



Byron Shire Council



Agenda Ordinary (Planning) Meeting

Thursday, 13 May 2021
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

CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

Disclosure and participation in meetings

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

Committee, or

- (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

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

Non-pecuniary Interests - Must be disclosed in meetings.

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

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

RECORDING OF VOTING ON PLANNING MATTERS

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

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

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BUSINESS OF ORDINARY (PLANNING) MEETING

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- 3. REQUESTS FOR LEAVE OF ABSENCE**
- 4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY**
- 5. TABLING OF PECUNIARY INTEREST RETURNS (CL 4.9 CODE OF CONDUCT FOR COUNCILLORS)**
- 6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS**
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14. QUESTIONS WITH NOTICE

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

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

NOTICES OF MOTION

Notice of Motion No. 9.1 Quarterly reports on residential dwelling figures

5 **File No:** I2021/706

I move:

- 10 **1. That Council notes:**
- a) the response to Question on Notice 14.1 ‘Agglomerated data on dwelling supply in Byron Shire’, and
 - b) that approximately 1,200 dwellings were approved between 2018 and 2021 and over 500 new lots created
- 15 **2. That Council receives quarterly updates that detail the provision of dwellings in the Shire, with reference to the targets set in the Byron Shire Residential Strategy 2020 and the North Coast Regional Strategy 2016.**

20 **Signed: Cr Cate Coorey**

Councillor’s supporting information:

This motion follows on from a question, which was taken on notice, at Council’s Ordinary Meeting held on 25 February 2021.

25 “In view of the recently adopted Residential Strategy and to assist in considering future planning decisions, can Councillors and the community be advised of changes in residential approvals since the operation of the Byron LEP 2014.”

Given the provision of the data regarding numbers of dwellings approved or provided through subdivision, it is prudent for these figures to be readily available so that Council can make informed decisions about planning matters.

Staff comments

by Shannon Burt, Director, Sustainable Environment and Economy:

(Management Comments must not include formatted recommendations – resolution 11-979)

5 While staff appreciate Councillor Coorey wanting to monitor and review dwelling delivery in the Shire; **staff do not support this motion as drafted.**

10 **This NOM has not been discussed with staff prior. It is staff position that no change be made to the existing monitoring and reporting regime on the ‘provision of dwellings in the Shire’ for the reasons discussed in the comments below.**

In response, it is important monitoring occurs within the context of an adopted policy framework and considers development industry seasonal variations, market volatility and other policy changes that may result in local development peaks and troughs.

15 For this reason the **Residential Strategy as adopted in December 2020 - Section 4 Monitoring and Review sets an annual report framework** on approvals for the various types of residential development – detached housing, secondary dwellings and low rise medium density in both new release and infill areas. This reporting also includes an update on the implementation of the Strategy’s actions.

20 Further, it is considered prudent that monitoring occurs consistently with other reporting requirements on same that are in place for all councils from the DPIE/ABS. These are already appropriately resourced by staff.

25 DPIE – Performance Monitoring report – DA types, times, etc.
DPIE – Land and Housing Monitor – No. of dwellings and lots approved and constructed.
ABS – Monthly building approvals and commencements (note these figures do not include DA approvals, only construction approvals and commencement – i.e. A DA has 5 years to be commenced but requires construction approval. These figures cannot be read together as dwelling numbers would be duplicated.)
30 Other adhoc reports as requested by Government departments from time to time.

35 Quarterly reporting of the ‘provision of dwellings in the Shire’ as recommended by the NOM, outside the above considerations holds an inherent risk of misinterpretation, resulting in possible reactive on-the-hop policy changes by say Council, which would be potentially devoid of consideration of:

- 40 • the longer term housing delivery framework as set in the residential strategy or state government policy current and emerging such as regulations for short term rental accommodation.
- trends in the construction industry such as, development pipeline approvals which have a five year commencement time and may not yet under construction or complete.
- 45 • external influences - such as in the last 12 months COVID-19 has had major impact on the function of Australia’s housing sector. Australia’s international

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borders have been essentially closed since March 2020 and we have seen short term shift in interregional migration trends. The population estimate for Byron Shire as of the 30th June 2020 was 35,773. Since the previous year, the population has grown by 1.99% and increase on the average of 1.55% in the preceding two years. Population growth in the same period for in Regional NSW was 0.83%. (source Id. profile / Australian Bureau of Statistics' official 2020 population figure for all LG Areas).The full economic and social consequences of the pandemic for NSW and Byron Shire housing sector is still to be determined.

- implications to long term infrastructure planning and delivery with reactive policy pivots.
- relationship to trends and housing delivery in adjoining local government areas and North Coast region which as stated above are report annually. These reports are used to assess council performance on housing targets in NCRP.

To exemplify staff comments above, the statement below has been analysed in more detail. What it shows is numbers are not simply numbers but can be read in such a way that without a context – longitudinal and other can give a false impression to the reader /user as to what is actually happening.

....1,200 dwellings were approved between 2018 and 2021 and over 500 new lots created...

Dwellings

- Infill development through dual occupancies (majority additional dwellings, not new developments) and Secondary dwellings made up 43% of the total dwelling count.
- Secondary dwellings made up 25% of the dwelling count. However, the number of these have gradually reduced over the last couple of years. In 2018 the community became aware that contributions may be reintroduced on Secondary Dwellings, and that saw a spike in applications. For example, during the period 1 January 2018 to 30 April 2018 there were 33 applications submitted. In the same period for 2021 there are only 17.
- Medium density dwelling numbers are variable. In 2018, as can be seen by the data there were a couple of larger DAs that made up these numbers. (i.e. 60 dwellings approved in 'Habitat' and 25 Affordable Housing dwellings approved in Mullumbimby 'Station Street NCCH'. The rest related to smaller developments.
- Studios are not habitable dwellings.
- In 2018 residential lots from previously approved subdivisions were released in Mullumbimby (Tallowood) and Bangalow.
- As stated in the report, there were 129 applications during the reported period that included demolition. There has been an increase in the number of replacement dwellings. Numbers quoted are not necessarily additional dwellings.

Subdivisions

- Table 5 (lots registered/created) indicate there were 450 lots created between 2018-2020. As noted in the report, these do not distinguish between lots created through boundary adjustments, consolidations and additional lots created through torrens title subdivision.

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- The registration/creation of lots is the last step in the subdivision process. The total does not indicate the development has taken place during that period, just that they were approved at some stage. The lots may relate to historical applications.
- Tables 3 and 4 (lots approved) during the period was 504. 61% (305) of these were strata subdivisions. Actual lots were not created. 33% (173) lots were created through torrens title subdivision.

Financial/Resource/Legal Implications:

No financial implication if the current reporting and monitoring regime is maintained. Staff costs if it is not.

10 **Is the proposal consistent with any Delivery Program tasks?**

Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.3	Manage development through a transparent and efficient assessment process
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STAFF REPORTS - GENERAL MANAGER

Report No. 13.1 BSC ats Pace Development Group Pty Ltd

Directorate: General Manager

5 **Report Author:** Ralph James, Legal Counsel
Chris Larkin, Manager Sustainable Development

File No: I2021/165

Summary:

10 This report is about the outcome of a section 34 Conciliation Conference which was held on 20 November 2020 and subsequent without prejudice discussions. It seeks delegations to authorise the General Manager to enter into consent orders or a s34 Conciliation Agreement approving Development Application 10.2019.576 .1 as per the conditions in Attachment 3.

15

RECOMMENDATION:

20 **That the General Manager be authorised under delegation to enter into consent orders or a s34 Conciliation Agreement approving Development Application 10.2019.576 .1 subject to the Without Prejudice Conditions in Attachment 3 (E2021/50075).**

Attachments:

- 25 1 Amended Hotel Plans as submitted to Land and Environment Court, E2021/61896 
- 2 Original Hotel Plans as submitted with Development Application DA10.2019.576.1, E2019/81719 
- 3 Without Prejudice Conditions, E2021/50075 
- 4 Copy of Submissions for 10.2019.576.1, E2021/62106 

30

Report

A Class 1 Application was filed with the Court on 28 February 2020 appealing Councils deemed refusal.

5 The appeal is presently fixed for hearing in the Land and Environment Court on 13 and 14 May 2021.

10 A section 34 Conciliation Conference was held on 20 November 2020. The Conciliation Conference reached the point where the applicant was prepared to make significant amendments to the proposal so as to enable a Conciliation Agreement to be entered into. Although the in principle agreement reached at the Conciliation Conference did not produce a settled agreement subsequent without prejudice discussions have brought the parties closer to an agreed position.

15 Staff do not hold delegated authority to enter into a Conciliation Agreement or Consent Orders. This report updates the status of the application and seeks a resolution empowering the General Manager to enter into a Conciliation Agreement or Consent Orders.

The Proposal

Development application 10.2019.576 .1 (**the DA**) was received by Council on 1 November 2019. The DA form describes the proposed development as:

20 *Demolition of an existing building and Mixed Use Development comprising hotel accommodation with ancillary swimming pool, roof top open space, ground floor retail premises and basement health spa. Three storey building above one level of basement. (Proposed Development)*

The Proposed Development consists of:

- 25
- a. Demolition of an existing building (shop);
 - b. Basement car park with 16 car parking spaces;
 - c. Health Spa with a floor space area of 135m² in the basement - open to both hotel guests and general public;
 - 30 d. Four (4) ground floor retail tenancies ranging in size from 75m² to 20m²;
 - e. Hotel lobby, common area swimming pool at ground level for use by hotel guests;
 - f. Twenty-nine (29) hotel rooms (with a total of 38 beds); and
 - g. Open roof top area for recreation activities for hotel guests (identified as a yoga platform) with toilet;
- 35

Vehicle access is proposed off Fletcher Lane. No onsite loading area is provided. A central bin storage area is proposed on the basement level with mechanical 'tug' device to enable the safe transfer of waste bins up the driveway ramp and onto Fletcher Lane.

40

The Site



5 The property is defined as Lot 9 in DP758207 and known as 7 Marvell Street, Byron Bay **(the Land)**. It is rectangular in shape with a primary frontage to Marvell Street (southern boundary) and a secondary northern frontage to Fletcher Lane. The Marvell Street and Fletcher Lane frontages are 20.117m in length with side boundaries of equal length of 50.29m. The Land has an area of 1012m².

10 The property currently contains an original timber dwelling which has been converted for use as a shop with rear gravel hardstand and paving areas. The rear parking areas are currently used as a parking area for rental vehicles associated with the adjoining rental car business at 5 Marvell Street. There is no substantial vegetation on the land, other than small landscape plantings.

15 The property is considered flat with a very gradual slope from the Marvell Street frontage to Fletcher Lane with an elevation of approx. RL 2.45 – 2.28m AHO. The lowest point of the site is 2.15m AHO in the rear yard area with the highest point of the site being 2.99m AHO and located midway along the eastern boundary of the site.

20 Development consent 10.2016.97.1 was issued in 8 November 2016 for the Demolition of existing building, Mixed Use Development comprising Hotel or Motel Accommodation with ancillary swimming pool, and ground floor Retail Premises (three storey building above two levels of basement parking) (the **Previous Consent**).

25 The Proposed Development differs from the Previous Consent in the following ways (as described by the applicant):

- a. Changes to the facade of the building to provide a more contemporary building

- more in keeping with the aims of the Byron Bay Town Centre Master Plan;
- b. Deletion of the second level of the basement carpark;
 - c. A larger hotel lobby with a corresponding 30m² reduction in the floor area of the retail spaces fronting Marvell Street;
 - 5 d. Two additional small retail spaces (20m²) each that will front the rear lane;
 - e. A health spa (135m²) in the basement car park. The health spa will be open to both guests and the public;
 - f. An open roof top platform for activities for hotel guests; and
 - 10 g. A reduction from 32 to 29 rooms (but maintaining the same number of beds) with a minor reconfiguration of the room layout.

CONTENTIONS

In the appeal Council raised the following contentions as to why the application should be refused:

Reliance on the Planning Proposal

- 15 The proposed development relies on amendments to the BLEP 2014 proceeding, without consideration of the submissions received during the exhibition of Planning Proposal and the effect that such submissions may have on the Respondent amending the proposed changes to **BLEP** 2014 and to BDCP 2014.

Height of building

- 20 The proposed development does not comply with the 11.5 metre maximum height of buildings in Clause 4.3 of BLEP 2014. It is noted that the development would also exceed the maximum allowable height of buildings under the current form of the proposed amended BLEP 2014 which provides a maximum height of 15 AHO (if the amendments were made). The applicant's clause 4.6 variation request does not provide
- 25 adequate justification of why such a variation from the current BLEP 2014 development standard is appropriate.

Floor Space Ratio

- 30 The proposed development does not comply with the maximum Floor Space Ratio of 1.3:1 in Clause 4.4 of BLEP 2014. The applicant has provided a Clause 4.6 variation request seeking to allow a maximum FSR of 1.57:1. The applicant's clause 4.6 variation request does not provide adequate justification of why such a variation from the current BLEP 2014 development standard is appropriate.

Traffic Planning, Vehicle Parking, Circulation and Access

- 35 The proposed development does not comply with BDCP 2014 Chapter B4: Traffic Planning, Vehicle Parking, Circulation and Access. The proposed development relies on the Planning Proposal, and proposed Chapter E9 to amend car parking provisions. Given the changes proposed under the Planning Proposal are neither likely nor imminent the departure from the current BDCP 2014 cannot be supported.

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STAFF REPORTS - GENERAL MANAGER

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Public interest

The application is not in the public interest having regard to the contentions raised.

5 The proposal is not consistent with the proper management or development of land for the purpose of promoting the social and economic welfare of the community, the land and a better environment, having regard to sections 1.3(a) and (b) of the *Environmental Planning and Assessment Act 1979*.

CONCILIATION

10 Conciliation and without prejudice discussions have occurred between parties and amended plans have been lodged with the Land and Environment Court. On 29 April 2021 the Court granted the Applicant's Motion to introduce the amended plans and ordered for joint expert reporting for town planning and traffic engineering experts.

15 The main changes to the development include the addition of a second basement level of car parking, provision of a car share for hotel guests to use, and changes to the front and rear facades of the development incorporating colonnade arches into those elevations. The applicant has also increased the floor area of two retail shops at the ground level from a total of 40m² to 100 m². Other detail has been prepared justifying the development including detailed clause 4.6 variations to the height and floor space ratio controls.

The following comments are provided on those changes in terms of the contentions raised:

Reliance on the Planning Proposal

20 The development has been amended to provide an additional level of basement car parking which is considered to provide adequate parking onsite for the proposed uses. Further the applicant has provided an amended Clause 4.6 request in relation to both the Height of Building and Floor Space Ratio.

25 Council has no draft controls which are currently imminent or otherwise that remove car parking rates, or the Floor space ration provisions from Byron LEP 2014. As such the proposed amended plans has been assessed with no regard to future changes to planning controls.

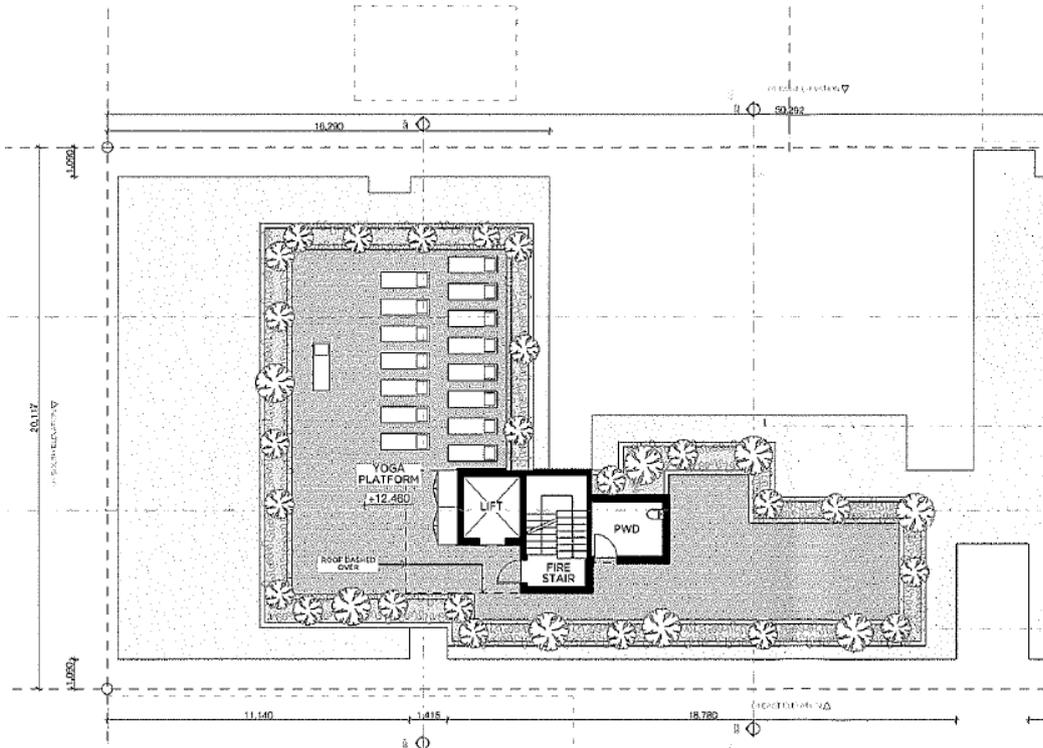
Height of building

30 The variation to the 11.5m height of buildings standard is associated with small parts of the overall building that relate to the top of stairs, lift overrun, storage area and toilet. All other parts of the proposed building would comply with the height standard.

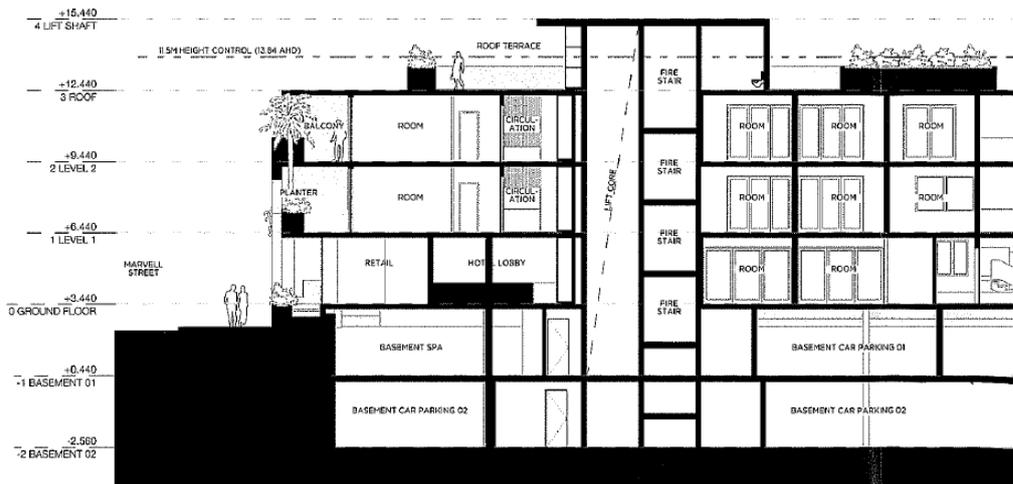
35 The variations to the height standard are numerically minor, particularly when considered as a percentage of the overall roof area. The exceedance of 1.65m relates to discrete elements near to the centre of the Site that cumulatively occur on less than 4.2% of the total roof area of the proposed development.

The small portion of the development that exceeds the 11.5m height of buildings standard will not be readily viewed from the street, and will not contribute to the development being dominant in the streetscape or out of character in the area. It is considered that strict

compliance with the development standard in this instance is unnecessary and a variation to the height controls can be granted in this instance.



Extract of roof top floor plan



LO2 LONG SECTION 02

Scale 1:200

5

Extract of Section showing the lift, fire stairs and toilet above the height limit

Floor Space Ratio

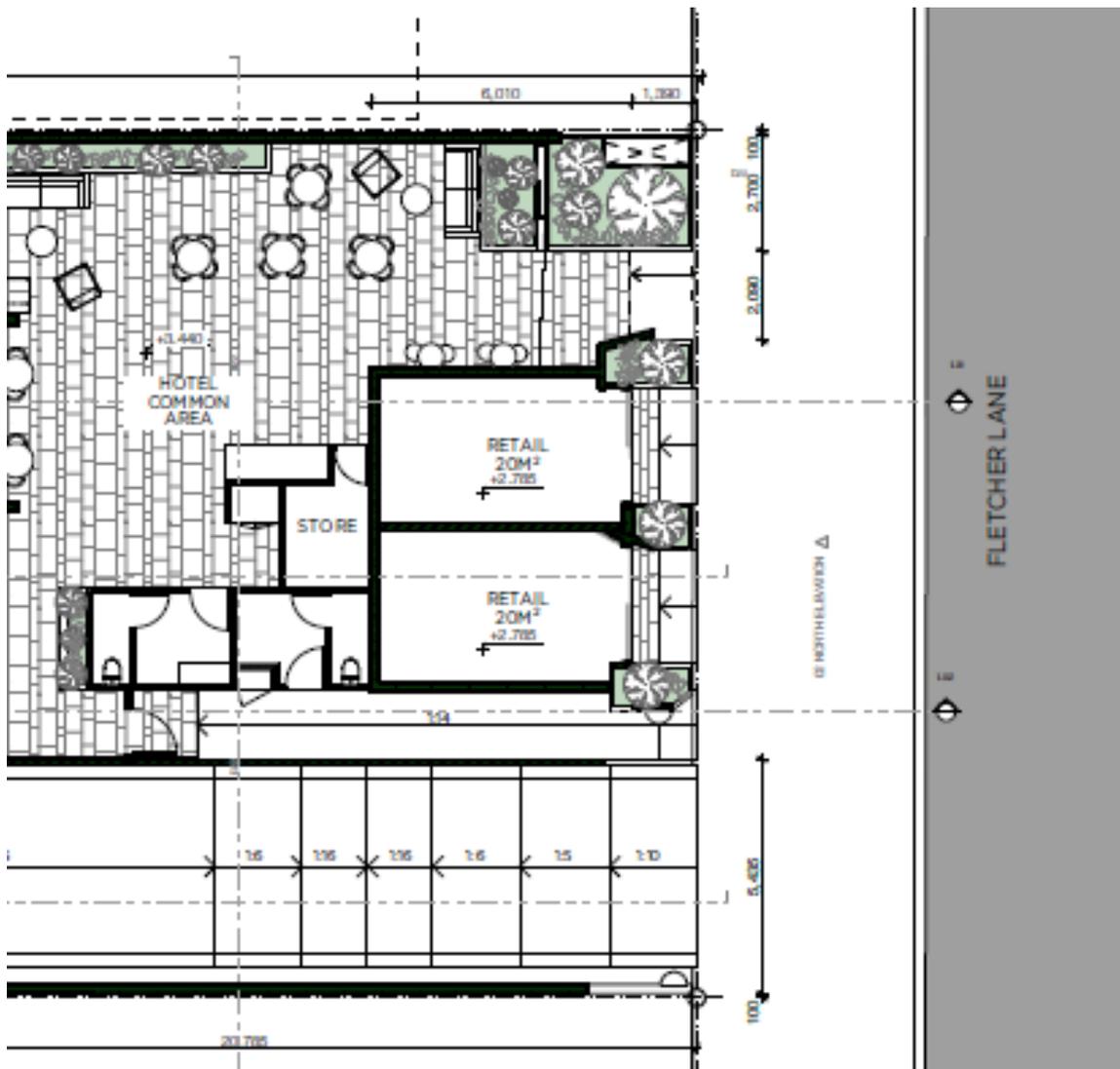
The proposed development does not comply with the maximum Floor Space Ratio of 1.3:1 in Clause 4.4 of BLEP 2014. The applicant has provided a Clause 4.6 variation request seeking to allow a maximum FSR of 1.57:1.

- 5 The site area of 1,012m² and the applicable 1.3:1 FSR standard provides a compliant GFA of 1,315.6m². The GFA of the proposal (including rooftop toilet) is 1,590m², that is an FSR of 1.57:1 and GFA exceedance of 274.4m² (20.9%)

In part 127 m² of the FSR variation sought relates to the Spa. The spa is located within a basement level and has no implications for the bulk and scale of the development.

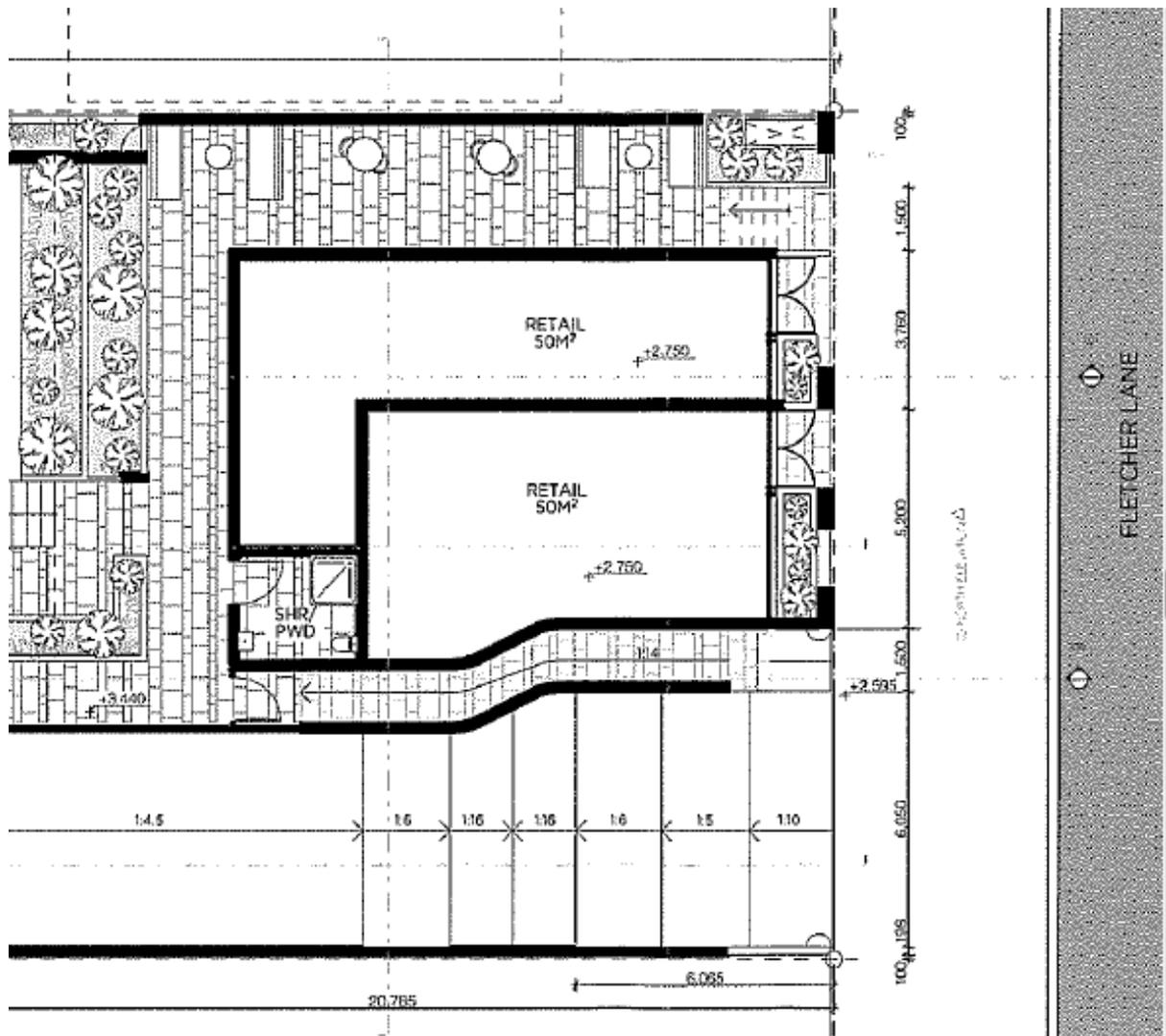
- 10 Excluding the GFA of the spa, the FSR of the development would be 1.44:1, that is an exceedance of approximately 0.147m² (11.2%).

It is noted that additional retail area is provided from the Fletcher Street Laneway with the original plans showing two small 20m² retail tenancies. The subject plans now show two retail shops of 50m² each.



15

Extract of Original Ground floor plan showing two 20m² retail shops



Amended plans showing increased retail floor area of two 50m² retail shops

5 In support of the proposal despite the FSR variation being sought, the development is largely “U” shaped and opened on the western elevation/ side boundary around the pool courtyard area. The building is also designed with a degree of articulation at the ground level facing Marvel Street with the retail shops setback from the boundary.

The applicant has submitted the following to support the variation to the FSR development standard:

- 10
- *Both the front and rear of the Site is bound by public roads, which in this case provides added separation to adjacent existing development.*
 - *A substantial component of the additional floorspace (Spa) is contained in a basement level that has no implications in regard to the size of the building.*

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STAFF REPORTS - GENERAL MANAGER

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- *The balance of the additional floorspace will be substantially contained within the envelope of an approved building and will not be discernible to an observer in the street.*
- 5 • *The proposed modified development reflects Council's contemporary planning controls for the town centre. Overall the changes would have a positive planning outcome. In particular, the smaller retail tenancies and health spa will activate Fletcher Lane, potentially acting as a catalyst for other developments to follow.*
- *The refinements to the approved building architecture will reduce the apparent bulk and scale of the building, albeit marginally.*
- 10 • *The proposed development is for an anticipated three storey building within the town centre of an appropriate scale and density of development to support the Byron Bay town centre, that is effectively contained within an approved building envelope. Consequently, the proposal would be consistent with the following objects of the EP&A Act at s.1.3:*
- 15 *(c) to promote the orderly and economic use and development of land, and (g) to promote good design and amenity of the built environment.*
- *In addition to the above, there is an absence of material negative impacts resulting from the proposed variation from the FSR standard.*



20

First and Second Floor Plans

- Some variation to the FSR development standard is generally anticipated by applicants seeking to re-develop in the Byron Bay Town Centre. In raw numbers a 20% variation is excessive. It would also appear there is little precedence for such a variation. The development on the corner of Browning and Jonson Street was approved with an FSR of 1.42:1.0, subject to a thorough Clause 4.6 variation. It is therefore submitted that the development standard has not been abandoned by Council, and it is considered a variation up to 1.57:1.0 will send the wrong signal to developers that the standard can be varied by more than a fifth.
- 5
- 10 Should Council wish to enter into conciliation with the applicant, it is recommended that conditions be imposed that require 100m² of floor area be removed from the development. This can be achieved in a number of ways by taking floor area out the retail shop areas at the ground level combined with a reduction in the basement spa area. Additional floor area can also be found across the first floor level of the development such as replicating the
- 15 second floor setback to the side boundaries by 1 metre. In this regard the floor area for the first floor although similar to the second floor is some 65 m² greater. Even the need for a toilet (5 m²) on the roof top although desirable could be removed, considering the area is to be utilised only by guests residing at the hotel who have direct access to their own facilities within the guest rooms.
- 20 With a reduction of 100 m² the floor area would be appropriate in terms of the floor space ratio controls.

In the event that Council does not support any variation to the Floor Space Ratio this will remain an outstanding contention and council will to defend the contention in the Land and Environment Court.

25 **Traffic Planning, Vehicle Parking, Circulation and Access**

- The applicant has amended the proposal to include a second basement level of car parking, similar to a similar approved development on the subject site. This has also increased car parking from 16 spaces to 36 spaces. The DCP for a development of this size requires a total of 46 spaces.
- 30 Engineering assessment has concluded that the additional parking provision will adequately service the development. The applicant has also proposed a share car arrangement for guests of the hotel to use, and conditions of consent are recommended in relation to an appropriate management plan being prepared for the share car.
- 35 Although there is a numerical shortfall, it is noted that the development is for predominantly tourist and visitor accommodation as opposed to residential accommodation. It is anticipated that some guests will arrive at the hotel by way of transfer from airports at Coolangatta or Ballina, and won't need a specific car parking space for the duration of their stay. Further the provision of a share car will provide opportunities for guests if they wish to visit other parts of the Shire access to a vehicle subject to booking.
- 40 Elements of the condition relating to the car share management plan and the vehicle include that the car is:

- to be owned and maintained by the Hotel at all times;
- be able to accommodate a minimum of four adults;
- be for available **only** for guest staying at the hotel;
- be no more than 5 years in age from the time of manufacture;
- 5 • be an automatic;
- be suitable for use on sealed and unsealed roads;
- be registered and appropriately comprehensively insured for guest use including public liability; and
- 10 • parked in the Basement of Level 1 with the space reserved and signposted at all times for the car share vehicle.
- Booking arrangements and measures for guests residing at the Hotel;
- Measures to promote the car share vehicle to Hotel Guests;
- Monitoring to enable data to be collected as to the effectiveness of the Car Share arrangements and sharing of that detail with Council if requested.

15 It is considered that there is also a degree of cross utilisation between the proposed spa and the hotel itself. In the event that car parking demand exceeds capacity from time to time, guests or shoppers will need to park in the public domain which is dominated by paid parking. Width of car parking spaces, disabled access and manoeuvring areas are satisfactory. Appropriate conditions of consent are recommended. This contention is
20 considered resolved.

Public interest

Should the Floor space ratio and car parking matters be resolved then it is considered that public interest issues fall away

Other issues

25 **Colonnade Arches**

The plans were amended during the conciliation process with the facades facing both Marvel Street and Fletcher Lane changed to rendered colonnade arches. Visually this would appear somewhat out of character with the streetscape and the applicant is agreeable that the development proceed with the original facades. Conditions of consent
30 to apply.

