant features of the natural environment.
- (4) Development consent must not be granted to development for the purpose of tourism development on land to which this clause applies unless:
  - (a) a lawfully erected dwelling house or dual occupancy (attached) is situated on the land, or
  - (b) a dwelling house may be erected on the land under this Plan.
- (5) Development consent must not be granted to development under subclause (4) if the development:
  - (a) includes an ancillary caretaker's or manager's residence, or
  - (b) is for the purpose of more than 1 bed and breakfast accommodation.
- (6) In this clause:

**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:

- (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,
- (h) rural industries that provide services, or the sale of goods, on site to visitors.

**5.13 Eco-tourist facilities**

- 5 (1) The objectives of this clause are as follows:
- (a) to maintain the environmental and cultural values of land on which development for the purposes of eco-tourist facilities is carried out,
- (b) to provide for sensitively designed and managed eco-tourist facilities that have minimal impact on the environment both on and off-site.
- 10 (2) This clause applies if development for the purposes of an eco-tourist facility is permitted with development consent under this Plan.
- (3) The consent authority must not grant consent under this Plan to carry out development for the purposes of an eco-tourist facility unless the consent authority is satisfied that:
- (a) there is a demonstrated connection between the development and the ecological, environmental and cultural values of the site or area, and
- 15 (b) the development will be located, constructed, managed and maintained so as to minimise any impact on, and to conserve, the natural environment, and
- (c) the development will enhance an appreciation of the environmental and cultural values of the site or area, and
- (d) the development will promote positive environmental outcomes and any impact on watercourses, soil quality, heritage and native flora and fauna will be minimal, and
- 20 (e) the site will be maintained (or regenerated where necessary) to ensure the continued protection of natural resources and enhancement of the natural environment, and
- (f) waste generation during construction and operation will be avoided and that any waste will be appropriately removed, and
- (g) the development will be located to avoid visibility above ridgelines and against escarpments and from watercourses and that any visual intrusion will be minimised through the choice of design, colours, materials and landscaping with local native
- 25 (h) any infrastructure services to the site will be provided without significant modification to the environment, and
- (i) any power and water to the site will, where possible, be provided through the use of passive heating and cooling, renewable energy sources and water efficient design, and
- (j) the development will not adversely affect the agricultural productivity of adjoining land, and
- 30 (k) the following matters are addressed or provided for in a management strategy for minimising any impact on the natural environment:
- i. measures to remove any threat of serious or irreversible environmental damage,
- ii. the maintenance (or regeneration where necessary) of habitats,
- iii. efficient and minimal energy and water use and waste output,
- 35 iv. mechanisms for monitoring and reviewing the effect of the development on the natural environment,
- v. maintaining improvements on an on-going basis in accordance with relevant ISO 14000 standards relating to management and quality control.

40 Under LEP 1988, rural tourism accommodation and associated development is permitted under the definition of rural tourist facility.

**Local Environmental Plan 1988 (Applies to Deferred Matter Land).**

**Definitions**

45 **rural tourist facility** means an establishment providing for low-scale holiday accommodation, or used for recreational or educational purposes and may consist of a bed and breakfast establishment, boat landing facilities, environmental facilities, holiday cabins, horse riding facilities, a picnic ground, a primitive camping ground or a restaurant or the like.

50 **holiday cabin** means a building containing a room or suite of rooms used, or intended to be used, for the provision of holiday accommodation only.

**Clause 34 Tourist accommodation in rural zones**

- 55 (1) This clause applies to all land within rural zones where rural tourist facilities are permissible.
- (2) Development for the purpose of a rural tourist facility incorporating holiday cabins on land to which this clause applies:
- (a) may only be carried out on a single allotment, and
- (b) must not:
- 60 i. exceed a total of 6 cabins, and
- ii. be carried out on an allotment with an area less than 20 hectares.
- (3) The council may grant consent for development for the purposes of rural tourist facilities on land within rural zones only where the council is satisfied that:
- (a) (Repealed)
- 65 (b) the proposal incorporates adequate landscaping and screen plantings for visual amenity when viewed from a public road or dwelling-house on other land in the locality,

- (c) (Repealed)
- (d) the proposed development will have no adverse effect on the present and potential use, including agricultural use, of the land and of lands in the vicinity,
- (e) there will be no adverse visual impact of the proposed development on the landscape,
- 5 (f) the proposed development will be low scale in nature, compatible with the rural environment and of minimal environmental impact,
- (g) (Repealed)
- (h) tourist accommodation is to be located so that it may benefit from existing road and physical service infrastructure, and
- (i) all proposed buildings and other uses are clustered so as to reduce impact on rural amenity, and
- 10 (j) adequate separation distances will be incorporated to minimise the potential for land use conflict between the proposed rural tourist facility and existing or potentially conflicting land uses, such as intensive agriculture, quarries or animal establishments on adjoining or adjacent land.

**Development Control Plan 2010**

15 DCP 2010 applies to land to which the Byron Local Environmental Plan 1988 (LEP 1988) applies i.e. all land deferred from Byron Local Environmental Plan 2014 (LEP 2014), with the exception of the West Byron urban release area (where DCP 2014 applies).

20 There were limited provisions in DCP 2010 for rural tourist accommodation and associated development. As a consequence, the Byron Rural Settlement Strategy 1998 (as referenced in clause 2A of BLEP 1988) was heavily relied upon for development assessment by staff.

**Development Control Plan 2014**

25 DCP 2014 applies to all land specified in the LEP 2014, with the addition of the West Byron urban release area.

30 DCP 2014 has provisions for rural tourist accommodation development by way of Chapter D3 Tourist Accommodation which references Byron Rural Settlement Strategy 1998 (BRSS) and includes its requirements as both performance standards and prescriptive measures; and has other related chapters in the Plan for development assessment by staff.

**Byron Rural Land Use Strategy 2018 and Byron Rural Settlement Strategy 1998**

35 The Byron Rural Settlement Strategy 1988 was replaced by endorsement of the Byron Rural Land Use Strategy by the Department of Planning in 2018.

40 In a recent Land and Environment Court judgement ([2018] NSWLEC 1695 *Ardill Payne & Partners v Byron Shire Council*, Commissioner Walsh found that ...*the DCP provisions calling up the Byron Rural Land Use Settlement Strategy remain live and pertinent, albeit subject to the provisions of s4.15(3) of the EPA Act.* This is because a policy document has no power to alter a statutorily made DCP.

45 Extract below:

**4.15 Evaluation (cf previous s 79C)**

- 50 (3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:
  - (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and
  - (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

55 Note. The application of non-discretionary development standards to complying development is dealt with in section 4.28 (3) and (4).

- (3A) Development control plans If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:
  - 60 (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and

- (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and
- (c) may consider those provisions only in connection with the assessment of that development application.

5 In this subsection, standards include performance criteria.

- **Statutory hierarchy**

10 Having regard to the above, a statutory hierarchy sees LEP provisions take precedent over DCP controls.

In DCPs, the hierarchy of controls sees the prescriptive measures as mandatory matters for consideration, and the performance criteria as general matters for consideration.

15 State legislation such as Rural Fires Act (including Planning for Bushfire Protection), BASIX, Biodiversity Conservation Act (BDAR, SEPP Vegetation), SEPP Rural Lands, SEPP Exempt and Complying Code takes precedence over any of the above Council requirements albeit lesser or higher standards being imposed as a consequence.

20 In the matter of [2018] NSWLEC 1695 Ardill Payne & Partners v Byron Shire Council, Commissioner Walsh refused inter alia to grant consent to 2 holiday cabins due to their large size and their lack of responsiveness to planning provisions like the relevant zone objectives for small scale and that ‘tourist accommodation in rural zones is just that..’.

25 Of relevance here is the statutory hierarchy.

An example of how the statutory hierarchy works for rural holiday/tourist cabin accommodation follows:

<b>Matter for consideration</b>	<b>BRSS Guidelines</b>	<b>LEP</b>	<b>DCP 2014</b>	<b>Other</b>
<b>cabin definition</b>	yes	1988 yes 2014 yes (2 definitions)	n/a	n/a
<b>map for potential land for cabins</b>	yes	1988 Clause 34 2014 Clause 6.8	no	n/a
<b>minimum land area 20 hectares</b>	yes	1988 yes (20ha) 2014 no	no	n/a
<b>restriction on number of cabins per property (6)</b>	yes	1988 yes (6) 2014 no	2014 D3.3.4 sliding scale (Performance Criteria & Prescriptive Measures)	n/a
<b>cabins to be no more than 60m2 GFA</b>	yes	no	2014 D3.3.4 (Prescriptive Measures)	n/a
<b>no night-time lighting for recreational facilities</b>	yes		2014 D3.3.4 (Prescriptive Measures)	n/a
<b>all weather centralised parking for</b>	yes	no	2014 D3.3.4	n/a

<b>guests</b>			(Prescriptive Measures) & B4	
<b>disabled access</b>	Yes (1)	no	2014 D3.3.4 (Prescriptive Measures)	Building Code Australia
<b>location, siting, character of cabins</b>	yes		2014 D3.2.1, D3.2.3 (Performance Criteria)	BASIX, Planning for Bushfire Protection
<b>planting of the 900 trees per cabin</b>	yes	no	2014 D3.2.3 (Performance Criteria)	SEPP 44, Biodiversity Conservation Act, 10/50 rule
<b>a 90% survival rate of trees after 24 months</b>				
<b>payment of an environmental repair bond of \$4500 per cabin</b>				
<b>an energy efficiency site analysis report</b>	yes		2014 D3.2.3 (Performance Criteria)	BASIX
<b>no erection of cabins or buildings near ridgelines</b>	yes		2014 D3.3.4 (Performance Criteria) & C3	Planning for Bushfire Protection
<b>water supply</b>	yes		2014 D3.2.3 (Performance Criteria)	BASIX, Planning for Bushfire Protection
<b>land use conflict risk assessment</b>	yes		2014 D3.3.4 (Prescriptive Measures) & B6	DPI Guidelines
<b>wastewater and effluent treatment on site</b>	yes		2014 D3.3.4 (Prescriptive Measures) & B3	S68 Local Government Act

There are differences in the LEP and DCP controls that apply across the Shire for holiday/tourist cabon development. In this regard each development application is considered having regard to the statutory hierarchy, its individual merits and circumstances of the case.

5

• **Development Application Trends**

A breakdown of rural applications – individual dwelling/building count as approved for 2014 - 2018 is below.

10

	2014	2015	2016	2017	2018
<b>Aged care units</b>	0	4	0	0	0
<b>Dual occupancy</b>	11	14	22	26	12
<b>Dwelling</b>	57	52	56	47	28
<b>Cabin - Rural</b>					
<b>Tourist</b>	0	2	3	0	34
<b>Secondary</b>	22	27	46	37	21

**dwelling**

<b>Studio</b>	13	13	10	4	8
<b>Tourist facility</b>	3	7	19	14	1
<b>TOTAL</b>	106	119	150	128	104

The above table shows the increase in holiday/tourist cabin numbers on rural land since 2016.

5 It is also clear that the ability to utilise multiple definitions in the LEP is resulting in different development on rural land not entirely consistent with the RU1 and RU2 zone objectives of the LEP.

10 There are also a considerable number of unauthorised ‘cabins’, secondary dwellings and rural sheds being used as dwellings and or holiday lets on rural land not currently accounted for.

Impacts from the above development types identified include: fragmentation of rural land, land use conflicts from non-farm use on a farm, infrastructure impost in areas where roads etc. are not of a standard to cater to traffic etc.

15 These issues are also common themes in objections to development applications, consultation on planning strategy/policy, complaints about unauthorised development on rural land. Most of these development types are paying minimal or no development contributions/rates.

20 **• Other North Coast Councils – rural tourism accommodation controls**

25 The table below provides a comparison with other North Coast councils with regards to LEP local rural tourism accommodation clauses: the use of specific tourism or rural tourism DCP chapters; and the inclusion DCP/LEP numerical limitations for scale, including bedrooms or buildings or floor area.

The density and scale of rural tourist accommodation for the Byron Shire is generous when compared to other councils.

<b>Council</b>	<b>LEP provision</b>	<b>Permits “other rural tourist accommodation”</b>	<b>Rural Tourism DCP</b>	<b>LEP/DCP density/scale limitations</b>
<b>Byron</b>	yes	yes	yes	Farmstay – 12 bedrooms Ecotourist 40m2 in a building; 60m2 stand alone cabin <b>Other</b> 3-12 bedrooms 60m2/cabin
<b>Ballina</b>	yes	yes	yes	Farmstay – 3 bedrooms <b>Other</b> – 8 cabins/16 bedrooms 75m2/cabin
<b>Lismore</b>	proposed	proposed	proposed	Farm stay – 5 bedrooms Ecotourist – 3 bedrooms <b>Other</b> 3 bedrooms 30m2 internal/cabin
<b>Clarence</b>	no	no	yes	Farm Stay – 10

<b>Valley</b>				bedrooms Ecotourist - none
<b>Richmond Valley</b>	no	no	yes	Farmstay – 10 bedrooms Ecotourist – 1 cabin/ha
<b>Tweed</b>	no	no	no	Farm stay 12 bedrooms

Note: “Other” doesn’t have to be located on a working farm (farm stay accommodation) nor does it have to be associated with special ecological or cultural values (eco-tourist facility).

5

**Options**

10 Council’s Rural Land Use Strategy Actions 10 and 13 provide for the local planning framework to be updated to reinforce the need to support only low scale rural tourism opportunities, particularly those directly associated with primary production and/or improved conservation outcomes on rural land.

**Next steps**

15 A review and amendment to the Local Environmental Plan/s and Development Control Plan/s is required if Council is of a mind to want to change the current planning controls for rural tourism accommodation development.

20 Separate reports to progress amendments can be provided to a future Council meeting depending on the preferred option of Council.

Options available to Council include:

Option 1 NO CHANGE TO CONTROLS	Option 2 AMEND LEP & DCP CONTROLS	Option 3 REMOVE CONTROLS
No change to the current LEP and DCP provisions.	Include a minimum lot size for rural tourism accommodation development;  Include a definition of rural holiday/tourist cabin (not farm stay);  Strengthen the definition of small scale;  Reduce the number of bedrooms for farm stay accommodation accordingly;  Amend DCP as required.	Remove provision for rural holiday / tourist cabin development (rely on farm stay accommodation & ecotourist development).  Amend DCP as required.
Outcome = Status quo	Outcome = Limit the scale and density of development by alignment of LEP and DCP controls to that of LEP 1988.	Outcome = Reduce the type of development permitted to pre 2016 controls.

25

**STRATEGIC CONSIDERATIONS**

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

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 3: We protect and enhance our natural environment	3.4	Support and secure our farming future	3.4.1	Develop and implement strategies to support agriculture, agri-business and farmers	3.4.1.1	Implement priority actions of the Rural Land Use Strategy

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

There are five steps in the Planning Proposal process which must be complied with:

10 The Planning Proposal – the planning proposal authority prepares the planning proposal. The planning proposal authority is usually the local council; however the Minister can appoint the Secretary of the Department of Planning and Environment, a regional planning panel or a Sydney planning panel to be the planning proposal authority.

15 Gateway – the Minister (or delegate) decides whether the planning proposal can proceed (with or without variation) and subject to other matters including further studies being undertaken, public consultation, public hearings, agency consultation and time frames. A planning proposal does usually not proceed without conditions of this nature. The conditions are then complied with and if necessary, the proposal is changed. A decision on whether the relevant council is able to finalise particular types of LEPs is also determined at this stage.

20 Community Consultation – the proposal is publicly exhibited as required by the Minister. A person making a submission may also request a public hearing be held.