Public Submissions

The application was notified from 21 November 2019 to 4 December 2019 Council received 23 submissions objecting to the development on the following grounds

BYRON SHIRE COUNCIL

Issue	Comment
<p>Lack of Parking</p> <p>Staff parking</p>	<p>Plans have been amended to increase car parking from 16 to 36 spaces. Conditions of consent are also recommended in relation to a share car being provided for guest use as discussed above. A minim of eight spaces are to be allocated for staff purposes</p>
<p>Height of Building</p>	<p>A small portion of the building being the lift, a toilet and staircase to the roof top area exceeds the height limit. The clause 4.6 variation is supported as discussed in the body of the report.</p>
<p>Floor space ratio is excessive</p>	<p>Noted. It is recommended that the development reduce its floor area by 100 m² and conditions of consent recommended.</p>
<p>Construction Noise</p>	<p>With any new development there will be construction noise. Conditions of consent are recommended in relation to managing hours of work and noise during this period.</p>
<p>Operational Noise</p>	<p>The development is located within the central business district of Byron Bay. It is anticipated the development will generate some noise consistent with the type of development being proposed. No night clubs or restaurant is proposed and specific hours of operation are recommended as follows:</p> <ul style="list-style-type: none"> • <i>Retail Shops and Spa - Monday to Sunday, from 7 am to 7 pm.</i> • <i>Roof top deck – Monday to Sunday, from 8 am to 6pm</i> <p>Roof top deck numbers are limited to a maximum of twenty patrons.</p> <p>in relation to the hours of operation of the retail spaces and the roof top area.</p>
<p>History of building and heritage</p>	<p>Subject building is not heritage listed nor is it in a heritage conservation area. Notwithstanding conditions imposed regarding collection of photographic archives for recording purposes prior to works commencing onsite.</p>

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STAFF REPORTS - GENERAL MANAGER

13.1

Services can't cope	Subject propriety is located within the Byron bay Town Centre and is adequately serviced with necessary infrastructure.
Does nothing for affordable housing	Noted – the development is for tourist and visitor accommodation not a residential development
Reliance on Draft Planning controls	Noted – Proposal has not been considered in terms of draft planning controls.
Rooftop yoga area is a storey	The rooftop yoga area is open to the weather and is not a storey.
Impacts on other tourist business	It is unlikely with the interest from tourists wishing to stay in Byron Bay that the proposal will impact on the viability of other tourist accommodation providers or yoga . Notwithstanding this is not a matter for consideration in terms of any competition that may eventuate between businesses

Options

If Council provide delegated authority to the General Manager is possible to resolve the proceedings even though the hearing will have commenced by the time Council considers this report. If no delegated authority is provided the hearing of the matter will continue and will be determined by the Commissioner.

5

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.6	Manage Council's resources sustainably	5.6.13	Manage the delivery of high quality cost effective legal services	5.6.13.2	Represent Council's legal interests

Legal/Statutory/Policy Considerations

Conciliation in the Court is undertaken in accordance with Section 34 of the Court Act (otherwise known as a Section 34 Conference).

- 5 Section 34 Conferences, as articulated by the Chief Judge in (2008) 19 ADRJ 72, provide:
“for a combined or hybrid dispute resolution process involving first, conciliation and then, if
the parties agree, adjudication. The conciliation involves a Commissioner with technical
expertise on issues relevant to the case acting as a conciliator in a conference between
the parties. The conciliator facilitates negotiation between the parties with a view to their
10 achieving agreement as to the resolution of the dispute. If the parties are able to reach
agreement, the conciliator, being a Commissioner of the Court, is able to dispose of the
proceedings in accordance with the parties’ agreement.”

The Court’s practice note encourages parties to consider using Section 34 Conferences to resolve disputes or narrow the scope of issues in dispute. The parties should properly prepare for each conference with this purpose in mind.

- 15 In accordance with Section 34(1A) of the Court Act it is the duty of each party to proceedings where a conciliation conference has been arranged to participate, in good faith, in the conciliation conference.

Conciliation Agreement/Consent Orders

- 20 The differences between finalising the Court proceedings via a Conciliation Agreement compared to Consent Orders are as follows:

1. A Conciliation Agreement is between Council and the applicant ie Council stays the determining authority.

- 25 Use of a Conciliation Agreement would bring the Court cases to an end immediately and without the need for Council to include any expert witness costs or any legal costs beyond the minor costs associated with finalising the Conciliation Agreement.

2. Consent Orders are Orders issued by the Court by agreement ie the Court becomes the determining authority and has the power to refuse to issue the orders the parties are asking for and/or to make different orders instead. With a Consent Orders hearing, everything, including the proposed conditions, is open to the Court to finally determine and, for example, a Commissioner might disagree with proposed conditions and issue orders with different conditions.

- 35 Because the Court becomes the determining authority, Consent Orders will not be entered by the Court without a hearing. That means a hearing would need to be held (usually commencing on-site then adjourning to a local Court house) and solicitors, expert witnesses and people who lodged an objection who wished to make a verbal submission to the hearing would have to attend, and Council would incur the associated legal and witnesses costs.

Usually, Consent Orders Hearing are shorter than defended hearings, often only 2 - 4 hours instead of the minimum full day hearing or more, but the hearing still needs to be

prepared for and attended, just like a defended hearing would be, which means that the vast majority of the costs are still incurred.

5 Due to the reduced certainty and the higher costs, this is usually not the option recommended by staff for disposal of the court cases where Conciliation Agreement option is still available, as is the case here.

Statement of Contentions

The first purpose of the Statement of Contentions is to inform applicants of the case to be met. The second purpose is to inform the Commissioner what the case is about.

Conciliation conferences

10 As per the body of this report.

Expert witness

15 Essentially, expert evidence is opinion evidence or, the opinion of the expert. The primary function of the expert witness is to assist the court in reaching its decision by providing independent expert/technical analysis and opinion on an issue(s), based on the information provided by those instructing the expert.

An expert witness must comply with the code of conduct in Schedule 7 to the *Uniform Civil Procedure Rules 2005*

The expert witness code of conduct imposes:

- a general duty to the Court
- 20 • a duty to comply with orders
- a duty to work co-operatively with other expert witnesses
- requirements regarding the content of the expert's report.

General duty to the Court

25 An expert witness has an overriding duty to assist the Court impartially on matters relevant to the expert witness's area of expertise. An expert witness' paramount duty is to the Court and not to any party in the proceedings (including the person retaining the expert witness. An expert witness is not an advocate for a party.

Duty to comply with Court directions

An expert witness must abide by any direction of the Court.

The expert, when complying with any direction of the Court to confer with another expert witness or to prepare a parties' expert's report with another expert witness in relation to any issue:

- (a) must exercise his or her independent, professional judgment in relation to that issue
- 5 (b) must endeavour to reach agreement with the other expert witness on that issue
- (c) must not act on any instruction or request to withhold or avoid agreement with the other expert witness.

Financial Considerations

- 10 Costs incurred in taking the matter to hearing completion would only be marginally greater than if the appeal was "settled" on day 1 of the hearing.

Consultation and Engagement

Not applicable.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.2 Draft 2021/22 Operational Plan and Budget for Public Exhibition

5 **Directorate:** Corporate and Community Services

Report Author: Heather Sills, Corporate Planning and Improvement Coordinator
James Brickley, Manager Finance

File No: I2021/641

10 **Summary:**

Council's Operational Plan articulates the key activities to be delivered in a financial year based on the actions and strategic goals in 'Our Byron, Our Future' – Council's 10-year Community Strategic Plan and 4-year Delivery Program. Council is in its final year of the Delivery Program.

15 Council's Statement of Revenue Policy includes Budget Estimates, Rates and Charges, Borrowings, and Fees and Charges.

The preparation of these documents is regulated under the Integrated Planning and Reporting Framework requirements legislated by the *Local Government Act 1993* (Sections 402 to 406).

20 This report recommends placing the Draft 2020/21 Operational Plan and Statement of Revenue Policy, subject to any amendments, on public exhibition for 28 days.

25 **RECOMMENDATION:**

That Council:

1. **Endorses the draft Operational Plan 2021/22 (Attachment 1, E2021/59631) for public exhibition for a period of 28 days, from 14 May to 11 June 2021.**
2. **Endorses the Draft 2021/22 Statement of Revenue Policy comprising detailed Budget Estimates (Attachment 2, E2021/62186), Rates, Charges, Borrowings and Fees and Charges (Attachment 3, E2021/62638) for public exhibition for a period of 28 days, from 14 May to 11 June 2021.**

Attachments:

35 1 Draft Operational Plan 2021/22, E2021/59631 

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.2

- 2 Draft Detailed 2021/2022 Budget Estimates, E2021/62186 
- 3 Draft 2021/22 Fees and Charges, E2021/62638 

5

Report

5 The Community Strategic Plan, the Delivery Program and the Operational Plan form part of the Integrated Planning and Reporting Framework which is a requirement under the *Local Government Act 1993*.

10 The Delivery Program turns the strategic goals found in the Community Strategic Plan into actions. The annual Operational Plan spells out the detail of the Delivery Program, identifying the individual projects and activities that will be undertaken in a specific year to achieve the commitments made in the Delivery Program. The Operational Plan must include the Council's annual budget, along with Council's Statement of Revenue Policy, which sets the proposed rates, fees and charges for that financial year.

Council undertook a significant review of its Delivery Program in 2018 following the development of a new Community Strategic Plan and recommendations from the Infrastructure Community Solutions Panel. It has not been reviewed this year.

15 **Draft 2021/22 Operational Plan**

The Operational Plan actions detail the activities and projects Council will undertake. It is grouped under our five Community Strategic Plan themes, which are:

- We have infrastructure, transport and services which meet our expectations
- We cultivate and celebrate our diverse cultures, lifestyle and sense of community
- 20 • We protect and enhance our natural environment
- We manage growth and change responsibly
- We have community led decision making which is open and inclusive

25 Within each theme, reading across, the Operational Plan is structured by Community Strategic Plan objective and strategy, Delivery Plan action, Operational Plan activity, financial implications, responsibility, measure, and due date. Links to Community Solutions Panel (infrastructure) recommendations and Disability Inclusion Action Plan requirements are also referenced.

The draft Operational Plan is included at Attachment 1.

Draft 2021/22 Budget Estimates (Statement of Revenue Policy)

30 The Draft 2021/22 Budget Estimates are based on the 2020/21 budget reviewed at 31 March 2021 Quarter Budget Review (subject to a separate report to this Council Meeting) with various changes to reflect the updated cost of service delivery across all programs developed from the input received from each Council Directorate.

35 The Draft 2021/22 Budget Result on a Consolidated (All Funds) basis forecasts a balanced budget result as outlined below at Table 1.

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Table 1 – Forecast Budget Result 2020/21 Consolidated (All Funds)

Item	Amount \$
Operating Result	
Operating Revenue	93,579,800
Less: Operating Expenditure	(77,453,200)
Less: Depreciation	(15,779,900)
Operating Result – Surplus/(Deficit)	346,700
Funding Result	
Operating Result – Surplus/(Deficit)	346,700
Add: Non cash expenses – Depreciation	15,779,900
Add: Capital Grants and Contributions	21,904,900
Add: Loan Funds Used	13,500,000
Add: Asset Sales	0
Less: Capital Works	(61,863,900)
Less: Loan Principal Repayments	(3,868,200)
Funding Result – Surplus/(Deficit) (Cash Movement)	(14,200,600)

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Reserves Movement – Increase/(Decrease)	(14,200,600)
Overall Budget Result – Surplus/(Deficit) (Operating + Funding)	0

The detailed Draft 2021/22 Budget Estimates are included at Attachment 2. Table 1 indicates a forecasted budgeted balanced result, and this relates to the General Fund. The forecast General Fund Unrestricted Cash Balance position based on the draft budget included at Table 1 is outlined in Table 2 below:

5 Table 2 – Forecast General Fund Unrestricted Cash Balance

Item	\$
Forecast unrestricted cash balance to 30 June 2021 at 31 March 2021 Budget Review (proposed)	517,600
Add: Estimated initial Draft 2021/22 Budget result	0
Forecast unrestricted cash balance at 30 June 2022	517,600

10 In addition to Table 1 above, budgeted financial statements incorporating an Operating Statement and Cash Flow Statement have been produced. These financial statements, replicating the format of Council’s Annual Financial Statements, are included in Attachment 1 as part of the Operational Plan, along with a one-page summary of all Council budget program outcomes. Reserve balances are outlined in the detailed budget estimates provided at Attachment 2.

Specific comment about Council’s financial position

15 To derive the proposed draft budget outcome for 2021/2022 has required Council to take dividends from some of its reserves which is not sustainable. Council is still feeling the impacts of the COVID-19 Pandemic with revenue reductions particularly from extreme low interest rates available for invested funds. Council’s 2021/2022 Budget is impacted by the following items for 2021/2022 that have compounded the difficulty of balancing the proposed budget position including:

- Superannuation guarantee increasing from 9.50% to 10.00% (yet to be confirmed).
- 20 • Insurance premiums
- Emergency Services Levy contribution

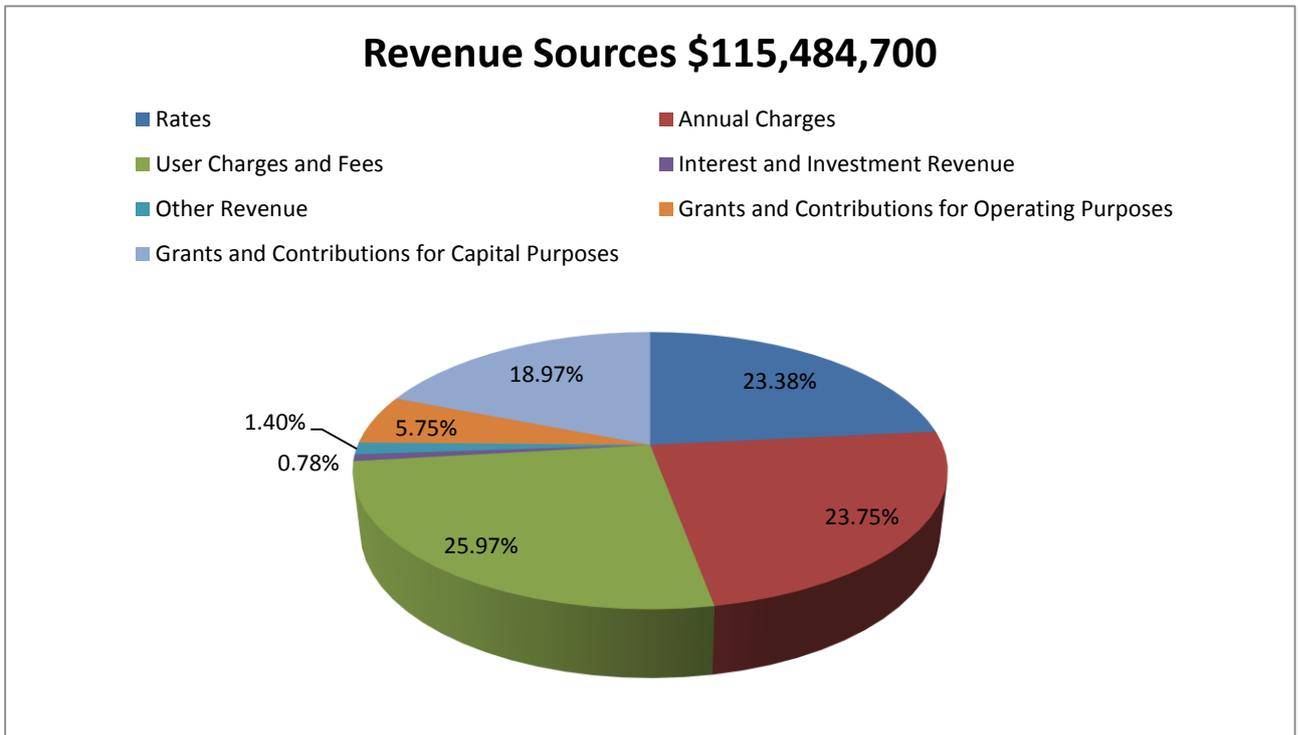
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- Reduction in interest revenue

The cumulative impact of the above four items on the budget is in the vicinity of an extra \$1.2million that needs to be absorbed.

5 Given Council’s current economic circumstances, it needs to be mindful of the financial impacts of future decisions. Council is fortunate at the current levels of grant funding being received and the assistance that brings but grants cannot be relied upon to always be available. In the lead up to the adoption of the 2021/22 Operational Plan and Revenue Policy at the June 2022 Ordinary Council Meeting, it is expected Council will be provided with an updated Long Term Financial Plan which it will need in order to consider its future financial projections whilst balancing community demands and expectations.

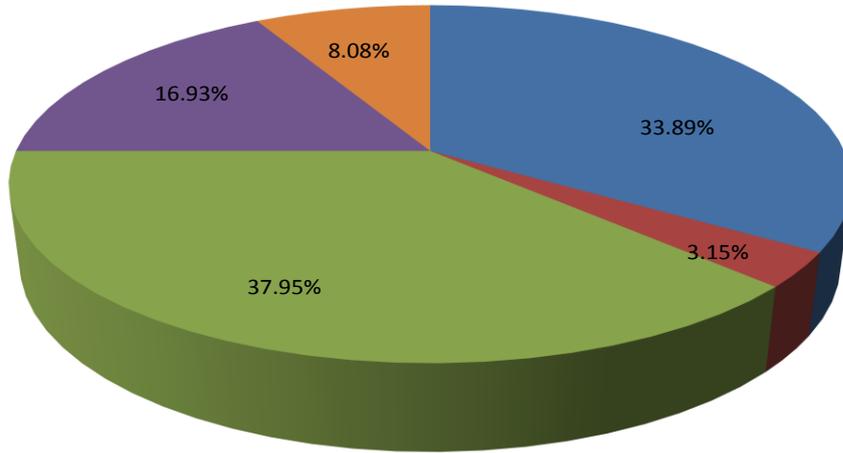
10 To arrive at the Draft Budget Results outlined in Table 1 for the 2021/22 financial year, Council’s revenue and operational expenses are expected to be derived from the following sources and allocated respectively as outlined in the graphs below:



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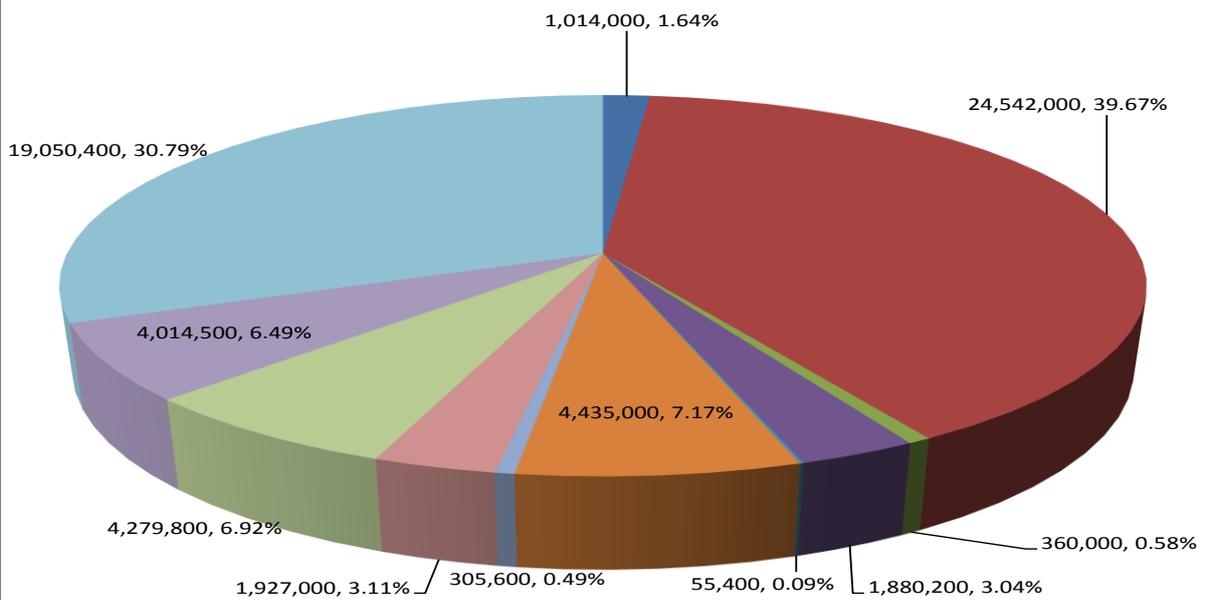
Operating Expenditure \$93,233,100

- Employee Benefits and Oncosts
- Borrowing Costs
- Materials and Contracts
- Depreciation and Amortisation
- Other Expenses



Capital Expenditure \$61,863,900

- Depot Services and Fleet Management
- Local Roads and Drainage
- Roads and Maritime Services
- Open Space and Recreation
- Projects & Commercial Development
- Waste Management
- Cavanbah Centre
- Holiday Parks
- Facilities Management
- Water
- Sewerage



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In addition to the operational aspects of the proposed Draft 2021/22 Budget Estimates, Council is proposing a capital works program of \$61.864million. By Fund, the projected capital works are:

- 5 • General Fund \$38.799million
- Water Fund \$4.015million
- Sewerage Fund \$19.050million

Specific capital works projects have been detailed in Attachment 2. As in previous years, the General Fund is presented in a different format, to improve the disclosure of funding sources for specific projects including:

- 10 • Developer contribution funding to describe the specific part of the Developer contribution plan and catchment that is providing the funding for a project.
 - Where reserve funds are funding a project, identification of the reserve being utilised.
 - Separation of funding provided by the 2017/18 Special Rate Variation (SRV) for which Council has reporting obligations for 10 years.
- 15 Of the \$38.799million for capital works related to the General Fund, \$24.902million is allocated to Roads and Drainage projects. The Sewerage Fund Capital Works Budget includes \$12.000million for the proposed Bio-Energy Facility.

The Draft 2021/22 Budget Estimates also propose new loan borrowings of \$13.500million to fund the following projects:

- 20 • First Sun Holiday Park Land Purchase \$1.500million
- Bio-Energy Facility (Sewerage Fund) \$12.000million

The amount of actual loan funds Council will need to borrow may be reduced pending the following considerations and depending on how both projects proceed during the coming financial year.

- 25 Should Council need to borrow the full \$13.500million or less, this will be subject to lending approval and it will be necessary for both projects to be financially viable to generate sufficient return to fund their future loan repayments.

- 30 It may be likely that Council will not be able to access the low-interest initiative loan borrowing facility offered by the NSW Government through NSW Treasury Corporation as these projects will possibly fall outside its lending criteria. Nevertheless, given the current interest rate environment, Council should, depending upon approval processes, be able to obtain a relatively low interest rate.

Draft General Land Rates and Charges (Statement of Revenue Policy)

- 35 The Draft 2021/22 Revenue Policy includes the proposed rating structure, consistent with the structure revised by Council for the 2017/18 financial year. This is outlined in Attachment 3. The rating structure incorporates the approved rate peg of 2.00% determined by the Independent Pricing and Regulatory Tribunal (IPART). Council is now back to normal rate pegging increases, given the approved 2017/18 Special Rate Variation

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(SRV) concluded in the 2020/21 financial year. The cumulative increase in rates revenue generated by the SRV over the last four financial years is now a permanent addition to Council's rating revenue base.

5 The 2021/22 financial year will also see the continuation of new land valuations introduced for the 2020/21 financial year for the purposes of levying general land rates.

In respect of other charges, the Draft 2021/22 Revenue Policy includes the following:

- Waste Charges – increase of up to 14%. Charges for 2020/21 were increased by 1.80% but should have been increased further to reflect waste disposal costs so there is a catch-up proposed for 2021/22.
- 10 • Water access charges increasing around 3.2% and water usage charges increasing by 2.9%. including continuation of water being the same price for usage irrespective of whether a consumer is residential or non-residential, providing equity for all consumers and continuation of the single tariff introduced in the 2019/20 financial year.
- 15 • Sewerage charge increased by 3.0%, including continuation of a fixed access charge for residential consumers and not charging sewerage usage charges based on water consumption as introduced in the 2020/21 financial year.
- The stormwater charge has not increased. It is a regulated charge that has not changed over the last fifteen years.

20

For the average residential ratepayer, the increases proposed for 2021/22 to rates and charges will see an overall increase of \$135.00 or 3.40% for 2021/22 compared to 2020/21.

Draft Fees and Charges (Statement of Revenue Policy)

25 The Draft 2021/22 Fees and Charges have been reviewed by the respective program managers and included at Attachment 3. Where possible, fees have been altered/increased to reflect the following specific changes:

- Increases in the Consumer Price Index (CPI)/Indexation - assumed at 1.00%.
- Review of fees and charges including benchmarking/cost of service provision and where possible, introduction of new fees to assist Council to generate additional/
- 30 enhanced revenue.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective		CSP Strategy		DP Action		OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.2	Create a culture of trust with the community by being open, genuine and transparent	5.2.1	Provide timely, accessible and accurate information to the community	5.2.1.1	Review Operational Plan annually

Legal/Statutory/Policy Considerations

5 [Section 405 of the Local Government Act](#) outlines the Operational Plan requirements including public exhibition and timeframes.

The specific statements required by Council to be disclosed as part of its Revenue Policy are determined by [Clause 201 of the Local Government \(General\) Regulation 2005](#).

Financial Considerations

10 The Operational Plan includes the annual budget required to fund the projects and services delivered as part of the Plan.

Consultation and Engagement

The Draft 2021/22 Operational Plan and Budget have been prepared based on the strategic priorities in the Community Strategic Plan and insights from the 2018 Infrastructure Community Solutions Panel and the 2018 Community Satisfaction Survey.

15 The Draft 2021/22 Operational Plan and Budget will be subject to 28 days' public exhibition. Feedback will be sought primarily through www.yoursaybyronshire.com.au, Public notices and media releases will also be distributed.

20 A *Community Conversation* will be held on 17 May as part of the exhibition period to offer members of the community an opportunity to meet with Council to discuss how the budget and operational plan have been developed, and projects planned for the 2021/22 financial year. Any input provided by the community as an outcome of the community conversation will be included as a submission to be considered by Council when adopting the final plans.

Report No. 13.3 Budget Review - 1 January 2021 to March 31 2021

Directorate: Corporate and Community Services

Report Author: James Brickley, Manager Finance

5 **File No:** I2021/645

Summary:

This report is prepared to comply with Regulation 203 of the *Local Government (General) Regulation 2005* and to inform Council and the Community of Council's estimated financial position for the 2020/2021 financial year, reviewed as at 31 March 2021.

10 This report contains an overview of the proposed budget variations for the General Fund, Water Fund and Sewerage Fund. The specific details of these proposed variations are included in Attachment 1 and 2 for Council's consideration and authorisation.

15

RECOMMENDATION:

1. **That Council authorises the itemised budget variations as shown in Attachment 2 (#E2021/62157) which include the following results in the 31 March 2021 Quarterly Review of the 2020/2021 Budget:**

20 a) **General Fund – \$89,400 increase to the Estimated Unrestricted Cash Result and \$4,234,700 increase in reserves**

b) **Water Fund – \$1,680,300 increase in reserves**

c) **Sewerage Fund – \$638,500 increase in reserves**

25 2. **That Council adopts the revised General Fund Estimated Unrestricted Cash Result of \$517,600 for the 2020/2021 financial year as at 31 March 2021.**

Attachments:

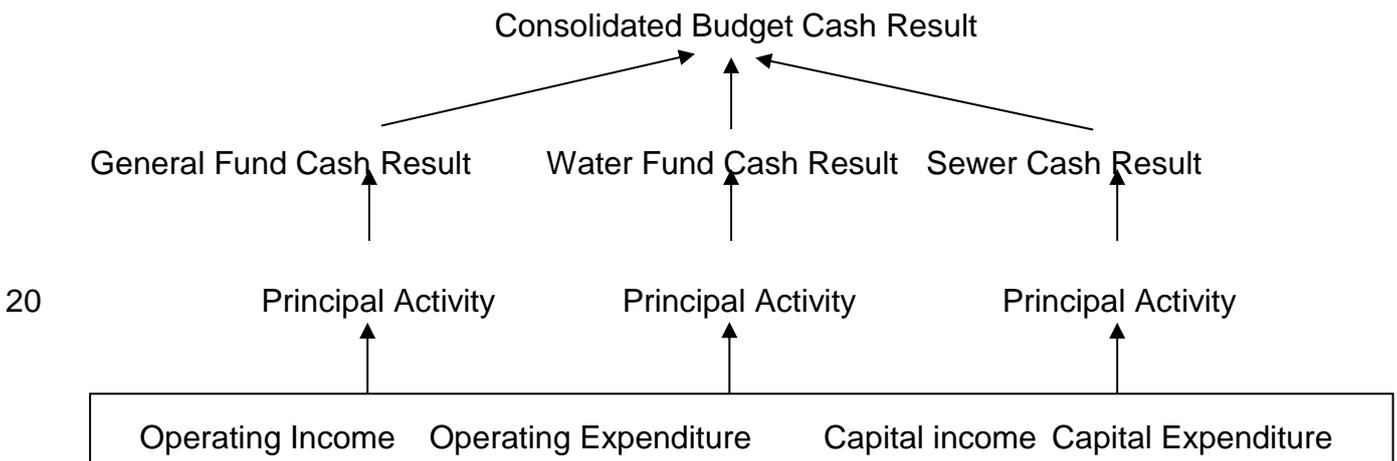
- 1 Budget Variations for General, Water and Sewerage Funds, E2021/62155 
- 2 Itemised Listing of Budget Variations for General, Water and Sewerage Funds, E2021/62157 
- 30 3 Integrated Planning and Reporting Framework (IP&R) required Quarterly Review Statements, E2021/62158 

Report

5 Council adopted the 2020/2021 budget on 30 July 2020 via Resolution **20-357**. It also considered and adopted the budget carryovers from the 2019/2020 financial year, to be incorporated into the 2020/2021 budget, at its Ordinary Meeting held on 27 August 2020 via Resolution **20-384**. Since that date, Council has reviewed the budget taking into consideration the 2019/2020 Financial Statement results and progress through the first three quarters of the 2020/2021 financial year. This report considers the March 2021 Quarter Budget Review.

10 The details of the budget review for the Consolidated, General, Water and Sewer Funds are included in Attachment 1, with an itemised listing in Attachment 2. This aims to show the consolidated budget position of Council, as well as a breakdown by Fund and Principal Activity. The document in Attachment 1 is also effectively a publication outlining a review of the budget and is intended to provide Councillors with more detailed information to assist with decision making regarding Council’s finances.

15 Contained in the document at Attachment 1 is the following reporting hierarchy:



25 The pages within Attachment 1 are presented (from left to right) by showing the original budget as adopted by Council on 30 July 2020 plus the adopted carryover budgets from 2019/2020 followed by and other budget adjustments approved by resolution or Quarterly Budget Reviews prior to the Quarterly Budget Review subject of this report summarised as ‘Adjustments Prior to Revote’ and then the revised position projected for 30 June 2021 as at 31 March 2021 including the proposed ‘Revote’ for this Quarterly Budget Review.

30 On the far right of the Principal Activity, there is a column titled “Note”. If this is populated by a number, it means that there has been an adjustment in the quarterly review. This number then corresponds to the notes at the end of the Attachment 1 which provides an explanation of the variation.

There is also information detailing restricted assets (reserves) to show Council’s estimated balances as at 30 June 2021 for all Council’s reserves.

35 A summary of Capital Works is also included by Fund and Principal Activity.

Office of Local Government Budget Review Guidelines:

5 The Office of Local Government on 10 December 2010 issued the new Quarterly Budget Review Guidelines via Circular 10-32, with the reporting requirements to apply from 1 July 2011. This report includes a Quarterly Budget Review Statement (refer Attachment 3) prepared by Council in accordance with the guidelines.

The Quarterly Budget Review Guidelines set a minimum standard of disclosure, with these standards being included in the Local Government Code of Accounting Practice and Financial Reporting as mandatory requirements for Councils to address.

10 Since the introduction of the new planning and reporting framework for NSW Local Government, it is now a requirement for Councils to provide the following components when submitting a Quarterly Budget Review Statement (QBR):-

- A signed statement by the Responsible Accounting Officer on Council's financial position at the end of the year based on the information in the QBR

15 • Budget review income and expenses statement in one of the following formats:

- Consolidated
- By fund (e.g. General, Water, Sewer)
- By function, activity, program etc. to align with the management plan/operational plan

20

- Budget Review Capital Budget
- Budget Review Cash and Investments Position
- Budget Review Key performance indicators
- Budget Review Contracts and Other Expenses

25 The above components are included in Attachment 3:-

Income and Expenditure Budget Review Statement by Type – This shows Council's income and Expenditure by type. This has been split by Fund. Adjustments are shown, looking from left to right. These adjustments are commented on in Attachment 1 under the section titled 'Budget Variation Explanations'.

30 **Capital Budget Review Statement** – This statement identifies in summary Council's capital works program on a consolidated basis and then split by Fund. It also identifies how the capital works program is funded. As this is the first quarterly review for the reporting period, the Statement may not necessarily indicate the total progress achieved on the delivery of the capital works program.

35 **Cash and Investments Budget Review Statement** – This statement reconciles Council's restricted funds (reserves) against available cash and investments. Council has attempted

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to indicate an actual position as at 31 March 2021 of each reserve to show a total cash position of reserves with any difference between that position and total cash and investments held as available cash and investments. It should be recognised that the figure is at a point in time and may vary greatly in future quarterly reviews pending on cash flow movements.

5

Key Performance Indicators (KPI's) – At this stage, the KPI's within this report are:-

- **Debt Service Ratio** - This assesses the impact of loan principal and interest repayments on the discretionary revenue of Council.
- **Rates and Annual Charges Outstanding Ratio** – This assesses the impact of uncollected rates and annual charges on Council's liquidity and the adequacy of recovery efforts
- **Asset Renewals Ratio** – This assesses the rate at which assets are being renewed relative to the rate at which they are depreciating.

10

These may be expanded in future to accommodate any additional KPIs that Council may adopt to use in the Long Term Financial Plan (LTFP.)

15

Contracts and Other Expenses - This report highlights any contracts Council entered into during the October to December quarter that are greater than \$50,000.

CONSOLIDATED RESULT

The following table provides a summary of the overall Council budget on a consolidated basis inclusive of all Funds' budget movements for the 2020/2021 financial year projected to 30 June 2021 but revised as at 31 March 2021.

20

2020/2021 Budget Review Statement as at 31 March 2021	Original Estimate (Including Carryovers) 1/7/2020	Adjustments to 31 Mar 2021 including Resolutions*	Proposed 31 Mar 2021 Review Revotes	Revised Estimate 30/6/2021 at 31/03/2021
Operating Revenue	84,311,000	1,084,700	4,480,600	89,876,300
Operating Expenditure	91,880,000	1,964,300	2,212,200	96,066,500
Operating Result – Surplus/Deficit	(7,569,000)	(879,600)	2,258,400	(6,190,200)
Add: Capital Revenue	27,338,600	(405,300)	(5,207,700)	21,725,600
Change in Net Assets	19,769,600	(1,284,900)	(2,949,300)	15,535,400
Add: Non Cash Expenses	14,986,200	0	0	14,986,200
Add: Non-Operating	27,000,000	1,750,000	(27,000,000)	1,750,000

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Funds Employed				
Subtract: Funds Deployed for Non-Operating Purposes	(96,029,000)	1,629,900	36,592,200	(57,806,900)
Cash Surplus/(Deficit)	(34,273,200)	2,095,000	6,642,900	(25,535,300)
Restricted Funds – Increase / (Decrease)	(33,916,400)	2,034,300	6,553,500	(25,328,600)
Forecast Result for the Year – Surplus/(Deficit) – Unrestricted Cash Result	(356,800)	60,700	89,400	(206,700)

The General Fund financial position overall has improved by \$89,400 as a result of this budget review, leaving the forecast cash result for the year at a deficit of \$206,700. The proposed budget changes are detailed in Attachment 1 and summarised further in this report below.

5 Council Resolutions

At the meeting of 24 September 2020, Council resolved through Resolution **20-518** “That Council considers a budget allocation at the September quarterly review to undertake further work on the Rail with Trail on the corridor between Mullumbimby and Byron Bay.” At this point in time there has not been the capacity to identify sufficient funding for this resolution given the overall Council budget position is still projecting a deficit position although a reduced deficit. Further consideration of this resolution will be given when the 30 June 2021 Quarterly Budget Review is completed which will provide a better indication of final 2020-2021 financial year outcomes and whether any funds can be reserved.

Council has not passed any resolutions that impact the unrestricted cash result for the January 2021 to March 2021 quarter.

Budget Adjustments

The budget adjustments identified in Attachments 1 and 2 for the General Fund have been summarised by Budget Directorate in the following table:

Budget Directorate	Revenue Increase/ (Decrease) \$	Expenditure Increase/ (Decrease) \$	Accumulated Surplus (Working Funds) Increase/ (Decrease) \$
General Manager	200,000	165,000	35,000
Corporate & Community Services	(403,400)	(304,400)	(99,000)
Infrastructure Services	(13,125,400)	(13,137,500)	12,100

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Sustainable Environment & Economy	125,100	(16,200)	141,300
Total Budget Movements	(13,203,700)	(13,293,100)	89,400

Budget Adjustment Comments

5 Within each of the Budget Directorates of the General Fund, are a series of budget adjustments identified in detail at Attachment 1 and 2. More detailed notes on these are provided in Attachment 1 but in summary the major additional items included are summarised below by Directorate and are included in the overall budget adjustments table above:

General Managers Program

- 10 • In the General Manager's program, it is proposed to transfer \$200,000 from the legal services reserve to cover the actual legal costs Council has incurred to date. This is in addition to the original \$200,000 budget.
- 15 • In the People & Culture program, it is proposed to decrease operating expenditure due to part of the budgets for training (\$20,000), advertising expenses for recruitment (\$10,000) and subscriptions (\$5,000) not being required for the remainder of the financial year.

Corporate and Community Services

- 20 • In the Councillor Services program, it is proposed to decrease operating expenditure due to the whole budget for Guidance Groups (\$5,000) not being required for the financial year. It is also proposed to decrease the budget against Australia Day (\$6,900). Council received grant funding for Australia Day which has allowed savings to be realised against the revenue funded portion of the event(s). \$5,000 expenditure is proposed to provide for a pre-election community information program.
- 25 • In the General Purpose Revenues program it is proposed to decrease operating income due to the interest that Council has received for investments being significantly lower than the budget (\$300,000). This is due to the low interest rates that are currently offered on investments available to Council. As some of this interest is allocated to externally restricted reserves (\$164,300), a decrease in the transfer to these reserves can be recognised. Some of this decrease can be offset by an increase in rate income that Council has received. The budget is under the actual rate income received
30 (\$175,800).
- In the Financial Services program, it is proposed to increase the budget for Section 603 certificates as the actual income received is trending higher than the budget due to increased activity in the property market.
- 35 • In the Information Services program, it is proposed to increase operating income by \$4,400 due to a reimbursement of iPad purchases received from the SEE directorate. It is proposed to increase operating expenditure due to a budget required for the PULSE

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annual licence fee (\$15,100), a decrease to the CCTV budget at main beach car park as it was completed under budget (\$1,200) and a decrease in support service costs reallocated (\$10,700).

- 5 • In the Corporate Services Program, It is proposed to decrease operating income due to the budgets for DA scanning fees (\$15,100) and document preparation fees (\$10,500) not being required. These fees are being taken up elsewhere. It is proposed to decrease operating expenditure due to the full budgets not required for the financial year for customer service initiatives (\$2,500), sundry expenses (\$1,000), overtime for meetings (\$2,000) and delegations management (\$5,500). A decrease is also proposed 10 for budgets against the strategic procurement roadmap (\$5,000) and risk management programs (\$20,000). This \$25,000 can be transferred to the risk management reserve and assist funding of the contract management framework in the 2022 financial year. A support service cost decrease of \$17,100 is also required.
- 15 • In the Community Development Program, it is proposed to increase operating income and expenditure by \$10,000 due to a grant received for the Arts Restart project. It is proposed to decrease operating expenditure due to schoolies approvals (\$1,400), Youth Week expenses, (\$2,200), aboriginal culture steering committee (\$6,100) and 20 volunteers' recognition (\$10,000) full budgets not being required this financial year due to Covid. It is proposed to add a budget for a ramp at Fletcher Street, to be funded by a reduction to Durrumbul Hall funding (\$46,600) and from community building urgent and 25 unplanned maintenance (\$10,900). Vacancies within the community development area have enabled the proposal to create a budget of \$40,000 for consultants to assist in completing projects. The vacancies have provided savings within the salaries budget that can be used to fund these consultant costs.
- 25 • In the Sandhills program, it is proposed to decrease operating income as the budget is too high. Sandhills fees had been kept at the 2019/20 level from July to December 2020 to assist customers who may have been affected by COVID-19. In addition to this, the facility has been operating at approximately 93% occupancy when the budget assumed 30 100%. The impact of this decrease is significant, but \$99,200 can be absorbed through a reduction in the transfer to and from the Children's Services Reserve.
- In the Other Children's Services program, it is proposed to increase operating expenditure as salaries for the Brunswick and Mullumbimby OSHC are trending higher than the budget. The impact of this increase can be absorbed through a reduction in the transfer to the Children's Services Reserve.

35 **Infrastructure Services**

- 40 • In the Projects and Commercial Development program, it is proposed to decrease capital expenditure due to Lot 22 Mullumbimby (\$40,500), Lot 102 Depot Relocation (\$5,000) and Lot 12 Bayshore Drive (\$9,900) not being completed this financial year. These adjustments are funded from the property development reserve and have been included in the Draft 2021/22 Budget.
- In the Local Roads and Drainage program, there are a number of adjustments outlined under Note 17 in the Budget Variations explanations section of Attachment 1. Further

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disclosure is included in the third and fourth pages of Attachment 2 under the budget program heading Local Roads and Drainage. Many of these adjustments are related to works that will not be completed in 2020/21 and will continue in the 2021/22 financial year. These adjustments have been added to the Draft 2021/22 Budget.

- 5 • In the Roads and Maritime Services program (RMS) it is proposed to increase operating income and expenditure by \$900,000 due grant funding of estimated natural disaster expenditure. It is proposed to increase operating expenditure by a further \$166,800 due to this being the amount Council will need to contribute for the March 2021 event.
- 10 • In the Open Space & Recreation program, there are a number of adjustments outlined under Note 19 in the Budget Variations explanations section of Attachment 1. Further disclosure is included in the sixth page of Attachment 2 under the budget program heading Open Space & Recreation.
- 15 • In the Quarries program, it is proposed to create a budget for operating income as the Quarry has been generating income during the year. This is the estimated income expected prior to the end of the financial year. It is expected that \$60,000 expenditure will be incurred by the end of the financial year with the difference between income and expenditure transferred to the Quarry Reserve.
- 20 • In the Waste & Recycling program, there are a number of adjustments outlined under Note 21 in the Budget Variations explanations section of Attachment 1. Further disclosure is included in the seventh page of Attachment 2 under the budget program heading Waste & Recycling. The capital works adjustments are related to works that will not be completed 2020/21 and will continue in the 2021/22 financial year. These adjustments have been added to the Draft 2021/22 Budget.
- 25 • In the Cavanbah Centre program, it is proposed to increase operating income due to adjustments relating to COVID-19. The original income budget for the Cavanbah Centre was reduced as the effect that COVID 19 would have on the Centre was unknown. These adjustments reflect the estimated actual income to 30 June 2021. Operating expenditure increased as the Centre was not closed for as long as first anticipated as a result of COVID-19, and staff costs have remained the same. It is proposed to decrease capital expenditure due to the installation of grandstands being less than the budget (\$3,500) and a slight over-spend against outdoor court lighting (\$2,000).
- 30 • In the First Sun Holiday Park program, it is proposed to increase the income and expenditure budgets to reflect actual income received and expenditure incurred. The original budgets took into account COVID-19 and the effect closures may have had on the holiday park. This did not happen for as long as anticipated, therefore increasing actual income and expenditure.
- 35 • In the Suffolk Park Holiday Park program, it is proposed to increase the income and expenditure budgets to reflect actual income received and expenditure incurred. The original budgets took into account COVID-19 and the effect closures may have had on the holiday park. Subsequently, this did not happen for as long as anticipated, therefore increasing actual income and expenditure.
- 40

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- In the Facilities Management program, it is proposed to increase operating expenditure by \$100,000 to fund the costs associated with over expenditure of toilet maintenance. The Byron Bay Main Beach toilets maintenance expenditure can be funded from the Crown pay parking reserve. It is proposed to decrease capital expenditure due to the construction works at Byron hospital not occurring this financial year (\$650,000), a decrease in community building renewals (\$8,600), and an additional \$18,600 required to complete renewal works at Mullumbimby netball courts. Further, construction of the Dingo Lane Solar Farm (given Council's recent decision to proceed to the Development Application stage) will not occur in the 2020/2021 financial year so it is proposed to remove the construction budget of \$12,000,000 and reduce the proposed capital income from new loan borrowings by the same amount.

Sustainable Environment and Economy

- In the Development Certification program, it is proposed to increase operating income as \$5,000 was received from the Department of Education for a trainee position.
- In the Planning Policy and Natural Environment program, operating income and expenditure increased by \$145,000 due to grants received for the Leash-Up Pilot Communication project (\$20,000) and Streets as Shared Spaces project (\$125,000). It is proposed to increase operating expenditure by a further \$34,500 as additional budgets are required for the Bangalow village plan (\$9,600), Mullumbimby hospital LEP amendment (\$10,500), Lot 22 Masterplan (\$10,500), Lot 12 and Lot 107 Bayshore Drive (\$3,500) and the Centennial Circuit one way trial (\$5,000).
- In the Environment & Compliance program, it is proposed to decrease operating expenditure due to budgets for overtime/consultants (\$7,000), Compliance overtime (\$45,000), advertising (\$2,000), sundry Expenses (\$6,000), Infringement Processing overtime (\$30,000), abandoned vehicle disposal (\$4,000), impounding expenses (\$3,500), signage (\$5,500), vet fees (\$1,000), public education (\$4,000) and sundry operating expenses (\$8,000) not being required this financial year.
- In the Economic Development program, it is proposed to decrease operating expenditure by \$57,600 due to savings made from the vacancy in the tourism research officer position. This can be used to fund additional budgets of \$34,100 required in the Planning Policy and Natural Environment program. Savings can also be made against the sustainable visitation strategy (\$15,300), events communication (\$9,900) and sector capacity building (\$7,900) as the budgets are not required this financial year.

WATER FUND

- After completion of the 2019/2020 Financial Statements, the Water Fund as at 30 June 2020 has a capital works reserve of \$9,260,100 and held \$1,483,600 in Section 64 developer contributions.

The estimated Water Fund reserve balances as at 30 June 2021, and forecast in this Quarter Budget Review, are derived as follows:

40

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Capital Works Reserve

Opening Reserve Balance at 1 July 2020	\$9,260,100
Plus original budget reserve movement	(1,406,900)
Resolutions July - September Quarter – increase / (decrease)	0
September Quarterly Review Adjustments – increase / (decrease)	(720,900)
Resolutions October - December Quarter – increase / (decrease)	0
December Quarterly Review Adjustments – increase / (decrease)	(29,200)
Resolutions January - March Quarter – increase / (decrease)	0
March Quarterly Review Adjustments – increase / (decrease)	1,411,900
Forecast Reserve Movement for 2020/2021 – Increase / (Decrease)	(745,100)
Estimated Reserve Balance at 30 June 2021	\$8,515,000

Section 64 Developer Contributions

Opening Reserve Balance at 1 July 2020	\$1,483,600
Plus original budget reserve movement	(620,500)
Resolutions July - September Quarter – increase / (decrease)	0
September Quarterly Review Adjustments – increase / (decrease)	(80,000)
Resolutions October - December Quarter – increase / (decrease)	0
December Quarterly Review Adjustments – increase / (decrease)	0
Resolutions January - March Quarter – increase / (decrease)	0
March Quarterly Review Adjustments – increase / (decrease)	268,400
Forecast Reserve Movement for 2020/2021 – Increase / (Decrease)	(432,100)
Estimated Reserve Balance at 30 June 2021	\$1,051,500

- 5 Movements for Water Fund can be seen in Attachment 1 with a proposed estimated increase to reserves (including S64 Contributions) overall of \$1,680,300 from the 31 March 2021 Quarter Budget Review.

SEWERAGE FUND

- 10 After completion of the 2019/2020 Financial Statements the Sewer Fund as at 30 June 2020 has a capital works reserve of \$6,884,700 and plant reserve of \$896,200. It also held \$8,117,300 in Section 64 developer contributions.

Capital Works Reserve

Opening Reserve Balance at 1 July 2010	\$6,884,700
Plus original budget reserve movement	(2,958,400)
Resolutions July - September Quarter – increase / (decrease)	0
September Quarterly Review Adjustments – increase / (decrease)	(349,200)
Resolutions October - December Quarter – increase / (decrease)	0
December Quarterly Review Adjustments – increase / (decrease)	94,200
Resolutions January - March Quarter – increase / (decrease)	0
March Quarterly Review Adjustments – increase / (decrease)	(129,600)

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Forecast Reserve Movement for 2010/2021 – Increase / (Decrease)	(3,343,000)
Estimated Reserve Balance at 30 June 2021	\$3,541,700

Plant Reserve

Opening Reserve Balance at 1 July 2020	\$896,200
Plus original budget reserve movement	0
Resolutions July - September Quarter – increase / (decrease)	0
September Quarterly Review Adjustments – increase / (decrease)	0
Resolutions October - December Quarter – increase / (decrease)	0
December Quarterly Review Adjustments – increase / (decrease)	0
Resolutions January - March Quarter – increase / (decrease)	0
March Quarterly Review Adjustments – increase / (decrease)	0
Forecast Reserve Movement for 2020/2021 – Increase / (Decrease)	0
Estimated Reserve Balance at 30 June 2021	\$896,200

5 Section 64 Developer Contributions

Opening Reserve Balance at 1 July 2020	\$8,117,300
Plus original budget reserve movement	(2,202,600)
Resolutions July - September Quarter – increase / (decrease)	(451,000)
September Quarterly Review Adjustments – increase / (decrease)	(82,000)
Resolutions October - December Quarter – increase / (decrease)	0
December Quarterly Review Adjustments – increase / (decrease)	0
Resolutions January - March Quarter – increase / (decrease)	0
March Quarterly Review Adjustments – increase / (decrease)	768,100
Forecast Reserve Movement for 2020/2021 – Increase / (Decrease)	(1,967,500)
Estimated Reserve Balance at 30 June 2021	\$6,149,800

Movements for the Sewerage Fund can be seen in Attachment 1 with a proposed estimated overall increase to reserves (including Section 64 Contributions) of \$638,500 from the 31 March 2021 Quarter Budget Review.

10 **Legal Expenses**

One of the major financial concerns for Council over previous years has been legal expenses. Not only does this item represent a large expenditure item funded by general revenue, but it can also be susceptible to large fluctuations.

15 The table that follows indicates the allocated budget and actual legal expenditure within Council on a fund basis as at 31 March 2021.

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Total Legal Income & Expenditure as at 31 March 2021

Program	2020/2021 Budget (\$)	Actual (\$)	Percentage To Revised Budget
Income			
Legal Expenses Recovered	0	0	0%
Total Income	0	0	0%
Expenditure			
General Legal Expenses	400,000	574,283	143.57%
Total Expenditure General Fund	400,000	574,283	143.57%

Note: It is proposed to transfer \$200,000 from the Legal Services Reserve within this Quarterly Budget Review to fund the increase in legal fees incurred.

5 Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.5	Manage Council's finances sustainably	5.5.1	Enhance the financial capability and acumen of Council	5.5.1.1	Financial reporting as required provided to Council and Management

Legal/Statutory/Policy Considerations

In accordance with Regulation 203 of the Local Government (General) Regulation 2005 the Responsible Accounting Officer of a Council must:

- 10 (1) *Not later than 2 months after the end of each quarter (except the June quarter), the responsible accounting officer of a council must prepare and submit to the council a budget review statement that shows, by reference to the estimate of income and expenditure set out in the statement of the council's revenue policy included in the operational plan for the relevant year, a revised estimate of the income and expenditure for*
- 15 *that year.*
- (2) *A budget review statement must include or be accompanied by:*

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- (a) *a report as to whether or not the responsible accounting officer believes that the statement indicates that the financial position of the council is satisfactory, having regard to the original estimate of income and expenditure, and*
- (b) *if that position is unsatisfactory, recommendations for remedial action.*
- 5 (3) *A budget review statement must also include any information required by the Code to be included in such a statement.*

Financial Considerations

10 The 31 March 2021 Quarter Budget Review of the 2020/2021 Budget is proposing to improve the overall budget result by \$89,400. This leaves the movement against the unrestricted cash balance attributable to the General Fund remaining at deficit of \$206,700 for the year. This outcome will derive an estimated unrestricted cash balance attributable to the General Fund of \$517,600 at 30 June 2021. Going forward Council must be conscious of decisions that may affect the unrestricted cash balance when considering matters with financial implications especially where funding sources are not identified.

15 It is the view of the Responsible Accounting Officer that the short-term financial position of the Council is still satisfactory for the 2020/2021 financial year, having consideration of the original estimate of income and expenditure at the 31 March 2021 Quarter Budget Review.

20 This opinion is based on the estimated General Fund Unrestricted Cash Result position and that the current indicative budget position for 2020/2021 outlined in this Budget Review continues to improve for the remainder of the 2020/2021 financial year. Council must remember it has a short-term financial goal of maintaining \$1,000,000 in unrestricted cash and if it is of the view to recover this position by 30 June 2021, the budget position must continue to improve by \$482,400.

5

Report No. 13.4 PLANNING -26.2017.6.1 - Byron Bay Town Centre Planning Controls - Review of submissions and next steps

Directorate: Sustainable Environment and Economy

Report Author: Isabelle Hawton, Planner

File No: I2021/391

10 **Summary:**

This is the submissions report for the second official round of exhibition for a planning proposal and accompanying DCP to make changes to the planning controls for the Byron Bay Town Centre.

15 Following feedback from the initial formal exhibition (along with information received over a series of workshops with the public), Council staff amended the controls, to provide an updated set of changes.

20 The DCP, Planning Proposal, and Design Excellence documents were exhibited for a period of 28 days. During this time a media release was published, the Echo ran an article on the changes, a letter and FAQ were sent to affected residents, Facebook posts were shared and staff met in person and spoke over the phone to numerous community members.

25 Submissions were received.

Based on the issues raised in the submissions, the recommended changes to the exhibited planning proposal are:

- 25
- remove the proposed height increase for the block bordered by Lawson St, Jonson St, Middleton St and Bay Ln. Retain the current 9m maximum building height for new development in this area; and
 - remove the change of zone from B2 Local centre to B3 Community Core. Retain the B2 Local Centre zone for all of the town centre.

30 The exhibited DCP Chapter is presented with some minor changes relating to waste management, as recommended by Council's Resource Recovery Team, and additional controls to reinforce building envelopes.

It is recommended that the Design Excellence Panel Procedures and Policy proceed with some minor amendments to fix inconsistencies.

NOTE TO COUNCILLORS:

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

RECOMMENDATION

10 That Council:

1. **Forwards the planning proposal to amend Byron LEP 2014, as included in Attachment 1 (E2021/58003), to the Department of Planning, Industry & Environment requesting its finalisation.**
- 15 2. **Adopts Byron DCP 2014 Chapter E10 as included in Attachment 2 (E2021/56492).**
3. **Publishes Byron DCP 2014 Chapter E10 on its website and notifies the public as required by the Environmental Planning and Assessment Act and Regulation.**
- 20 4. **Adopts the Design Excellence Procedures as included in Attachment 3 (E2021/56761).**
5. **Adopts the Design Excellence Policy as included in Attachment 4 (E2021/56762).**
- 25 6. **Prepares and circulates an Expression of Interest for appropriately qualified professionals to form the Design Excellence Panel, as per Attachment 5 (E2020/75377), and report back to Council with the responses.**

Attachments:

- 1 26.2017.6.1 Byron Bay Town Centre Planning Controls - Planning Proposal V#9, E2021/58003 
- 30 2 26.2017.6.1 DCP 2014 Chapter E10 Byron Bay Town Centre - April 2021, E2021/56492 
- 3 26.2017.6.1 Byron Town Centre Planning Controls - Design Excellence Panel Procedure attachment to Council Report 13 May 2021 - For adoption, E2021/56761 
- 4 26.2017.6.1 Byron Town Centre Planning Controls - Design Excellence Policy (attachment to council report 13 May 2021), E2021/56762 
- 35 5 26.2017.6.1 Byron Town Centre Planning Controls - Expressions of Interest to sit on the Design Excellence Panel, E2020/75377 
- 6 26.2017.6.1 PUBLIC version Submissions Byron Bay Town Centre Planning Controls, E2021/55053 
- 7 26.2017.6.1 Disclosure of Pecuniary Interest, E2012/2815 

Report

Proposed changes to planning controls relating to the Byron Bay Town Centre have been exhibited a number of times since 2018, involving previous community workshops and formal public exhibition of a Planning Proposal.

- 5 The most recent proposed changes to various planning controls were placed on exhibition for 28 days from the 1 March to the 28 March 2021. During this time, letters were sent out to landowners in the area affected, a media release was published, previous submitters were contacted, Facebook posts were shared and community groups were emailed with details. Council also posted information regarding the proposal to social media.
- 10 The Echo ran a story on the proposed changes during the exhibition period.

Council staff spoke over the phone with several people, and met in person with others to answer questions about the proposed changes and help property owners to understand how it might affect their property.

Key issues

15 Height Limits and proposed increase

Proposed changes to building height limits were the most contentious and commented upon issue in the suite of changes.

- 20 As exhibited, the planning proposal suggested that the maximum building height be increased from the current 9.0m to 11.5m for the block bordered by Lawson St, Jonson St, Middleton St and Bay Lane, to match the 11.5m height applicable to the majority of the town centre.

Many submissions were concerned that any height increase would erode the existing character of Byron Town Centre.

- 25 It should also be noted that many submissions appeared confused about the current height limits in the Byron Town Centre, and were under the impression that the proposed 11.5m was completely new and did not apply anywhere else in the town centre. This is incorrect.

- 30 The area suggested for the height increase is a relatively small part of the overall town centre and many of the existing two-storey buildings fronting the northern side of Lawson Street are relatively modern and unlikely to be redeveloped in the short to medium term.

- 35 The intent of exploring a height increase in this block was to increase the capacity of shop-top housing or upper storey commercial in the town centre. Given the level of community concern generated by the proposed height increase, and the quite minor increased capacity it could generate, it is considered that there is no strong planning or urban design reason to pursue the change in height.

It is therefore recommended that the existing 9.0m maximum building height limit be retained in this part of the town centre.

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5 The only other proposed change to building height relating to the correction of mapping anomaly for a block of land at the southern end of Jonson Street, near Mitre 10. For that property, the northern part of the lot, fronting the bypass, has a 9.0m height limit, with the southern end mapped at 11.5m. There is no apparent planning reason why this block would have a dual height control, and a review of historic files suggests that it was originally a mapping error.

The proposal is to correct this error by applying the existing 11.5m height limit to the whole of the property.

10 The only other area within the town centre to have a 9.0m height limit as opposed to the 11.5m limit, is the block at the southern end of Jonson Street, on the eastern side of the road, between Kingsley and Browning Streets.

Building height in this area was reviewed by Council previously, with a resolution to retain the 9.0m maximum. As exhibited, the planning proposal did not suggest any change to that.

15 A submission from the owners at 131 Jonson Street requested that Council consider a height increase to 11.5m for their property (corner Johnson and Ruskin Street), arguing that, given the topography of this site, a building height of 11.5m would have minimal visual impact on adjoining residential properties to the east.

20 While that is the case for this one property, the topography is not uniform across this area. The original intention for retaining a 9.0m height limit was to minimise impact on residential properties to the east, and that objective remains valid for this stretch of Jonson Street.

It is recommended, therefore, that the height limit in this location does not change.

Zoning Changes

25 A number of submissions expressed concern that a change in zoning from B2 Local Centre to B3 Commercial Core might erode the character of Byron Bay – despite the fact that the only real change would be a prohibition of Bed and Breakfast uses in the B3 (where they had previously been allowed in B2).

30 Submissions were concerned that the zone change might result in different built form outcomes in the town centre, and would not reflect the coastal town vibe of Byron Bay town centre. There also appeared to be a great deal of mistrust in Council reflected in submissions in relation to the zone change. Many submissions could not understand exactly why Council was proposing a zone change and therefore concluded that this might be some kind of ‘Trojan Horse’ for delivering other changes. This is not the case.

35 The B3 zoning was a legacy from the initial two exhibitions of this planning proposal. It was initially intended to distinguish the Byron town centre from other areas in the Shire also zoned B2, to prohibit backpacker’s accommodation in the town centre, and allow for certain other changes to be specific only to the Byron town centre area.

Through previous discussions, the proposal to prohibit backpacker’s accommodation was withdrawn from the proposal and other minor adjustments were made such that, as

exhibited, there was virtually no difference between the existing B2 Local Centre zoning and the proposed B3 Commercial Core zone.

Based on the level of community concern, and the relatively small differences between the two zones, it is recommended that the existing **B2 Local Centre zoning be retained**.

5 **Floor Space Ratio**

As exhibited, it is recommended that the **existing Floor Space Ratio (FSR) standard of 1.3:1 be retained**. Recent court cases have tested the efficacy of the FSR as a control and staff believe that further investigation of alternatives and of the efficacy of FSR is warranted.

- 10 A more in-depth review of FSR will be undertaken, to examine the pros and cons of its use as an effective control of building bulk and scale, and staff will report on the outcomes of such review at a later date.

Car parking/Traffic

- 15 A small number of submissions raised concern over the exhibited changes to carparking – arguing that reducing the amount of parks owners are required to provide on site might lead to an increase in cars ‘cruising’ for parks. This feedback is noted, however these changes will be re-examined for implementation at a later date and are not proposed as a part of this suite of changes.

- 20 The intention is to re-examine these proposals once peripheral parking areas are brought online.

Design Excellence

- 25 There were very few submissions that directly addressed the proposed Design Excellence Panel. Some verbal submissions expressed support for the panel agreeing that it might assist in getting better built form outcomes, and one written submission directly opposed the panel, saying that it would be an organisation to ‘sideline’ the majority of the community.

However staff believe that if executed correctly, the panel could have significant benefits to the built form outcomes in the Byron Bay town centre resulting in design that is more reflective of the character of the town and produces better urban design outcomes.

- 30 It is recommended that Council proceed with the adoption of the Design Excellence Policy and Procedures, and release a call for Expressions of Interest (Attachment 5 E2021/) to sit on the panel.

Issues outside of the scope of these changes

- 35 Many submissions made comments on specific recent developments in the Byron town centre – these are outside the scope of the proposed changes. Other unrelated concerns included the validity of the Master planning process. Again, this falls outside the scope of

these amendments. The full list of submissions can be found in Attachment 6 (E2021/55053).

Feedback from Council’s Waste team

5 During the public exhibition period, comment was sought from Council’s waste management team. This has resulted in some minor updates to the Waste Management section in the exhibited DCP. These have been included in the final copy for adoption.

Cadastre issues

10 A minor mapping inconsistency was picked up in a small area adjacent to Mitre 10 at the Southern end of Jonson Street where the lots have been partially split in the Height of Buildings Map, so Council is taking this opportunity to rectify this minor mapping error.

15 A submission from the Department of Education raised another mapping inconsistency during the exhibition period – adjacent to the Byron Public School in Kingsley Street. A small sliver of the land belonging to the Department of Education has been incorrectly included in the town centre area on a number of LEP maps. This issue has been added to the list of Housekeeping amendments and will be rectified as a part of that planning proposal.

Options

Council has several options with regards to the proposed changes:

1. **Option 1 (recommended)**

20 Amend the planning proposal to retain the 9.0m building height limit for the block between Jonson, Lawson, Middleton and Bay Lane.

Submit the amended planning proposal (Attachment 1) to the Parliamentary Counsel office to ‘make’ the amendment.

Adopt the Byron DCP with some minor changes

25 Adopt the Design Excellence Procedure and Policy

Seek Expressions of Interest for suitably qualified professionals for the Design Excellence Panel

2. **Option 2 (not recommended)**

30 Progress the planning proposal as it was exhibited.

Adopt the Byron DCP Plan as exhibited.

Adopt the Design Excellence Procedure and Policy.

35 Consider and Expressions of Interest Process to seek suitably qualified professionals for the Design Excellence Panel.

3. **Option 3 (not recommended)**

Abandon the Planning Proposal and other exhibited changes

Next steps

Council forwards the Planning Proposal to the Department of Planning, Industry & Environment requesting its finalisation.

Council adopts and notifies Byron DCP 2014 Chapter E10 as amended.

- 5 Council adopts the Design Excellence Policy and Procedures, and begins an Expression of Interest process to seek suitable applicants for the Design Excellence Panel.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.1	Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.1.1	Progress draft Planning Proposal and DCP chapter to amend planning controls for Byron Bay town centre (Byron Bay Town Centre Masterplan action)
	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.1	Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.1.2	Investigate establishment of a Design Panel for Byron Bay Town Centre

Recent Resolutions

- 10 • 20-681

Legal/Statutory/Policy Considerations

By adopting the Design Excellence Policy, Council is introducing a new policy. The policy will apply to land marked on the Design Excellence Map in the Byron LEP 2014.

Financial Considerations

- 5 The fees collected under the 2020/2021 fees and charges will cover any costs incurred as part of the administration of the Design Excellence Panel.

Consultation and Engagement

Council has undertaken extensive community consultation as a part of this project as discussed in the report.

Report No. 13.5 PLANNING - s4.55 application to modify conditions related to Artisan Food and Drink Industry (Brewery & Tasting) - 10.2020.201.2

Directorate: Sustainable Environment and Economy

5 **Report Author:** Jordan Vickers, Planner

File No: I2021/303

Proposal:

Modification No:	10.2020.201.2			
Proposed modification:	S4.55 to Delete or Amend Conditions 3, 17, 30, 49, 52, 53 and 55, and stage the development into two stages			
Original Development:	Artisan Food and Drink Industry			
Type of modification sought:				
Property description:	LOT: 7 DP: 805144 9 Dudgeons Lane BANGALOW			
Parcel No/s:	20000			
Applicant:	Ardill Payne & Partners			
Owner:	Mr B K Plummer			
Zoning:	IN1 General Industrial			
S96 Date received:	27 November 2020			
Original DA determination	Approved - 07/10/2020			
Public notification or exhibition:	<ul style="list-style-type: none"> - Level 0 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications - Council received no submissions 			
Planning Review Committee:	Council			
Issues:	<ul style="list-style-type: none"> • Car parking • Patron Numbers • Noise impacts 			

Summary:

10 This application seeks approval for a modification of DA2020/201 under s4.55 to Delete or Amend Conditions 3, 17, 30, 49, 52, 53 and 55, and stage the development into two stages.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.5

5 Specifically the applicant was initially seeking to increase patron numbers from 20 to 100 and an extension of hours with a closing time of 6pm extended to 10pm seven days a week. Consent was also sought to amend the conditions to enable amplified music. There was a general concern that this development appeared more like a licensed venue such as a hotel rather than an artisan food and drink premise with a tasting room.