25 Assessment – the planning proposal authority reviews public submissions. Parliamentary Counsel then prepares a draft local environmental plan.

The Making of the LEP – with the Minister’s (or delegate’s) approval the local environmental plan is published on the NSW legislation website and becomes law.

30 Amendments to the Development Control Plans will be done in concert with the Planning Proposal including exhibition as required by the Environmental Planning and Assessment Act 1979.

***Financial Considerations***

35 Task to be managed within existing financial / legal and resource allocations.

***Consultation and Engagement***

As required by the gateway determination and Council’s Engagement Policy.

40



carriageway and it is required to be widened and upgraded to satisfy the requirements of the Rural Fire Services. The Right of Carriageway also needs to be re-aligned, but owners consent from the neighbour to the east has not been provided agreeing to this.

- 5 Further, the proposal requires the removal of six ironbark trees for the provision of an asset protection zone to facilitate the retrospective approval of the dual occupancy. It is considered better siting of the dwelling may have eliminated the need for these trees to be removed, however this is difficult to achieve in this instance as the house has already been constructed.
- 10 The Application is therefore recommended for refusal based on ecological impacts and failing to demonstrate legal access to the site.

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

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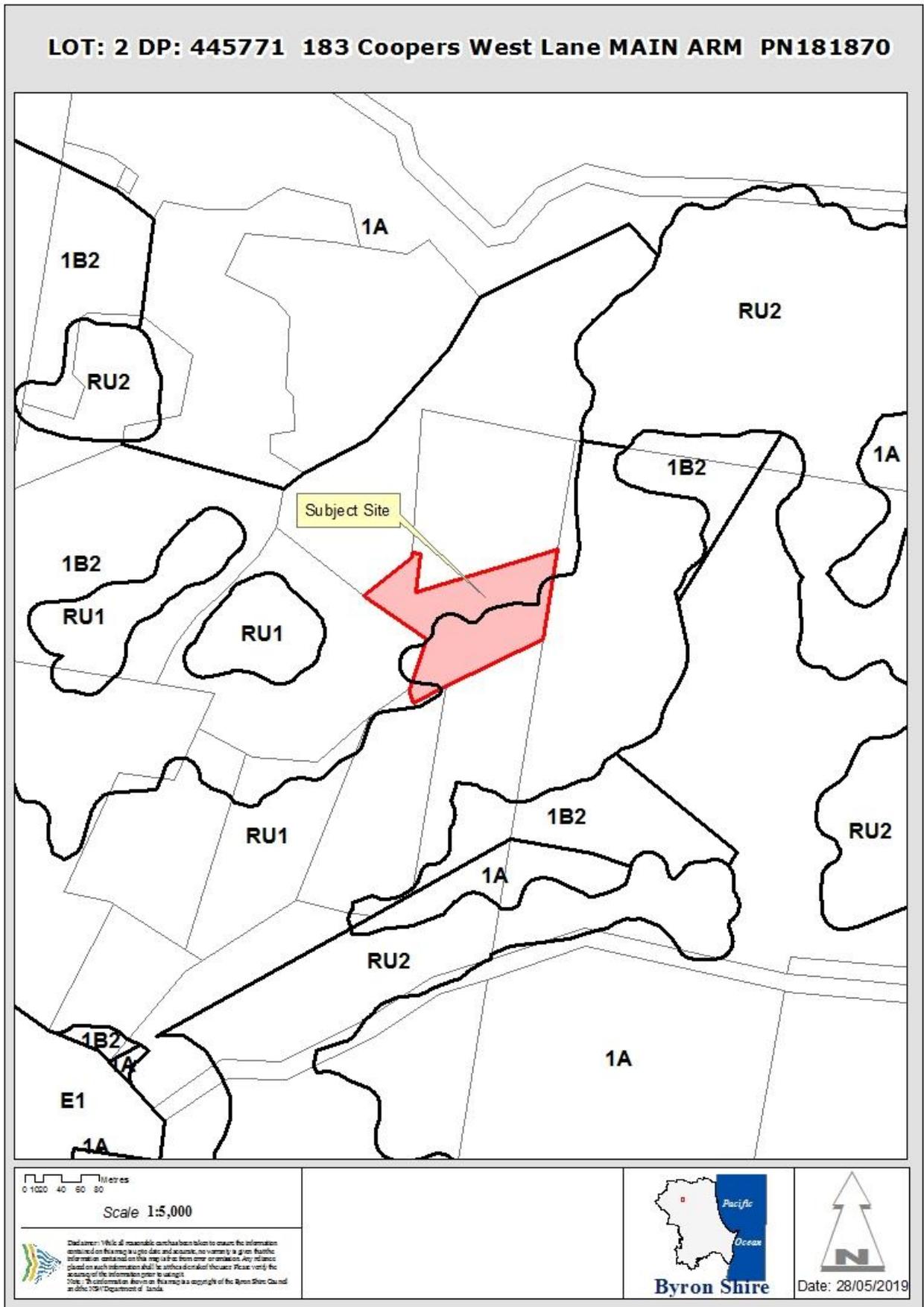
RECOMMENDATION:

**That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No.10.2018.384.1 for Use of existing structure as a Dwelling House and Alterations and Additions to create Dual Occupancy (detached), Alterations and Additions to existing Dwelling House, Tree Removal and Upgrade existing Wastewater System, be refused for the following reasons:**

- 1. Pursuant to Section 4.15(1)(a)(i) of the EPA Act 1979 the proposed development does not have adequate access arrangements in place to service the development in accordance with clause 6.6 of the Byron Local Environment Plan 2014.**
- 2. Pursuant to Section 4.15 (1)(c) of the EPA Act 1979 the site is not suitable for the proposed development as suitable vehicular access has not been established for the property, and it requires the removal of native vegetation for the provision of an Asset Protection Zone for the dual occupancy.**
- 3. Pursuant to Section 4.15(b) of the EPA Act 1979 the proposed vegetation removal will have an adverse impact upon the natural environment.**
- 4. Pursuant to Section 4.15(e) of the EPA Act 1979 the proposed development is not in the public interest as suitable access arrangements are not provided to the property and the issuing of retrospective approval for the dual occupancy sets a undesirable planning precedent in the circumstances of the case.**

Attachments:

- 25 1 Proposed Plans, E2019/38326 
- 2 Submissions received, E2019/38225 



**Assessment:**

**1. INTRODUCTION**

5

**1.1. History/Background**

The site has an approval for a dwelling under BA 78/2020 determined 23/02/1978.

10 A request for further information was sent to the applicant on 21/9/2018 regarding absence of a  
accurate survey plan and inconsistencies identified with the provide plans following a site  
inspection (carried out on 14/9/2018). A response to this request was received on 4/10/2018 which  
provided an interim amended site plan (P1, 2/10/18) and stated that a survey had been  
15 commissioned. The detailed site survey was provided on 18/10/2018 (Amended Site Plan,  
18/10/18).

Further correspondence was received from the applicant (17/1/2019) stating that:

- The eastern wastewater disposal fields will be relocated so that they are no longer proximate to the Brushbox Tree, thus alleviating the need to remove this tree; and
- Removal of the expanded dwelling module from the plan.

A further request for further information was sent to the applicant on 21/1/2019 regarding:

- Owners consent for the proposed asset protection zones (APZ) beyond the property boundary or an amended Bushfire Report that proposes mitigation that is restricted to within the property; and
- An amended Bushfire Report that reduces the ecological impacts from the recommended APZs.

30 An amended Bushfire Report (22/3/2019) was provided by the applicant and referred to the Rural Fire Service (RFS) (3/4/2019) with a response being received from RFS on 9/5/2019.

**1.2. Description of the proposed development**

The initial application sought approval for:

- Alterations and Additions to existing Dwelling House (central east of the site) including construction of an expended dwelling module;
- Use of existing structure as a Dual Occupancy (detached) including alteration and additions to this structure;
- Tree Removal (8 trees); and
- Upgrade of the existing Wastewater System.

The application was amended to remove the proposed expanded dwelling module and tree removal (email 27/5/19).

**1.3. Description of the site**

Land is legally described as	LOT: 2 DP: 445771
Property address is	183 Coopers West Lane MAIN ARM
Land is zoned:	RU1 Primary Production / PART Deferred Matter (1(b2) Agricultural Protection)
Land area is:	2.18 ha
Property is constrained by:	Bushfire prone land (vegetation category 1 and buffer zone) High Environmental Value vegetation (three patches: middle and east of site – north coast wet sclerophyll and subtropical rainforest)

Koala habitat (two patches: middles and west of site)  
Threatened fauna habitat  
Underground and above ground powerlines run through property  
Right of Way

A site inspection was conducted on 3/6/2019.



Photo 1 – Primary dwelling – view west from Coopers Lane West.



Photo 2 – Primary dwelling – view north from Coopers Lane West.



Photo 3 – Other building to be converted to a shed.



Photo 4 – Proposed dual occupancy



Photo 5 – Coopers Lane West at No.183.

**2. SUMMARY OF REFERRALS**

<b>Referral</b>	<b>Issue</b>
Environmental Health Officer	No objections subject to conditions.
Development Engineer	Not supported due to unresolved issues with access.
Building Surveyor	Recommendation: "Deferred commencement" condition that Building Information Certificate is required to demonstrate that buildings are structurally adequate for their intended use.
S94 / Contributions Officer	No objections subject to conditions.
Ecologist	Siting of the second dwelling is not supported due to the removal of a copse of grey ironbark trees.
Rural Fire Service (100B/4.14/4.14)	No objections subject to conditions.

**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 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 below.

The subject parcel of land is located in a designated 10/50 vegetation entitlement clearing area (RFS online tool accessed 29/5/19).

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

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

**4.1 State Environmental Planning Instruments**

	<b>Satisfactory</b>	<b>Unsatisfactory</b>
State Environmental Planning Policy No 44—Koala Habitat Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The consent authority must not consent to development without considering land contamination (clause 7). Council’s Environmental Health Officer reviewed the contamination status of the land and made the following comments:  <i>Preliminary Contaminated Land Assessment No. 18383_sepp55 prepared by Greg Alderson &amp; Associates dated 12th June 2015 identified the presence of elevated concentrations of arsenic in and around the building envelope. Arsenic concentrations in both composite samples were above the adjusted Health Investigation Level (HIL) from NEPM 2013. There is a requirement for a further soil investigation to be undertaken. Should levels exceed HILs remedial works may be necessary. Conditions have been imposed in this regard.</i>		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>

	Satisfactory	Unsatisfactory
Consideration: The dwelling house and proposed dual occupancy (detached) are both BASIX affected development. A BASIX Certificate for each dwelling was provided with the application (clause 6).		
State Environmental Planning Policy (Infrastructure) 2007	<input checked="" type="checkbox"/>	

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

5 LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development. The LEP 2014 clauses that are checked below are of relevance to the proposed development:

Part 1	<input checked="" type="checkbox"/> 1.1  <input checked="" type="checkbox"/> 1.1AA  <input checked="" type="checkbox"/> 1.2  <input checked="" type="checkbox"/> 1.3  <input checked="" type="checkbox"/> 1.4  <input checked="" type="checkbox"/> Dictionary  <input checked="" type="checkbox"/> 1.5  <input checked="" type="checkbox"/> 1.6  <input checked="" type="checkbox"/> 1.7  <input checked="" type="checkbox"/> 1.8  <input type="checkbox"/> 1.8A  <input checked="" type="checkbox"/> 1.9  <input type="checkbox"/> 1.9A
Part 2	<input checked="" type="checkbox"/> 2.1  <input checked="" type="checkbox"/> 2.2   <input checked="" type="checkbox"/> 2.3   <input checked="" type="checkbox"/> Land Use Table
Part 3	<input type="checkbox"/> 3.1  <input type="checkbox"/> 3.2  <input type="checkbox"/> 3.3
Part 4	<input checked="" type="checkbox"/> 4.2A  <input checked="" type="checkbox"/> 4.2D  <input checked="" type="checkbox"/> 4.3
Part 6	<input type="checkbox"/> 6.1  <input type="checkbox"/> 6.2  <input type="checkbox"/> 6.3  <input type="checkbox"/> 6.4  <input type="checkbox"/> 6.5  <input checked="" type="checkbox"/> 6.6  <input type="checkbox"/> 6.7  <input type="checkbox"/> 6.8  <input type="checkbox"/> 6.9

- 10 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 Dwelling House and Dual Occupancy (Detached);
  - (b) The land is within the RU1 Primary Production / PART DM Deferred Matter (1(b2) Agricultural Protection) according to the Land Zoning Map (The proposed development is
- 15 located only within Zone RU1 land);
- (c) The proposed development is permissible with consent; and
  - (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
<ul style="list-style-type: none"> <li>• <i>To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.</i></li> <li>• <i>To encourage diversity in primary industry enterprises and systems appropriate for the area.</i></li> <li>• <i>To minimise the fragmentation and alienation of resource lands.</i></li> <li>• <i>To minimise conflict between land uses within this zone and land uses within adjoining zones.</i></li> <li>• <i>To encourage consolidation of lots for the purposes of primary industry production.</i></li> <li>• <i>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.</i></li> <li>• <i>To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.</i></li> </ul>	<p>The proposed development does not further the zone objectives but neither does it expressly conflict with them.</p> <p>The application does not indicate that the property is used for primary production or rural tourism.</p>

**Clause 4.2A Erection of dwelling houses and dual occupancies on land in certain rural zones**

5 Although the subject lot is less than the minimum lot size of 40ha, development consent may be granted under subclause 3 as the lot was created before this plan commenced and a dwelling house was permissible before commencement of this plan (clause 15 and schedule 7 of BLEP 1988). Development consent may be granted under subclause 4 as an approved dual occupancy is not currently erected on the land.

10 **Clause 4.2 D Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2**

Under subclause (2), development consent must not be granted to development for the purpose of a dual occupancy (detached) on land in Zone RU1 Primary Production unless the consent authority is satisfied of a range of matters discussed below:

- 15 (a) *the development will not impair the use of the land for agriculture or rural industries, and*
- (b) *each dwelling will use the same vehicular access to and from a public road, and*
- (c) *any dwellings will be situated within 100 metres of each other, and*
- 20 (d) *the land is physically suitable for the development, and*
- (e) *the land is capable of accommodating the on-site disposal and management of sewage for the development, and*
- (f) *the development will not have an adverse impact on the scenic amenity or character of the rural environment.*

25 The proposed dual occupancy satisfies part of the clause; however the siting of the dwelling as currently located is questionable having regards to environmental impacts associated with tree removal. In this regard other sites closer to the dwelling may have ameliorated this issue and enabled the retention of the subject ironbark trees that currently need to be removed for the provision of an Asset Protection Zone. The application is recommended for refusal.

30

**Clause 6.6 Essential Services**

35 The proposal relies on access to the site via right of carriageway (ROW) over the property to the east. The constructed access road however does not sit within the ROW; whilst the Rural Fire Service will require the access to be upgraded to meet there access requirements. No detail has been submitted from the applicant demonstrating that the ROW can be re-aligned or upgraded in the form of owners consent from the land owner to the east. The application is recommended for refusal.