10 Discussions with the applicant resulted in the patron numbers being amended to an increase to a maximum of 50 people after 5 pm on Thursday and Friday evenings and on Saturday and Sunday with the use of a courtesy bus to ferry patrons to and from the site proposed. Amendments to hours of operation is supported to enable extended trading to 10.00pm on Thursday, Friday and Saturday nights and to 8pm on Sundays only. The request to modify Condition 55 (no amplified music) is partially supported to allow background music from small indoor speakers. No live bands or DJs indoors and/or outdoors are permissible at any time.

15 The applicant has also sought to stage the consent in terms of production of beer whilst there is some general housekeeping of conditions also proposed in relation to managing building waste and bringing the building into compliance with the Building Code of Australia.

The application is considered to be substantially the same development as approved.

It is recommended for approval subject to amended conditions of consent.

20 NOTE TO COUNCILLORS:

25 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.

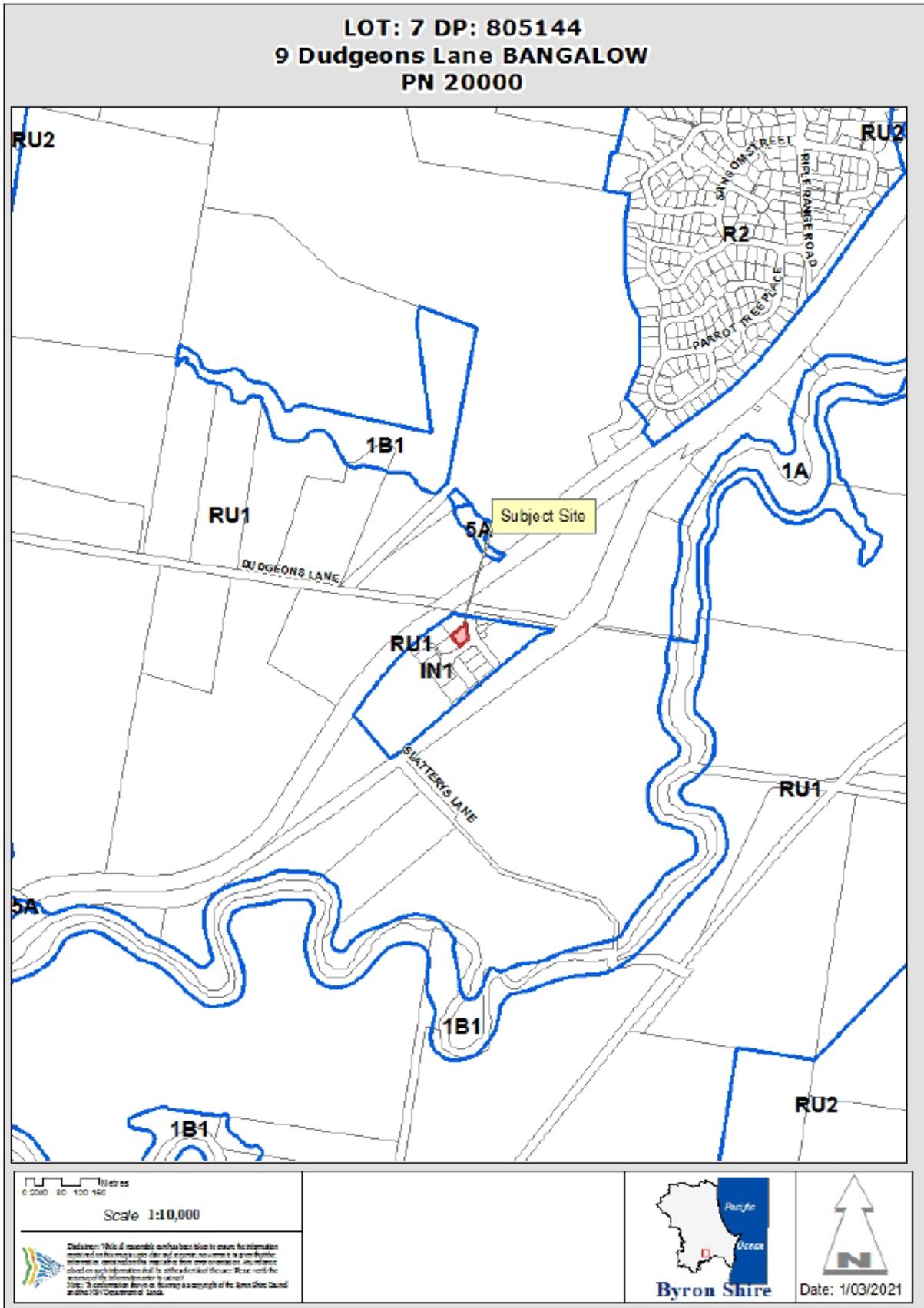
RECOMMENDATION:

30 **That pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, that Application No. 10.2020.201.2, for S4.55 to delete or amend Conditions 3, 17, 30, 49, 52, 53 and 55, be approved by modifying Development consent number 10.2020.201.1 as indicated in Attachment 2 (E2021/58206).**

Attachments:

35 1 DA10.2020.201.1 Stamped Approved Plan, E2020/76930 
2 DA10.2020.201.2 Modified conditions of consent, E2021/58206 

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Assessment:

1. INTRODUCTION

1.1. History/Background

5 A search of Council records indicates the following relevant site history:

DA No.	Description	Outcome	Date
5.1992.266.1	Sign	Approved	04/08/1992
6.1992.2058.1	Factory/Laboratory	Approved	03/03/1992
10.1999.87.1	Alteration to Factory Unit	Approved	21/07/1999
10.2005.614.1	Use of Existing Industrial building as Ice production facility	Approved	15/12/2005
10.2005.614.2	Modification to reduce developer contributions	Approved	02/03/2007
10.2020.201.1	Artisan Food and Drink Industry	Approved	07/10/2020

1.2. Description of the proposed development

10 This application seeks approval for a modification of DA2020/201 under s4.55 to Delete or Amend Conditions 3, 17, 30, 49, 52, 53 and 55, and stage the development into two stages as follows:

Condition 3

3. Existing building/s to be bought into compliance with fire safety provisions

In accordance with Clause 94 of Environmental Planning & Assessment Regulation 2000, the existing building is to be bought into compliance with the fire protection and structural provisions of the Building Code of Australia.

Reason: It is requested to Modify Condition 3 to define fire safety upgrades to the building.

15 Condition 17

17. Certificate of Compliance – Water Management Act 2000

A Certificate of Compliance will be issued upon payment of developer charges for water and sewer as calculated in accordance with Byron Shire Council's Development Servicing Plan.

Note: Copies of the application forms for Certificates of Compliance are available on Council's website

http://www.byron.nsw.gov.au/files/Forms/Section_305_Certificate.pdf or from Council's Administration Office. Copies of Byron Shire Council's Development Servicing Plans are available at Council's Administration Office.

Developer charges will be calculated in accordance with the Development Servicing Plan applicable at the date of payment. A check must be made with Council to ascertain the current rates by contacting Council's Principal Engineer Systems Planning, Water on 02 6626 7081. Applicable charges can be found on Council's website: <http://www.byron.nsw.gov.au/development-contributions-plans-section-94-and-64>

The contributions payable will be adjusted in accordance with relevant plan and the amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment.

Payment by Personal or Company Cheque will not be Accepted

Reason: It is requested to update condition 17 to reflect the proposed staging of this development having regards to the payment of water and sewer charges

5 **Condition 30**

30. Removal of asbestos

All asbestos wastes associated with removal of the existing dwelling to be disposed of in accordance with the requirements of the WorkCover Authority. The applicant/owner is to produce documentary evidence that this condition has been met.

Please note the Byron Resource Recovery Centre can not accept asbestos. You will need to arrange disposal at an alternate landfill site.

Reason: It is requested to delete condition 30 as the condition is already covered by another condition of the consent.

Condition 49

49. Restriction on Production Rate

Production of beer and Kombucha at the premises is to be limited to **1442.31 Litre per week**. Any increase in production rate will require further consent from Council.

10 **Reason** It is requested that condition 49 is amended to reflect the proposed staging under this modification.

Condition 52

52. Restricted Use

Patron use of the tasting room is restricted to twenty (20) patrons at any time.

Reason: It is requested to modify condition 52 to permit increased patrons.

15

Condition 53

53. Hours of Operation

The development must not unreasonably interfere with the amenity of the neighbourhood. In particular operating noise, when audible on adjoining residential premises, can only occur:

Brewery Production

Monday to Sunday, from 7.00am to 10.00pm

Tasting Room & Takeaway Sales

Monday to Sunday, from 10.00am to 6.00pm

Reason: It is requested to modify condition 53 to permit tasting room operation and sales until 10pm.

Condition 55

55. Amplified music

Amplified music is not permitted at any time.

Reason: It is requested that condition 55 be deleted from the consent to enable amplified music.

5 **1.3. Description of the site**

10 The subject site known as 9 Dudgeons Lane, Bangalow and legally described as Lot 7 on DP805144 has a total area of 1003m² and is located in the General Industrial (IN1) zone of the Byron Local Environmental Plan 2014. The property is currently improved by an established industrial building that has been historically used for various industrial operations, hardstand for car parking and planted landscaping at the Dudgeons Lane frontage.



Subject Site

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

Section 4.55 Modification of Consents:

5 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.

Hours of Operation and Patron Numbers

10 The main changes to the consent relate to an increase in patrons and hours of operation. In this regard it is noted the development site is some 2 kilometres to the south west of the Bangalow Town Centre in the industrial estate. Public transport is limited, and the development is unlikely to attract pedestrian traffic as the main mode of transport. It is anticipated patrons and staff will predominantly arrive and leave the site by way of motor vehicle. Council also was concerned that the development is meant to be an artisan food and drink industry with ancillary sales and tastings, not a licensed venue such as “pub” or hotel. The development site only contains ten car parking spaces.

15 It was initially requested to modify the consent to permit up to 100 patrons anytime and hours of operation extended to 10 pm. Further discussions with the applicant reduced the increase to a maximum of 50 patrons after 5pm to 10pm on Thursday and Fridays and on Saturday Afternoons and Sundays to closing time. To make up for any shortfall in parking the applicant has proposed to provide a courtesy bus. It is noted that the extended patron numbers and hours of operation are generally outside of normal business hours within the industrial estate and there should be room within the street network for any overflow parking if required.

20 It is recommended that Council approve the proposed changes to the conditions of consent to increase patron numbers and hours of operation. Additional conditions of consent are recommended in relation to a plan of management being prepared and submitted to Council for approval in relation to the courtesy bus operations, the need for a register of patrons to be kept in terms of numbers and the bus to operate as required as per the conditions of consent.

Amplified Music

35 Condition 55 does not permit amplified music. This has been reviewed by council and there remains some concern regarding impacts of amplified music may have on the surrounding amenity. Although the development site is located within an industrial area, there are rural residential properties in vicinity to the site on Lismore road and Dudgeons Lane.

40 The applicants have submitted a Noise Report for the development. It is as recommended that the condition be modified to allow background music from small indoor speakers. Amplified music including live bands and DJ’s is not permitted on the site (indoors and outdoors) at any time.

Proposed Staging

45 The proposed staging of the development is to allow the operator of the brewery to open at a smaller scale and gradually increase production as time and income permit. Conditions of consent and the notes are recommended to be updated and amended to reflect the staging arrangements in relation to the payment of headworks charges.

Building Code and Demolition Matters

Council's Building Certifier confirmed that it is appropriate to modify the condition to reflect which sections of the Building Code of Australia apply to fire upgrades of the building.

5

Typographical Error

An error was noticed in relation to Condition 54, where the word 'restaurant' has been used instead of 'development'. This is to be amended to reflect that the development is an 'artisan food and drink industry' as defined.

10 The proposed development remains substantially the same development as approved and satisfies the provisions under Section 4.55(1A) of the EPA Act 1979.

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

15 Application assessed as having no direct conflict or adverse impact on these provisions.

2.2. Byron Local Environmental Plan 2014

20 Application assessed as having no direct conflict or adverse impact on these provisions.

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

25 No draft EPIs apply to the proposal.

2.4. Development Control Plans

Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access

30 Artisan Food and Drink Industry are a type of Light Industry which only require 1 space per 100m² of floor area and a parking rate for general retail was utilised for the sales and tasting area, as follows.

- *Factory & Mezzanine Area – 312m² x 1 space per 100m² GFA = 3.12 spaces*
- *Tasting Room & Deck – 135.9m² x 1 space per 20m² GFA = 6.80 spaces*
- ***Total Parking Spaces Required = 9.92 spaces round to 10 spaces***

40 However there are no specific provisions within the DCP to consider in terms of patron numbers. The applicant's proposal to facilitate access to the site through the use of a mini bus after general business hours in the industrial estate provides for a suitable outcome for increased patronage up to 50 people. Conditions of consent recommended in relation to the provision and operation of the courtesy bus, including a plan of management.

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

45

The proposed amendments to the consent have the potential to impact on the amenity of the surrounding properties, having regard to overflow parking, hours of operation and noise impacts. These issues have been carefully considered and amended conditions recommended to limit patron numbers, limited extended hours outside of normal business hours and restrictions on amplified music to mitigate against such impacts.

2.6. The suitability of the site for the development

The site suitability was previously assessed and has not changed the result of the application.

2.7. Submissions made in accordance with this Act or the regulations

Not relevant.

2.8. 3.7Public interest

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

2.9. DEVELOPER CONTRIBUTIONS/ WATER AND SEWER CHARGES

There is no nexus to levy additional contributions. Notwithstanding, conditions prescribing Water and Sewer charges are modified under this consent to reflect the proposed staging.

3. CONCLUSION

The proposed amendments to the consent are assessed as satisfactory having regard to relevant matters for consideration. The application is recommended for approval subject to conditions listed in the attachment.

4. 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

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Report No. 13.6 PLANNING - Subdivision to Create Two (2) Lots and New Dwelling House - DA10.2020.102.1 at 18 Red Bean Close, Suffolk Park

5 **Directorate:** Sustainable Environment and Economy
Report Author: Jordan Vickers, Planner
File No: I2021/483

Proposal:

DA No:	10.2020.102.1		
Proposal description:	Subdivision to Create Two (2) Lots, New Dwelling House		
Property description:	LOT: 19 DP: 1009620		
	18 Red Bean Close SUFFOLK PARK		
Parcel No/s:	229750		
Applicant:	Mr J V Main		
Owner:	Mr J V & Mrs B A Main		
Zoning:	R2 Low Density Residential / PART 2A Residential / PART 7(d) Scenic/Escarpment zone		
Date received:	27 February 2020		
Integrated / Designated Development:	<input checked="" type="checkbox"/> Integrated	<input checked="" type="checkbox"/> Designated	<input type="checkbox"/> Not applicable
Public notification or exhibition:	– Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications – Exhibition period: 16/3/20 to 29/3/20 – Submissions received: 0 – Submissions acknowledged: <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A		
Variation request	Clause 64A >10%		
Delegation to determine	Council		
Issues:	<ul style="list-style-type: none"> • Subdivision less than Minimum lot size • Bushfire prone land • High Environmental Value Vegetation • Biodiversity Values assessment 		

Summary:

This application seeks approval for Subdivision to Create Two (2) Lots and a New Dwelling House. The intended staging of the Subdivision/Dwelling house is undefined, and the applicant has requested conditions allowing either to take place first.

- 5 The subject site has a total site area of 1.315ha and proposes to create two (2) lots, being: proposed Lot 1 of 1.143ha, and proposed Lot 2 of 1720m². As the lot 1 (residual Lot) contains 7(d) zoned land it does not comply with the minimum lot size requirements of the Byron LEP 1988 being 40 Ha. A Clause 64A variation accompanies the application. The variation request is recommended to be supported for the reasons detailed in this report.
- 10 In this regard the subdivision does not affect the area in the 7(d) Zone

- A new two-storey Dwelling house is planned for proposed Lot 2, which is comprised of four (4) bedrooms, in and outdoor living areas (including decks), kitchen and a double car garage. The dwelling has a total height of 9m and complies with prescribed boundary setbacks and building height plane. Some clearing of native vegetation is required to facilitate the development in terms of asset protection zones for the dwelling. The vegetation has elements of littoral rainforest species.
- 15

- The Biodiversity Development Assessment Report (BDAR) provided with the application was not finalised by the applicant's ecologist to Council's satisfaction having regards to the Biodiversity Assessment Method. An offset was offered for the minimal clearing required for the development equal to one littoral rainforest credit. The proposal is unlikely to have a detrimental impact on the environment or threatened species, however to ensure the development satisfies Biodiversity Conservation Act 2016, it is recommended that the development be approved subject to a deferred commencement condition requiring that a completed BDAR is provided to the satisfaction of Council.
- 20

- 25 NOTE TO COUNCILLORS:

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

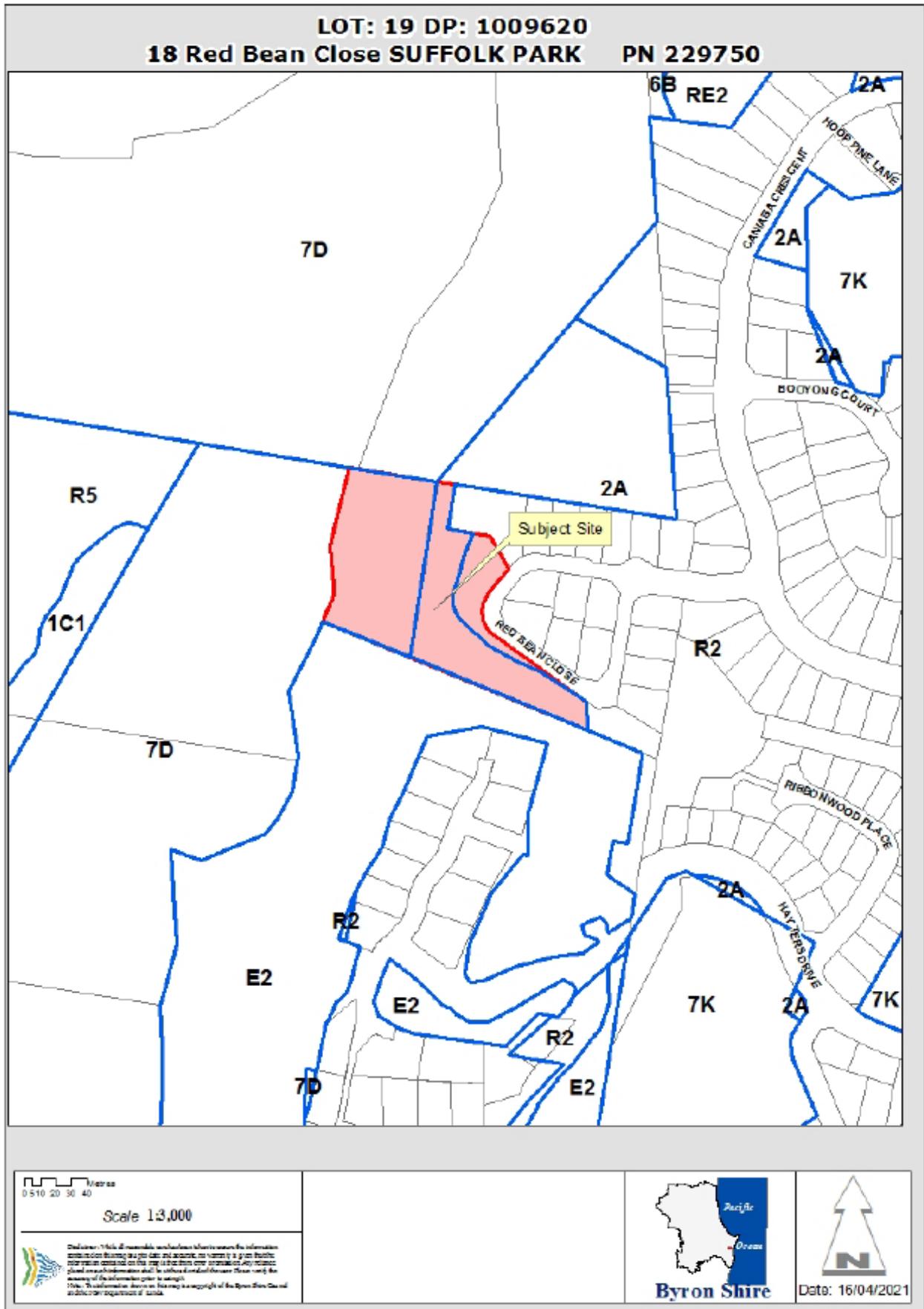
RECOMMENDATION:

- 35 **That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.102.1 for subdivision to create two (2) lots and new dwelling house, be granted Deferred Commencement (deferral period 12 months).**

Attachments:

- 40 1 DA10.2020.102.1 Conditions of consent 18 Red Bean Close, Suffolk Park, E2021/57881 
2 DA10.2020.102.1 Plans for approval (Subdivision and dwelling house), E2021/57849 

BYRON SHIRE COUNCIL



Assessment:

1. INTRODUCTION

1.1. History/Background

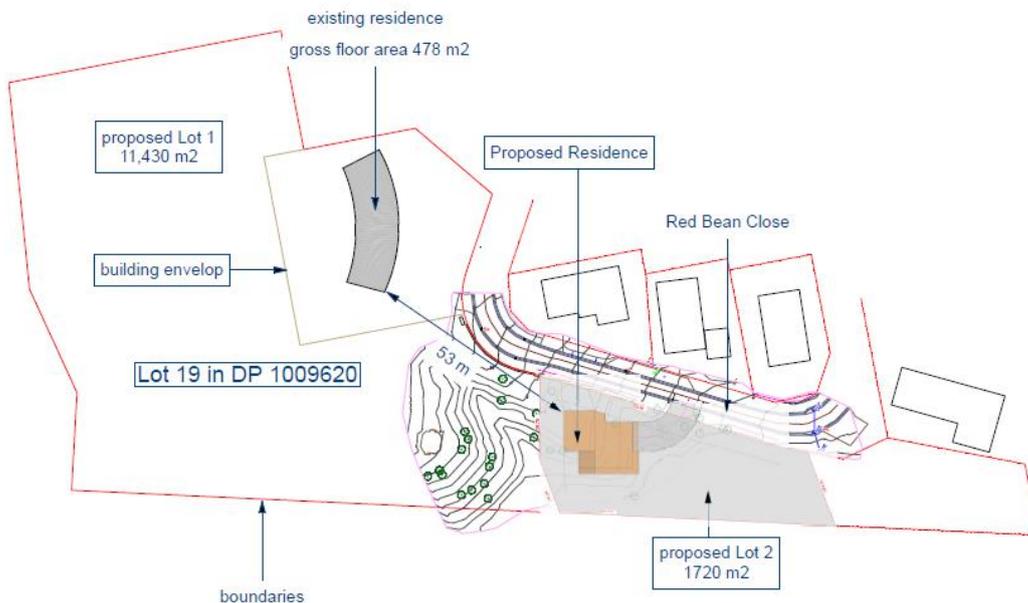
5 A search of Council records indicates the following relevant history:

DA No.	Description	Outcome	Date
10.2005.312.1	Dwelling, Tree removal & swimming pool	Approved	17/03/2006
10.2008.323.1	Pruning four trees	Approved	06/06/2008
10.2010.315.1	Tree removal two trees	Approved	15/07/2010

The location of the proposed dwelling appears to have been recently cleared, with no evidence of approval for the removal of this mature vegetation.

1.2. Description of the proposed development

10 This application seeks approval for Subdivision to Create Two (2) Lots and New Dwelling House. The subject site has a total site area of 1.315ha and proposes to create two (2) lots, being proposed Lot 1 of 1.143ha and proposed Lot 2 of 1720m². As the proposed lot sizes do not comply with the minimum lot size requirements of the Byron LEP, a Clause 4.6 variation accompanies the application material.



15 Proposed Site Plan

A new two-storey Dwelling house is planned for proposed Lot 2, which is comprised of four (4) bedrooms, in and outdoor living areas (including decks), kitchen and a double car garage. The dwelling has a total height of 9m, and complies with prescribed boundary

setbacks and the building height plane. The house is to be located on a generally cleared area, however associated asset protection zones have an impact on surrounding native vegetation comprising rainforest species.

1.3. Description of the site

5 The subject site known as 18 Red Bean Close, Suffolk Park and legally described as Lot
 19 on DP1009620 has a total site area of 1.315ha (13,150m²) and is traversed by three
 zones: the Low Density Residential (R2) zone of the Byron Local Environmental Plan
 (LEP) 2014, and the Residential (2A) zone and 7(d) Scenic/Escarpment zone of the Byron
 10 LEP 1988. The property is currently improved by a single dwelling house and established
 mature vegetation, the majority of which is mapped by Council as High Environmental
 Value (except for the proposed dwelling location) and on the Biodiversity Values map of
 the Biodiversity Conservation Act. The site is identified as Bushfire prone land and
 potentially subject to geotechnical instability. A restriction on use easement (building
 envelope) exists on the subject site, being the location of the existing dwelling house.



15

High Environmental Value Vegetation Mapping

2. SUMMARY OF REFERRALS

Referral	Issue
Development Engineer	No objections subject to conditions.
Water & Sewer Engineer (Local Approvals Officer)	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to conditions.

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Referral	Issue
S94 / Contributions Officer	No objections subject to conditions.
Ecologist	See comments below
Rural Fire Service (100B/4.14/4.14)	No objections subject to conditions. General terms of approval under Section 100B of the Rural Fires Act 1997. Conditions to apply

Ecologist:

The subject development site and in particular the house site is mapped as containing biodiversity values under the Biodiversity conservation Act 2016.



- 5 A Biodiversity Development Assessment Report (BDAR) was supplied and Council sought advice from NSW Government's Department of Planning, Environment and Industry (DPIE) regarding this report. Various issues were identified but predominantly, that the method of data collection for the BDAR was not fully compliant with the Biodiversity Assessment Method (BAM). Multiple information requests (RFIs) were provided to the applicant seeking clarification/amendments to the BDAR to ensure that it complies with the BAM. The applicant failed to provide sufficient information in this regard, however the applicant's ecologist completed field work as to impacts on the surrounding native vegetation to estimate that one Biodiversity Credit would need to be retired to offset the
- 10

impacts associated with the dwelling house. This is generally associated with the provision of the asset protection zone around the dwelling for bushfire purposes.

5 It was requested that the BDAR be completed and updated to accurately to reflect these
 offsets are in accordance with the Biodiversity assessment methodology. Aside from strict
 compliance with the BC Act and associated regulations, the proposal development is not
 10 fatally flawed of its own accord. The provided BDAR and associated information indicates
 that minimal environmental impact is anticipated as a result of the development. As such it
 is recommended that the matter be finalised by way of deferred commencement consent
 condition that will require an amended BDAR which accords with the BAM, to the
 satisfaction of Council.

15 It is noted that Council’s Ecologist remains concerned that this is not the most appropriate
 way of fulfilling the requirements of the Biodiversity Conservation Act 2016 and had
 recommended refusal and that this may create a precedent with other developers seeking
 to circumvent biodiversity controls as they apply. However, the environmental impacts of
 the proposed development are understood in the current circumstance and the requested
 corrections to the BDAR subject to deferred commencement will accurately inform the
 Biodiversity offset credits required to be retired.

3. SECTION 4.14 – BUSH FIRE PRONE LAND

20 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, whom provided conditions which
 are reflected in the Recommendation of this Report.

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

25 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

30

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 55— Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
The property has a long standing residential history and is not included on Council’s contaminated lands register. There is no record of previous land uses on the site, or on surrounding sites, that are likely to have resulted in land contamination. Based on the available information, the site is considered to be suitable for the proposed residential use in its current state and no further investigation is warranted.		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
The proposal is accompanied by a valid BASIX certificate. The SEPP has been addressed and the proposal is considered to comply.		

	Satisfactory	Unsatisfactory

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

Note: The subject site is traversed by the Low density residential (R2) zone of the Byron LEP 2014; however, the proposed development is located within the Residential (2A) zone of the Byron LEP 1988. Nevertheless, the proposal complies with the Byron LEP 2014.

5 4.2B Byron Local Environmental Plan 1988 (LEP 1988)

Notes: The subject site is traversed by both the Residential (2A) zone and 7(d) Scenic/Escarpment zone of the Byron LEP 1988. The entirety of proposed Lot 2 and the proposed Dwelling house are to be located within the Residential (2A) zone, with the remainder of the Lot 1 comprising components of the Residential (2A) zone and Scenic/Escarpment (7(d)) zone of the BLEP 1988, and Low density residential (R2) zone of the Byron LEP 2014.

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.

15 The proposal complies with all clauses of the LEP 1988, except clause 11 – Subdivision in Rural areas for agriculture etc. The subject dwelling is permitted with consent in the 2(a) residential zone, complies with height and floor space ratio provisions and the land is serviced with necessary infrastructure.

20 A Clause 64A variation request accompanies this application to vary the 40ha lot size under Clause 11 as discussed below.

Clause 64A – Exceptions to Development Standards:

25 As per the planning circular PS20-002 - Variations to development standards, the Secretary’s concurrence cannot be assumed for development that contravenes a numerical development standard by more than 10% where the application is decided by a Council delegate (e.g. Director of SEE or General Manager). But concurrence can be assumed by the elected Council to vary the development standard and as such the proposal is reported to Council for determination as per the planning circular.

1. Introduction – Summary of Proposed Development

30 The development application proposes to establish a Dual Occupancy at the subject site, including Torrens title subdivision to create two (2) residential allotments. Proposed Lot 1 has a total area of 1.143ha and is traversed by the Scenic Escarpment (7d) and Residential (2A) zones of the Byron LEP 1988 and Low density residential (R2) zone of the Byron LEP 2014, while Proposed Lot 2 has a total site area of 1,720m², and is entirely within the Residential (2A) zone of the Byron LEP 1988.

2. Clause 64A Exceptions to Development Standards.

LEP 1988 clause 64A allows the granting of development consent in the instance that a development would contravene a development standard. However, Council must first be satisfied by a written request from the Applicant, that:

- 5 a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- b) there are sufficient environmental planning grounds to justify contravening the development standard.
- 10 c) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the development within the zone in which the development is proposed to be carried out.

3. The Development Standard to be varied

15 The Development Standard to be varied is the 40ha Minimum lot size (Scenic Escarpment (7d) zone) prescribed by clause 11 of LEP 1988.

4. Extent of Variation to the Development Standard

The extent of the variation relates to the proposed 1.143ha lot size, which requires a variation of around 97% to the 40ha development standard.

5. Objective of the Development Standard

20 The objectives of the development standard, as outlined in clause 11 are:

- a) The council shall not consent to the subdivision of land for agriculture, forestry or a dwelling-house within the zones shown in Column 1 of the Table to this clause unless the area of each of the allotments to be created is not less than that shown opposite that zone in Column 2 of the Table and, in the opinion of the
- 25 council, each allotment is of satisfactory shape and has a satisfactory frontage.

6. Objective of the Zone

The objectives of the Scenic Escarpment (7d) zone are as follows:

- 30 a) to protect and enhance the scenic qualities of the Shire of Byron which enhance the visual amenity by controlling the choice and colour of building materials, position and bulk of buildings, access roads and landscaping,
- b) to prohibit development within the zone that is likely to have a visually disruptive effect on the scenic quality and visual amenity of the Shire,
- 35 c) to enable development for certain purposes where such development would not have a detrimental effect on the scenic quality and visual amenity of the Shire,
- d) to minimise soil erosion from escarpment areas and prevent development in geologically hazardous zones, and
- e) to enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem.

40 **7. Assessment – specific questions to be addressed under LEP Clause 64A:**

(a) Clause 64A(3) (a) – Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The Clause 64A written request submitted in support of the DA advises as follows in this regard:

5 *“Compliance with the development standard is unreasonable in the circumstances as no purpose would be served in requiring compliance. The apparent aim of not permitting the fragmentation of scenic lands has been fulfilled in that all the land remains in one lot...*

Therefore, in terms of the criteria in Clause 64A (3) the compliance with the lot size control in Clause 11 is unnecessary as the scenic land is to be retained in the one lot and will not be fragmented”

10 Officer comment:

15 The subject site currently has a total area of 1.315ha, and is traversed by three (3) separate zones from both the LEP 1988 and LEP 2014. The portion of the site zoned Scenic Escarpment (7d) has an approximate area of 6,600m² and is landlocked behind zones for residential purposes (2A and R2). The proposal will maintain the entirety of the 6,600m² Scenic Escarpment zone within proposed Lot 1, which will therefore not be fragmented or altered from its current state. Neither the existing allotment (1.315ha) nor the portion of the allotment zoned 7d (6,600m²) achieve the development standard.