40 **4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority**

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

45 **4.4A Byron Shire Development Control Plan 2014 (DCP 2014)**

DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP& A Act because it applies to the land to which LEP 2014 applies. The DCP 2014 Parts/Chapters that are checked below are of  
50 relevance to the proposed development:

Part A	<input checked="" type="checkbox"/>
Part B Chapters:	<input checked="" type="checkbox"/> B2  <input checked="" type="checkbox"/> B3  <input checked="" type="checkbox"/> B4  <input type="checkbox"/> B5  <input type="checkbox"/> B6  <input type="checkbox"/> B7  <input checked="" type="checkbox"/> B8  <input type="checkbox"/> B9  <input type="checkbox"/> B10  <input type="checkbox"/> B11  <input type="checkbox"/> B12  <input type="checkbox"/> B13  <input type="checkbox"/> B14
Part C Chapters:	<input type="checkbox"/> C1  <input type="checkbox"/> C2  <input type="checkbox"/> C3  <input type="checkbox"/> C4

Part D Chapters	<input type="checkbox"/> D1  <input checked="" type="checkbox"/> D2  <input type="checkbox"/> D3  <input type="checkbox"/> D4  <input type="checkbox"/> D5  <input type="checkbox"/> D6  <input type="checkbox"/> D7  <input type="checkbox"/> D8
Part E Chapters	<input type="checkbox"/> E1  <input type="checkbox"/> E2  <input type="checkbox"/> E3  <input type="checkbox"/> E4  <input type="checkbox"/> E5  <input type="checkbox"/> E6  <input type="checkbox"/> E7

**B2 – Preservation of Trees and Other Vegetation**

5 The revised application (i.e., no expanded dwelling module) does not require any tree removal for the alterations and additions to the dwelling house. The asset protection zone (APZ) required by the Rural Fire Service (RFS) for the proposed dual occupancy will require the removal of six Ironbarks. The initial application proposed compensatory planting (see amended Site Plan, 17/1/19) being:

- In a line north-south between the dwelling and proposed dual occupancy; and
- To the west of the proposed dual occupancy.

10 The applicant was provided the opportunity to seek confirmation from a bushfire professional that the APZ required by the RFS could be established and maintained without the need for the removal of the Ironbarks however this information was not received at the time of finalising this report.

15 **B3 – Services**

Water supply – The application states that water supply for the dwellings will be from tank water. (NB - *Rural dwellings without reticulated water are to have a minimum domestic tank capacity of 40,000 litres.*)

Electricity – powerlines run through the property near to the two subject buildings.

20 Telecommunications – No detail on telecommunications for the proposed development was identified in the application.

Stormwater – The application states that roof water will be diverted through the BASIX water tank, then the Bushfire Tank with overflow directed to the stormwater infiltration areas (see Amended Site Plan, 17/1/19).

25 Access – via a right of way (ROW) from Coopers West Lane. As discussed above the ROW need to be re-aligned and widened, but owners consent for this to occur has not been provided. The application is recommended for refusal.

30 Wastewater – Council’s Environmental Health Officer has assessed the proposed wastewater management and found it to be acceptable subject to conditions.

**B4 – Traffic Planning, Vehicle Parking, Circulation and Access**

Proposed parking and circulation are adequate however Council’s Development Engineer identified issues relating to access.

35

**B6 Buffers & minimising land use conflicts**

Surrounding land use consists predominantly of rural-residential development. Council’s Environmental Health Officer is satisfied with the proposed buffers for wastewater disposal.

40 **D2 Residential Accommodation and Ancillary Development in Rural Zones**

**D2.2 General Provisions**

The dwelling and proposed dual occupancy is set back over 20m from all property boundaries (D2.2.2). The total number of residential buildings proposed for the property is two (D2.2.3).

45

**D2.3 Dwelling Houses**

The principal dwelling has adequate parking however Council’s Engineer has raised concerns regarding access (D2.3.1).

50 **D2.5 Dual Occupancies and Secondary Dwellings**

Parking for (D2.5.1), and siting of (D2.5.2), the dual occupancy is consistent with relevant prescriptive measures. Although not clearly delineated in the application, there appears to be

ample opportunity to provide the required (30m<sup>2</sup>) private open space for the dual occupancy (D2.5.4).

The proposed development raises no other issues under the DCP.

5

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

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

10

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

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	Yes	Yes. See Building Surveyor referral	Condition to apply in relation to a Building Information Certificate should the application be approved.
94	Yes	Yes. See Building Surveyor referral	See above.
94A	No	N/A	N/A

**4.7 Any coastal zone management plan?**

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

15

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

Impact on:	Likely significant impact/s?
<b>Natural environment</b>	The proposed alterations and additions to the dwelling alone will not have a significantly adverse impact on the natural environment. However the retrospective approval for the second dwelling will require the removal of six Ironbarks to meet Rural Fire Service requirements. It is considered that better siting of the dwelling closer to the existing house may have limited the need for these trees to be removed. As such it is considered the proposal will have an adverse impact on the natural environment.
<b>Built environment</b>	No. The proposal will not have a significantly adverse impact on the built environment.
<b>Social Environment</b>	No. The proposal will not have a significant social impact on the locality.
<b>Economic impact</b>	No. The proposal will not have a significant economic impact on the locality.

20

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

The site is considered suitable for the proposed development but for the following issue:

<b>Issue</b>	<b>Comment</b>
Services - Access	<p>The current ROW is of insufficient width and location to meet the requirements of section 4.13 (2) of 'Planning for Bushfire Protection 2006'. Further, the constructed ROW does not follow the legal alignment.</p> <p>The ROW needs to be re-aligned to support the development however this has not been addressed by the applicant, although details have been sought in that regard.</p>

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

- 5 The development application was publicly exhibited. There were 4 submissions made on the development application, all in opposition.

<b>Key issues raised in submissions</b>	<b>Consideration</b>
Traffic, access (road condition/maintenance)	Council's Engineer has considered traffic and access for the proposed development. The additional traffic likely to be generated by the proposed development was assessed as being minimal. Concerns with legal access are discussed above.
Dust from road use	Additional traffic generated by the development is expected to be minimal and the increase in dust from this development is not likely to be significant.
Impact on habitat/native species	Should established native trees (i.e., the six Ironbarks) require removal to establish the APZ for the dual occupancy there is likely to be an impact on habitat/native species (see discussion above).
'Illegal' use of shed as a residence	The application proposes to remove the internal walls of the "shed" and this could be required in addition to this building not being used for habitation by condition/s should the application be approved.
Impact on scenic quality/amenity	See discussion below.
On-site Sewage Management	Proposed on-site wastewater management has been reviewed by Council's Environmental Health Officer and found to be acceptable.

Impact on scenic quality/amenity

- 10 Council staff attended the property to the west of the subject site on 14/9/2018 to assess the impact of the proposed development on scenic quality/amenity. The below images were taken from the verandah of the dwelling on the neighbouring property to the west (The dual occupancy is the light-coloured roof in the centre of these photos).



Figure 1: portrait



Figure 2 Landscape

The applicant has proposed the following measures to minimise the visual impact of the proposed dual occupancy:

- Plant native trees to the west of the proposed dual occupancy (see Amended Site Plan, 17/1/19) – 4/10/2018; and
- Remove gable roof from building and replace with skillion roof (see Plan P2, 30/4/19).

It is considered the visual impact is minimal with the dual occupancy screened in part by surrounding vegetation and not elevated in any way to affect view lines to the surrounding hinterland. This is not considered as a reason for refusal.

**4.11 Public interest**

The proposed development is not in the public interest as access issues have not been resolved; and the issuing of the retrospective approval for the dual occupancy sets an undesirable precedent in the circumstances of the case.

**5. DEVELOPER CONTRIBUTIONS**

**5.1 Water & Sewer Levies**

No Section 64 levies will be required.

**5.2 Section 7.11 Contributions**

Section 7.11 Contributions will be payable.

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

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

Environment Division.	
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**7. CONCLUSION**

- 5 The proposed development relies upon the removal of native vegetation and the realignment and upgrading of the existing right of carriageway to the property on the neighbours land to the east. It is considered the vegetation removal will have an adverse impact upon the environment, whilst no detail has been submitted from the neighbour in the form of owners consent in support of the works required for the right of carriageway or for its legal re-alignment. The application as presented can not be approved and is recommended for refusal.

# BYRON SHIRE COUNCIL

**Report No. 6.11**      **PLANNING - 10.2018.466.1 Demolish Existing Dwelling House and Construct New Dwelling House and Swimming Pool at 61 Kingsley Street Byron Bay**

**Directorate:** Sustainable Environment and Economy  
**Report Author:** Nancy Tarlao, Planner  
**File No:** I2019/834

5

10

**DA No:** 10.2018.466.1  
**Proposal description:** Demolish Existing Dwelling House and Construct New Dwelling House and Swimming Pool  
**Property description:** LOT: 11 SEC: 45 DP: 758207  
61 Kingsley Street BYRON BAY  
**Parcel No/s:** 38660  
**Applicant:** Byron Bay Planning & Property Consultants  
**Owner:** Mrs N E & Mr C J Cowan  
**Zoning:** R2 Low Density Residential  
**Date received:** 12 September 2018  
**Integrated / Designated Development:**  Integrated       Designated       Not applicable  
**Concurrence required** No  
**Public notification or exhibition:**  
– Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications  
– Exhibition period: 25/09/2018 to 8/10/2018  
– Revised plans 05/03/2019 – 18/03/2019  
– Submissions received: Two objections received in total, various submissions received from the same objector  
**Concurrent approvals (S68/138):** Not applicable  
**Variation request**  Clause 4.6       SEPP 1       Not applicable  
**Issues:**  
• Heritage Conservation Area  
• Non-compliance with the Building Height Plane- DCP 2014

## Summary:

15 The subject site is located within Kingsley Street Conservation Area in Byron Bay. The DA proposes demolition of the existing dwelling house and construction of a new 2 storey dwelling with basement storage and a back yard pool. The existing dwelling to be demolished has been updated throughout the years with non-characteristic heritage additions and no longer displays heritage characteristics worthy of conservation.

20 The application was lodged on 12.09.2019 with architectural plans that were non-compliant with the LEP height limit and the DCP controls for the Building Height Plane. The building has been through various architectural changes which have lowered the building height to less than 9m at the roof pitch, however a breach of the building height plane remains. In this regard the dwellings either side of the proposed building also breach the Building Height Plane, however the  
25 development through the use of 3 metre ceilings on the ground floor, has exacerbated the breach. To bring the development more into compliance and to reduce overshadowing on neighbouring

properties, it is recommended the ground floor be lowered 200 mm and the floor to ceiling height on this level be reduced a further 300 mm lowering the dwelling a total 500mm.

5 With the changes proposed by way of conditions, as discussed above the proposed dwelling house is considered acceptable and not out of character with the area. The application is recommended for approval subject to Conditions of Consent.

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.

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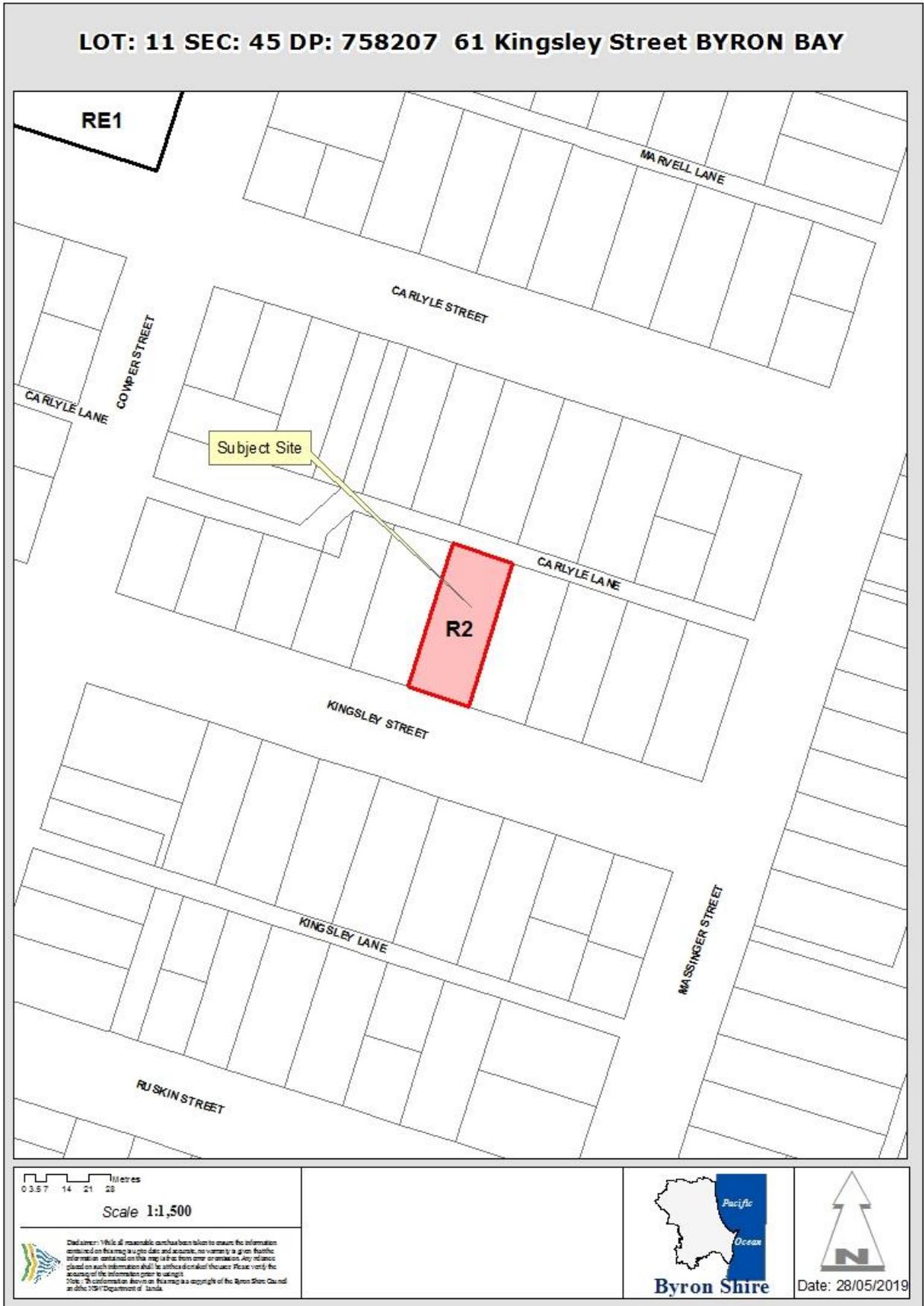
**RECOMMENDATION:**

**That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, development application no. 10.2018.466.1 for Demolish Existing Dwelling House and Construct New Dwelling House and Swimming Pool, be granted consent subject to the conditions of approval at the end of this report.**

**Attachments:**

- 20
- 1 Development Plans, E2019/38252 
  - 2 Submissions received, E2019/38254 
  - 3 Conditions of Consent, E2019/39725 

25



**Assessment:**

**1. INTRODUCTION**

**5 1.1. History/Background**

6.1994.2039.001	Building Applications	Addition/Alteration Dwelling	Approved 16/03/1994
10.2010.190.1	Development Application	Tree removal	Approved 19/04/2010
10.1998.744.1	Development Application	Dwelling	Approved 06/01/1998

**1.2. Description of the proposed development**

15 The proposed development is for demolition of an existing single storey dwelling within the Kingsley Street Heritage Conservation Area, and construction of a new two storey dwelling and pool and basement storage level.

20 The proposed building form incorporates a hipped and gabled roof with a skillion verandah to the front and side. The second storey has a smaller footprint above the main floor.

Proposed materials are Scyon Linea Board cladding, Colorbond roof and a stone wall base.

**1.3. Description of the site**

Land is legally described as LOT: 11 SEC: 45 DP: 758207  
 Property address is 61 Kingsley Street BYRON BAY  
 Land is zoned: R2 Low Density Residential  
 Land area is: 1012 m2

25 The site is known as LOT: 11 SEC: 45 DP: 758207, 61 Kingsley Street Byron Bay. It contains a single storey timber clad dwelling in an urban subdivision. The property is modest in scale and size and is setback from the street and falls away to the rear of the block where it slopes away from the street. The subject site also contains rear lane access.