20 Proposed Lot 1, with an area of 1.143ha is substantially less than the 40ha development standard; however, compliance with the development standard in this instance is unreasonable and unnecessary for the following reasons:

- the portion of proposed Lot 1 zoned Scenic Escarpment (7d) (≈6,600m²) will not be fragmented or altered under the proposal, and compliance is therefore unnecessary; and
- 25 - neither the greater allotment, nor the portion of the allotment containing land zoned Scenic Escarpment (7d) currently achieves the minimum lot size for the zone, and therefore expecting compliance with this standard is unreasonable.



5 In this circumstance, the proposed development presents a better planning outcome than strict compliance with the development standard by allowing for the creation of suitably sized residential allotments on residential zoned land. As such, compliance is unreasonable and unnecessary, and no purpose would be served by compliance with the standard as the portion of the subject site within the Scenic Escarpment (7d) zone will remain unaltered.

(b) Clause 64A(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

10 The Clause 64A written request submitted in support of the DA advises as follows in this regard:

15 *“Further there are sufficient environmental planning grounds to justify contravening the development standard in that it allows the extensive area that is residentially zoned to be subdivided into smaller lots as intended. If this variation was not granted no subdivision of the residential land would be possible, contrary to the clear intent of other provisions of the LEP.”*

Officer comment:

20 The proposal will provide two residential allotments on appropriately zoned land which exceed the prescribed minimum lot sizes for each zone respectively (prescribed 600m² minimum, proposed 1.143ha and 1720m²). The portion of the subject site zoned Scenic Escarpment (7d) will remain unaltered in shape and/or size, will remain entirely within proposed Lot 1, and is therefore unaffected by the proposal.

25 There are sufficient environmental planning grounds to justify the contravention of the standard as the proposal will provide suitably sized residential allotments as envisaged by the LEP while preserving/maintaining the existing Scenic Escarpment (7d) zone in situ.

(c) Clause 64A(4) (a) (ii) – Is the proposed development in the public interest? Is it consistent with the objectives of the standard and the zone as set out above?

30 Regarding the objectives of the standard and the zone, the Clause 64A written request submitted in support of the DA advises as follows:

35 *“There are no objectives for lot size standard in Clause 11 as is the case with standard LEPs. Therefore, I advise the following regarding consistency with the zone objectives for development only.*

A. Consistency with the objectives of the zone

Regarding consistency with each of the zone objectives, I advise as follows:

The use of the land in the zone will not be changing and no works are proposed. Therefore, there will be no impact on the scenic qualities of the Shire of Byron.

The use of the land in the zone will not be changing and no works are proposed. Therefore, there will be no disruptive effect on the scenic quality and visual amenity.

5 *No new use is proposed. The entire area of the zone is to be retained in one lot.*

No works are proposed. Therefore, there will no impact on the stability of the land.

10 *Retaining the land in the lot will ensure easier control of noxious plants and weeds.*

15 *...[t]he development will be in the public interest for the purposes of clauses 64A(a)(ii)...as the scenically protected land will not be fragmented and the residential lots will be larger than 600m², as intended by the planning controls. The development will still comply with the respective objectives of the development standards and the zones."*

Officer comment:

20 There are no objectives of the development standard; however the proposal aligns with the Objectives of the Scenic Escarpment zone. It is considered that the proposal is in the public interest.

The proposal and associated request to vary a development standard is considered to meet subclause (3) of clause 64A, and therefore the request to vary a development standard is supported in this case.

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

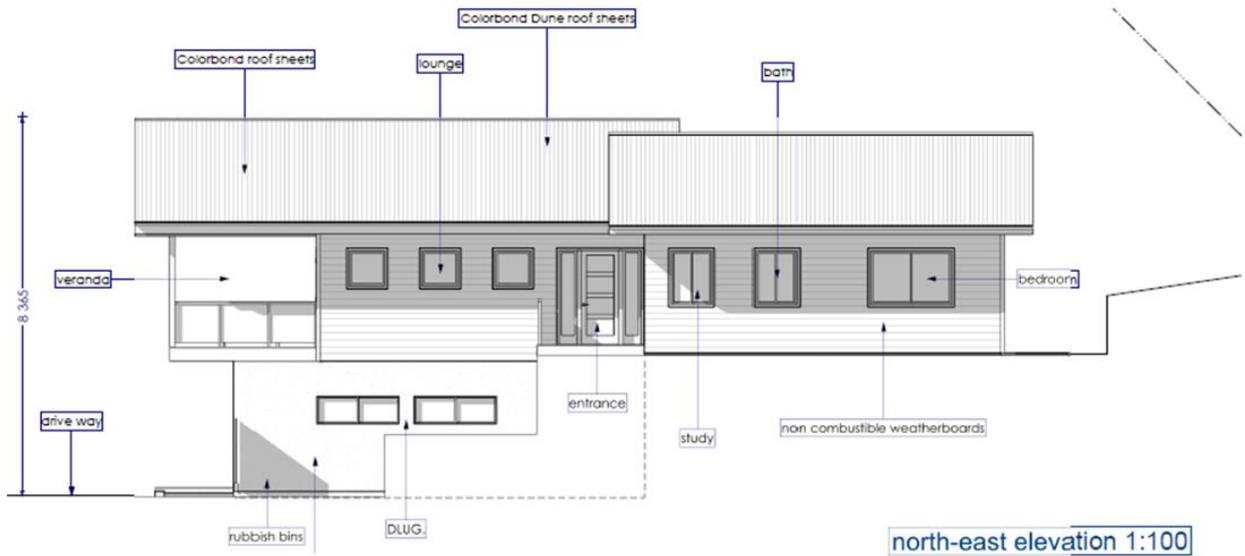
25 DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP& A Act because it applies to the land to which LEP 2014 applies. As the proposed development takes place entirely within the 2A and 7D zones of the Byron LEP 1988, assessment under the DCP 2014 is not required.

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

The proposed development complies with the relevant provisions of DCP 2010 as they relate to subdivision and dwelling houses other than *Element C2.6 – Setbacks from street* and *'Element C2.7 – Extent of Earthworks'* which are discussed in detail below:

C2.6 Element – Setback from Street:

35 Prescriptive Measures for Element C2.6 require that urban development provides a setback of 6.5m from the primary front boundary, with a variation permissible to 4.5m where the building is less than 3.6m in height. The proposed dwelling house presents in part as a single storey/ two storey dwelling to the street with elements breaching the setback controls. The controls under DCP 2014 permit a more generous setback of 4.5
40 metres to dwellings of all heights. Having regards to the split level design of the dwelling, a variation is warranted in this instance.



Street Elevation – part one and two storey presentation

C2.7 Element – Extent of Earthworks:

5 Prescriptive Measures for Element C2.7 requires that excavation/fill does not exceed 1m.
 The proposal seeks to establish in part a two-storey dwelling where the ground floor (garage and bedrooms) are cut into the natural ground with a maximum excavation of up to 2.4m. Despite non-compliance with the standard, the proposal will blend into the landscape with a reduced footprint, and provides a design which is in keeping with the natural landform, with car parking provided at a suitable grade from the street. It is recommended a variation be supported in this instance.
 10

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

15

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

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

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

5 Council Policies applicable to the proposed development have been considered through the assessment of this application with relevant conditions imposed where necessary. Appropriate conditions of consent recommended in relation to construction activities, hours of work, builders waste and the like.

10

4.8 The suitability of the site for the development

15

The site is serviced, and generally unconstrained property and is suitable for the proposed development. Bushfire constraints have been considered with appropriate conditions of consent recommended.

4.9 Submissions made in accordance with this Act or the regulations

20

The development application was publicly exhibited. No submissions were received.

4.10 Public interest

25

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

30

Section 64 levies will be payable.

5.2 Section 7.11 Contributions

35

Section 7.11 Contributions will be payable.

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6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

Provide Disclosure Statement register details here: Not applicable

7. CONCLUSION

5

The DA proposes Subdivision to Create Two (2) Lots and New Dwelling House. The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development. The application appropriately addresses the relevant constraints applying to the site, and is recommended for approval subject to conditions of consent.

10

Report No. 13.7 PLANNING - 26.2019.11.1 Outcome of Public Exhibition - Planning Proposal to obtain Dwelling Entitlement at Lot 6 DP 8385 81 Yagers Lane, Skinners Shoot

5 **Directorate:** Sustainable Environment and Economy
Report Author: Dylan Johnstone, Development Investigations Lead
File No: I2021/541

Summary:

10 On 18 June 2020 Council considered a planning proposal (Attachment 1) to amend Byron Shire LEP 2014 by granting a dwelling entitlement for the land so that development consent can be sought for the use of an existing unauthorised dwelling house on the land. The matter is the subject of current enforcement action in accordance with Council's Enforcement Policy.

15 The land has an area of approximately 4.1 hectares and is zoned RU2 pursuant to LEP 2014. The planning proposal is consistent with the Byron Rural Land Use Strategy 2017 and the North Coast Regional Plan 2036.

The Department of Planning, Industry & Environment issued a Gateway determination on 7 August 2020 and the planning proposal (Attachment 1) was placed on public exhibition for a period of 4 weeks from 15 February to 15 March 2021.

20 One (1) public submission was received and two (2) public authority submissions were received.

25 If a dwelling is permitted on the site, this will create additional demands on rural roads, community facilities, open spaces etc. Such demands are captured by the Byron Shire Developer Contributions Plan 2012 which requires a monetary contribution in accordance with the Plan and Section 7.11 of the Environmental Planning and Assessment Act 1979.

Such a monetary contribution is required to be formalised through a planning agreement. A formal agreement was drafted by the applicant's legal representative (Attachment 4) and exhibited concurrently with the planning proposal. No public submissions were received during the exhibition period that referred specifically to the draft planning agreement.

30 This report recommends that the planning proposal be sent to the Department of Planning, Industry & Environment for finalisation and that delegation be granted to the General Manager for the Director Sustainable Environment and Economy to execute the planning agreement associated with the planning proposal.

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.7

NOTE TO COUNCILLORS:

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

RECOMMENDATION:

10 That Council:

1. **Forward the planning proposal in Attachment 1 (E2020/96982) to the Department of Planning, Industry & Environment requesting finalisation.**
- 15 2. **Grant delegation to the General Manager for the Director Sustainable Environment and Economy to execute the planning agreement associated with the planning proposal in Attachment 4 (E2021/58054).**

Attachments:

- 20 1 26.2019.11.1 Exhibited Version - Planning Proposal to obtain Dwelling Entitlement 83 Yagers Lane Skinners Shoot, E2020/96982 
- 2 26.2019.11.1 DPIE Gateway Determination, E2020/86729 
- 3 26.2019.11.1 DPIE Altered of Gateway determination, E2021/57832 
- 4 26.2019.11.1 Draft Planning Agreement 83 Yagers Lane Skinners Shoot, E2021/58054 
- 5 26.2019.11.1 - Combined Submissions, E2021/58026 
- 25 6 Template - Form of Special Disclosure of Pecuniary Interest, E2012/2815 

Report

Background

5 On 18 June 2020 Council considered a planning proposal to amend Byron Shire LEP 2014 by granting a dwelling entitlement for the land so that development consent can be sought for the use of an existing unauthorised dwelling house on the land.

Action No. 22 of the Byron Shire Rural Land Use Strategy 2017 (BSRLS) recommends investigation into a strategic framework for resolving dwelling entitlement issues. This action provides the strategic basis for the subject planning proposal. This strategy was endorsed by the NSW Department of Planning and Environment (DPE) in July 2018.

10 Following consideration of the 18 June 2020 Council report, **20-283** Resolved that Council:

1. *Proceed with option 1 to request the NSW Department of Planning, Industry and Environment to issue a Gateway determination for the planning proposal as contained in Attachment 1 (E2020/40745).*
- 15 2. *Agree that staff can proceed to obtain further studies from the applicant (if required by the Gateway determination), then undertake public exhibition of the planning proposal and government agency consultation based on the Gateway determination.*
- 20 3. *Request staff to prepare an Unauthorised Residential Accommodation Policy as a matter of priority to confirm the planning pathways and consequences for unauthorised residential accommodation seeking regularisation in Byron Shire, and that this be reported to the next available Planning meeting for consideration of public exhibition.*
- 25 4. *That in the meantime any planning proposal or development application lodged with Council for existing (as of 18 June 2020) unauthorised residential accommodation comply with the requirements of the Unauthorised Residential Accommodation Policy or for those applications lodged prior to the Policy being adopted the principles as presented in this report.*
- 30 5. *That a 15 month (from 18 June 2020) moratorium on enforcement action be granted to land owners with existing (as of 18 June 2020) unauthorised residential accommodation on their land that does not present unacceptable risk to human health or the environment, to enable them time to lodge a planning proposal and or development application to Council for assessment under the Unauthorised Residential Accommodation Policy as drafted / adopted at the time of lodgement.*
- 35 6. *Confirm that any unauthorised residential accommodation built after 18 June 2020 or existing unauthorised accommodation altered or added to after 18 June 2020 will be subject to Council's Enforcement Policy as adopted.*

35 In response to item 3 above, the draft Unauthorised Dwellings Policy was reported to the Ordinary Meeting on 27 August 2020 where it was resolved to place the draft policy on public exhibition from 23 September to 4 November 2020. A number of public submissions

were received during this period and these submissions will be reported to Council in the near future.

Planning Proposal

5 The planning proposal (Attachment 1) seeks to amend Byron Shire LEP 2014 by granting a dwelling entitlement for the land (Lot 6 DP 8385) so that development consent can be sought for the use of an existing unauthorised dwelling house on the land. Specifically, the planning proposal seeks to add the land to Schedule 1 – Additional permitted uses of LEP 2014 to permit a dwelling house with consent.

A “Plain English” version of the proposed Byron LEP 2014 Schedule 1 clause is as follows:

10 ***What Land Does it Apply to?***

Lot 6 DP 8385, 81 Yagers Lane, Skinners Shoot.

What Additional Development will be Permitted?

A dwelling house will be permitted with development consent.

Gateway Determination

15 A Gateway determination (Attachment 2) was issued by the DPIE on 7 August 2020. The Gateway determination required:

- Minor amendments to the planning proposal
 - Public exhibition for a minimum of 14 days
 - Consultation with public authorities (see details below)
- 20 • The time frame for completing the LEP is to be **9 months** following the date of the Gateway determination.

At the request of Council staff DPIE issued an alteration of gateway determination dated 6 April 2020 (Attachment 3), granting an amended timeframe of 7 August 2021 for completion of the LEP amendment.

25 ***Planning Agreement***

The planning proposal seeks to amend LEP 2014 so that a dwelling is permitted with consent on the subject site.

30 If a dwelling is permitted on the site, this will create additional demands on rural roads, community facilities, open spaces etc. Such demands are captured by the Byron Shire Developer Contributions Plan 2012 which requires a monetary contribution in accordance with the Plan and Section 7.11 of the *Environmental Planning and Assessment Act 1979*.

Ordinarily contributions would be paid at the time of subdivision for creating a lot with a dwelling entitlement equivalent to one Standard Dwelling Unit (SDU) (3 bedroom dwelling or greater). However, for the purposes of this planning proposal, there is no clear mechanism within the Contributions Plan for applying developer contributions.

- 5 The submitted planning proposal included a letter of offer to enter into a planning agreement with Council. The offer proposes payment of a monetary contribution equivalent to one SDU.

10 Council staff have no justification to require additional contributions over and above the demand 30 normally generated for a rural dwelling under the terms of the Contributions Plan 2012.

A formal agreement was drafted by the applicant's legal representative and exhibited concurrently with the planning proposal. No public submissions were received during the exhibition period that referred specifically to the draft planning agreement.

- 15 Council's Legal Services have reviewed the draft planning agreement (Attachment 4) and recommend that it be executed by the Director Sustainable Environment and Economy.

Consultation Undertaken

Consultation with Public Authorities

In accordance with the Gateway determination, comment on the planning proposal was sought from the following public authorities:

- 20
- NSW Rural Fire Service
 - Tweed Byron Local Aboriginal Land Council
 - Jali Local Aboriginal Land Council
 - Arakwal Corporation

25 Two submissions were received, one from Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) and one from the NSW Rural Fire Service. Both authorities had no comments to make.

Despite a number of follow up attempts to obtain comments from Tweed Byron Local Aboriginal Land Council and Jali Local Aboriginal Land Council, comments have not been received.

Public Exhibition

In accordance with the Gateway determination, the planning proposal was placed on public exhibition for a period of 4 weeks from 15 February to 15 March 2021.

One (1) public submission was received during the exhibition period. This submission is in favour of the proposal on the grounds that there are minimal constraints on the land and

that it would also allow the extended family members of one of Byron Shire's oldest pioneer families to stay in close to proximity to family and community.

A copy of all submissions can be found in Attachment 5.

Options

5 Option 1 (Recommended)

Forward the Planning Proposal in Attachment 1 to the Department of Planning, Industry & Environment requesting finalisation.

Option 2

Withdraw support for the Planning Proposal.

10 Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 4: We manage growth and change responsibly	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		
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.4	Enhance community safety and amenity while respecting our shared values	2.4.3	Enhance public safety, health and liveability through the use of council's regulatory controls and services	2.4. 3.1	Monitor, investigate and resolve complaints in relation to community safety, land use and the environment

Recent Resolutions

- **20-283** dated 18 June 2020.

Legal/Statutory/Policy Considerations

The relevant legal/statutory/policy considerations have been noted above.

Financial Considerations

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

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

Consultation and Engagement

- 10 Details pertaining to community consultation and engagement are provided above. Consultation has been undertaken in accordance with the Gateway determination.

Report No. 13.8 Update on Resolution 20-664 (Lot 12 Bayshore Drive)

Directorate: Sustainable Environment and Economy

5 **Report Author:** Shannon Burt, Director Sustainable Environment and Economy
Andrew FitzGibbon, Place Liaison Officer

File No: I2021/377

Summary:

The purpose of this report is to provide Council with an update on [Resolution 20-664](#) relating to Lot 12 Bayshore Drive, Byron Bay.

10 Staff have been in negotiations with Creative Capital as the preferred EOI proponent to refine the masterplan as required by Resolution 20-664.

A refined masterplan has been submitted to Council (refer Attachment 1).

15 A final decision on the refined Creative Capital masterplan is now needed in order to progress and realise development on Lot 12 Bayshore Drive consistent with the Site Strategy and Urban Design Protocol.

RECOMMENDATION:

20 **That Council:**

1. **Endorses the revised masterplan prepared by Creative Capital (Attachment 1) alongside the Lot 12 Site Strategy and Urban Design Protocol as the basis for the Lot 12 Bayshore Drive future planning proposal and development applications.**
- 25 2. **Authorises staff to prepare and lodge a development application for a three (3) lot subdivision over Lot 12 Bayshore Drive, Byron Bay, as per the Lot 12 subdivision concept plan (refer Attachment 3 Concept Plan).**
3. **Authorises the sale of that part of Lot 12 in DP 1189646, being the land marked 'Lot 1' (Land) in the Concept Plan (refer Attachment 3) to Creative Capital, subject to reaching agreement on sale price and terms.**
- 30 4. **For the purposes of resolution part 3, authorises the General Manager to:**
 - (a) **obtain an acceptable valuation (consistent with Council's land acquisition and disposal policy) for the Land to determine its sale price;**

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- (b) reach agreement with Creative Capital on price and terms for the sale;
 - (c) execute any document on Council's behalf necessary to complete the sale; and
 - (d) do anything else reasonably necessary to complete the sale.
- 5 5. Agrees to revenue derived from the above sale being quarantined to the Council reserve titled 'Property Development Reserve – Lot 12 Bayshore Drive'.
6. Notes that staff will prepare and forward a Lot 12 planning proposal as per the Masterplan to the Department of Planning Industry and Environment (DPIE) for the purpose of obtaining a gateway determination from DPIE, and that Council then exhibit the Planning Proposal as required by DPIE.
- 10

Attachments:

- 1 Revised Masterplan Creative Capital, E2021/59395 
- 2 Update on Resolution 20-664 Points 1a to 1d, E2021/59416 
- 15 3 Lot 12 Subdivision Concept Plan, E2021/58790 
- 4 Confidential - Original Creative Capital EOI Masterplan Response - Confidential, E2021/53108
- 5 Request for Expression of Interest Lot 12 Bayshore Drive, E2020/73154 
- 20 6 Lot 12 Site Strategy & Urban Design Protocol, E2020/68646 

Report

As per Council resolution (**Res 20-446**) Expressions of Interest (EOI) were sought for the development of Council-owned land at Lot 12 Bayshore Drive, within the Byron Arts and Industry Estate.

- 5 As per the resolution, the EOI process sought ideas and proposals to achieve Council's vision for the property consistent with the adopted Lot 12 Site Strategy and Urban Design Protocol (refer **Res 20-446**).

10 The EOI process was open from 14 September to 26 October 2020 (a period of more than 6 weeks). Two EOI submissions were received, one from Citta Property Group and one from The Creative Capital Company (Creative Capital).

An EOI evaluation report was presented to the Ordinary Meeting on 26 November 2020, where Council resolved as below (refer **Res 20-664**).

Resolved:

- 15 1. That Council authorise the General Manager to enter into direct negotiation with The Creative Capital Company as the preferred EOI proponent and that following these negotiations the General Manager reports back to Council with a refined proposal. Key issues to be refined during this negotiation include (but are not limited to) the following:
- 20 a) Mix of land uses to align more strongly with overall vision – review quantity of retail and residential
- b) Structure and land uses on proposed Council lots to be defined by Council
- c) Site access, frontage and entry to better prioritise pedestrian and cyclists movements, including a revision of the traffic study to consider all options, not just a roundabout
- d) Proposed subdivision and masterplan to respond accurately to the extent of existing vegetation
- 25 e) Clarify and confirm governance and title arrangements (i.e. community title with central management body which can oversee design excellence and tenancy)
- f) Timing of main infrastructure to accommodate delivery of TAFE by 2022
- g) Independent review of quantity surveyor and land valuation reports provided in the proposal
- 30 2. That a report be brought to the December meeting of Council outlining the process for delivery of the TAFE NSW Connected Learning Centre in the location proposed within the Creative Capital EOI, including the details of the proposed lease arrangements for approval.
- 35 3. That Council thank Citta Property Group for their Expression of Interest and advise that they were not successful in this instance.
4. That Council develops a project scope for a Lot 12 Planning Proposal to amend provisions of the Byron Local Environmental Plan 2014 and the Byron Development Control Plan 2014 to deliver on the final agreed masterplan, to be reported back to Council in early 2021.
- 40 Relevant background documents to **Res 20-664** have been attached as follows:
- Attachment 4: Original Creative Capital EOI response (confidential)
 - Attachment 5: Request for Expression of Interest Lot 12

- Attachment 6: Lot 12 Site Strategy and Urban Design Protocol

Update on Resolution 20-664

Resolution points are addressed below.

- 5
1. **That Council authorise the General Manager to enter into direct negotiation with The Creative Capital Company as the preferred EOI proponent and that following these negotiations the General Manager reports back to Council with a refined proposal. Key issues to be refined during this negotiation include (but are not limited to) the following:**
- 10
- a) **Mix of land uses to align more strongly with overall vision – review quantity of retail and residential**
 - b) **Structure and land uses on proposed Council lots to be defined by Council**
 - c) **Site access, frontage and entry to better prioritise pedestrian and cyclists movements, including a revision of the traffic study to consider all options, not just a roundabout**
 - 15 d) **Proposed subdivision and masterplan to respond accurately to the extent of existing vegetation**

Creative Capital and relevant Council staff have held meetings to discuss and address the aspects of the EOI that required further refinement.

- 20
- A revised masterplan has been provided by Creative Capital at Attachment 1 which addresses the points above.

This builds on the presentation given to Councillors at the Strategic Planning Workshop on 1 April 2021.

- 25
- Specific comment regarding the spatial masterplanning points (1a to 1d) are addressed in detail at Attachment 2.

- e) **Clarify and confirm governance and title arrangements (i.e. community title with central management body which can oversee design excellence and tenancy)**

Governance

- 30
- The initial masterplan proposed that Creative Capital deliver infrastructure over the whole site upfront and then receive land to a similar value of the cost of works. This project methodology would constitute a Public Private Partnership (PPP) under the Local Government Act 1993.

- 35
- Advice from the Office of Local Government (OLG) on other Council projects has indicated that the OLG are unable to provide an estimated timeframe as to how long an initial assessment would take or, if it were to be assessed as a PPP, how long that process would take (refer Report 14.1 Form Byron Hospital, 25 March 2021 Council Meeting).

An alternative approach has therefore been developed that involves the following key steps:

- Council undertakes an initial high order subdivision that reflects the overall split of Council and Creative Capital lots;
- 5 • Council sells one lot to Creative Capital;
- Council develops their lot with the proceeds from the sale; and
- Creative Capital develops their lot independently.

10 The project methodology was developed following independent legal advice and in consideration of the initial Probity Management Plan that was prepared for the EOI process. The independent legal advice has confirmed that the alternative approach outlined above:

- does not trigger the Public Private Partnership provisions of the Local Government Act 1993 (Chapter 12 Part 6) as Creative Capital will not be providing any public infrastructure or facilities; and
- 15 • does not trigger the tendering provisions of the Local Government Act 1993 (Section 55) as Council is not required to invite tenders before entering into a contract for the purchase and sale of land.

Delivery of Shared Infrastructure

20 Any shared infrastructure, such as the entry road, will need to be delivered equitably with costs shared by both parties. This could be achieved through a Planning Agreement for example during the planning proposal or development application stages.

Design Quality

Design quality measures will be embedded throughout the process at all possible stages. This will include:

- 25 • contract conditions relating to design at the execution of sale;
- LEP and DCP provisions to guide detailed masterplanning, subdivision and development applications; and
- Design Excellence Panel or similar to consider development applications.

f) Timing of main infrastructure to accommodate delivery of TAFE by 2022

30 The timing and delivery of the TAFE development is able to occur independent but concurrent to the masterplan process. Funding for the base infrastructure is through a transferal of funds from the Sewer Fund to the General Fund as payment for an easement on Lot 12 to facilitate the Additional Flow Path project.

g) Independent review of quantity surveyor and land valuation reports provided in the proposal

5 Land valuation reports will be required and are dependent on the outcome of this report to Council which will confirm the governance and title arrangements to support the masterplan delivery for Lot 12.

An independent land valuation will be carried out prior to proposed sale of part of Lot 12 to Creative Capital.

An independent quantity surveyor report is no longer required at this point given the new governance model proposed.

10 **2. That a report be brought to the December meeting of Council outlining the process for delivery of the TAFE NSW Connected Learning Centre in the location proposed within the Creative Capital EOI, including the details of the proposed lease arrangements for approval.**

15 Council resolved at 17 December Council Meeting to authorise the General Manager to continue negotiations and enter an agreement for lease and lease with TAFE NSW (refer resolution 20-697).

These negotiations are ongoing. Council has not entered into an agreement yet with TAFE but is proceeding in good faith towards this.

20 TAFE has lodged a Development Application for their Connected Learning Centre on Lot 12.

3. That Council thank Citta Property Group for their Expression of Interest and advise that they were not successful in this instance.

This part of the resolution has been completed. Citta Project Group notified of the result of the EOI process, and given feedback in an EOI debrief meeting in December 2020.

25 **4. That Council develops a project scope for a Lot 12 Planning Proposal to amend provisions of the Byron Local Environmental Plan 2014 and the Byron Development Control Plan 2014 to deliver on the final agreed masterplan, to be reported back to Council in early 2021.**

30 The revised masterplan (refer Attachment 1) provides the scope for a Lot 12 Planning Proposal to amend the Byron Local Environmental Plan 2014 and the Byron Development Control Plan 2014. In principle, the Planning Proposal will need to provide for:

- the land uses described in the revised masterplan;
 - 3 storey heights (11.5m);
 - any required amendments to floor space ratio and minimum subdivision lot size requirements;
- 35

- design excellence panel provisions (unless other design review method established); and
- other specific development controls relating to movement, environment, sustainability, infrastructure, built form, public realm, etc.

5 **Other Considerations**

Sustainability Targets

The Site Strategy and Urban Design Protocol seeks best practice sustainability outcomes at precinct and building site levels.

- 10 The revised masterplan states that, “Creative Capital maintains its commitment to deliver a climate resilient precinct, to deliver zero carbon in operation and to deliver future ready, shared sustainable infrastructure to support the new community” (refer Attachment 1, page 13).

The revised masterplan includes a request for more time to confirm sustainability rating tools and targets to be used for Lot 12 (refer Attachment 1, page 13).

- 15 Council is able to work with the proponent on this matter to confirm sustainability tools and targets that will apply to both Creative Capital and Council lots. These targets will aim to achieve the aspirations in the Site Strategy and Urban Design Protocol in a pragmatic way.

These targets will be included in the contract for land sale.

Next steps

20 **A. Finalise EOI Process**

Advise Creative Capital that they are the successful EOI proponent and that the revised masterplan can be used as the basis for Lot 12 Bayshore Drive future planning proposal, development applications and land sale contract conditions.

B. Initial Subdivision

- 25 Prepare and lodge a development application for the initial 3 lot subdivision over Lot 12 Bayshore Drive, Byron Bay generally in accordance with the subdivision concept plan (as per Attachment 3).

C. Sale of Land to Creative Capital

- 30 The General Manager to enter negotiations and subsequent contract for sale of part of Lot 12 to Creative Capital subject to independent valuation and contract conditions that ensure development and delivery consistent with the masterplan vision, principles and design.

D. Planning Proposal

Prepare and forward a Planning Proposal to the Department of Planning Industry and Environment (DPIE) as per the masterplan to request a gateway determination. Then exhibit the Planning Proposal as required by DPIE.

5 E. Lot 12 Bayshore Drive Property Reserve

Quarantine any revenue derived from a future sale of a lot created as part of the initial 3 lot subdivision of Lot 12 Bayshore Drive, Byron Bay to the reserve titled ‘Property Development Reserve – Lot 12 Bayshore Drive’. These funds to be used for any development costs over Council land on Lot 12.

10 Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.2	Provide essential services and reliable infrastructure which meet an acceptable community standard	1.2.6	Optimise Council’s property portfolio (SP)	1.2.6.1	Progress Lot 12 Bayshore Drive Byron Bay future use
Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.1	Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.1.5	Implement Our Mullumbimby Masterplan, Bangalow Village Plan and Byron Arts and Industry Estate Plan

Recent Resolutions

Number	Meeting Date	Primary Subject Matter
20-161	16 April 2020	Request to develop Lot 12 development options
20-285	18 June 2020	Adoption of Byron Arts and Industry Estate Precinct Plan and request to refine development options for Lot 12
20-304	26 June 2020	Request to prepare a Site Strategy and Urban Design Protocol for Lot 12

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20-446	31 August 2020	Adoption of Lot 12 Site Strategy and Urban Design Protocol and endorsement to undertake EOI process
20-664	26 November 2020	EOI outcomes, TAFE lease and planning proposal
20-697	17 December 2020	Authority to enter an agreement for lease with TAFE NSW

Legal/Statutory/Policy Considerations

Compliance with the Local Government Act

5 The project methodology was developed following independent legal advice and in consideration of the initial Probity Management Plan that was prepared for the EOI process. The independent legal advice has confirmed that the proposed project methodology:

- does not trigger the Public Private Partnership provisions of the Local Government Act 1993 (Chapter 12 Part 6) as Creative Capital will not be providing any public infrastructure or facilities; and
- 10 • does not trigger the tendering provisions of the Local Government Act 1993 (Section 55) as Council is not required to invite tenders before entering into a contract for the purchase and sale of land.

Compliance with the Independent Commission Against Corruption guidelines

15 The Independent Commission Against Corruption (ICAC) issued a publication in September 2007 (still current) titled Corruption risks in NSW development approval processes – position paper. Recommendation 14 in this publication makes reference to the sale of land by Council and states that Councils disposing of their own land should consider using a competitive process for the sale of valuable land notwithstanding the absence of a statutory requirement to do so.

20 Independent legal advice indicated that Council would be in a position to consider the Lot 12 EOI process as the competitive process recommended by ICAC in the above publication. However, it is considered that this would be the case provided there is no material change to the purpose and objectives of the EOI.

Compliance with the Planning Legislation

25 Amendments to the Byron Local Environmental Plan 2014 and Byron Development Control Plan 2014 will be required to deliver the revised masterplan (as outlined earlier in the report). TAFE use of the Council part of Lot 12 can proceed under the current zone without LEP and DCP amendments.

Financial Considerations

Funds required for the initial subdivision of the land to be financed by existing property reserve plus a transfer from the Sewer Fund to the General Fund for 3m wide Additional Flow Path easement on the site.

- 5 Future development of infrastructure associated with Council lots to be financed by sale of a lot to Creative Capital.

The sale of a lot to Creative Capital to be based on independent valuation.

Comment from Manager Finance

- 10 The proposed outcome indicated in this report is supported given it will potentially provide a positive financial outcome for Council allowing funding for development of Lot 12 and the opportunity for recurring revenue.

As the project progresses, budgetary information will be reported to Council for consideration on the basis this project should not have any financial impact to the General Fund.

15 Consultation and Engagement

The call for Expression of Interest was provided to the open market from 14 September to 26 October 2020 (a period of more than 6 weeks).

Community consultation and engagement will take place at multiple future stages in accordance with Councils Community Participation Plan. This will occur as part of the:

- 20
- initial 3 lot subdivision Development Application;
 - Planning Proposal process; and
 - any Development Applications for future subdivisions or development over the lots.

**Report No. 13.9 PLANNING - Development Application
10.2020.215.1 Multi Dwelling Housing
Comprising of Ten (10) Two Storey
Detached Dwellings and Ten (10) Swimming
Pools and Strata Subdivision at 6 Keats
Street Byron Bay**

5

Directorate: Sustainable Environment and Economy

Report Author: Ivan Holland, Planner

File No: I2021/635

10 **Proposal:**

Property description: LOT: 2 DP: 1257709
6 Keats Street BYRON BAY

Parcel No/s: 269978

Applicant: Ardill Payne & Partners

15 **Owner:** Stanford Finance Solutions Pty Ltd & Lilac Capital Pty Ltd & others

Zoning: R2 Low Density Residential

Date received: 4 May 2020

Integrated / Designated Development:

20 Integrated

Concurrence required: Yes – Enter CNR No.7391

Public notification or exhibition:

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- 25 - Exhibition period: 14/5/20 to 3/6/20
- Submissions received: 10
- Submissions acknowledged: Yes No N/A

Planning Review Committee: 11 June 2020

Variation request Not applicable
Delegation to determine: Council

Issues:

- 5 • Potential impacts on adjacent coastal wetland
- Encroachment into the building height plane
- Encroachment into the street front setback
- Submissions in opposition from neighbouring residents

Summary:

10 This application has been referred by the Planning Review Committee for determination by the elected Council.

This application seeks approval for multi dwelling housing comprising of ten (10), two storey detached dwellings and ten (10) swimming pools and strata subdivision (see Figure 1).

15 Dwellings have four (4) bedrooms, a guest room, three (3) bathrooms, a balcony, ground floor outdoor areas, a swimming pool, a garage and carport.

The strata subdivision will ultimately result in each dwelling being located on an individual strata lot with the driveway and southern landscaping being located on common property.

The applicant proposes staging the development as follows:

- 20 • Stage 1 – construction of dwellings 5 – 10 including swimming pools, driveway and landscaping.
- Stage 2 – strata subdivision of dwelling 5 – 10 and creation of a vacant strata lot.
- Stage 3 – construction of dwellings 1 – 4 including swimming pools and landscaping on the vacant strata lot.
- 25 • Stage 4 – strata subdivision of dwelling 1 – 4.

Earthworks and tree removal will be required to facilitate the development.

30 During the assessment, the buffer between the dwellings and associated driveways were moved north to increase the setback to the mapped coastal wetland to the south of the property. Council's Ecologist is of the view that the application has not adequately demonstrated that significant impacts on the coastal wetland will be avoided by the development owing to the limited buffer width and that the buffer is required to be managed for bush fire protection purposes (rather than for ecological benefit). However, a condition has been recommended to require a solid, non-combustible fence to be
35 constructed adjacent along the southern boundary of the development such that the buffer is separated from the residential land use to minimise urban edge effects on the wetland.

Some minor plan amendments have been required by recommended conditions to address issues raised in the assessment. Otherwise the application appropriately

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addresses the relevant constraints applying to the site, and is recommended for approval subject to the conditions listed in the Recommendation of this Report below.

NOTE TO COUNCILLORS:

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

10

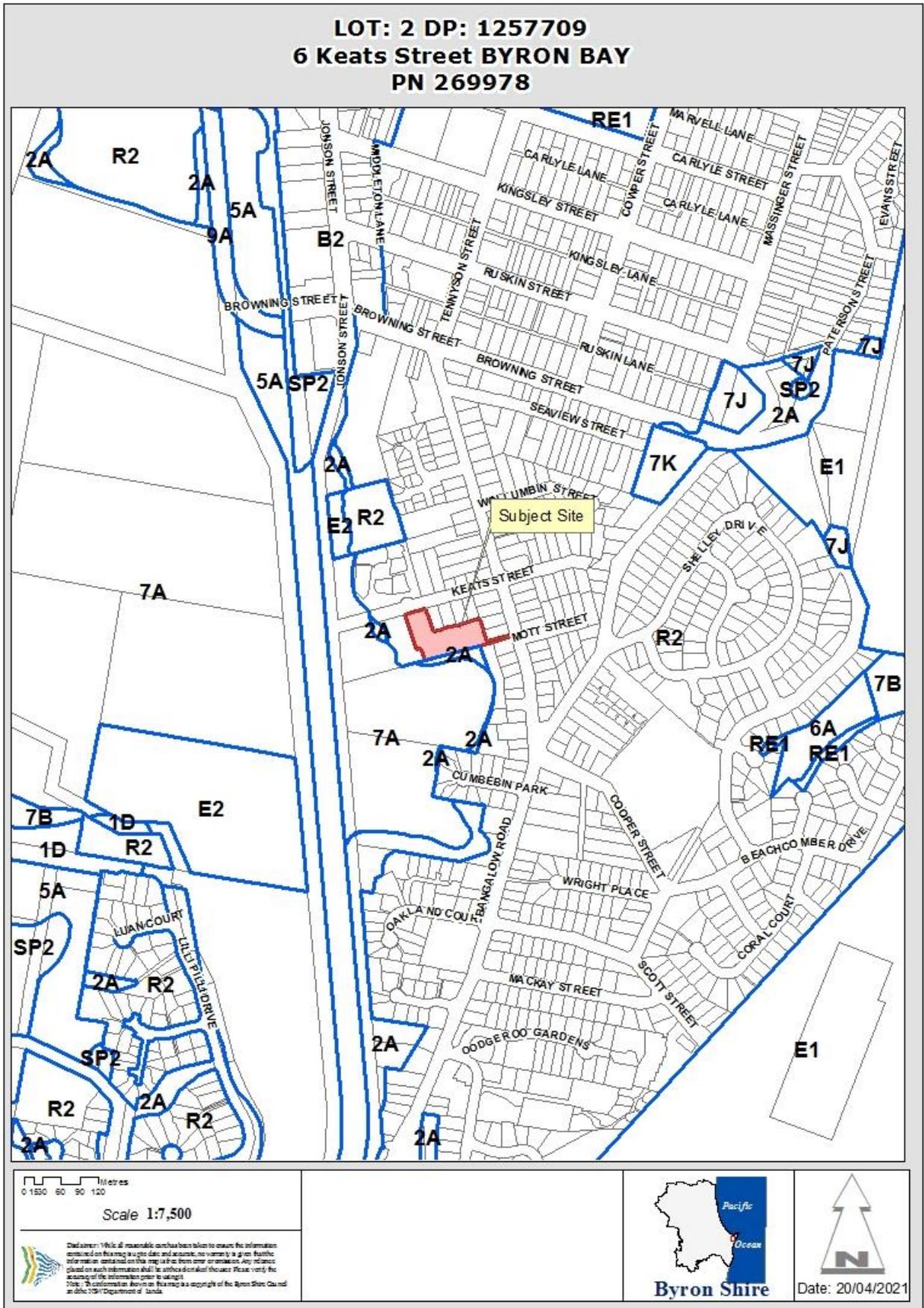
RECOMMENDATION:

- 15 **That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.215.1 for Multi Dwelling Housing Comprising of Ten (10) Two Storey Detached Dwellings and Ten (10) Swimming Pools and Strata Subdivision, be granted consent subject to the conditions listed in Attachment 8 (E2021/57487).**

Attachments:

- 20 1 Overall site plans - DA 10.2020.215.1 - 6 Keats Street, E2021/58179 
2 Dwelling plans Part 1 - DA 10.2020.215.1 - 6 Keats Street, E2021/58188 
3 Dwelling plans Part 2 - DA 10.2020.215.1 - 6 Keats Street, E2021/58189 
4 Stormwater management plan - DA 10.2020.215.1 - 6 Keats Street, E2021/58168 
5 Driveway plans - DA 10.2020.215.1 - 6 Keats Street, E2021/58169 
25 6 Strata plans - DA 10.2020.215.1 - 6 Keats Street, E2021/58173 
7 Landscaping plans - DA 10.2020.215.1 - 6 Keats Street, E2021/58174 
8 Recommended conditions - DA 10.2020.215.1 - 6 Keats Street, E2021/57487 
9 Submissions received - DA 10.2020.215.1 - 6 Keats Street, E2021/57828 

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Report

1. INTRODUCTION

1.1. History/Background

5 The subject property was created by a 2 lot subdivision (DA 10.2016.794.1) which was approved on 13/6/2017.

1.2. Description of the proposed development

10 This application seeks approval for multi dwelling housing comprising of ten (10), two storey detached dwellings and ten (10) swimming pools and strata subdivision (see Figure 1).

15 The Dwellings have four (4) bedrooms, a guest room, three (3) bathrooms, a balcony, ground floor outdoor areas, a swimming pool, a garage and carport. The strata subdivision will ultimately result in each dwelling being located on an individual strata lot with the driveway and southern landscaping being located on common property.

The applicant proposes staging the development as follows:

- 20 • Stage 1 – construction of dwellings 5 – 10 including swimming pools, driveway and landscaping.
- Stage 2 – strata subdivision of dwelling 5 – 10 and creation of a vacant strata lot.
- Stage 3 – construction of dwellings 1 – 4 including swimming pools and landscaping on the vacant strata lot.
- 25 • Stage 4 – strata subdivision of dwelling 1 – 4.

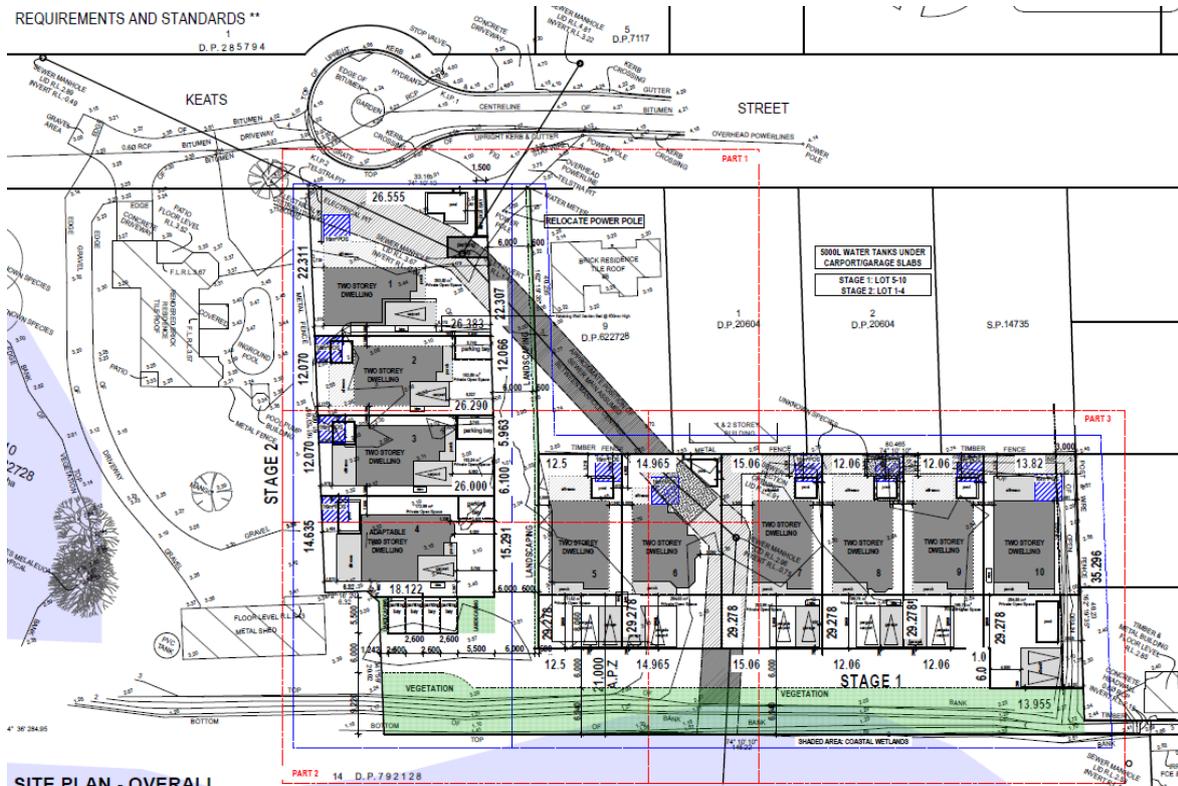


Figure 1. Site plan showing location and layout of proposed dwellings, swimming pools and associated infrastructure and landscaping.

1.3. Description of the site



5 Figure 2. Aerial photo showing property (identified by yellow polygon) and land zoning showing property zoned as R2.

Land is legally described	LOT: 2 DP: 1257709	
Property address	6 Keats Street BYRON BAY	
Land is zoned:	R2 Low Density Residential	
Land area is:	6013 m ²	
Property is constrained by:	<ul style="list-style-type: none"> • Flood Liable Land • Bushfire prone land • Acid Sulfate Soils Class 5 • Underground powerlines • Stormwater drains • Sewer pipelines and manhole • Biodiversity values (beyond the development footprint) 	
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

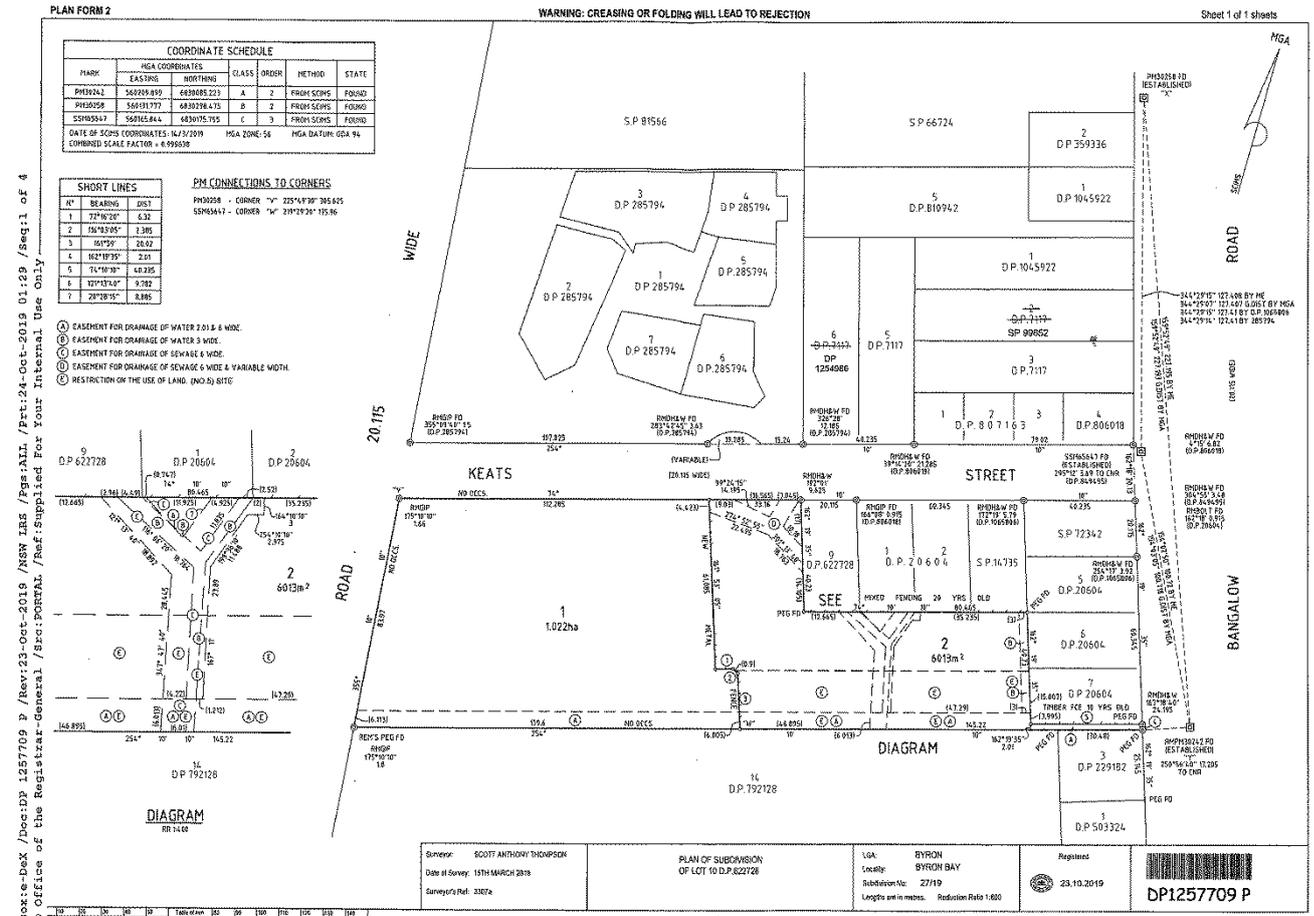


Figure 3. Land title showing 6 Keats Street (identified as Lot 2) and associated easements and restriction of use of land.

5 A site inspection was carried out on 26 May 2020



Photo 1 – view south from Keats Street to the site



Photo 2 – view south from Keats Street to the site



Photo 3 – open stormwater drain adjacent to southern boundary – view east



Photo 4 – open stormwater drain adjacent to southern boundary – view west



Photo 5 – open stormwater drain at east of property – view east



Photo 6 – sewer manhole and tree to be removed



Photo 7 – one of three stormwater grates within the property

2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.

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Referral	Issue
Ecologist	See Comments below Re: Biodiversity Act 2016 and SEPP Coastal Management 2018
Rural Fire Service (100B)	No objections subject to conditions.
Essential Energy	No objections, general comments only.

3. SECTION 1.7 – APPLICATION OF PART 7 BIODIVERSITY CONSERVATION ACT 2016

5 The development footprint will not encroach into land within the property identified on the Biodiversity Values map (see Figure 4 below. In relation to this property, the area mapped as biodiversity values is the same as the area mapped as coastal wetland).

10 Council's Ecologist notes that, should tree removal be required within the area mapped as biodiversity values (i.e., to establish an asset protection zone), then the biodiversity offsets scheme and the requirement for a biodiversity assessment report would be triggered (*Biodiversity Conservation Act 2016*, Parts 6 and 7). As noted below, a condition has been recommended to prevent removal of vegetation within the mapped biodiversity values/coastal wetland area within the property.

15 4. State Environmental Planning Policy (Coastal Management) 2018

20 A small section at the south of the property is mapped as a coastal wetland (see Figure 4 below) and the remainder of the property is mapped as wetland buffer. The built footprint of the proposed development does not encroach into the mapped coastal wetland. The section of mapped wetland adjacent to the boundary is part of Council's stormwater infrastructure being an open drain taking stormwater from the site, surrounding properties and Bangalow Road to the west where it eventually discharges into the Cumbegin Wetland via a culvert under the north coast rail corridor.

25 Council's ecologist was concerned if clearing is required in the mapped wetland area (and the Biodiversity values area) the application becomes designated development. The development footprint, including vehicular access and asset protection zones, will not require any clearing of vegetation in the wetland. Survey detail submitted with the application indicates the drain is located along the southern boundary of the lot and wetland vegetation is only on the southern bank and in the neighbouring property. Notwithstanding this, conditions have been recommended protecting and preventing clearing of vegetation within the mapped coastal wetland.

35 A larger vegetated buffer, with meaningful setbacks to the coastal wetland to the south, would be preferable however, considering the peri-urban nature of the parcel a condition has been recommended to require a solid, non-combustible (i.e. sheet metal) fence to be constructed adjacent to the driveway. This fence will benefit the coastal wetland by minimising urban edge effects such as noise, light, gross pollution (i.e., rubbish) and exotic species that are likely to result from the development. The applicant has also proposed landscaping along the northern edge of the drain to which will also assist with mitigation of edge effects. Conditions of consent to apply.

40 Having regard to the above, the impact of the proposed development on the coastal wetland is considered acceptable under this SEPP.



Figure 4. Aerial photo with subject site identified as yellow polygon, coastal wetlands identified as blue/ diagonal stripes and stormwater infrastructure yellow dashed line.

5 **5. 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'. The site is bush fire prone land. The development application is for integrated development and was referred to the NSW Rural Fire Service, which provided a bush fire safety authority and general terms of approval which are included in the Recommendation of this Report below.

EFFECT OF 10/50 RULE ON SIGNIFICANT VEGETATION

The subject parcel of land is located in a designated 10/50 vegetation entitlement clearing area. However, the 10/50 exemption to clear vegetation cannot be used on this parcel of land. This land is excluded from the operation of the 10/50 Code as it has been identified as being wholly or partially within coastal wetlands (online tool accessed – 17/2/21).

20 **6. 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.

25 **6.1 State Environmental Planning Instruments**

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The applicant has submitted details addressing SEPP 55 which is generally satisfactory, however the contamination investigation provided does not adequately assess the whole development site and the subject site is identified on Council's mapping as containing radioactive sand fill. Conditions have been recommended that require a detailed contaminated land assessment to be prepared for the entire site (as a deferred commencement condition). Following which, preparation of a remedial action plan (RAP) may be required (if contamination is		

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	Satisfactory	Unsatisfactory
detected) and implementation of the RAP to ensure the site is suitable for the proposed residential development.		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposal is for BASIX affected development and a multi dwelling BASIX Certificate was provided with the application.		
State Environmental Planning Policy (Infrastructure) 2007	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposal involved works in the proximity of electricity distribution infrastructure. Essential Energy was notified of the DA and their advice has been taken into consideration (clause 45). Essential Energy general comments are included in the notes section of the consent.		

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

- 5 (a) The proposed development is defined in the LEP 2014 Dictionary as multi dwelling housing;
 (b) The land is within the R2 Low Density Residential according to the Land Zoning Map;
 (c) The proposed development is permitted with consent; and
 (d) Regard is had for the Zone Objectives as follows:
- 10 Subdivision of land (as defined in clause 6.2 of the EP&A Act) is permitted with consent pursuant to clause 2.6 of LEP 2014. Proposed demolition of the shed is permitted with consent pursuant to clause 2.7 of LEP 2014.

Zone Objective	Consideration
<ul style="list-style-type: none"> • To provide for the housing needs of the community within a low density residential environment. • To enable other land uses that provide facilities or services to meet the day to day needs of residents. 	<p>The proposed multi dwelling housing has the ability to provide for the housing needs of the community.</p> <p>In terms of yield the proposal will result in one house per 600m² which is not inconsistent with the objectives of the R2 Zone</p>

- 15 The subject property with an area in excess of 6000 m² meets the minimum lot size for multi dwelling housing being 1000m² (c.4.1E).
- The maximum height of the dwellings is ~8.5m which is compliant with the 9m maximum (c.4.3).
- 20 The floor space ratio of the combined development is ~0.35:1 and well below the relevant limit of 0.5:1 for the property (c.4.4).
- 25 The site is classified as containing class 5 acid sulfate soils which are unlikely to be disturbed during construction works. Council's Environmental Health Officer has recommended that conditions be included that require a preliminary acid sulfate soils investigation be carried out to ensure there is no environmental impact (c.6.1) from construction activities.
- 30 Subject property is partly identified as prone to flooding with heights across the site varying from 3.82 m AHD at Keats Street down to 2.02m adjacent to the northern bank of the drain with the land generally grading to the southern boundary. To avoid filling the site, Conditions of consent recommended in relation to houses being constructed using a bearer and joist design other than

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the adaptable dwelling on Lot 4 which is on an elevated knoll which meets the minimum floor level of 3.1 m AHD. (c.6.2 and 6.3).

5 The development site is an urban location which has access to services or the ability to access services when required (c.6.6). Council’s Development Engineer determined that the design and construction of the re-routing of the inter-allotment drainage system, servicing numbers 10 and 12 Keats Street, needs to be carried out prior to the approval commencing to ensure the landowner approvals for this work are current (i.e., as a deferred commencement condition). Otherwise, issues associated with stormwater and sewer services that transect the site have been assessed by Council’s Development Engineer and Systems Planning Officer and found to be acceptable subject to recommended conditions.

The proposal raises no other issues under the LEP.

15 **4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority**

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

20 **4.4A Byron Shire Development Control Plan 2014 (DCP 2014)**

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

Part A	<input checked="" type="checkbox"/>
Part B Chapters:	<input checked="" type="checkbox"/> B1 <input checked="" type="checkbox"/> B2 <input checked="" type="checkbox"/> B3 <input checked="" type="checkbox"/> B4 <input checked="" type="checkbox"/> B5 <input checked="" type="checkbox"/> B6 <input checked="" type="checkbox"/> B7 <input checked="" type="checkbox"/> B8 <input checked="" type="checkbox"/> B9 <input type="checkbox"/> B10 <input type="checkbox"/> B11 <input type="checkbox"/> B12 <input checked="" type="checkbox"/> B13 <input checked="" type="checkbox"/> B14
Part C Chapters:	<input type="checkbox"/> C1 <input checked="" type="checkbox"/> C2 <input type="checkbox"/> C3 <input type="checkbox"/> C4
Part D Chapters	<input checked="" type="checkbox"/> D1 <input type="checkbox"/> D2 <input type="checkbox"/> D3 <input type="checkbox"/> D4 <input type="checkbox"/> D5 <input checked="" 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 checked="" type="checkbox"/> E5 <input type="checkbox"/> E6 <input type="checkbox"/> E7

Chapter A13.4 and Community Participation Plan

30 The proposal is community significant development being “residential accommodation resulting in 10 or more dwellings” and as such community consultation is required to be undertaken prior to lodgement of a development application (A13.4). The failure to carry out community consultation prior to development application lodgement is also contrary to the equivalent requirements in Council’s Community Participation Plan (October 2019) (see also sections 2.21 and 2.22 of the EP&A Act). Confirmation that pre-lodgement consultation was not, and will not, be undertaken was provided by the applicant Ardill Payne and Associates, to Council, on 8 April 2020 who advised that:

- *The land owners immediately to the west of the subject site disposed of this vacant land following a two Lot subdivision with the knowledge that a medium density development would be undertaken onsite.*
- *The two properties immediately to the east of the subject site have been consulted about the project during the planning stage.*
- *The development is on the lower end of the community significant development definition threshold being 10 dwellings.*
- *The proposed medium density development is:*

- well below the nominated floor space ratio for the subject site,
 - complaint with nominated height limits,
 - generally exceeds all building lines and setbacks
 - 5 - compliant with carparking requirements including visitor spaces
 - will be adequately serviced by all reticulated services
 - will not be visible from Bangalow Road, and
 - will provide generous areas of landscaping and private open space for each dwelling
- 10 • Accordingly, pre-lodgement consultation is not deemed necessary nor advantageous in this instance. APP have been instructed by our client to assess and satisfactorily address any reasonable submissions received during Council's public notification process

15 It is noted that the failure to carry out that consultation has resulted in delays in finalising the assessment of this DA. Had they discussed the proposal with the neighbours more broadly in accordance with the Community Participation Plan, issues such as stormwater management, easement issues and privacy concerns as raised in the submissions and by Council could have been more thoroughly addressed in the DA by the applicant when first submitted.

20 However, as the development application has since been publicly exhibited and notified to neighbours and submissions have been considered (see 4.8 below) it is arguable that the views of the community have been sought and considered. Should Council be dissatisfied with this, a condition could be imposed to reduce the number of dwellings to 9 to ensure compliance with the Community Participation Plan. The effect of such a condition would potentially result in a separate stand alone DA being submitted for the tenth dwelling, or the applicant utilising their appeal or review rights under the EPA Act 1979.

25 **Chapter B1**

The proposed development will require the removal of all trees from the site but for those adjacent to the southern boundary/drain The SEE identifies these trees as either "landscaping" or "Pandanus Palm plantation". As such, this vegetation is not considered to be "red-flag" vegetation under Chapter B1. However if the Pandanus are endemic (i.e., Pandanus tectorius) they should be relocated on site and incorporated into the proposed landscaping. As noted above, a condition has been recommended preventing clearing of vegetation within the mapped coastal wetland.

35 **Chapters B3 and B4**

Council's Engineer has assessed the revised proposal and updated stormwater management plan and is satisfied the development meets, or is capable of meeting, relevant servicing and parking requirements subject to recommended conditions.

40 **Chapter B6**

The SEE did not address land use conflict in relation to the location of the residential development adjacent to a coastal wetland/area of biodiversity value. In this regard:

- 45 • "New urban development, rural settlement and other development should be sited and designed to protect key environmental assets and, where possible, enhance environmental assets including high conservation value vegetation and habitats and ecosystems, ecosystem corridors, waterways, endangered ecological communities and key habitat.
- The potential for land use conflict and development of mitigation measures should be assessed as part of any proposed intensification of use..." (B6.2.3).

50 As discussed above, a narrow (~7m) landscaped buffer has been proposed between the development and the mapped coastal wetland which will need to be managed as an asset protection zone. No information was provided with the application to demonstrate the adequacy of

this buffer in protecting and ideally enhancing the adjacent coastal wetland. As such, a condition has been recommended to require the southern edge of the development to be fenced to minimise the impact on the coastal wetland from urban edge effects.

5 **Chapter B7**

The standard condition requiring windows to be screened has been recommended owing to the development being located within a mapped mosquito risk zone.

Chapter B8

10 A site waste minimisation and management plan (SWMMP) was not submitted with the application (B8.2.1). A condition has been recommended requiring a SWMMP to be submitted prior to the issue of a construction certificate and to address:

- Demolition (B8.3.1);
- Construction (B8.3.2);
- 15 • Ongoing use including ensuring there is sufficient space for bins to be placed on Keats Street for collection (B8.3.3); and
- Matters specific to multi dwelling housing (B8.4.2).

Chapter B9

20 An amended concept landscaping plan (Overview, Rev 003, Kris McFadden Design, 21/12/20) was provided that increased the landscape area along the southern boundary of the property (Chapter B9). A condition has been recommended requiring a detailed landscaping plan to be submitted for approval, prior to the issues of a construction certificate, that demonstrates:

- Consistency with the general landscape design principles (B9.3.1);
- 25 • Matters specific to multi dwelling housing (B9.4.1) including but not limited to screen planting to street frontages and driveway areas, identification of common landscaped area (B9.4.2);
- Landscaping of the drainage line along the southern boundary of the property (B9.10.2);
- Consideration of a street tree (B9.11.1);
- 30 • Existing vegetation (B9.12.4); and
- Planting size, density and species (B9.12.5).

Chapter B13

35 Dwelling No.4 will be an adaptable dwelling which meets the minim requirement for 10% of dwelling units to be adaptable (B13.2.2). Required adaptable car parking has been assessed by Council's Development Engineer and found to be acceptable subject to conditions.

Chapter B14

40 Council's Engineer has assessed the earthworks required for the development and is satisfied that the works and potential impacts can be adequately managed (i.e., erosion and sediment control) subject to recommended conditions.

Chapter C2

45 Council's Engineer has assessed the revised proposal and is satisfied the development meets, or is capable of meeting, relevant flood planning requirements subject to recommended conditions.

Chapter D1

50 Indicative streetscape renders were provided. Owing to the shape of the lot the character and visual impact of the development will be minimal with only Lot1 being clearly visible from Keats Street (D1.2.4).

Fencing is shown along the Keats Street boundary in the streetscape renders however no details were provided in the application. A mailbox structure is proposed at the northeast corner of Lot 1. Any street front fencing and the mailbox structure should be limited to 1.2m in height: conditions recommended (D1.2.5).

5 According to plans provided, each dwelling will have usable, ground-level, private open space of at least 30m² and at least 4m in width and length (D1.6.1).

Chapter D6

10 The application did not include a consideration of the subdivision design guidelines (D6.2.1). As a result the subdivision deviates from some of the design guidelines particularly relating to riparian buffers and land fronting watercourses. The proposed lots sizes are below the 600m² minimum (D6.4.1) however, minimum lot size requirements do not apply to strata subdivisions (clause 4.1(4)(a) of LEP 2014). Council’s Development Engineer is satisfied that the subdivision is
15 acceptable subject to recommended conditions (D6.4).

Chapter E5

20 6 Keats Street is located within Pocket B which is characterised by has “an eclectic array of architectural styles, with diverse coastal architectural themes” and “built form is largely one or two storeys incorporating various building materials and styles” (E5.8.4). The proposed development is not at odds with the relevant character narrative. Further, the property is located in the “transitional” area “earmarking an area for change incorporating pockets of low rise medium density homes that match the amenity of traditional free standing homes, while introducing contemporary dwelling forms”.

25

What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Objectives of this Section? Address.	Does the proposed development comply with the Performance Criteria of this Section? Address.
<p>D1.2.1 Building Height Plane</p> <p>The western façade of Lots 1 (both floors) 2, 3 and 4 (ground floor only) encroach the building height plane. The eastern façade of Lot 10 (first floor only) encroaches the building height plane.</p> <p><u>Note:</u> The northern façade of lots 5, 7, 8, 9 and 10 encroach the building height plane. These encroachments have not been considered further as they are on the south side of existing development (i.e., no shading impacts) and are only small sections of the ground floor alfresco area roof (i.e., minimal privacy and view impacts).</p>	<p>The proposed development complies with the Objectives of the Section because:</p> <p>Shadow diagrams were provided for Lots 1, 2 and 10 which show no shading impact on the neighbouring dwelling to the west (Lots 1 and 2) or east (Lot 10). There are no dwellings adjacent to and west of Lots 3 and 4.</p> <p>Privacy and view impacts from the encroachments will be minor due to the encroachments being largely of the ground floor roof of alfresco areas.</p> <p>Privacy impacts of the first floor encroachments of Lot 1 and Lot</p>	<p>The proposed development complies with the Performance Criteria of this Section because:</p> <p>The first floors of the proposed dwellings are largely set back progressively from the boundaries;</p> <p>All dwellings and lots have a north facing outdoor area and covered alfresco areas.</p> <p>The development will not cause shading impacts on living areas of neighbouring dwellings as evidenced in the shadow diagrams provided.</p>

<p>D1.2.2 Setbacks from Boundaries</p>	<p>10 can be minimised by screening windows on the non-compliant facades: conditions recommended. View impacts from the Lot 10 encroachment can be minimised through alterations to the building design: condition recommended.</p>	<p>The proposed development complies with the Performance Criteria of this Section because:</p>
<p>The dwellings comply with relevant setbacks but for the swimming pool associated with Lot 1 which is located in the street front setback. The provision states “<i>Pools should not be located within the street frontage setback, except on sites where private open space can be accommodated only in this location or other site attributes support this outcome.</i>”</p>	<p>The proposed development complies with the Objectives of the Section because:</p> <p>Lot 1 is constrained by a sewer easement and the proposed pool has good solar orientation being located north of the dwelling.</p>	<p>Although setbacks are to be applied flexibly, the Lot 1 pool is to be 800mm from the street front boundary. This minimal setback does not allow adequate landscaping to be provided to avoid impacts on the streetscape. The pool could be relocated south of the sewer easement where the Alfresco area is currently proposed. As such, the Lot 1 swimming pool should be relocated south of the sewer easement or removed from the proposal altogether: conditions recommended.</p>

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

4.5 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	Yes	Yes	Condition recommended that demolition of shed be undertaken in accordance with AS 2601
93	No	N/A	N/A
94	No	N/A	N/A
94A	No	N/A	N/A

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

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

- 5 Standard conditions of consent recommended in relation to the construction activities including construction noise, hours of work, builders waste and implementation of sedimentation and erosion control measures.