30 Figure 1: Shows the GIS mapping and the location of the subject site

35 The subject property is within the statutory Kingsley Street Heritage Conservation Area under Byron Shire LEP 2014 and lies in the general streetscape setting of two heritage items on the opposite side of the street. The existing property on site has been substantially altered over time

and does not contain any original features which would be deemed suitable to be retained and repaired in the Heritage Conservation Area.

**2. SUMMARY OF REFERRALS**

5

Referral	Issue
Development Engineer	No objections subject to conditions. Refer to Doc #A2018/30306
Heritage Consultant	No objections subject to conditions. Refer to Doc #E2018/88801
Essential Energy	No objections subject to conditions. Refer to Doc #E2018/80300

No objection was raised during the referral process.

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

10

Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document Planning for Bush Fire Protection 2006. The site is not bush fire prone land.

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

15

Not relevant to this subject site

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

20

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

**4.1 State Environmental Planning Instruments**

25

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 1—Development Standards	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: A SEPP 1 Objection was lodged by the applicants seeking a variation to increase the DA above the permitted 9 m height limit.		
The height increase above 9 m has not been supported by Council, and hence the building was reduced during the assessment of the DA in order to comply.		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: According to the Council GIS records and the mapping the subject site is not affected by any contaminants		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: A BASIX certificate is lodged Number 953104S		

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

30

LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject

land and the proposed development. The LEP 2014 clauses that are checked below are of relevance to the proposed development:

Part 1	<input checked="" type="checkbox"/> 1.1  <input checked="" type="checkbox"/> 1.1AA  <input checked="" type="checkbox"/> 1.2  <input checked="" type="checkbox"/> 1.3  <input checked="" type="checkbox"/> 1.4  <input checked="" type="checkbox"/> Dictionary  <input checked="" type="checkbox"/> 1.5  <input checked="" type="checkbox"/> 1.6  <input checked="" type="checkbox"/> 1.7  <input checked="" type="checkbox"/> 1.8  <input type="checkbox"/> 1.8A  <input checked="" type="checkbox"/> 1.9  <input type="checkbox"/> 1.9A
Part 2	<input checked="" type="checkbox"/> 2.1  <input checked="" type="checkbox"/> 2.2   <input checked="" type="checkbox"/> 2.3   <input checked="" type="checkbox"/> Land Use Table   <input type="checkbox"/> 2.4   <input type="checkbox"/> 2.5   <input type="checkbox"/> 2.6   <input type="checkbox"/> 2.7   <input type="checkbox"/> 2.8
Part 3	<input type="checkbox"/> 3.1  <input type="checkbox"/> 3.2  <input type="checkbox"/> 3.3
Part 4	<input type="checkbox"/> 4.1  <input type="checkbox"/> 4.1A  <input type="checkbox"/> 4.1AA  <input type="checkbox"/> 4.1B   <input type="checkbox"/> 4.1C  <input type="checkbox"/> 4.1D  <input type="checkbox"/> 4.1E  <input type="checkbox"/> 4.2  <input type="checkbox"/> 4.2A  <input type="checkbox"/> 4.2B  <input type="checkbox"/> 4.2C  <input type="checkbox"/> 4.2  <input checked="" type="checkbox"/> 4.3  <input type="checkbox"/> 4.4   <input checked="" type="checkbox"/> 4.5   <input checked="" type="checkbox"/> 4.6
Part 5	<input type="checkbox"/> 5.1  <input type="checkbox"/> 5.2  <input type="checkbox"/> 5.3  <input type="checkbox"/> 5.4  <input type="checkbox"/> 5.5  <input type="checkbox"/> 5.6  <input type="checkbox"/> 5.7  <input type="checkbox"/> 5.8  <input type="checkbox"/> 5.9  <input type="checkbox"/> 5.9AA  <input checked="" type="checkbox"/> 5.10  <input type="checkbox"/> 5.11  <input type="checkbox"/> 5.12  <input type="checkbox"/> 5.13
Part 6	<input checked="" type="checkbox"/> 6.1  <input checked="" type="checkbox"/> 6.2  <input type="checkbox"/> 6.3  <input type="checkbox"/> 6.4  <input type="checkbox"/> 6.5  <input type="checkbox"/> 6.6  <input type="checkbox"/> 6.7  <input type="checkbox"/> 6.8  <input type="checkbox"/> 6.9

- 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 Dwelling ,Swimming Pool ;
  - (b) The land is within the R2 Low Density Residential according to the Land Zoning Map;
  - (c) The proposed development is permissible with consent; and
- 10 (d) Regard is had for the Zone Objectives as follows:

<b>Zone Objective</b>	<b>Consideration</b>
• To provide for the housing needs of the community within a low density residential environment.	The single dwelling house is an appropriate form of low density housing
• To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The replacement single dwelling is an appropriate residential use on the site

**Clause 4.4 Floor Space ratio**

15 The proposed new dwelling has a FSR of 03:1 across the entire site which has a total area of 1012m<sup>2</sup> with a proposed floor space of 308.5 m<sup>2</sup>. The proposal complies with the allowable FSR of 0.5:1

**Clause 4.3 Height of Buildings**

20 The development has been designed to comply with the 9 metre height limit. Conditions are also proposed to lower the building a further 500 mm in relation to the building height plane, which further reduce the overall height of the dwelling.

**Clause 5.10 Heritage Conservation**

25 The proposed development is located within the Kingsley Street Conservation Area. The application was considered by Councils Heritage officer who raised no issue with the demolition to the existing dwelling or the new house to replace. The following comments are provided:

30 *The subject dwelling forms part of a streetscape of predominantly single storey cottages on this side of Kingsley Street, which collectively contribute to the aesthetic character of the Conservation Area through bulk, scale, setbacks, materials, traditional roof forms and landscaped setting. The subject dwelling however, demonstrates little aesthetic significance. The roof lines have been extensively altered and modified and the exterior fabric appears to include much new material,*

35 *and non-original fenestration. Replacement with the proposed dwelling which has a predominantly single storey façade to the street and a small second storey area is not*

considered likely to have an adverse impact upon the aesthetic significance of the Conservation Area which is noted for the following elements.

- Wide streets, ample verges, buildings setback behind fences
- Development respects the subdivision pattern but rises up the slope
- Predominantly traditional forms and materials
- Buildings set on ample lots with subtropical vegetation
- No obvious kerbs and gutters

With regard to the setting of the Conservation area and that of heritage items in the vicinity of the site, the proposed dwelling is considered to be an acceptable design which will not detract from these values.

Recommendations have been made in relation to the colour scheme and condition of consent has been proposed in that regard.

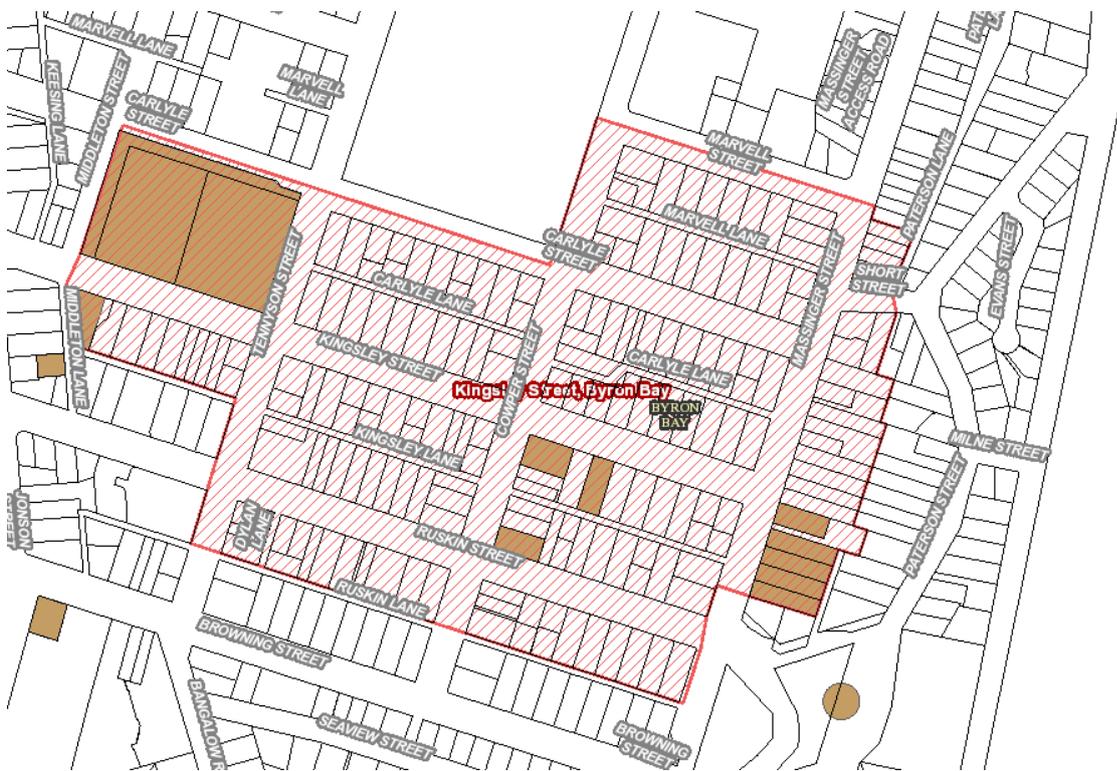


Figure 2: Kingsley Street Heritage Conservation Area and the individual Heritage Items.

The proposed new design is considered appropriate in scale and size and has an architectural design that reflects the objectives for new infill house in the heritage conservation area. There is a range of dwelling houses located in this locality of varying in style and colour. The proposal however is considered to be sympathetic the heritage provisions within the DCP and raises no specific issues in that regards. It is considered the proposal complies with the provisions of Clause 5.10.

The proposal raises no other issues under the LEP.

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

No draft EPIs affect the proposal

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

5 DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP& A Act because it applies to the land to which LEP 2014 applies. The DCP 2014 Parts/Chapters that are checked below are of relevance to the proposed development:

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

10 **Chapter C1  
Non-Indigenous Heritage  
C1.3.1 General Streetscape Context**

*Performance Criteria*

- 15 1. The side and front setbacks must be typical of the spacing of existing buildings both from each other and from the street, such that the streetscape is retained.
2. The established landscape character of the locality including height of canopy and density of boundary landscape plantings must be retained in any new development.
- 20 3. New developments must respect and complement the existing heritage character of the streetscape by maintaining the general scale, height, bulk and proportions of traditional and new buildings in the streetscape.
4. Extensions must not overwhelm the original building. It may be preferable to create two separate buildings with a linkage in order to maintain the integrity of the original.
- 25 5. Floor levels must be compatible with floor levels of adjoining buildings.

Overall the new infill building is considered to be sympathetic to the aims and objectives of the Kinsley Street Heritage Conservation Area.

The new building does the following in order to comply with the heritage considerations:

- 30
- Contains the same setback as the adjoining properties
  - Proposes a larger side setback than the BCA minimum;
  - Proposes the same roof slope and pitch as the adjoining properties
  - Façade treatment is considered similar but modernised
  - Floor levels align with the adjoining properties

35

  - Window size is considered to align with heritage conservation principles
  - Street trees are proposed to be retained
  - No works are proposed along the rear Carlyle Lane.

40 Overall staff support the new building design, subject to the changes in red - as marked on the architectural plans.

**Chapter D1 Residential Accommodation in Urban, Village & Special Purpose Zones  
D1.2.1 Building Height Plane:**

45 The proposed development breaches the prescribed building height plane which is defined under DCP 2014 as:

*Building Height Plane means the plane projected at an angle of 45° over the land to be built upon, measured from a vertical distance of 1.8 metres above ground level (existing) at the site boundary.*

5 At the front elevation the 45 degree Building Height Plane is generally compliant, however when  
viewed from the rear or northern elevation there is a breach predominantly on the western  
elevation. The rear non-compliance is exaggerated due to the slope and the topography of the  
land, combined with the height of the development. The dwelling however is well setback from the  
neighbouring property to the west being 1.6 metres at the closest point and then extends to over 2  
metres from the same boundary. The upper levels of the dwelling are then setback in excess of 3  
10 metres from the boundary. The proposal has a garage and storage area on the eastern side  
setback 1 metre from this boundary then the dwelling is setback over 5 metres from that boundary

15 The adjoining property to the west (No. 59 Kingsley St) is constructed approximately 850 mm from  
the side boundary and breaches the Building Height Plane, whilst the property to the east  
comprising a contemporary 1 and 2 storey development is only setback 2 metres from the  
boundary and also clearly breaches the Building height plane. As to the existing dwelling on the  
subject site it is also in breach of the building height plane along the western boundary.



20

Figure 3: Adjacent dwelling at No. 63 Kingsley Street to the right – (NB Dwelling approved prior the creation of the Conservation Area under Byron LEP 2014).

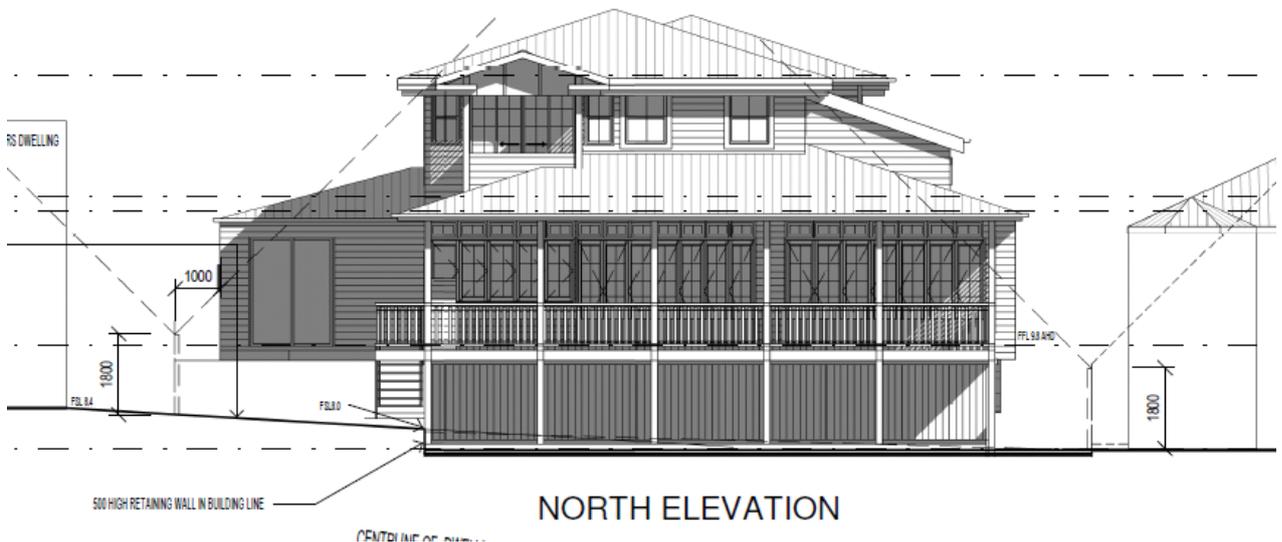


Figure 4: No. 59 Kingsley Street (to the right) from rear yard



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Figure 5: Proposed South elevation showing the Building Height plane for the development and as existing for neighbouring properties.



10

Figure 6: Proposed Northern elevation showing the building height plane and as existing for neighbouring properties.

- 5 To bring the building into better compliance with the prescriptive measures, conditions of consent are recommended to lower the dwelling by 500 mm. In this regard the ground floor of the dwelling to be set 200 mm lower at 9.6 m AHD, whilst the 3 metre ceilings on this level are also to be lowered to 300 mm to 2.7 m AHD. With further lowering of the development, the proposal has been considered against the objectives and performance criteria underpinning this design element in the DCP the following comments are provided:

**Objectives**

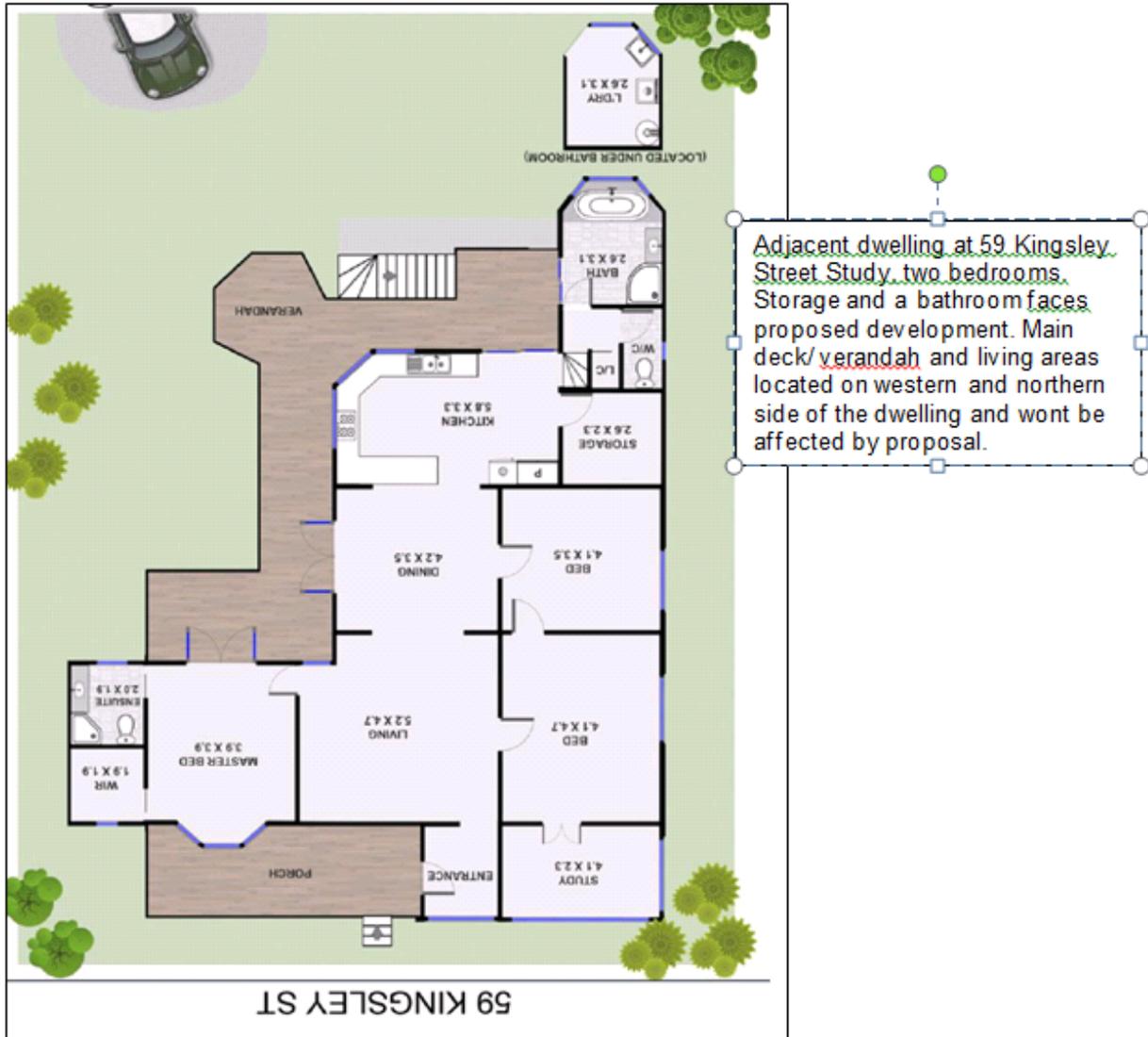
- 15 *1. To ensure that residential development is designed to minimise impacts on solar access and privacy on adjoining properties, and on the views from adjacent existing buildings.*  
*2. To ensure that the occupants of the building or buildings will enjoy the optimum use of winter sunlight and summer shade.*

**Performance Criteria**

- 20 *1. Developments must be set back progressively from the site boundaries as height increases so that they do not adversely affect existing or future development on adjoining properties by way of overshadowing, impinging on privacy or obstructing views.*  
*2. Developments must be designed so that they will promote energy efficiency and so that residents may enjoy optimum use of winter sunlight and summer shade.*  
 25 *3. Development applications must demonstrate that the windows of living areas (decks, living rooms, bedrooms, kitchens, etc.) of development on adjoining properties will, as a minimum, retain full solar access between the hours of 9.00am to 3.00pm on any day.*

**Comment:**

30 It is considered the design of the development which gradually steps back from the side boundaries as it rises in height will minimise impact in relation to solar access, whilst no direct impacts are observed in terms of privacy. Also the orientation of the lots on a general north south axis will ensure good solar access through the middle of the day. It is considered the development will not obstruct views being within an existing residential street dominated by dwellings aligned on a north south axis, whilst general energy efficiency of the dwelling in terms of winter sunlight and summer shade is maintained. As to shadow impact the applicant provided a series of shadow diagrams. (See Attachment 1 for Plans) Although the proposal will cast a shadow onto the neighbouring dwelling to the west in midwinter at 9 am such impact has gone by 11 am. Further, such shadow impact falls upon three bedrooms of the neighbours house, not there main living areas which are located on the northern and western elevations. In contrast the midwinter 3pm shadow diagram shows the dwelling at 59 Kingsley Street casting a shadow onto the proposed dwelling.



**Conclusion**

Having regard to the building height plane breaches that are evident at both the adjoining properties at 59 and 63 Kingsley Street, the level of encroachment resulting from the proposal is considered acceptable once the further lowering of the development is achieved.

In some regards it could be considered that the BHP provisions for both these properties has been abandoned to a degree and the rationale or fairness to make the subject development comply strictly with this guideline is not wholly apparent. However, it is clear from the proposed plans the development has attempted to satisfy the controls. In relation to any overshadowing that results from the development. It has to be recognised that such shadow impacts already occur from each of these dwellings at 59 – 63 Kingsley Street in the morning and evening hours onto the subject property. Having regards to the circumstance of the case the application can be supported.

It is considered the proposal raises no other issues against the DCP chapters within DCP 2014.

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

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

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

<b>Clause</b>	<i>This control is applicable to the proposal:</i>	<i>I have considered this control as it relates to the proposal:</i>	<i>If this control is applicable, does the proposal comply?</i>
<b>92</b>	Yes	Yes	Yes Conditions of consent proposed in relation to the demolition of the dwelling house
<b>93</b>	Yes	No	No
<b>94</b>	Yes	Yes	No
<b>94A</b>	Yes	No	No

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

5

**4.7 Any COASTAL ZONE MANAGEMENT PLAN?**

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

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

10

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

Conditions of consent to apply to control construction activities including hours of work, builders noise, construction waste and installation of sedimentation and erosion control devices.

15

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

The site is a serviced, unconstrained property and is suitable for the proposed development. The property is not affected by natural hazards such as landslip, flooding, bushfire, coastal erosion or acid sulfate soils

20

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

The development application was publicly exhibited twice.

25

- First exhibition: 25/09/2018 to 8/10/2018
- Re-Exhibition for revised plans 05/03/2019 – 18/03/2019

Two Initial Objections were received with follow up submission from the immediate neighbours and consultant planner

30

<b>Issues</b>	<b>Comment</b>
Building height Plane Breach and Overshadowing Impacts on 59 Kingsley street	The Building height Plane Breaches and level of Overshadowing on the adjacent property to the West is discussed in detail above. Such impacts having regards to the circumstances of the case and existing built form in the street are considered acceptable.
Overshadow Impacts on 57 Kingsley Street	Shadow Diagrams have been submitted. It is considered the proposal will not adversely impact 57 Kingsley Street two properties to the west
The size and bulk of the dwelling is too large having regards to the conservation precinct	The proposal was considered by Council's Heritage Adviser as acceptable having regards to the heritage controls under Byron LEP and DCP 2014. The proposal complies with the statutory height and FSR controls under the LEP; the size of the dwelling is not out of character with other dwellings in the locality.
Privacy Impacts from rear decks and swimming pool	The decks are to be screened as per proposed plans, whilst conditions are proposed in relation to landscaping the fence line adjacent to the pool.

**4.11 Public interest**

- 5 The proposed development is unlikely to prejudice or compromise the public interest or create a dangerous precedent

**5. DEVELOPER CONTRIBUTIONS**

- 10 There is no nexus to levy contribution or headworks charges in this instance

**6. CONCLUSION**

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

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

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

**Statement of Reasons**

The proposed development complies with the provisions of Byron Local Environmental Plan 2014.
The proposed development complies with relevant State Environmental Planning Policies
The proposed development complies with relevant provisions of Development Control Plan 2014
The proposed development complies with Environmental Planning & Assessment Regulation 2000 considerations.
The proposed development complies with the Coastal Zone Management Plan.
The proposed development will not have significant adverse impact on the natural, built or social

environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The development application was notified/advertised in accordance with Development Control Plan 2014. Issues raised in the submissions have been addressed during assessment of the application.
The proposed development is unlikely to prejudice or compromise the public interest.
The proposed development will not have a detrimental impact on the heritage character of the precinct or the buildings contained on the site. It is considered consistent with the heritage provisions contained within Clause 5.10 of Local Environmental Plan 2014.
The proposed development will not have a detrimental impact on the heritage character of the precinct or the buildings contained on the site. It is considered consistent with the heritage provisions contained within Development Control Plan 2014.

<b>How community views were addressed</b>
The DA was advertised in accordance with Development Control Plan 2014. The submissions received were considered on merit and addressed during assessment of the application.
To view the considerations, please contact Council to view a copy of the assessment report relating to this DA.

**Report No. 6.12**                    **PLANNING - 10.2017.399.2 - S4.55 to permit use of Cavanbah Centre carpark for the Byron Farmers Market at 249 Ewingsdale Road Byron Bay**

**Directorate:**                    Sustainable Environment and Economy  
**Report Author:**                Chris Larkin, Manager Sustainable Development  
     Noreen Scott, EA Sustainable Environment and Economy  
**File No:**                            I2019/839

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10

**Section 96**                        10.2017.399.2  
**Application No:**  
**Proposed modification:**        S4.55 to Permit Use of Cavanbah Centre Carpark for the Byron Farmers Market  
**Original Development:**        10.2017.399.1  
**Type of modification sought:**  
**Property description:**            LOT: 3 DP: 706286  
     249 Ewingsdale Road BYRON BAY  
**Parcel No/s:**                        132490  
**Applicant:**                        Byron Shire Council  
**Owner:**                              Byron Shire Council  
**Zoning:**                              RE1 Public Recreation / PART RU2 Rural Landscape / PART DM Deferred Matter  
**S96 Date received:**                7 May 2019  
**Original DA determination date:**                1 February 2018  
**Public notification or exhibition:**    – Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications  
     – Exhibition period: 23/5/19 to 05/06/19  
     – No Submissions were received  
**Delegation to determination:**        Council  
**Issues:**                                • Car parking

**Summary:**

15    An application has been submitted to amend development Consent DA10.2017.399.1 to facilitate the use of the Cavanbah Centre Carpark for the Byron Farmers markets for 80 stalls during construction of the Byron Bay Town Centre Bypass. Amendments sought include to:

- 20    • Condition 4 as it has been drafted in such a way to prevent the scenario of two markets operating in Byron Bay on the same day.  
     • Condition 2 to reflect the number of stalls proposed for the Byron Farmers Market within Market Area B.

5 An assessment of the proposal against the car parking requirements for markets has been carried out, and a minor numerical shortfall of 9 spaces has been identified based on stall holders also requiring a designated car parking space. As many of the stall holders will operate from their vehicles within the market area, a minor variation to the numerical requirements is considered justified in this instance.

10 The additional use of the site for the Byron Farmers Market is considered to be substantially the same development as approved and satisfies the provisions under Section 4.55 of the EPA Act 1979. It is considered the amendments do not generate any additional impacts that have not been previously considered; the site being directly accessible from Ewingsdale Road is also deemed as suitable for the proposed use. The Section 4.55 Application is recommended for approval. .

15 NOTE TO COUNCILLORS:

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

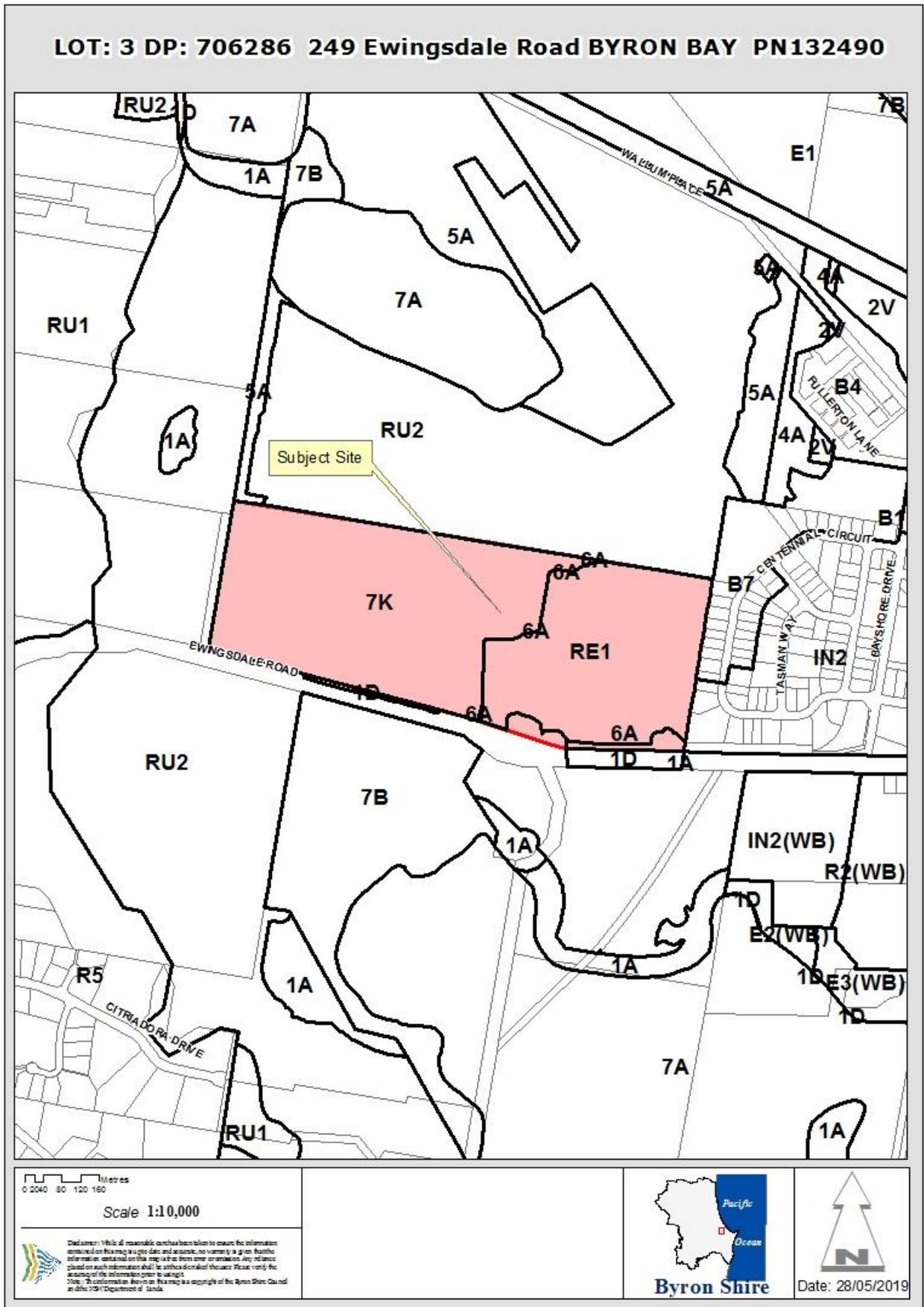
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**RECOMMENDATION:**

**That pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, that Application No. 10.2017.399.2 to Permit Use of Cavanbah Centre Carpark for the Byron Farmers Market, be approved subject to the amended Conditions in Attachment 1 (E2019/40630).**

25 **Attachments:**

1 Amended Conditions of Consent, E2019/40630 



**Assessment:**

**1. INTRODUCTION**

**5 1.1. History/Background**

DA10.2017.399.1 – Use of Cavanbah Centre for Markets and primitive camping ground. Approved 1/2/18

**10 1.2. Description of the proposed development**

This application seeks approval for a S4.55 modification of development consent to Permit Use of the Cavanbah Centre Carpark for the Byron Farmers Market.