4.7 The suitability of the site for the development

- 10 The site can be serviced, has manageable constraints and is assessed as suitable for the proposed development.

4.8 Submissions made in accordance with this Act or the regulations

- 15 The development application was publicly exhibited

There were **ten (10)** submissions made on the development application:

- 20 - Nil (0) For
- Ten (10) Against

Key issues raised in submissions	Consideration
	The developments density and yield satisfies the objective of the R2 Zone.
Stormwater management / drainage	Council's Development Engineer is satisfied that adequate provision has been made (or will be made through compliance with recommended conditions) for managing stormwater and drainage from and for the development.
Site suitability – property is subject to flooding	Council's Development Engineer is satisfied that the flooding impacts can be adequately managed via recommended conditions.
Traffic impacts	Council's Development Engineer is satisfied that the traffic impact is low risk and can be adequately managed via recommended conditions.
	As noted above, the applicant confirmed that pre-lodgement consultation was not undertaken.
Waste collection	A condition has been recommended that requires a site waste minimisation and management plan to be provided prior to the issue of a construction certificate that includes details of waste management associated with

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	ongoing use of the development including ensuring there is sufficient space for bins to be placed on Keats Street for collection.
Encroachment of development on Cumbebin Swamp	Impacts on the wetland have been considered as discussed above
Residential Impacts (noise, amenity, privacy)	<p>But for the building height plane and street front setback encroachments discussed above, the proposed multi dwelling housing is otherwise compliant with Council planning requirements.</p> <p>View impacts from the Lot 10 first floor, building height plane encroachment can be minimised through alterations to the building design for which a condition recommended.</p> <p>A fence has been requested by some submitters along the northern boundary of proposed Lots 5 to 10 to mitigate potential amenity impacts. Conditions of consent recommended requiring the fence to be constructed.</p>

4.9 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

15 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 Environment Division.	No

Provide Disclosure Statement register details here: Not applicable

20 Conclusion

This application seeks approval for multi dwelling housing comprising of ten (10), two storey detached dwellings and ten (10) swimming pools and strata subdivision.

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5 The key issues associated with this proposed development are stormwater management and potential impacts on the adjacent coastal wetlands. Conditions have been recommended to address stormwater management including a deferred commencement condition relating to proposed modification to inter-allotment drainage affecting numbers 10 and 12 Keats Street. The buffer between the development and the coastal wetland was increased in size but remains limited (~7m) in width and is subject to strict management requirements for bushfire protection (thus limiting the ecological value of the buffer). However, the buffer will be landscaped and a fence between the development and the buffer/wetland to mitigate potential impacts on development has been required by a recommended condition.

10 Some minor plan amendments have been required by recommended conditions to address issues raised in the assessment. Otherwise the application appropriately addresses the relevant constraints applying to the site, and is recommended for approval subject to the recommended conditions (Attachment 8).

15 The proposal is 'community significant development' however the applicant failed to carry out the required community consultation prior to lodging the development application. However, as the development application has since been publicly exhibited and notified to neighbours, and submissions have been considered, it is arguable that the views of the community have been sought and considered as per the intent of this requirement.

Report No. 13.10 PLANNING - State Government Planning Amendments for Agriculture

Directorate: Sustainable Environment and Economy

Report Author: Rob van Iersel, Place Activation Coordinator

5 **File No:** I2021/636

Summary:

The Department of Planning, Industry and Environment (DPIE) recently notified an intention to amend planning legislation relating to agriculture, particularly focussing on tourism uses that might be supplementary to farming.

10 The proposed changes will relate to:

- farm stay accommodation;
- ‘farm gate activities’; and
- ‘farm events’;

on the basis that such uses could provide farmers with a supplementary income.

15 The changes would make it far easier for farmers to carry out these activities, in many cases, as exempt development or complying development.

The exhibition period for these changes closed on 19 April, and staff lodged a submission expressing concern at the nature and extent of change. The submission indicates that Council does not want to be included in the proposed changes until a full review of
20 impacts, intended and unintended, can be completed.

The main concern is that DPIE’s ‘one size fits all’ proposals are not suitable to the Byron context, where the combination of land values and existing rural settlement patterns will result in the raft of changes incentivising non-farming uses rather than supporting farmers to increase their productivity.

25 It is also concerning to note that the DPIE’s proposals appear to be in conflict with a recent options paper, issued by the NSW Agricultural Commissioner (Dept. Primary Industries Agriculture) relating to agricultural land use planning.

30 That options paper stresses the importance of protecting farm land and the right to farm, which could easily be undermined by the DPIE Agritourism proposal, particularly in areas like Byron with ‘tree-changers’ moving into rural areas for lifestyle rather than farming, who would likely prefer to take up a tourist use of the land than a farming use of the land.

As currently proposed, the agritourism proposals will remove / compromise state and regionally significant farmland by stealth.

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Staff have discussed the agritourism proposals with other Northern Rivers Councils, all of whom share our concerns.

5 It is recommended that Council continue to work with our neighbouring Council's, through the Northern Rivers Joint Organisation, and make representations to relevant State members, to achieve improved outcomes for the planned amendments.

NOTE TO COUNCILLORS:

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

RECOMMENDATION:

15 That Council:

1. **Notes the submission lodged with the State Government in relation to proposed planning amendment for agriculture Attachment 1 (#E2021/57181).**
- 20 2. **Notes that the proposed changes to planning legislation as drafted, and if imposed on Byron Shire Council in their current form, will by stealth, significantly impact the future viability of our farm land being used for use agricultural purposes; and our long term capacity to grow our local, valued and recognised agricultural produce sector.**
- 25 3. **Notes that if the proposed changes to planning legislation are imposed in their current form, there is likely to be an increase in requirement for compliance/enforcement on a range of tourism land use activity, the costs for which cannot be recouped by additional application fees.**
- 30 4. **Makes formal representations to the Local Member for Ballina, the Minister for Planning and Public Spaces and the Minister for Agriculture in relation to Council's concerns with the proposed amendments (Attachment 1 #E2021/57181) and those in 2 and 3.**

Attachments:

- 35 1 Planning Amendments for Agriculture - Council Submission, E2021/57181 

Report

DPIE have released an “Explanation of Intended Effect” outlining proposed changes to a variety of planning instruments aimed at “encouraging the growth of emerging industries that are supplementary to, or based on, agriculture”.

5 The changes are aimed at facilitating agritourism, and they involve:

- **Farm stay accommodation** – including changes to the existing definition and provisions to allow certain accommodation to be undertaken as exempt or complying development;
- 10 • **Farm events** – a new definition and provisions for certain events to occur as exempt or complying development; and
- **Farm Gate Activities** – a new definition, which includes processing/sales, restaurants, tasting rooms and the like, and provision for certain activities to occur as exempt or complying development.

15 There are a number of significant concerns regarding the application of these proposed changes to the Byron context. Primarily, staff are of the view that the changes have the strong potential to incentivise non-farming activities, rather than resulting in increased productivity.

Existing rural settlement in the Shire does not reflect a traditional farming pattern. Over 70% of lots within rural zones have an area less than 10ha; with 61% being less than 5ha.

20 As rural land values continue to increase, the ability for farmers to make a viable income from farming continues to be a significant challenge.

25 Providing opportunities for farmers to supplement farming income is a positive. However, the nature and extent of changes proposed raise a series of significant issues that have a real potential to incentivise non-farming commercial uses of rural land to the detriment of farming.

Focussing on increasing tourism does not address farm productivity, and in the Byron context, has the potential for significant environmental and social impacts.

If the changes proceed as proposed, there would be significant levels of activity allowed as exempt development, including:

- 30 • use of land for farm stay accommodation by change of use of an existing dwelling or in tents, caravans or similar;
- use of land for farm gate activities, which can include farm tours, tastings and roadside stalls; and
- use of land for farm events.

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In particular, the farm events use has significant potential for impact, as exempt development can include:

- 52 event days per year for up to 30 guests per event, or 10 event days per year for up to 50 guests per event; and
- 5 • event times up to 11pm Mondays to Thursdays and midnight on Saturdays.

We have seen in this Shire the history of uncontrolled events and the social disturbance that can result.

10 In addition to the exempt provisions, a range of development would be able to occur as complying development, which can be approved by private certifiers or Council. This includes:

- change of use of an existing building or erection of a new building as farm stay accommodation, allowing a maximum of one dwelling per 15ha, up to a maximum of 6 dwellings;
- 15 • erection of new buildings for farm gate activities (which includes restaurant), with a maximum building size of 200m², and a maximum of 50 guests at any one time; and
- change of use of an existing building, or erection of a new building for farm events, with a maximum building size of 200m², and the same event parameters as exempt development.

20 It is clear that, in the Byron context, this 'one size fits all' approach to these uses will result in significant environmental and social impacts. With the exempt and complying provisions, there is, in effect, no opportunity for Council to assess the potential for impacts before they occur.

The resultant activity would significantly increase the compliance/ enforcement resources required, with no opportunity for fees to offset these costs.

25 Importantly, the changes as proposed have no real effect in increasing farm productivity. Tourism may provide additional income for a farmer, but it does not promote farming. In our context, where there are very high tourism demands, the changes will incentivise non-farming activities rather than incentivising farming.

30 It is also concerning to note that the DPIE's proposals appear to be in conflict with a recent options paper, issued by the NSW Agricultural Commissioner (Dept Primary Industries Agriculture) relating to agricultural land use planning.

35 That options paper stresses the importance of protecting farm land and the right to farm, which could easily be undermined by the DPIE Agritourism proposal, particularly in areas like Byron with 'tree-changers' moving into rural areas for lifestyle rather than farming, who would then prefer the high return tourist use.

As currently proposed, the agritourism proposals will remove / compromise state and regionally significant farmland by stealth.

5 **Submissions in response to the State’s position closed 19 April. Council staff lodged a submission (see Attachment 1) expressing these significant concerns and requesting that Council be exempted from the new provisions if they are not substantially changed.**

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	Finalise and commence implementation of the Agriculture Action Plan
Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.3	Manage development through a transparent and efficient assessment process	4.1.3.11	Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps

Legal/Statutory/Policy Considerations

Staff will monitor the results of consultation regarding the proposed planning changes.

10 **Financial Considerations**

If the proposed changes are imposed in their current form, there is likely to be an increase in requirement for compliance/ enforcement, the costs for which cannot be recouped by additional application fees.

Report No. 13.11 PLANNING - s4.55 to Modify Conditions 1 and 6 Landscaping Plan, DA 10.2019.650.2 at 103 Kings Road Federal

Directorate: Sustainable Environment and Economy

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

File No: I2021/638

Proposal:

Modification No: 10.2019.650.2

Proposed modification: S4.55 to Modify Conditions 1 and 6 Landscaping Plan

Original Development: New Dwelling to create Dual Occupancy (Detached)

Type of modification sought:

Property description: LOT: 2 DP: 733182
103 Kings Road FEDERAL

Parcel No/s: 37780

Applicant: Newton Denny Chapelle

Owner: Ranamok Pty Ltd

Zoning: RU2 Rural Landscape / 1(a) (General Rural Zone)

Date received: 25 February 2021

Original DA determination date: 16/04/2020

Public notification or exhibition:

- Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 5/3/21 to 18/3/21

- Submissions received: 3

Issues:

- Public submissions

Summary:

An application has been received under S4.55 to Modify Conditions 1 and 6 Landscaping Plan of DA10.2019.650. The dual occupancy was approved by Council with conditions requiring an earth mound (1.5 m high) and landscaping to screen the proposed driveway from the neighbouring dwelling to the west. Due to the length of the driveway and height of the mound some 1100 cubic metres of soil would need to be excavated and imported to the site. Assuming 10 cubic metres of soil per truck, this would require in excess of 100 truck movements alone to build the mound. The application proposes to delete the earthmound from the landscape plan and to install instead a fence from the corner of the property and down the approved sealed driveway for a suitable length. A condition is to be included requiring the fence to be maintained permanently. The previously approved area of plantings is also proposed to be modified with an area of lawn or grass to be maintained adjacent to neighbouring dwelling.

The proposal is satisfactory having regard to relevant matters for consideration and is considered to be substantially the same development as approved. The Section 4.55 application is recommended for approval subject to modifying conditions 1 and 6 of the consent and inserting relevant conditions to address issues raised in the submissions.

NOTE TO COUNCILLORS:

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

25

RECOMMENDATION:

That pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, Application No. 10.2019.650.2, to Modify Conditions 1 and 6 Landscaping Plan, be approved by modifying Development Consent Number 10.2019.650.1 in accordance with the amended conditions in Attachment 2 (E2021/57319).

Attachments:

- 1 10.2019.650.1 Development Consent and Approved Plans, E2021/57313 
- 2 10.2019.650.2 Modified Conditions of Consent, E2021/57319 
- 3 10.2019.650.2 Proposed Landscape Plan, E2021/57317 
- 4 10.2019.650.2 Submission, E2021/57320 
- 5 10.2019.650.2 1st and 2nd additions to Submission, E2021/57322 

35

Assessment:

History/Background

The site has the following application history:

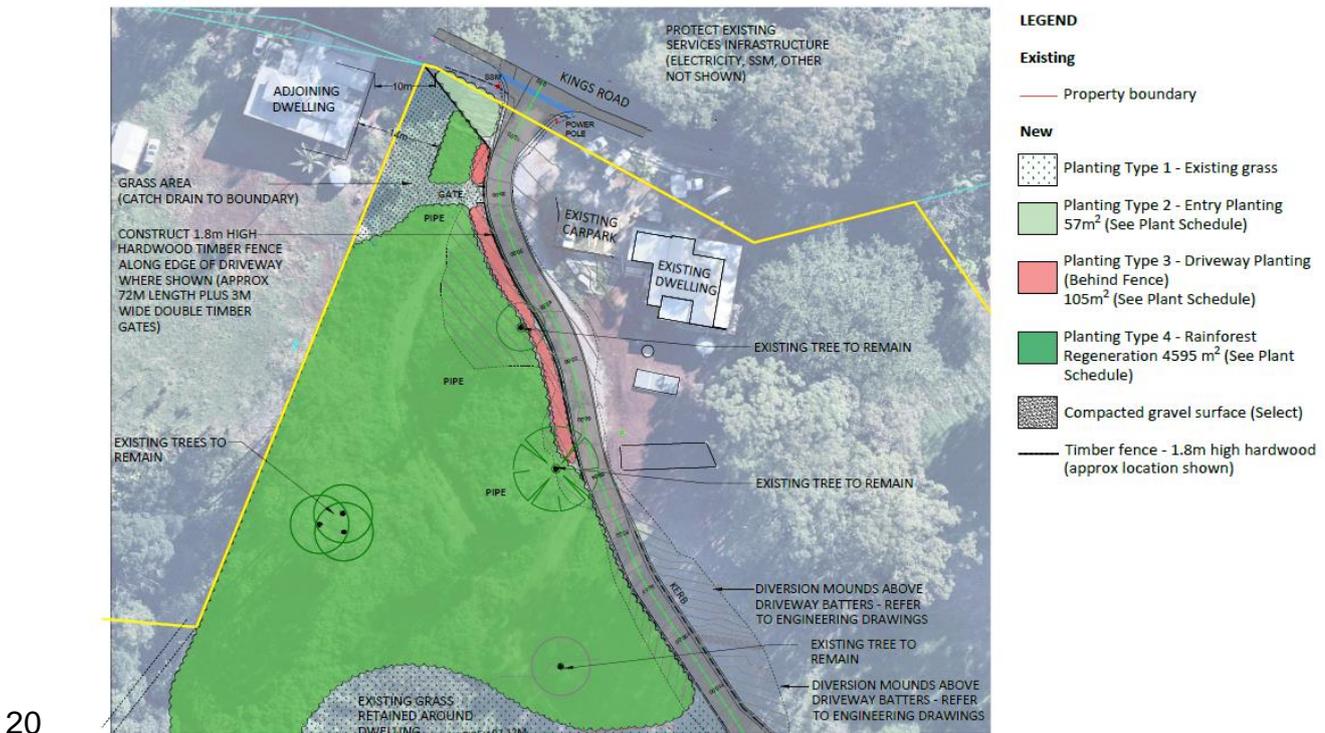
	BA 84/2548	Dwelling	5/10/1984
5	6.1995.2158.1	Rural Shed	19/05/1995
	10.2019.650.1	New dwelling to create dual occupancy (detached)	16/4/2020

Condition 1 of the consent to DA 10.2019.650.1 (Attachment 1) lists the approved plans, including the approved Landscaping Plan. Condition 6 of the consent provides more detailed specifications for the Landscaping Plan.

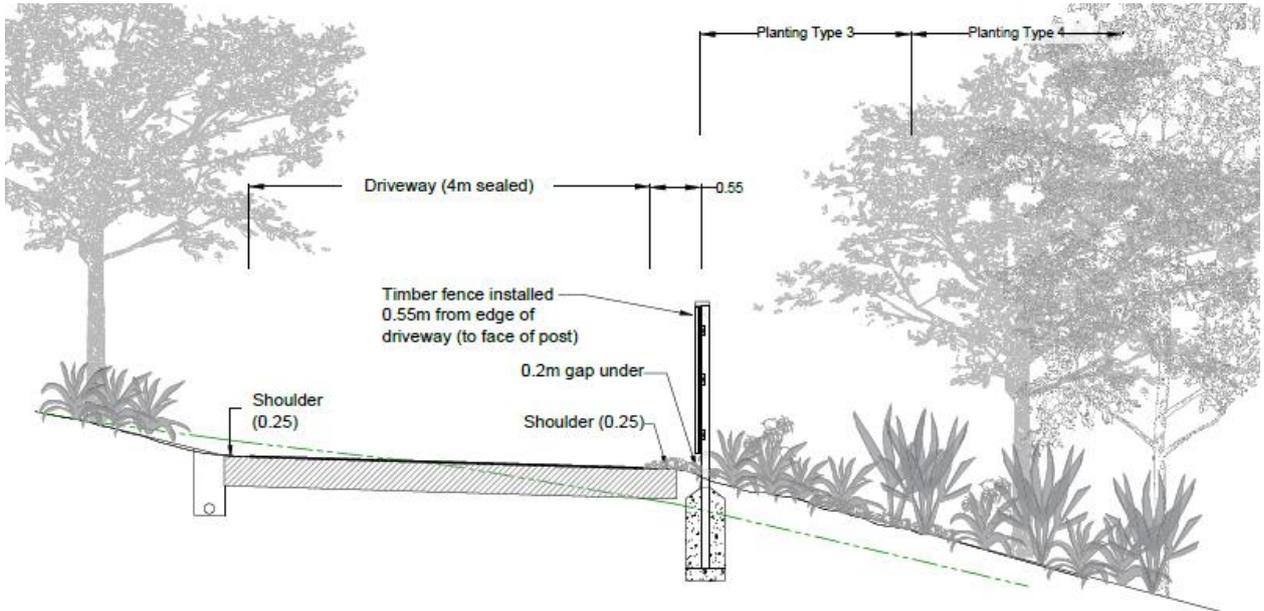
10 Description of the proposal

This application seeks approval under S4.55 to Modify Conditions 1 and 6 Landscaping Plan. The proposed modifications to conditions 1 and 6 (Attachment 2) would replace the reference to the approved Landscaping Plan with the modified Landscape Plan (Attachment 3).

15 The application proposes to delete the earthmound from the landscape plan and to install instead a 1.8 m timber fence from the corner of the property and down the approved sealed driveway to the dwelling currently under construction. The previously approved extensive area of plantings is also proposed to be modified, and it is noted the area adjacent to the neighbours dwelling is to be turfed with grass.



Landscape Plan extract



Photograph is indicative of the general fence style only.

The fence shall be constructed as follows:

- Hardwood timber fence
- 1.8m overall height
- 0.2m gap under fence for drainage
- Lapped and capped construction (without the bottom running board to enable drainage)
- Constructed with straight panel sections.

Proposed Fence Detail Extract

5 Description of the site

Land is legally described as	LOT: 2 DP: 733182
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Property address is	103 Kings Road FEDERAL	
Land is zoned:	RU2 Rural Landscape / 1(a) (General Rural Zone)	
Land area is:	26.29 hectares	
Property is constrained by:	Bush Fire Prone Land	
	Drinking Water Catchment	
	High Environmental Value Vegetation	
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

The site was inspected on 12 March 2021.

A meeting was held at the immediate neighbour's property with the applicant, the neighbour and staff to discuss the proposed amendments.

5

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.

10

1. State/Regional Planning Policies, Instruments, EPA Regulations 2000

The proposed amendments raise no significant issues under relevant State Environmental Planning Policies or the provisions of the Environmental Planning and Assessment Regulation 2000.

2. Byron Local Environmental Plan 2014

The proposed amendments do not generate any additional significant issues in relation to considerations under Byron Local Environmental Plan 2014 that have not been previously addressed in the assessment of the original development application.

5 **3. Draft EPI that is or has been placed on public exhibition and details of which have been notified to the consent authority**

There are no draft environmental planning instruments which significantly affect the proposal.

4. Development Control Plans

10 The proposed amendments do not generate any additional significant issues in relation to considerations under Byron Shire Development Control Plan 2014 that have not been previously addressed in the assessment of the original development application.

15 **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 proposal as modified will not generate any significant impacts on the natural and built environments, or significant social or economic impacts in the locality. It is noted the construction for the proposed fence instead of importing fill and constructing the earth mound should remove the need for approximately heavy 100 truck movements up and down Kings Road, reduce dust and other nuisance issues associated with such a mound (e.g. machinery moving soil around by heavy machinery, bob cats and the like). Further the construction of the fence will not see the need for 1100 m³ of soil having to be exported from a quarry or some other fill source.

25 In terms of noise from vehicles from the dual occupancy dwelling once occupied, there are no specific requirements for an Acoustic Report in terms of mitigating vehicle noise from the dwelling which on average will generate 9 vehicle trips per day. Notwithstanding, it is noted that the proposed fence is likely to be equal to or more effective than the earth mound as originally approved. The 1.8 m fence is to be higher than the 1.5m earthmound and located adjacent to the driveway to the dwelling. The fence is to be appropriately
30 embellished with landscape plantings of native vegetation facing the neighbouring dwelling.

6. The suitability of the site for the development

The site remains suitable for the approved development having regard to the modifications sought by the section 4.55 application.

35 **7. Submissions made in accordance with this Act or the regulations**

The development application was publicly exhibited.

There was 1 objection (Attachment 4) dated 8 April 2021 objecting to the proposal, with 2 further additions to the objection dated 11 April 2021 and 12 April 2021 (Attachment 5).

The issues raised in the initial objection are commented on as follows:

Location of access driveway to the approved dual occupancy dwelling

5 The sealed driveway to the dwelling approved under DA 10.2019.650.1 is shown on the approved plans under the original development consent, as modified to the extent shown on the plans approved under the construction certificate. As the construction of the approved dwelling is not yet completed, the sealing of the driveway is likewise not yet completed. The distance between the sealed driveway:

- 10
1. according to the plans approved under the original development application;
 2. according to the plans approved under the construction certificate; and
 3. according to the plans submitted under the current section 4.55 application;

And the common boundary between the site and the objector's property is measured to be approximately 15m to 16m. On this basis, no change is proposed under the current section 15 4.55 application to the location of the sealed driveway as per the original development consent (inclusive of the construction certificate).

Deposited Plan 1121773 shows the objector's dwelling to be approximately 8m from the same common boundary. The approximate side setback from the common boundary to the dwelling is 8m, to the deck is approximately 4.5m and to the spa is approximately 4m. 20 On this basis, the distance between the sealed driveway and the objector's dwelling would be an estimated 23m and 19m to the deck and spa. No change is proposed in this regard under the section 4.55 application.

The proposal is not for the relocation of the approved driveway whether to the eastern side of the existing dwelling on the site or the neighbouring property at 93 Kings Road further to 25 the north east.

Noise & Reverberation

Council's Environmental Health Officer raised no concerns with the proposed modifications in relation to noise or reverberation, and for a development that generated only 9 trips per day there are no specific requirements for a noise report for this development. Further the 30 construction of the proposed fence will have a smaller impact compared to the importation of fill and construction of the earth mound as originally approved.

Dust and Fumes

The driveway is to be sealed and dust from the driveway is not an issue. No additional traffic will be generated from the change to a fence from an earthmound once constructed. 35 However, as discussed above there will be a reduction in trucks and machinery generating dust during construction of the fence as opposed to the earthmound.

Fumes from the vehicle movements associated with a single dwelling as approved are not assessed as having a significant impact in terms of air quality. It is noted the neighbours dwelling is some 23 metres from the driveway.

40 **Visual nuisance**

Proposed plantings adjacent to the fence facing the neighbours dwelling will reduce any impacts of the subject fence. The following is proposed:

PLANTING TYPE 3 - DRIVEWAY PLANTING				
<i>(Area to be planted - 105m²) This planting applies to the rear of the fence and will be seen upon fence removal.</i>				
Scientific Name	Common Name	Est Mature Ht	Min Stock Size	Qty
Understorey				
Alocasia brisbanesis	Cunjevoi	1.2m	Native tube	15
Alpinia caerulea	Native ginger	1.5m	Native tube	20
Cordyline petiolaris	Broad leaved palm lilly	5m	Native tube	15
Cordyline rubra (true form)	Red-fruited palm lilly	2m	Native tube	15
Cordyline stricta	Narrow-leaved palm lily	5m	Native tube	15
Dianella caerulea	Blue flax lilly	0.4m	Native tube	40
Lepodozamia peroffskyana	Burrawang	1.5m	140mm pot	15
Lomandra hystrix	Matt rush	1.2m	Native tube	100

Mature Heights are an estimate only based upon the predicted growth with respect to the site conditions and context. Mature heights may vary with rainfall, maintenance and due to other factors.

Ways to reduce the earthmound fill – e.g. retaining walls

5 The alternatives suggested by the objector to reduce the amount of fill required are noted; however the application proposes no earthmound, no fill and no retaining walls. The fence as proposed is considered a suitable alternative.

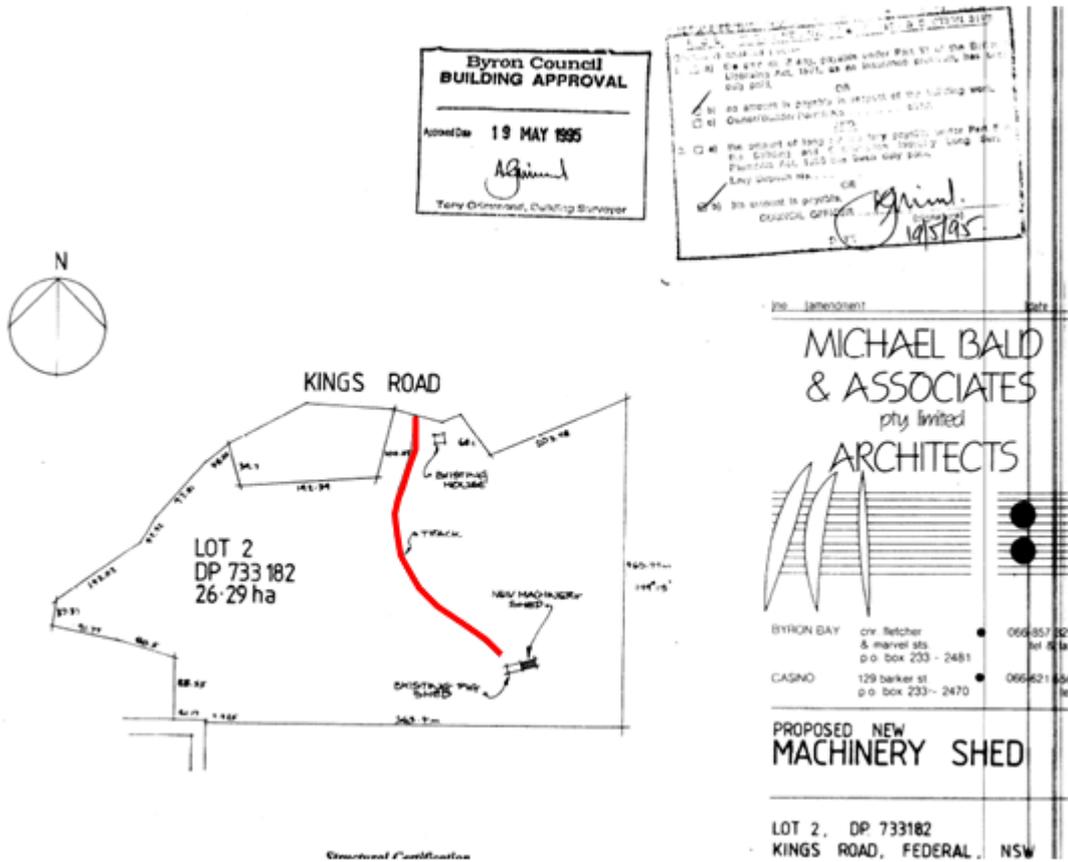
New gate and access near our bedroom

10 The plans submitted in support of the section 4.55 application show in the vicinity of the objector’s dwelling, an area of grass or turf between the boundary and the proposed fence and driveway. There is a gate proposed in the fence to provide access to the area. The application does not propose the use of the grass area as overflow car parking. The applicant could potentially plant the area out with trees and shrubs but has left it as a lawn turf area. It is not unreasonable that a gate be located in the fence to get access to the land between the fence and the neighbours boundary for maintenance and mowing purposes.

15 At the time of inspection there was a pile of timber and tree trunks adjacent to the boundary. This will need to be removed to enable the landscaping works including the grass area to be completed.

Additional vehicle movements

20 The driveway accesses a shed and the remainder of the property on the farm. The property is utilised for forest plantation purposes with an approved Plantation Plan in place. It should not be unexpected that the landowner will seek to access the property by this driveway from time to time to carry out other activities on the property. It is noted BA6.1995.2158.1 for a shed on the property shows an a farm track in this general location between the existing dwelling and the neighbours property to the west linking with Kings
25 Road. An extract from the approved plans is provided below. The track has been marked in red for identification purposes.



Approved Plan Extract – Internal track to shed from Kings Road marked up in red

5 The current consent now requires that driveway to be sealed. Should the owner of the property carry out additional activities on the land or in the new dwelling which require development consent which has not been obtained, then such matters can be raised with Council to investigate and take action if required.

Farm Track adjacent to boundary

10 An existing farm track closer to the neighbours dwelling will be planted out with rainforest vegetation as indicated on the proposed landscape plan. The schedule below shows the plants to be planted in this area. The track once planted out will be unusable for vehicle movements.

PLANTING TYPE 4 - RAINFOREST REGENERATION
 (Area to be planted - 4595m²)
 Do not plant tree species within 2m of the pipes near the driveway. Quantities are based upon trees at 1.8m spacings (1 plant / 3.24 m²).