15 A modification is necessary as conditions were imposed on the original development consent limiting the number of stalls to two areas, and for 'markets' held on site not to conflict with either the Byron Farmers Market or Byron Sunday Markets.

20 The applicant is seeking approval for the Byron Farmers Market to be moved temporarily to the site during construction of the Byron Bay Town Centre Pass.



Figure 1 – Approved Market Area A and Area B

25 Conditions 2 and 4 of development consent 2017/399 currently require the following:

**2. Number of Stalls Permitted**

When any stall is located within the existing bitumen sealed car park, a maximum of 55 stalls are permitted.

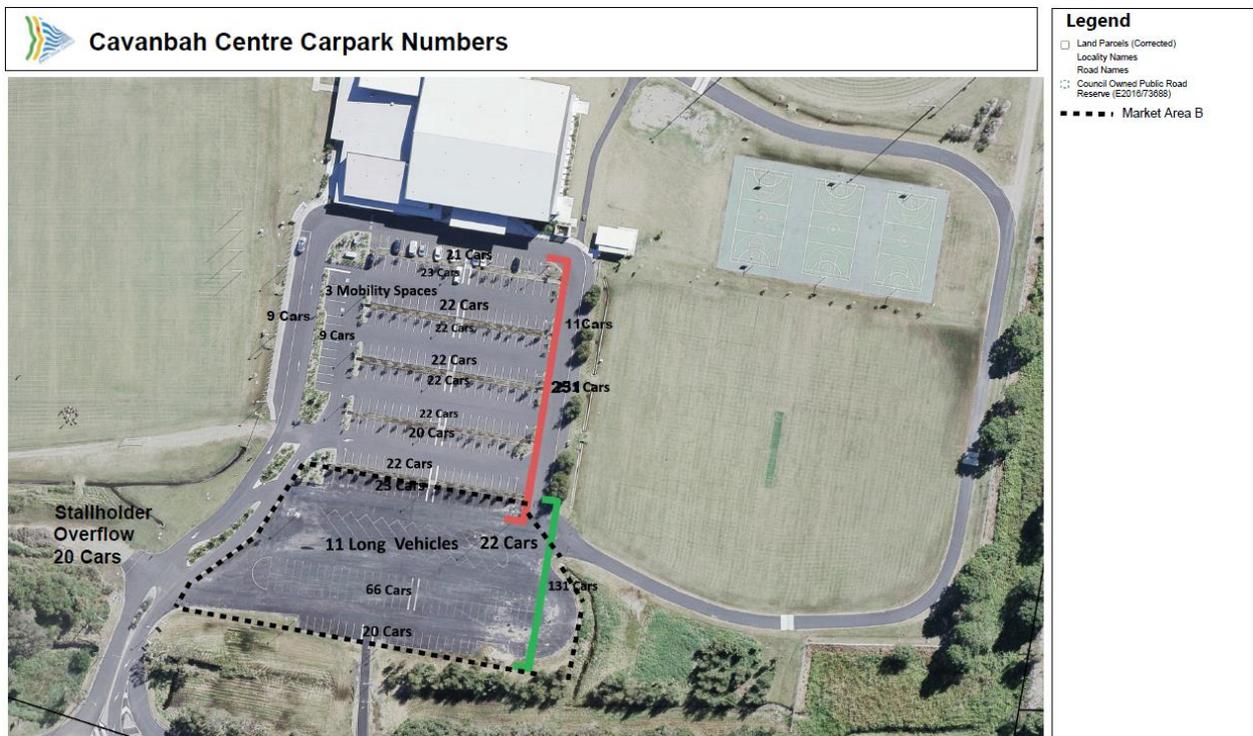
When no stall is located within the existing bitumen sealed car park a maximum of 90 stalls are permitted.

**4. Restricted hours of operation**

Markets are not permitted to operate:

- 5 • While the Cavanbah Centre, associated sport facilities, sports ovals or primitive camping are in use. Nor are the markets permitted to operate within an hour of the Cavanbah Centre, associated sport facilities, sports ovals or primitive camping beginning or finishing operation.
- 10 • At any time that coincides with the Byron Bay Community Markets and Byron Farmers Market.

The Byron Farmers Market is proposed for the southern end of the bitumen car park identified as Market Area B.



15

**1.3 Description of the site**

Land is legally described as	LOT: 3 DP: 706286
Property address is	249 Ewingsdale Road BYRON BAY
Land is zoned:	RE1 Public Recreation / PART RU2 Rural Landscape / PART DM Deferred Matter
Land area is:	40 hectares
Property is constrained in part by:	Flood Liable Land, Bushfire prone land Acid Sulfate Soils Class 2 and 3 High Conservation Value High Environmental Value in areas to the west, outside existing sports fields. Markets and camping areas are outside of high conservation value areas.

5 The site has a total area of 40 hectares. The eastern part of the site is developed for sporting fields, car parking, roads, ancillary infrastructure and a community building. The community building contains indoor sports facilities, meeting rooms, change rooms, toilet and shower facilities and storage.

The western part of the site is a mixed wetland and sedgeland with various levels of historical disturbance. This area is managed as part of the West Byron Sewage Treatment Plant.

10 The site is located on the western outskirts of Byron Bay, approximately four kilometres from the town centre. It is bound by the Byron Bay Arts and Industrial Estate to the east, the west Byron STP and effluent reused wetland to the north, rural and environmental wetland to the west and Ewingsdale Road to the south. Vehicular access to the site is via a roundabout on Ewingsdale Road. Pedestrian and bicycle access is available to the site from the town centre.

15 **2. SECTION 4.15 – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES**

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

20 **2.1. State/Regional Planning Policies, Instruments, EPA Regulations 2000**

SEPP Infrastructure 2007

The site adjoins and takes its access from a classified road (Ewingsdale road). The proposal was considered against Clause 101(2) of the SEPP which states:

25 *(2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*

- (a) where practicable, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
  - (i) the design of the vehicular access to the land, or*
  - (ii) the emission of smoke or dust from the development, or*
  - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

40 The matter was considered in some detail with the assessment of the original application. In this regards there is no other means of access into the site and a specifically designed roundabout on Ewingsdale Road provides access for vehicles coming from both directions on Ewingsdale Road.

In terms of traffic generation, it is considered the intersection has the capacity to manage peak hour traffic. In terms of the market itself, it is a temporary use which is unlikely to be adversely affected or impacted upon by traffic noise or vehicle emissions.

45 Proposed amendments raise no other issues under the relevant SEPPS, Policies or clauses of the EPA Regulations 2000.

**2.2. Byron Local Environmental Plan 2014**

50 The proposed amendments raise no issues under Byron LEP 2014

### 2.3. Draft EPI that is or has been placed on public exhibition and details of which have been notified to the consent authority - Issues

5 No draft EPIs affect the proposal.

### 2.4. Development Control Plans

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

10

##### Parking

Markets require 2.5 spaces per stall in terms of car parking for customers but the DCP is silent on the staff or stall holder car parking requirements. In the previous assessment for the DA an additional space per stall holder was also included the calculation.

15

The subject location of the Byron Farmers Market in the southern Car Park shown as Market Area B will remove some 131 car parking spaces from the Cavanbah Centre, leaving 251 formal spaces and a further 20 informal spaces for parking. Based on a strict calculation this equates to approximately 77.5 stalls, with a shortfall of around 9 spaces for the markets. However no consideration has been given to the number of stall holders that operate from the back of trucks, utes, vans and cars on market day. The applicant has submitted information from the Byron Farmers Market that this is the case (e.g. stall holders predominantly use their vehicles in part as stalls) and as such will be parked in the designated Market Area. In terms of other uses at the Cavanbah Centre, the applicant has advised no other activities will be occurring at the Cavanbah centre on the Thursday Mornings. It is considered that a variation be granted to the minor shortfall and the car parking proposed is adequate.

20

25

##### Traffic

Traffic generation was previously considered with the approval of DA10.2017.399.1. In that regards the Cavanbah Centre Intersection on Ewingsdale Road was designed with a peak hour traffic count of 470 peak hour trips. In accordance with RMS Guide to Traffic Generating Developments 1 market stall generates 4 PHT's. Therefore 80 stalls is equivalent to 320 peak hour trips. It is considered the intersection has adequate capacity to cater for the Byron Farmers Market.

30

Conditions were imposed for a Traffic Management Plan to be submitted pursuant to S138 of the Roads Act for approval. It is recommended condition 18 be partially re-worded to reflect the need for the S138 Application only for works and signage in the road reserve. Preliminary discussions with the applicant indicate that for the Byron Farmers Market, the Management Plan will relate to traffic control and signage within the car park area of the Cavanbah Centre only.

35

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

The proposed amendments do not generate any impacts that have not been previously considered.

45

### 2.6. The suitability of the site for the development

The restriction on markets at the Cavanbah Centre was placed on the consent to avoid any potential conflict that the Cavanbah Centre could operate a market on the same day as the Byron Farmers Market. It was never envisaged that the Byron Farmers Market may need to operate from this site at the time of approval.

50

The site is considered suitable for the Byron Farmers Markets having regards to the car parking onsite, access from Ewingsdale Road and the duration of the markets generally from 6am through to Midday every Thursday Morning.

**5 3.6 Submissions made in accordance with this Act or the regulations**

No submissions were received.

**10 3.7 Public interest**

The proposed amendments are unlikely to prejudice or compromise the public interest.

**4. DEVELOPER CONTRIBUTIONS/ WATER AND SEWER CHARGES**

15 The applicant has sought a minor amendment to the requirements for Certificate of Compliance under the Water Management Act 2000. In this regard the certificates are required for the camping ground component of the development should this ever go ahead where by headworks charges would apply. Conditions 21 & 22 have been amended accordingly.

20 There is no nexus to levy additional contributions.

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

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No
Provide Disclosure Statement register details here:	Not applicable

**25 6. CONCLUSION**

The proposed use of the site for the Byron Farmers Market is considered to be substantially the same development and satisfies the provisions under Section 4.55 of the EPA Act 1979. The amendment seeks to make minor modifications to a number of conditions of consent (2, 4 18, 21 & 22) as it is concluded the site is suitable for the Byron Farmers Market as proposed.

The proposal is recommended for approval subject to amended conditions of consent.

# BYRON SHIRE COUNCIL

Report No. 6.13      **PLANNING -10.2018.486.1 Redevelopment of Brunswick Heads Surf Life Saving Club including Demolition works and Construction of New Surf Club Building containing Training Rooms, Storage Areas, Canteen, Amenities and Foyer at Ground Level and an Additional Training Room, Bar Areas, Kitchen, Amenities, Storage Areas, Cool Rooms, Function Area and Deck Areas within the Upper Floor at South Beach Road Brunswick Heads**

5

Directorate: Sustainable Environment and Economy  
Report Author: Patricia Docherty, Planner  
10 Noreen Scott, EA Sustainable Environment and Economy  
File No: I2019/847

DA No: 10.2018.486.1

Proposal description: Redevelopment of Brunswick Heads Surf Life Saving Club including demolition works and construction of new surf club building containing training rooms, storage areas, canteen, amenities and foyer at ground level and an additional training room, bar areas, kitchen, amenities, storage areas, cool rooms, function area and deck areas within the upper floor.

Property description: LOT: 427 DP: 729272  
South Beach Road BRUNSWICK HEADS

Parcel No/s: 181600

Applicant: Joe Davidson Town Planning

Owner: Byron Shire Council

Zoning: 7 f1 Coastal Land Zone

Date received: 24 September 2018

Integrated / Designated Development:  Integrated       Designated       Not applicable

Concurrence required No

Public notification or exhibition: – Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications  
– Exhibition period: 18/10/18 to 31/10/18  
– Submissions received: one (1) Support

Planning Review Committee: Date of PRC: 25.10.18

Concurrent approvals (S68/138): Not applicable

Variation request  Clause 4.6       SEPP 1       Not applicable

Delegation to determine Council

Issues: Flood Liable Land – along western boundary.  
Acid Sulfate Soils Class 3 and 5  
Coastal Erosion Precinct 1

15 **Summary:**

20 The proposed development includes the demolition of the old surf club and replacement with a new and larger facility on the site. The new surf club building contains training rooms, storage areas, canteen, amenities and foyer at ground level and an additional training room, bar areas, kitchen, amenities, storage areas, cool rooms, function area and deck areas within the upper floor. The old building was erected in the late 1960's with the most recent additions completed in 1973.

5 The subject site is located South Beach road and is zoned 7(f1) Coastal Lands Zone. Although the building is not relocatable, it is considered that it is sited sufficient distance from the Erosion escarpment some 70 metres to the east. In the event that the building was at risk of being damaged by Coastal Erosion Processes, it can be demolished.

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

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  
20 been called by the mover and seconder of all motions relating to this report.

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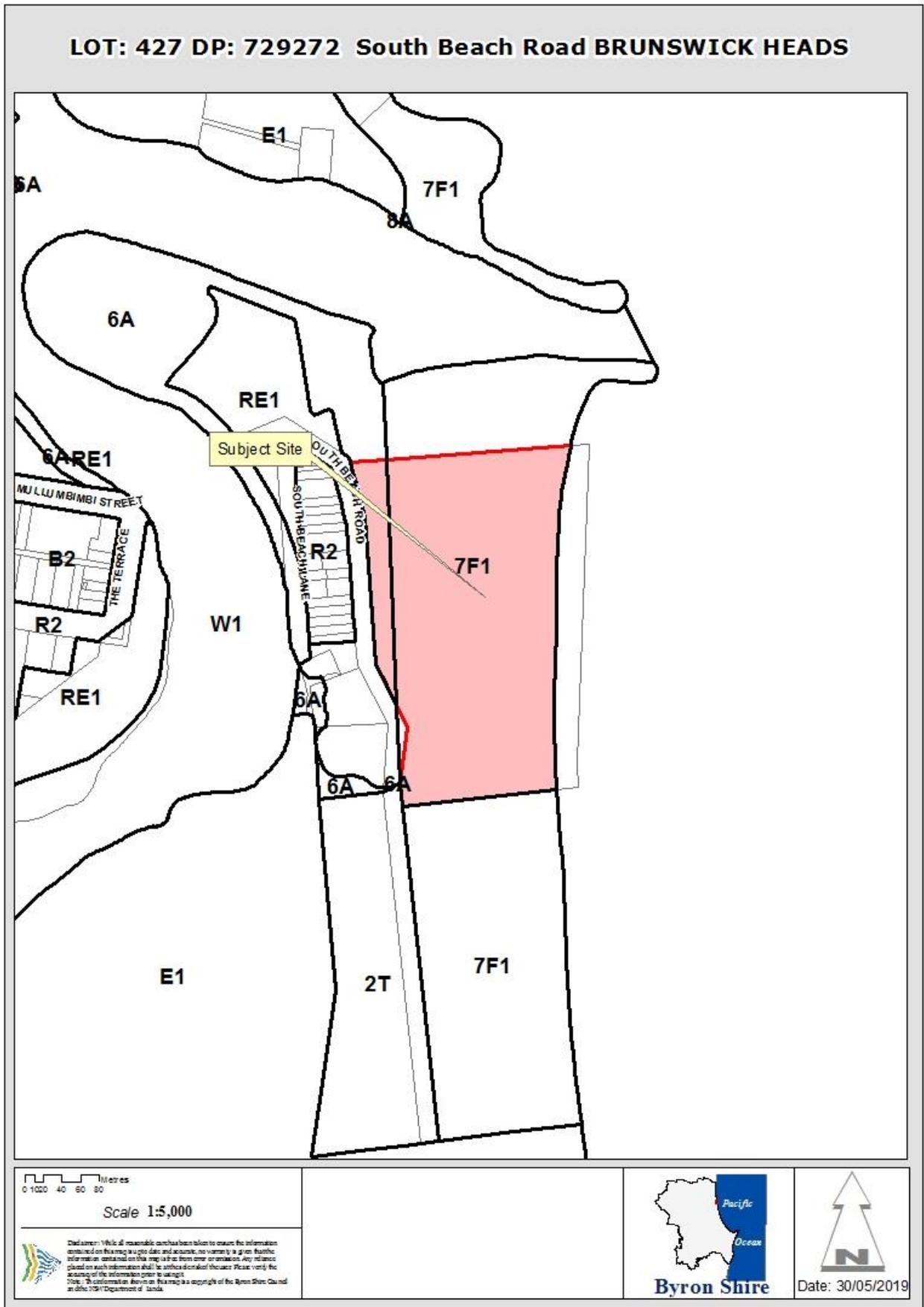
RECOMMENDATION:

**That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application 10.2018.486.1 for redevelopment of Brunswick Heads Surf Life Saving Club including demolition works and construction of new surf club building containing training rooms, storage areas, canteen, amenities and foyer at ground level and an additional training room, bar areas, kitchen, amenities, storage areas, cool rooms, function area and deck areas within the upper floor, be granted consent subject to conditions in Attachment 3 (E2019/40478).**

Attachments:

- 25 1 Submission received, E2018/89825   
2 Final Plan Set Brunswick Heads Surf Club.pdf, E2019/39486   
3 Consent Conditions, E2019/40478 

30



**Assessment:**

**1. INTRODUCTION**

**1.1. History/Background**

The site has had continuous usage for surf life saving activities for over 80 years. The applicants Statement of Environmental Effects states that the proposed building is to replace an existing two storey structure that was originally constructed within the site in 1968. Additions to the club were completed in 1973.

Summary of Council ‘authority’ records for more recent Development Applications on the land parcel:

- DA10.2002.99.1 Amenities Block – withdrawn 19/4/02
- DA10.2003.30.1 Amenities block – Approved 18/5/04
- DA10.2006.66.1 New Surf Lifesaving tower – Approved 24/5/06
- DA10.2006.583.1 Bikes and Kites event – Approved 3/11/06

**1.2. Description of the proposed development**

This application seeks approval for redevelopment of Brunswick Heads Surf Life Saving Club including demolition works and construction of new surf club building containing training rooms, storage areas, canteen, amenities and foyer at ground level and an additional training room, bar areas, kitchen, amenities, storage areas, cool rooms, function area and deck areas within the upper floor.

Two planted Lilli Pilli trees will be required to be removed as part of construction works whilst a Cottonwood Hibiscus will require lopping to facilitate construction of the new building.

*Site Plan and location tree removal and pruning*



*Western Elevation of proposed Brunswick Heads Surf Life Saving Club*

**1.3. Description of the site**

A site inspection was carried out on 5 February 2019

Land is legally described as LOT: 427 DP: 729272  
 Property address is South Beach Road BRUNSWICK HEADS  
 Land is zoned: 7 f1 Coastal Land Zone  
 Land area is: Lot area is 8.42 hectares

Property is constrained by:

- Flood Liable Land – along western boundary however the site of the proposed development is outside mapped 1 in 100 year flood area.
- Acid Sulfate Soils Class 3 and 5
- High Environmental Value – No significant vegetation to be cleared
- Coastal Erosion Precinct 1 - DA referred to Coastal & Biodiversity Coordinator



Lot boundary Lot 427 in DP 729272 (L) Zoning Overlay (R)

5 The proposal relates to Lot 427 DP 729272. No works are proposed within Lot 436 DP 839424 or Lot 437 DP 839424 adjoining the site. Any works to be completed within the adjacent road reserve will be done so under Section 138 of the Roads Act 1993. It is not proposed to reconstruct parking areas within Lot 436 or Lot 437.



10 SLSC looking west from reserve



SLSC looking east from car park



Cottonwood in foreground to be pruned (L), Lilli Pilli to be removed (R)

5

**2. SUMMARY OF REFERRALS**

Referral	Issue
Environmental Health Officer	No objections subject to conditions. Refer to Doc # A2018/31927
Development Engineer	No objections subject to conditions. Refer to Doc # A2018/31929
S64 / ET Systems Planning	No objections subject to conditions. Refer to Doc #A2018/31933
S7.11 Contributions Officer	<p>No contributions recommended. Refer to Doc # A2018/31935</p> <p>Comments:</p> <p><i>Developer contributions (S7.12) could be levied for this development. However as this is for a public facility that was previously identified in the 2005 Contributions Plan it is not appropriate to levy a contribution.</i></p> <p><i>Clause 2.16 of the plan states:</i></p> <p><b><u>2.16 Other Public Benefit Exemptions from the Contributions Plan</u></b></p> <p><i>It is not always possible to identify in advance all developments which may be able to make a meritorious case for an exemption from the obligation to pay some or all of the applicable contributions. On the principle of ensuring public accountability, transparency and equity between all developers, this section specifies the limited opportunity for making a merit-based case for exemption.</i></p> <p><i>Council may formally consider, on the individual merits, a case for exempting the following types of development from the levying of contributions:</i></p> <ul style="list-style-type: none"> <li>• <i>Developments which provide a distinct community benefit on a not-for-profit basis including but not necessarily limited to: accommodation associated with fire stations, police stations or police shop fronts, ambulance stations, rescue services, State Emergency Service (SES) and Rural Fire Services (RFS) operational bases and the like. This provision is not intended to include corporate headquarters of any type; and</i></li> <li>• <i>Development by or for non-profit or cooperative organisations which provide a distinct community benefit including but not limited to: the provision of childcare services (especially for under-2s and/or special needs children) including kindergartens and pre-schools; outreach services, community services or the like, on a cooperative or not-for-profit basis.</i></li> </ul> <p><i>The surf club meets the requirements of the second dot point. No</i></p>

Referral	Issue
	<i>contributions are payable.</i>
Crown Lands	Owners consent was lodged with the application. Note from Council Executive Officer extracted below - Refer Doc #E2019/39595: <i>The advice received from Crown Lands at the meeting 30 May was that the Owners Consent to the lodgement of the DA that they issued to the Surf Club last year is continuing and remains valid for the purposes of the DA. So no further owners consent is required. (30 May 2019)</i>
Traffic Engineer	No objections subject to conditions. Refer to Doc #A2018/31953
Police	No comments or objections. Refer to Doc ##A2018/31981
Tweed Byron Land Council	No objections received. Refer to Doc #E2019/15513
NTSCorp	No objections received. Refer to Doc #E2019/18493

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

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

5 Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land that the development complies with the document Planning for Bush Fire Protection 2006. The site is not mapped as bush fire prone land or mapped buffer.



10 The site located on Lot 427 DP 729272 is outside the bushfire vegetation buffer.

The proposal is not a Special Fire Protection Purpose and therefore does not require approval of the RFS. Notwithstanding the RFS advice was sought having regards to coastal vegetation surrounding the site. The RFS provided recommended conditions, most of which have been incorporated into the consent. However the provision of 30 metre APZ would require substantial removal of coastal vegetation to the south and north of the building. As the development is not a special fire protection purpose nor is it designed for residential accommodation the Asset protection zone has not been included in the consent so that surrounding areas of high environmental value coastal vegetation are not removed.

Other conditions regarding water and utilities, evacuation and emergency management and design and construction have been included in the recommended conditions at the end of this report.

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

25 Clearing cannot be undertaken on this parcel of land under the 10/50 Code.

**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.

**4.1 State Environmental Planning Instruments**

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><b>Consideration:</b> The site has had continuous usage for surf life saving activities for over 80 years. A Preliminary Contaminated Land Assessment Report prepared by Greg Alderson and Associates, dated August 2018 provided as part of the Development Application addresses the detailed requirements of State Environmental Planning Policy No. 55. The report concludes that:</p> <p><i>A preliminary contaminated site investigation was undertaken in the proposed development area of Lot 427 DP 729272 for the proposed redevelopment of the Brunswick Heads Surf Club.</i></p> <p><i>The site was previously used for a surf club building and sand mining was undertaken during 1966-67 in the vicinity. As the sand was taken off-site for processing, it is unlikely that any of these land uses would have contaminated the site.</i></p> <p><i>It is concluded that there is sufficient evidence gathered from the site history to infer that the investigation area is not contaminated in accordance with the definition within NEPM 1999, and therefore, no further investigation is required to be undertaken at the subject site for soil contamination however it is possible that the building contains asbestos in the form of fibro and possibly other materials. All work relating to asbestos is required to be in accordance with the Occupational Health and Safety Regulation 2001.</i></p> <p><i>The assessment is limited to visual inspection of the building and immediate surrounds and history of the site, if any foreign material is uncovered during the excavation work this will need to be disposed of to an appropriately licensed landfill with the possibility that further investigation may be required.</i></p> <p>The DA was also referred to Council’s Environmental Health Officer and conditions of consent are included in the recommendation of this report. It is considered that no further investigation is warranted.</p>		
State Environmental Planning Policy (Coastal Management) 2018	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><b>Consideration:</b> The site of proposed works is located in the Coastal Environment Area and the Coastal Use Area. The land subject to proposed works is <u>not</u> located within or in proximity to Littoral Rainforest or Coastal Wetlands. The proposed development is considered against Division 3 and 4 to satisfy that the development is designed, sited and will be managed to avoid an adverse impact on:</p> <ul style="list-style-type: none"> <li>• the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,</li> <li>• coastal environmental values and natural coastal processes,</li> <li>• the water quality of the marine estate (within the meaning of the <i>Marine Estate Management Act 2014</i>), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,</li> <li>• marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands</li> </ul>		

	Satisfactory	Unsatisfactory
and rock platforms, <ul style="list-style-type: none"> <li>• existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,</li> <li>• Aboriginal cultural heritage, practices and places,</li> <li>• existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,</li> <li>• overshadowing, wind funnelling and the loss of views from public places to foreshores,</li> <li>• the visual amenity and scenic qualities of the coast, including coastal headlands,</li> <li>• cultural and built environment heritage, and</li> <li>• has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.</li> </ul>		

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

5 LEP 1988 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development:

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

- 10 (a) The proposed development is defined in the LEP 1988 Dictionary as surf lifesaving facility;
- (b) The land is within the LEP1988 Coastal Land Zone according to the map under LEP 1988;
- (c) The proposed development is permissible with consent; and
- (d) The proposed development is consistent with the relevant objectives of the Zone for the following reasons:

Zone Objective	Consideration
(a) to identify and protect environmentally sensitive coastal land,	The proposal is consistent with the objectives of the zone. It is not considered to have a detrimental effect on habitat, landscape or scenic quality of the locality nor is it likely to interfere with coastal processes.
(b) to enable development for certain purposes where such development does not have a detrimental effect on the habitat, landscape or scenic quality of the locality,	
(c) to prevent development which would adversely affect, or be adversely affected by, coastal processes, and	
(d) to enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem.	

15 **Clause 33 Development within Zone No 7 (f1) (Coastal Lands Zone)**

The development has been considered against the relevant provisions of this Clause and advises that the Council, in deciding whether to grant consent to development referred to in subclause (2), can be satisfied that the following has been taken into consideration:

- 20
- the likelihood of the proposed development adversely affecting, or being adversely affected by, coastal processes,
  - the likelihood of the proposed development adversely affecting any dune or beach of the shoreline or foreshore,

- the likelihood of the proposed development adversely affecting the landscape, scenic or environmental quality of the locality of the land, and
- whether adequate safeguards and rehabilitation measures have been, or will be, made to protect the environment.

5 Conditions of consent to apply for the consent to cease in the event of a coastal erosion event threatening the surf club and for the building to be removed.

**Clause 63 Acid Sulfate Soils**

10 An Acid Sulfate Soils Assessment prepared by Greg Alderson and Associates submitted with the DA has concluded:

*Investigations by this office in the locality of the subject site has found that the surrounding soils are acidic, however are not potential acid sulfate soils. It is concluded that the site is not on acid sulfate soils and further assessment is not warranted.*

15 An unexpected findings condition has been recommended at the end of this report to address any unexpected disturbance of Acid Sulfate Soils during construction.

20 All relevant clauses have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act. The proposed development complies with all clauses of LEP 1988 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

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

25 No draft Environmental planning instruments affect the proposal.

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

30 DCP 2010 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP& A Act because its purpose is to provide planning strategies and controls for various types of development permissible in accordance with LEP 1988.

**Part G Vehicle Circulation and Parking**

35 The development requires the formalisation of 25 spaces to generally service the club and its activities. These will be located partly within the road reserve and partly onsite at the front of the property facing South Beach Road. Conditions of consent to apply.

**Part J – Coastal Erosion**

40 The proposed development is located within the Coastal Erosion Precinct No. 1. The applicant has provided a statement in support of the proposal, which the assessing officer considers to be reasonable in the particular circumstances of the case and subject to conditions of consent regarding the provisions of Part J - Coastal Erosion:

45 *Part J2.1 of Development Control Plan 2010 requires new buildings or works to be temporary and able to be readily removed in the event of coastal erosion. It also states:*

*Development that is of a community nature, which relates to the use of the beachfront, may be considered, provided that any building is easily removable and does not require a major extension to a service main.*

55 *The proposed building is to replace an existing two storey structure that was originally constructed within the site in 1968. Additions to the club were completed in 1973. The current building comprises brickwork walls over concrete footings. A pitched roof clad with metal sheeting covers the building. A timber deck extends to the east.*

Whilst the proposed surf club building does not require a major extension to a service main (as per Part J2.1 of DCP 2010), it has not strictly been designed to be “easily removable”. The building can be dismantled and removed from the site, but not in a short timeframe.

5 The proposed development is unique to other development proposals that are considered by Byron Shire Council as it is one of only two surf club buildings within the Byron Shire. A meeting with Byron Shire Council’s Development Advice Panel on 21 November 2017 suggested that a variation to the requirements of Part J2.1 of DCP 2010 should be sought as part of the Development Application. Reasons in support of this variation are discussed below.

15 The site of the current (and proposed) surf life saving building was specifically chosen following the demolition of a former surf club building in August 1968. The demolished building was located approximately 100 metres to the east of the current building. In late 1950, the former surf club building was threatened by coastal erosion. However, it is noted that this was at a time before the construction of the Brunswick River training walls which have significantly increased stability to the coastline adjacent to the site.

20 The current and proposed location of the surf club building has a substantial buffer of coastal dunes between the nearest recorded erosion escarpment. Dated in May 2010, this line is located over 70 metres to the east of the proposed development...Byron Shire Council’s most recent mapping of coastal erosion probability adjacent to the proposed development...provides that the maximum predicted 2100 year erosion line is approximately 40 metres from the proposed development.

25 As noted above, the development site is over 70 metres from the nearest recorded erosion escarpment. The above estimates maintain a buffer of approximately 40 metres to the development site in 2100.

30 The proposed development will replace an existing brick building with blockwork construction at ground level and lightweight materials above. Whilst an increase in the footprint of the development is proposed, the proposal comprises the replacement of the existing building with a very similar structure in the same location. As such, the development will result in no significant change in threats to the site.

35 The project Draftsperson has advised that preliminary engineering designs include the use of a screw pier system to support the development. This system is particularly beneficial within the sandy soils beneath the site. Such will also provide support for the development in the unlikely event of coastal erosion processes affecting the building. Detailed engineering designs are to be submitted as part of the construction phase of the development.

The assessing officer further notes Council’s Coastal and Biodiversity Coordinator comments that conclude:

45 The applicant has considered the effect of coastal processes and the provisions of development within Erosion Precinct 1. The location of the new development will be within the same footprint (although larger) of the original Surf Club which is an adequate distance from the most recent survey of the erosion escarpment. Council’s most recent coastal hazard mapping has also been referred to which outlines that the development will be located up to 40 m landward of the 2100 hazard line (which accommodates erosion, and sea level rise recession). Estimated recession of the shoreline due to sea level rise in the most recent study is 26 m at the site and as such, the development is unlikely to be impacted over the proposed lifetime of the development.

55 All other relevant Chapters/Parts have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act. The

proposed development is demonstrated to meet the relevant Objectives of DCP 2010 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

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

5 Not applicable

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

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

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

Not applicable

15 **4.8 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

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

20 Conditions of consent to apply in relation to construction activities, hours of work construction noise, builders waste and the like.

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

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

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

30 The development application was publicly exhibited. There was one submission made on the development application in support of the development. However, this submission raised an issue about the loss of an access path from South Beach Road, and the car park to the beach and the off-leash beach exercise area as a result of the increased footprint of the surf club. The submission requested a new level access to be provided. Conditions of consent to apply for the access to be re-instated.

**4.11 Public interest**

5 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**

10 Section 64 levies will be payable.

**5.2 Section 7.11 Contributions**

No Section 7.11 Contributions will be required.

**6. CONCLUSION**

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

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

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

**Statement of Reasons**

The proposed modifications were minor and substantially the same as the original development approval with no detrimental environmental impacts.
The proposed development complies with the provisions of Byron Local Environmental Plan 1988.
The proposed development complies with relevant State Environmental Planning Policies
The proposed development complies with relevant provisions of Development Control Plan 2010
The proposed development complies with Environmental Planning & Assessment Regulation 2000 considerations.
The proposed development complies with the Coastal Zone Management Plan.
The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The development application was notified/advertised in accordance with Development Control Plan 2010. Issues raised in the submissions have been addressed during assessment of the application.
The proposed development is unlikely to prejudice or compromise the public interest.

**How community views were addressed**

The DA was advertised in accordance with Development Control Plan 2014. The submissions received were considered on merit and addressed during assessment of the application. To view the considerations, please contact Council to view a copy of the assessment report relating to this DA.
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**Report No. 6.14**      **PLANNING - Proposed Amendments to Byron LEP 2014 and Byron DCP 2014 to incorporate controls for manors houses and multiple dwelling houses (terrace houses) in response to the Low Rise Medium Density Development Code**

5    **Directorate:**            Sustainable Environment and Economy  
**Report Author:**        Steve Daniels, Project Officer - Planning Reforms  
    Shannon Burt, Director Sustainable Environment and Economy  
**File No:**                    I2019/872

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**Summary:**

15    On 6 April 2018 amendments were made to the NSW planning framework to facilitate the development of low rise medium density housing through the introduction of a new Low Rise Medium Density Housing Code (SEPP Exempt and Complying Development Codes) 2008. The amendments came into effect on 6 July 2018.

20    However, the commencement of the Code was deferred to land in the Byron Shire LGA until 1 July 2019. A subsequent request was made to the Minister to extend the deferment beyond 1 July 2019; however Council has not received a response to date.

25    The Low Rise Medium Density Housing Code introduces two new development typology definitions to the standard instrument – ‘manor houses’ and ‘multi dwelling housing (terraces)’. Preparation of a planning proposal to introduce minimum lot size controls for these new development types is considered prudent in the absence of a favourable response to Council’s request to extend the deferment of the Code.

30    Based on the results of the draft Residential Strategy public consultation process – Shaping our Neighbourhoods, and to maintain consistency with existing planning controls and zone objectives, it is recommended that Council proceed with a Planning Proposal to amend the Byron Shire Local Environmental Plan (LEP) 2014 by inserting minimum lot size controls for ‘manor houses’ and ‘multi dwelling housing (terraces)’ as detailed in Attachment 1 and in Table 2 of this report.

35    Amendments to the Byron Shire Development Control Plan (DCP) 2014 to include controls for ‘manor houses’ and ‘multi dwelling housing (terraces)’ are also recommended as these are new development types not yet captured under existing DCP controls. A review of the DCP against the State Government’s DA Design Guide should also be undertaken to determine where improvements can be made generally to controls that relate to low rise medium density housing.

40

This report seeks Council support for:

- 45    • A planning proposal to amend clause 4.1E of Byron Shire Local Environmental Plan 2014 by inserting the minimum lot size standards shown in Table 2, and detailed in Attachment 1, of this report.
- 50    • Forwarding the planning proposal to the Minister for Planning for Gateway determination to allow public exhibition.
- 55    • Initiating a review of Byron DCP 2014 as it relates to low rise medium density housing, and introducing any required changes and references to manor houses and multi dwelling housing (terraces). The draft DCP would be reported to Council for consideration before being placed on public exhibition.

55    Due to the uncertainty of a Code deferral extension, these amendments need to be commenced as a matter of urgency.

**NOTE TO COUNCILLORS:**

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

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**RECOMMENDATION:****That Council:**

1. **Agree to initiate a planning proposal to amend clause 4.1E of Byron LEP 2014, by inserting minimum lot size standards for 'manor houses' and 'multi dwelling housing (terraces)' as contained in E2019/41816 (Attachment 1).**
2. **Forward the planning proposal to the NSW Department of Planning and Environment for a Gateway determination.**
3. **Agree to initiate a review of Byron DCP 2014 as it relates to low rise medium density housing, and prepare a draft amendment to strengthen Byron DCP 2014 where necessary and include references to 'manor house' and 'multi dwelling housing (terraces)' development.**
4. **Receive a further report to consider the proposed DCP amendments before proceeding to public exhibition.**

**Attachments:**

15

- 1 PP for amendment of Byron Local Environmenta Plan 2014 to introduce minimum lot size controls for manor house and multi dwelling housing (terraces), E2019/41816 

20

## REPORT

### Background

5 On 6 April 2018 amendments were made to the NSW planning framework to facilitate the development of low rise medium density housing through the introduction of a new 'Low Rise Medium Density Housing Code' into the SEPP (Exempt and Complying Development Codes) 2008. The amendments came into effect on 6 July 2018.

10 However, the Byron Shire LGA (and 50 other LGAs in NSW) was deferred from commencement of the Code until 1 July 2019. The deferral was provided to allow Councils sufficient time to fully consider the potential impacts of the amendments. For Byron Shire, the pause was an opportunity to enable Council to determine the nature and extent of any impacts on its Residential Strategy (in preparation) and supporting planning controls.

15 A subsequent request was made to the Minister to extend the deferment beyond 1 July 2019; however Council has not received a response to date. Preparation of a planning proposal to amend relevant minimum lot size controls is considered prudent in the absence of a favourable response to this request.

### 20 Low rise medium density housing

Low rise medium density housing consists of three development types, limited to 1 or 2 storeys in height:

- 25
- **Dual occupancy** – being two dwellings either attached or detached on one lot of land.
  - **Manor house** – being a maximum two-storey residential flat building which contains 3 or 4 dwellings. At least one dwelling must be located above another, and dwellings are attached by a common wall or floor.
  - 30 • **Multi dwelling housing (terraces)** – being three or more attached dwellings on one lot of land, facing and generally aligned along one or more public roads.

### Low rise medium density housing permitted with a development application

35 From 1 July 2019, manor houses will be permissible with development consent (as a DA) in the Shire wherever multi dwelling housing is permitted - namely the R2 Low Density Residential and R3 Medium Density Residential Zones. Dual occupancy and Multi dwelling housing (terraces) development are already permitted.

40 The new Low Rise Medium Density code will allow one and two storey dual occupancies, manor houses and multi-dwelling housing (terraces) to be carried out under a fast-track complying development approval process. Fast-track complying development (including that under private certification) can only be approved if the development application meets the requirements of the code and if the proposed use is permitted under a council's local environmental plan.

45 The Low Rise Medium Density Design Guide for Development Applications (DA Design Guide) commenced on 6 July 2018 to provide design guidance and best practice design controls and standards for low rise medium density development requiring development consent. The Environmental Planning and Assessment Regulation 2000 (the Regulation) requires councils to consider the DA Design Guide when assessing DAs for this type of development, until they adopt development controls and standards for these new housing types. A council may choose not to adopt local development controls and standards and instead rely on the DA Design Guide.

50

55 Council is preparing a residential strategy which will include local area residential character narratives articulating the desirable elements of an area's existing or future character. The

'narratives' will assist in updating residential design guidelines for our urban towns and villages, where required. However, concerns remain that the Code coming into effect on 1 July 2019 will pre-empt the residential strategy process. This includes introducing relevant LEP and DCP provisions that seek to manage the potential impact of the code.

5 In addition to impacts on residential character, concerns have been raised over the adequacy of existing infrastructure to meet the demands of higher density development in certain parts of the Shire. It is anticipated that the fast track complying development approvals process via the new code may incentivise low rise medium density development and result in an upsurge in these types of applications. Investigations are currently underway to inform the residential strategy with regard to infrastructure.

**Community Consultation and Feedback**

15 As part of the draft Residential Strategy public consultation process, Council staff undertook a 'Shaping Our Neighbourhoods' discussion with the community to inform the 'residential character narratives' for each urban town and village. The implications of the Low Rise Medium Density Housing Code were a key topic for discussion and feedback. Feedback was provided via:

- 20 • Written submissions
- Discussion board posts on Council's 'Have Your Say' website
- Online Surveys
- Interactive drop-in sessions held across the LGA between 30/4/19 and 13/5/19

25 Over 80% of survey respondents considered that low rise (2 storey) *Manor Houses* should only occur on lots 800m<sup>2</sup> or larger. Lot sizes under the minimum are deemed inadequate to provide for a suitable, sustainable and local form of development. Of note specific concerns were raised regarding the effects of overshadowing resulting from low rise medium density development on small blocks (i.e. 600m<sup>2</sup>).

30 Concerns over the adequacy of car parking provisions were also raised. The volume of cars parking on residential streets is already diminishing amenity and character of neighbourhoods across the Shire. This impact would be further exacerbated by densities under the new Code.

35 Infrastructure capacity was among the key issues identified in Council's letter to the Planning Minister (April 2019) requesting extension of time on the Code implementation.

**Planning proposal to amend Byron Shire LEP 2014**

40 Clause 4.1E *Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat building* of the Byron Shire LEP 2014 currently sets out minimum lot size standards for dual occupancies, multi dwelling housing and residential flat buildings within certain zones. These are shown in in Table 1 below.

45 Table 1: Existing Minimum Lot Size Controls

<i>Multi dwelling housing</i>	<i>Zone R2 Low Density Residential</i>	<i>1,000 square metres</i>
<i>Multi dwelling housing</i>	<i>Zone R3 Medium Density Residential</i>	<i>800 square metres</i>
<i>Residential flat building</i>	<i>Zone R3 Medium Density Residential</i>	<i>800 square metres</i>

By contrast, the DA Design Guide control for minimum lot size of *manor houses* and *multi dwelling housing (terraces)* is 600 square metres.

To respect the desired future character of our urban towns and villages, and to maintain consistency with existing planning controls and zone objectives, it is recommended that minimum lot size standards for manor houses and multi dwelling housing (terraces) be introduced in Byron LEP 2014 as follows:

5

Table 2: Proposed Minimum Lot Size Controls

<i>Manor house</i>	<i>Zone R2 Low Density Residential,</i>	<i>1,000 square metres</i>
<i>Manor house</i>	<i>Zone R3 Medium Density Residential</i>	<i>800 square metres</i>
<i>Multi dwelling housing (terraces)</i>	<i>Zone R2 Low Density Residential</i>	<i>1000 square metres</i>
<i>Multi dwelling housing (terraces)</i>	<i>Zone R3 Medium Density Residential</i>	<i>800 square metres</i>

The above is considered to provide the best mix of application and location for this type of development in the Shire.

10

A planning proposal (Attachment 1) has been prepared to facilitate the recommended changes to Byron Shire LEP 2014, *Clause 4.1E Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat building*. The draft clause is detailed in the planning proposal.

**15 DCP controls for low rise medium density housing**

The Byron DCP 2014 currently provides development controls for the development of dual occupancies, multi dwelling housing and residential flat buildings within the Byron LGA. To provide appropriate controls for all types of low rise medium density housing, additional controls are required for *manor houses* and *multi dwelling housing (terraces)*.

20

In addition to extending the controls of Byron DCP 2014 to manor houses and multi dwelling housing (terraces), a review of the DCP against the State Government’s DA Design Guide should also be undertaken to determine where improvements can be made generally to controls that relate to low rise medium density housing.

25

It is therefore recommended that Council staff initiate a review of Byron DCP 2014 as it relates to low rise medium density housing and prepare a draft DCP for Council’s consideration.

**30 Summary**

This report seeks Council support for:

35

- A planning proposal to amend clause 4.1E of Byron Shire Local Environmental Plan 2014 by inserting the minimum lot size standards shown in Table 2, and detailed in Attachment 1, of this report.
- Forwarding the planning proposal to the Minister for Planning for Gateway determination to allow public exhibition.
- Initiating a review of Byron DCP 2014 as it relates to low rise medium density housing, and introducing any required changes and references to manor houses and multi dwelling housing (terraces). The draft DCP would be reported to Council for consideration before being placed on public exhibition.

40

45

Due to the uncertainty of a Code deferral extension, these amendments need to be commenced as a matter of urgency.

**STRATEGIC CONSIDERATIONS**

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

	<b>CSP Objective</b>	<b>L2</b>	<b>CSP Strategy</b>	<b>L3</b>	<b>DP Action</b>	<b>L4</b>	<b>OP Activity</b>
5	<b>Community Objective 4: We manage growth and change responsibly</b>	4.2	Support housing diversity in appropriate locations across the Shire	4.2.1	Establish planning mechanisms to support housing that meets the needs of our community		

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

10 The relevant legal/statutory/policy considerations have been noted above.

***Financial Considerations***

15 As this is a Council initiated planning proposal, the costs will be borne by Council if it chooses to proceed.

The costs associated with the recommended review of the DCP and preparation of a draft DCP will also be borne by Council if it chooses to proceed.

20 ***Consultation and Engagement***

If Council chooses to proceed with the planning proposal, it will be forwarded to the NSW Department of Planning & Environment for a Gateway determination. A positive determination will identify any government agency or other consultation requirements.