Scientific Name	Common Name	Est Mature Ht	Min Stock Size	Qty
Canopy Species				
<i>Acmena ingens</i>	Red apple	20m	Native tube	30
<i>Akania bidwillii</i>	Turnipwood	20m	Native tube	30
<i>Alphitonia excelsa</i>	Red ash	12m	Native tube	55
<i>Arytera distylis</i>	Twin leaved coogera	20m	Native tube	30
<i>Argyrodendron actinophyllum</i>	Black booyong	30m+	Native tube	10
<i>Baloghia inophylla</i>	Brush bloodwood	25m	Native tube	20
<i>Castanospermum australe</i>	Black bean	30m+	Native tube	10
<i>Cinnamomum virens</i>	Red barked sassafras	15m	Native tube	40
<i>Commersonia bartramia</i>	Brown kurrajong	10m	Native tube	60
<i>Cupaniopsis parvifolia</i>	Small leaf tuckeroo	10m	Native tube	45
<i>Cryptocarya glaucescens</i>	Jackwood	15m	Native tube	45
<i>Cryptocarya obovata</i>	Pepperberry	30m+	Native tube	5
<i>Diospyros australis</i>	Black plum	8m	Native tube	50
<i>Diploglottis australis</i>	Native tamarind	12m	Native tube	40
<i>Diploglottis campbellii</i>	Small leaved tamarind	8m	Native tube	45
<i>Doryphora sassafras</i>	Sassafras	25m	Native tube	25
<i>Dysoxylon fraserianum</i>	Rosewood	30m+	Native tube	10
<i>Elaeocarpus grandis</i>	Blue quandong	20m+	Native tube	20
<i>Endiandra pubens</i>	Hairy walnut	10-15m	Native tube	40
<i>Ficus fraseri</i>	Sandpaper fig	8-10m	Native tube	60
<i>Geissois benthamiana</i>	Red carabeen	30m	Native tube	20
<i>Gmelina leichhardtii</i>	White beech	15m	Native tube	35
<i>Guioa semiglauca</i>	Guioa	10m	Native tube	60
<i>Heritiera actinophylla</i>	Black booyong	30m	Native tube	5
<i>Heritiera trifoliolata</i>	White booyong	30m+	Native tube	5
<i>Homalanthus populifolius</i>	Bleeding heart	8m	Native tube	55
<i>Hymenosporum flavum</i>	Native frangipani	10m	Native tube	55
<i>Litsea australis</i>	Brown bolly gum	12-15m	Native tube	40
<i>Lophostemon confertus</i>	Brush box	20m	Native tube	50
<i>Macaranga tanarius</i>	Macaranga	10m	Native tube	60
<i>Mallotus discolor</i>	Yellow Kamala	10m	Native tube	56
<i>Notelaea johnsonii</i>	Veinless mock olive	6m	Native tube	40
<i>Polyscia elegans</i>	Celerywood	8m	Native tube	50
<i>Rhodamnia rubescens</i>	Scrub turpentine	15m	Native tube	35
<i>Sarcopteryx stipata</i>	Steelwood	10m	Native tube	40
<i>Sloanea woollsii</i>	Yellow carabeen	30m+	Native tube	8
<i>Syzygium australe</i>	Scrub cherry	10-20m	Native tube	40
<i>Syzygium crebrinerve</i>	Purple cherry	15-25m	Native tube	20
<i>Syzygium corynanthum</i>	Sour cherry	10-20m	Native tube	20
<i>Syzygium smithii</i>	Common lilly pillly	6-12m	Native tube	40
<i>Toona ciliata</i>	Red cedar	30m+	Native tube	15

(blue denotes early succession plant species which will establish the quickest)

Earthmound versus fence

5 The applicant has proposed a 1.8 m high timber lap and cap hardwood paling fence. The fence has a 0.2 m gap at the bottom to enable water from the driveway to drain away. The proposal was considered by Councils Environmental Health Officer as acceptable, noting the number of vehicles generated by the development on average per day (i.e. nine).

Length of fence in adequate

10 The submitted landscape plan shows that the proposed fence starts at the north western corner of the site with the neighbours boundary at the road reserve, extends across to the driveway, then follows the western side of the driveway for a distance of some 65 metres. The fence is considered an appropriate length having regard to the number of vehicles per day. Conditions recommended regarding the fence to be maintained at all times and not removed.

Use of top west corner

5 The application proposes to change the landscaping in the north western corner of the site near the objector's dwelling from planting throughout to 3 different planting types and a grass area. The application describes the grass area as an asset protection zone to the objector's dwelling. This contrasts with the original approved landscape plan which does not provide an asset protection zone to the objector's dwelling, but potential plantings of Bangalow Palms, Pencil Cedars, Brown Currajongs, Lilli Pillies and "other native landscape plants"

10 Compared to the approved landscape plan, the grass area shown on the proposed plan provides for a more favourable outcome to the neighbour's in terms of no trees planted in this location which may overshadow the dwelling or present as a bushfire risk to the neighbours dwelling in the future.

Landscaping around approved dwelling and carport

15 Council's GIS shows a distance between the objector's and the approved dwelling of approximately 110m. The gravel area referred to in the objection is approximately 8m wide in the front northern side of the approved dwelling, hence it is likely to be around 100m from the objector's dwelling. The approved dwelling is provided with sufficient space for the parking of vehicles to meet the minimum requirements of Council's Development Control Plan. Council raises no objection to the provision of this gravel area as part of the landscaping of the dwelling house and for the parking of vehicles on.

20 Council notes that the landscape plans show a car port, but no detail has been provided for the structure. The applicant has advised that this will be carried out under a further approval if not exempt de elopement under SEPP (exempt and complying development Codes) 2008. The plans to be marked up showing the car port not approved under this DA.

Removal of timber boundary fence

30 The approved landscape plan showed a timber fence on the common boundary near the objector's dwelling. This fence is not shown on the submitted landscape plan. No objections have been raised by Council's Environmental Health Officer in relation to the deletion of that fence having regard to noise or reverberation impact reasons, or by Council's Natural Resource Planner with respect to weed control reasons.

Over time, the proposed plantings will provide visual softening.

Department of Primary Industry House Buffers

35 The subject property has a Plantation Plan approval from NSW Primary Industries. Condition 5 of the development consent requires the Plantation Plan to be amended to reflect the proposed dwellings and any associated house buffers. The Applicant is required to ensure that the proposal does not conflict with the plantation requirements. In the event there is a breach of that Plantation Plan then the neighbour can direct those concerns to the Department of Primary Industries being the appropriate authority in that regard.

40 **View loss**

The proposed plantings as amended will enhance the vegetated outlook, and the proposed modifications will not have a significantly detrimental impact on views in this location.

Bush fire safety map

5 The bush fire safety map provided by the objector, which is taken from the NSW Planning Portal, has not yet been gazetted by the NSW Rural Fire Service. Notwithstanding the proposed map and the existing bushfire maps are near identical and have no bearing on the application.

Compromise alternatives 1 and 2

The objector's offered compromise 1, being a 30m length of 1.5m high earthmound at the top of the driveway then a shorter length of 1.8m high lapped and capped timber fence is not the proposal.

10 The objector's offered compromise 2, being no earthmound but instead fence mitigation, no gaps or cracks, from the entry point to access "C" is not the proposal.

The proposal as submitted by the Applicant in support of their application causes no significant environmental impact.

Only objector

15 The application was publicly notified and only 1 submission plus the two addendum submissions to this were received.

Not substantially the same development and not minimal environmental impact

20 The approved development was essentially for a dwelling to be added to the site. No change is proposed to the approved dwelling. The amendments to the landscaping and replacement of the earth mound with the proposed fence are considered to be minor having regards to the totality of the development. It is considered the proposed development is substantially the same and generates minimal environmental impacts (in some cases less with reduced truck movements to construct the earthmound as discussed above)

25 It is appropriate to utilise the provisions of section 4.55(1A) of the Environmental Planning and Assessment 1979 to approve the application for the proposed modifications.

Condition 38 and all other conditions of the development consent remain the same

30 The application only proposes modifications to conditions 1 and 6 as described in the Attachment 3 to this report. No changes are proposed to condition 38 of the consent which requires the removal and re-siting of the existing fence currently sited in the road reserve of Kings Road. The fence still needs to be resited as per the condition.

Change have been made to the parking area in front of the existing dwelling

35 The applicant has advised the front of the existing dwelling is being landscaped at present. The existing dwelling has two spaces within a garage/ car port facing Kings Road. Access to the garage/ car port is from the single driveway as approved by this development application. An additional condition of consent is recommended requiring that the garage/ car port be used for parking of resident vehicles associated with this dwelling house.

8. Public interest

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

BYRON SHIRE COUNCIL

9. DEVELOPER CONTRIBUTIONS/ WATER AND SEWER CHARGES

There is no nexus to levy additional contributions.

10. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

5

11. CONCLUSION

10 The proposed amendments to Modify Conditions 1 and 6 relating to the Landscaping Plan are considered satisfactory having regard to relevant matters for consideration. Additional conditions have been recommended addressing neighbours concerns that residents will park next to their house. In terms of replacing the earthmound with the fence and associated landscaping, the fence is considered an appropriate alternative and removes the need for significant earthworks to occur to source the soil, truck movements to bring the soil to the site (over 100) and then noise and dust associated with machinery to actually construct, shape and form up the earthmound. The proposal is considered to be 15 substantially the same development and the Section 4.55 Application is recommended for approval.

**Report No. 13.12 PLANNING - Report of the 8 April 2021
Planning Review Committee**

Directorate: Sustainable Environment and Economy

5 **Report Author:** Chris Larkin, Manager Sustainable Development
Noreen Scott, EA Sustainable Environment and Economy

File No: I2021/642

Summary:

This report provides the outcome of the Planning Review Committee (PRC) held on 8 April 2021.

10 **NOTE TO COUNCILLORS:**

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

RECOMMENDATION:

20 **That Council endorses the outcomes of the Planning Review Committee meeting held on 8 April 2021.**

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.12

Report

The Planning Review Committee meeting was held on 8 April 2021. The meeting commenced at 1:30pm and concluded at 2:00pm.

Councillors: Hunter, Lyon, Hackett, Martin

5 Apologies: None

Staff: Chris Larkin (Manager Sustainable Development)

The following development application was reviewed with the outcome shown in the final column.

DA No.	Applicant	Property Address	Proposal	Exhibition /submissions	Reason/s Outcome
10.2021.62.1	M Walker Town Planning	44 Benloro Lane Myocum	Dual Occupancy (Detached) including addition of expanded house habitable outbuilding to the existing dwelling, and New Dwelling & Studio	Level 1 12/2/21 to 25/2/21 No submissions	Staff Delegation

Report No. 13.13 Byron Music Festival 2021 - Use of Dening Park

Directorate: Sustainable Environment and Economy

5 **Report Author:** Rob van Iersel, Place Activation Coordinator
Alice Heasman, Events Officer

File No: I2021/709

Summary:

Council considered a report at the Ordinary meeting of 25 February 2021 on the proposal to use Dening Park for the 2021 Byron Music Festival.

10 Council resolved (**Res 21-040**):

1. *That Council grants a temporary licence in accordance with section 2.20 of the Crown Land Management Act for the purpose of Entertainment, Exhibition and Markets to the Byron Music Festival between Friday 18 June 2021 and Monday 21 June 2021 for occupation of Dening Park.*
- 15 2. *That the granting of the temporary licence be subject to receipt and favourable assessment of a full Event Application including:*
 - a) *management of environmental risks on the site with consideration to the dune areas*
 - b) *financial structure and management of the event.*

20 Event organisers have provided further information addressing the points in Council's resolution.

The key issue of concern relates to the current beach erosion in this area and the potential for event activities to impact on dune stability.

25 All event infrastructure is located at least 10m from the timber fencing separating the park area from the vegetated dunes, with access to that area restricted. A condition is recommended to increase the width of that restricted area by having market stalls front the existing pathway.

30 Safety web fencing is proposed to be attached to the existing timber fencing for the whole length of the event site, preventing event patrons accessing the dunes (including closing the existing access points for the day of the event). Security will be employed to monitor the beach, to prevent people access the event site from the beach itself.

The event use of Dening Park will be for one day only.

Other conditions are recommended to further mitigate any risk.

BYRON SHIRE COUNCIL

It is recommended that the licence to use Dening Park be granted subject to the conditions limiting impact on the dune edge.

5

RECOMMENDATION:

10 **That Council grants a temporary licence in accordance with section 2.20 of the Crown Land Management Act for the purpose Entertainment, Exhibition and Markets to the Byron Music Festival for Saturday 19 June 2021 for occupation of Dening Park, subject to:**

1. **All market stalls on the beachside of the existing pathway to be moved back, a minimum of 10m from the timber fence, inline with the pathway, with the area between the back of stalls and the timber fencing to be back of house only, with no general public access;**
- 15 2. **Market stalls requiring vehicles integral to stall operation, are to be located on the south side of the path;**
3. **The proposed 'world stage' is to be relocated away from the dune edge to the south side of the path.**

Attachments:

20

- 1 Draft Event Site Map - Byron Music Festival, E2021/62136 
- 2 Byron Music Festival -Draft Statement of Environmental Effects and Security Plan, E2021/62135 

25

Report

Byron Music Festival is a three-day community event held in multiple venues throughout the Byron Bay town centre, to be held on 18-20 June 2021. The organisers of the festival have applied for a temporary licence to occupy parts of Denning Park, Byron Bay on Saturday 19 June 2021, for the festival activities.

The Denning Park activities would include live music, keynote speakers, market/ food stalls and busking activities. Organisers are anticipating around 3,000 attendees (subject to COVID-19 public health orders).

In order for the event to be COVID-safe, the Denning park event site would need to be fenced and ticketed. To meet this requirement, event organisers will charge a nominal entry fee (\$25) to cover the administrative and operational costs associated with ticketing the event.

The area proposed for use and the fencing proposed for that use is shown in **Attachment 1**.

Council considered a report on the festival at the Ordinary Meeting of 25 February 2021 and resolved (**Res 21-040**):

1. *That Council grants a temporary licence in accordance with section 2.20 of the Crown Land Management Act for the purpose of Entertainment, Exhibition and Markets to the Byron Music Festival between Friday 18 June 2021 and Monday 21 June 2021 for occupation of Denning Park.*
2. *That the granting of the temporary licence be subject to receipt and favourable assessment of a full Event Application including:*
 - a) *management of environmental risks on the site with consideration to the dune areas*
 - b) *financial structure and management of the event.*

Event organisers have addressed the points in the resolution and provided a number of supporting documents, contained in **Attachment 2**.

Environmental Management:

The main issue relates to the current and ongoing deterioration of the Byron foreshore. The beach is currently heavily eroded with a severely depleted beach profile, vulnerable to further erosion of the back-beach escarpment under small wave conditions and/or high tides.

For the beach in front of Denning Park, there is no dune buffer to withstand any kind of storm/wave event, with the most vulnerable area currently located around the surf club. Erosion cell has recently moved westward in the compartment past the JSPW however, beach levels are low and the area is susceptible to further erosion of the present very

steep escarpments. The area from the Surf Club to the Children's Playground is the most vulnerable extent of the Crown Reserve related to the dune width.

- 5 The width of the dune in some locations is only 5-7m between the landward fencing and the steep escarpment. The dune is currently at risk and we want minimal people on or in close proximity to it as possible. Significant loading of the area may cause further dune slope instability or failure.

The erosion escarpment is currently approx. 7m seaward of the timber fence. An area of around 5-10m back from this erosion escarpment is the most vulnerable, where activities creating a potential for further slumping of the dune.

- 10 While it is not possible to be exact, within the event area, the strip of land 5-10m in from the timber fence is the most vulnerable.

The event organisers propose to use plastic web fencing attached to the existing timber fencing along the full length of the event site. This will include fencing to temporarily close existing beach access points within the event area.

- 15 There are five (5) formal beach access points within the proposed event area. Currently, only two of the access points are open for use (located closest to the surf club), with the remainder closed due to erosion.

- 20 These two access points would be closed to the public during the one-day event, by the safety fencing, with security personnel employed specifically to prevent its use from the beach side.

The main beach access in front of the surf club will remain open during the event, with no event infrastructure in that area.

The fencing and security will mitigate the risk of people walking through the dune vegetation.

- 25 As shown in the Event Map (Attachment 1), market stalls are proposed to be located along a substantial length of the dune edge, with stalls proposed to be a minimum of 10m away from the fence. The area between the fence and the stalls will be restricted to 'back of house' use only, and will not be accessible by the event patrons.

This limits the infrastructure, activities and people within the most vulnerable location.

- 30 This protection can be increased by requiring market stalls to be moved further away from the dune edge, to front the existing pathway, which would double the width 'back of house' protected area for a significant length.

- 35 It is also recommended that any market stalls which require a vehicle in the 'back of house' area (e.g. food vans) to be located on the southern market area, well away from the dune edge.

A stage area proposed to be located next to the timber fence to the east of the market stalls will also be relocated to the south of the existing path, well away from the dune edge.

BYRON SHIRE COUNCIL

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These measures will minimise structures, activities and people close to the vulnerable area and successfully mitigate risk of slumping.

- 5 The event will be for one (1) day only. Given the above, and that the impact on the vulnerable dune area can be minimised, it is recommended that the event go ahead, subject to the adjustments described in the report and conditions on the application.

Financial Structure and Management of the Event

The event is primarily funded through sponsorship. For the one-day event at Denning Park, site fencing and ticketing is required in order to comply with COVID-19 public health orders.

- 10 The ticket price (\$25) covers to administration required for the fencing and ticketing.

The event organisers are aware that corporate advertising is not allowed on the site.

Key issues

- 15 As discussed above, the current vulnerable state of the beachfront is the key issue of concern. The event organisers have addressed the risks by preventing access across the dunes, moving infrastructure away from the fenced dune edge and restricting public access from the 'back of house'; areas between stalls and the fence.

The conditions recommended above will further mitigate risk.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.1	Support and encourage our vibrant culture and creativity	2.1.1	Support a range of inclusive events that encourage broad community participation and promote social inclusion	2.1.1.1	Support innovative and flexible delivery of community events and initiatives

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Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.1	Support and encourage our vibrant culture and creativity	2.1.2	Provide meaningful and inclusive opportunities for volunteering	2.1.2.1	Partner with community organisations to develop coordinated spontaneous volunteering processes
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.1	Support and encourage our vibrant culture and creativity	2.1.7	Support range of existing, emerging and major events	2.1.7.1	Continue to support event organisers in the delivery of a range of events
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.1	Support and encourage our vibrant culture and creativity	2.1.7	Support range of existing, emerging and major events	2.1.7.3	Administer licences for weddings, events, activities and filming on council and crown land
Community Objective 4: We manage growth and change responsibly	4.4	Support tourism and events that reflect our culture and lifestyle	4.4.1	Build a tourism industry that delivers local and regional benefits in line with the community's values	4.4.1.2	Continue to lead, build and strengthen strategic tourism partnerships

Recent Resolutions

Res 21-040, 25 February 2021:

- 5 1. That Council grants a temporary licence in accordance with section 2.20 of the Crown Land Management Act for the purpose of Entertainment, Exhibition and Markets to the Byron Music Festival between Friday 18 June 2021 and Monday 21 June 2021 for occupation of Denning Park.
- 10 2. That the granting of the temporary licence be subject to receipt and favourable assessment of a full Event Application including:
 - a) management of environmental risks on the site with consideration to the dune areas
 - b) financial structure and management of the event.

Legal/Statutory/Policy Considerations

Council is able to approve a licence for the event in accordance with the Crown Land Management Regulation 2018, and Byron Shire Council Policy 5.52 *Commercial Activities on Coastal and Riparian Crown Reserves*.

5 Financial Considerations

No cost to Council.

Byron Music Festival would be charged the adopted fee for a Commercial Temporary Activity, which is currently \$244 for the application fee and \$341 per day (for 1 to 7 days) for the licence fee.

- 10 Additionally, event organisers will be charged fees in accordance with Council's adopted Fees and Charges for their Traffic Control Plan assessment (if required), waste management, Occupation Certificate (if required), site inspection/s (if required), and any relevant building or health inspections.

- 15 In the assessment of the event application a bond for any clean up and/or remediation of Denning Park will be considered and negotiated with the event organisers.

Consultation and Engagement

Council staff have reviewed the event application, particularly in relation to the environmental risks.

Report No. 13.14 Proposed Housing Diversity State Environmental Planning Policy (SEPP) Confirmation of Council's position on Boarding Houses in the R2 Low Density Residential Zone

5

Directorate: Sustainable Environment and Economy

Report Author: Shannon Burt, Director Sustainable Environment and Economy

File No: I2021/727

10 The Department Planning Industry and Environment (DPIE) recently advised Council that it is working towards the notification of a new Housing SEPP by the middle of the year.

This new Housing SEPP will include certain changes to the current planning controls. One of the changes proposed is to no longer mandate *boarding houses* as a permissible use in the R2 Low Density Residential zone (R2 zone).

15 This change would have the effect of removing the land use term *boarding houses* as a permitted use from the R2 zone for all standard instrument LEPs.

The DPIE is seeking to ensure that all councils wishing to allow *boarding houses* in their R2 zone can continue to do so, without the need for a separate planning proposal after the new Housing SEPP is made.

20 The Byron LEP 2014 includes *boarding houses* as permissible with consent in the R2 zone.

Confirmation is sought on whether Council would like to retain *boarding houses* as a permissible use in the R2 zone or not.

Council has been given until 13 May 2021 to respond to the DPIE otherwise their default position will apply.

25

RECOMMENDATION:

30 **That Council retains *boarding houses* as a permissible use in the R2 Low Density Residential zone of Byron Local Environmental Plan 2014, and notify the Department of Planning Industry and Environment accordingly.**

Attachments:

- 1 Submission: to Department of Planning, Industry and Environment on the Explanation of intended effects for a new Housing Diversity SEPP Sept 2020, E2020/71559 

Report

Last year the DPIE exhibited an Explanation of Intended Effect (EIE) for a proposed new Housing Diversity State Environmental Planning Policy (Housing Diversity SEPP).

<https://www.planningportal.nsw.gov.au/proposed-new-housing-diversity-sepp>

5 Staff made a submission to the EIE.

The DPIE has recently advised Council that it is working towards the notification of a new Housing SEPP by the middle of the year.

10 The new Housing SEPP will include certain changes to current planning controls. One of the changes is to no longer mandate *boarding houses* as a permissible use in the R2 Low Density Residential zone (R2 zone).

If the proposed change is adopted, it would have the effect of removing the land use term *boarding houses* as a permitted use from the R2 zone for all standard instrument LEPs.

15 The DPIE is seeking to ensure that all councils wishing to allow *boarding houses* in their R2 zone can continue to do so, without the need for a separate planning proposal after the proposed new Housing SEPP is made.

Confirmation is sought on whether Council would like to continue permitting *boarding houses* in the R2 zone or not.

20 There have been submissions and petitions about infill development under the Affordable Rental Housing (ARH)SEPP presented to Council for consideration; and more recently objections to a new generation *boarding house* development at Brunswick Heads which have highlighted the divergent views in the community on infill housing such as *boarding houses*.

Council has until 13 May 2021 to respond to the DPIE otherwise their default position will apply.

25 Key issues

The existing provisions under the ARHSEPP can be viewed here:

<https://www.planning.nsw.gov.au/-/media/Files/DPE/Factsheets-and-faqs/fact-sheet-sepp-affordable-rental-housing-boarding-houses-2019-02-28.pdf?la=en>

30 The EIE as exhibited included proposed updates to some of the provisions for *Boarding houses* in the SEPP for discussion:

- **The *boarding house* definition to be amended to require *boarding house* development to be affordable**

Boarding houses required to be 'affordable housing' and managed by community housing providers (CHPs). The NSW Government has also asked for feedback from key

stakeholders on whether the affordable housing restriction for new *boarding houses* should remain in place in perpetuity or be limited to a 10-year period only.

- **Boarding house development not be mandated in the R2 Low Density Residential Zone**

5 *Boarding houses* no longer mandated as a permissible use in the R2 Low Density Residential zone. Note however that the permissibility of *boarding houses* on government owned land will remain regardless of the LEP provisions.

- **Proposed 20% FSR bonus for *boarding house* development**

10 The floor space ratio (FSR) bonus for *boarding houses* in zones where residential flat buildings (RFBs) are permitted to be set at a flat rate of 20%.

- **Car parking**

No changes to the current rates set under the ARH SEPP.

15 A non-discretionary parking requirement of 0.5 spaces per *boarding house* room or 0.2 spaces per room where the *boarding house* is delivered by a social housing provider is to be retained. The car parking rate is a standard that cannot be used to refuse consent.

Matters for consideration if *boarding houses* are retained as permissible in the R2 zone

- No change to permissibility. The Byron LEP 2014 currently includes *boarding houses* as permissible with consent in the R2 zone.
- 20 • In February 2019 the ARHSEPP was amended so *boarding houses* are limited to 12 boarding rooms per site within the R2 Low Density Residential.
- Allowing a *boarding house* with up to 12 bedrooms could be considered out of scale with the low-density character of the R2 zone (in particular on lots with an area of less than 1000m²).
- 25 • The 20 % flat FSR bonus will not apply. RFBs not permitted in the R2 zone.
- In June 2018, the ARHSEPP was amended so car parking standards were increased for *boarding houses*.
- 30 • Car parking standards for *boarding houses*, except where provided by a Social Housing Provider, are now 0.5 spaces per room in all locations. This standard is contained at Clause 29(2) (e) of the ARHSEPP, and remains a 'standard which cannot be used to refuse consent'. This means councils cannot refuse a *boarding house* proposal if it meets this standard, but that they may consider a lower car parking rate if appropriate.
- 35 • The former car parking rates of 0.2 spaces per room in accessible areas, and 0.4 spaces in non-accessible areas will continue to apply where *boarding houses* are developed by or on behalf of a Social Housing Provider, as defined in the ARHSEPP. This is based on feedback received during the exhibition that Social Housing Providers should be supported in providing *boarding houses* for lower income earners and other groups.
- 40 • No changes proposed to the car parking rates for *boarding houses*.

- Lack of on site car parking, traffic generation and limited public transport continue to be the main cause of community concern for infill development such as *boarding houses*.

5 *Boarding houses/ new generation boarding houses* are now part of the wider housing typology spectrum. They provide a place to live for those that don't need a lot of space typically young professionals, students and older single persons.

Further it is noted that Council has only approved a limited number of *boarding houses* in the residential zones over the past decade (less than 5), and more recently a *new age boarding house* in the neighbourhood business zone at Brunswick Heads.

10 It is submitted they are not a form of residential accommodation that is being oversupplied in the Shire by social housing providers or the private sector.

Based on the above, it is recommended that *boarding houses* be retained as a permissible use in the R2 zone in Byron LEP 2014.

Strategic Considerations

15 Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action
Community Objective 4: We manage growth and change responsibly	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

As discussed in the report.

Financial Considerations

Not applicable.

20 Consultation and Engagement

This report is presented to Council in response to a request from the DPIE.

There have been submissions and petitions presented to Council recently about development under the ARH SEPP.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.15 Byron Bay Bypass Project Closeout

Directorate: Infrastructure Services

5 **Report Author:** Joshua Winter, Civil Engineer

File No: I2021/609

Summary:

10 The Byron Bay Bypass is now open to traffic after many months of construction and years of planning. The feedback from the community has been generally positive and has already shown a significant improvement in traffic flow through town. The construction of the bypass was not without difficulties, which are discussed in this report along with some potential ways to mitigate those on future construction projects.

15 The purpose of this report is to provide a brief history of the project, summarise the key issues experienced throughout the project including some key learnings, and advise Council of the final financial position including the cost overruns that Council resolved to fund via loan borrowings as part of the 31 December 2020 Quarterly Budget Review.

20 **RECOMMENDATION:**

1. That Council notes the lessons learnt on the Byron Bay Bypass project.
2. That staff consider these lessons when implementing future projects.
3. That Council formally authorises the borrowing of \$1,750,000 to fund additional expenditure associated with the Byron Bay Bypass Project.
- 25 4. That Council authorises the General Manager to accept loan borrowing terms offered to Council that represents the best financial outcome amongst any loan offers received.
5. That Council authorises the affixing of the Council Seal to any documents to execute the loan borrowings outlined in this report.

30

Report

5 The Byron Bay Bypass has been in the planning for over 30 years, with Council's 1988 LEP identifying road reserve extending south on Butler Street which was ultimately chosen as the preferred route. Throughout this time, there were a number of concept designs, routes and environmental reports prepared, with the planning of the final design and the constructed route commencing in approximately 2014.

10 The project required an extensive environmental impact statement (EIS) that guided the design and environmental approvals required for the project. As part of the project, Council was required to establish sites under the NSW Biodiversity Banking and Offsets Scheme (Biobanking) to offset the environmental impact to flora and fauna in the project footprint. These sites were established at Lilli Pilli to the south of the site and Wallum Place to the northwest of the site.

15 The Biobanking agreements at these locations ensure that 44.8 hectares of land are protected in perpetuity, with active management currently being undertaken at Lilli Pilli (with all environmental credits retired) and passive management at Wallum Place, due to only around 5% of the credits at this site having been retired. The retirement of credits governed by the Biobanking scheme is managed by NSW Department of Planning, Industry and Environment.

20 Further to the requirement for Biobanking, Council has allocated funding to undertake further bush regeneration and works in three areas around the proximity of the project footprint, that were investigated and either had a likelihood of containing Mitchell's Rainforest Snail habitat, or at the least were areas of similar flora that would benefit from regeneration works. These works known as the "Above and Beyond" will be ongoing for the next four years.

25 The determination of the Northern Regional Planning Panel (NRPP) to approve the development application for the bypass was challenged in the NSW Land and Environment Court by the Butler Street Community Network. The issues considered by the Court included:

- 30
1. Biobanking;
 2. flood modelling;
 3. noise impacts and at-property mitigations works to the affected properties;
 4. social impacts;
 5. traffic modelling assumptions.

35 The appeal was dismissed and the Court granted development consent subject to conditions. The original conditions of the NRPP approval forming the basis of the consent conditions, with the exception of noting that because the consent only applied to the Part 4 area of the site, all works under an adjacent Part 5 assessment must also be complete before the project could operate.

40 Council was then actively preparing to commence construction of the Bypass, which solidified when a further \$9.5M in funding through the Growing Local Economies grant program was added to the initial \$10.5M in election commitment funding and \$4M in

developer contributions. A tender was let to Hazell Bros in May 2019 to construct the Bypass.

5 Construction commenced soon after with a soft start in June 2019, with the road officially opening to traffic on 27 February 2021 after a protracted construction period with a number of difficulties as explained further in this report.

Issues Experienced During Construction & Additional Funding

Due to several factors, the project budget encountered challenges throughout that were initially managed within project contingency but ultimately required additional funding to complete the works. The cost overrun is \$1.75M.

10 The funding shortfall was due to specific challenges largely outside the control of Council. These challenges can be summarised as follows:

- 15 1. The unprecedented COVID-19 response involving strict border closures and social distancing restrictions particularly affected this project as the principal contractor was based in SE Queensland. Throughout the bulk of 2020 and at a critical time in the project timeline, key staff were stopped from attending site as well as key subcontractors. This meant sourcing alternative contractors and increasing third party supervision of the project.
- 20 2. A major flooding event in February 2020 that inundated the town centre caused a significant delay to stage two of the project (the greenfield area). This delay, being on the critical path, resulted in delay damages claims from the Contractor.
3. There were substantial design changes made to accommodate latent conditions, including unknown services, contaminated soil removal, poor subgrade conditions, and a heritage find.
- 25 4. The inclusion of Stage 4 of the project which is the most northern section including the Shirley St roundabout upgrade. The cost of Stage 4 was \$2.5M, which although allowed for initially within the tender contract value, was never allowed for in the overall project estimates.
- 30 5. Protest activity on the project resulted in substantial additional cost. The protest group established a camp at the start of the project which resulted in the NSW Police instructing Council to shut the project down until the required NSW Police resources were able to intervene and remove the camp from site and enable the project to recommence safely.
- 35 6. Allegations of breaches of the Environmental Protection and Biodiversity Conservation Act (EPBC Act) were made to the Australian Government regarding the project's impact on threatened species and communities. Council was required to submit a referral under the EPBC Act to the Commonwealth Department of Environment and Energy. This substantially delayed the project and incurred additional cost. It was determined by the Department of Environment and Energy that the project would not have a significant impact and no further assessment
- 40 under the terms of the EPBC Act was required.

Finalisation Works

5 The civil works are 100% complete, awaiting only the works as executed documentation for Council's assets team to finalise the new assets in our system. The noise abatement works are also complete, with the exception of the Byron Motor Lodge where the owner would not sign the Works Deed to allow Council to do the works. An addendum REF was determined to accept this works as incomplete, on the basis that the noise level is only 1dB over the limit, which is negligible, and that the property owners have indicated an appetite to redevelop the site in the short-medium term.

10 Regarding Council's "Above and Beyond" works, the Bypass project will fund the works as resolved by Council into the future, which allocates a further \$81,600 to be held over for the next four financial years to fund the works. This figure is included in the required loan borrowing amount detailed in this report.

15 The project will also pay rent for use of the Countrylink building, intended to be contributed towards the minor maintenance/refurbishment works in combination with the \$100,000 allocated by the state government. The rent was calculated at a nominal rate of \$250 per week over two years which amounts to \$26,000. This figure is included in the required loan borrowing amount detailed in this report.

20 A requirement of the noise abatement works is for Council's acoustic consultants to validate their modelling that was used to design the works, post construction and under operational traffic conditions. This was undertaken after the writing of this report but prior to the Council meeting. An estimate of the final cost of this work is included in the required loan borrowing amount detailed in this report.

25 The noise validation monitoring is undertaken in combination with traffic counts to ascertain the number of vehicles creating the noise. Traffic counters have been on Lawson Street (at the rail line), Ewingsdale Road (west of Kendall Street) and on Butler Street (south of Glen Villa entrance). The counts have been fairly consistent and were also taken over the Easter period.

30 The counts for a one week period over Easter (from Thursday 8 April to Wednesday 14 April) were as follows (the counts are total number of vehicles in both directions);

1. Lawson Street averaged 17,400 vehicles per day.
2. Ewingsdale Road averaged 23,500 vehicles per day.
3. Butler Street averaged 8,000 vehicles per day.

35 As can be seen above, the averaged traffic numbers indicate that approximately 34% of vehicles are using the Bypass road (assuming that all vehicles on the Bypass originated from or ended up using Ewingsdale road), which is significantly above the original 20% estimate provided as part of the project approval process.

Key Lessons Learnt

5 The majority of the challenges on the project could not be mitigated or planned for, such as the COVID-19 pandemic, flooding and protest activity. In these instances, there is not much that can be done from a project management or construction perspective to mitigate the financial risk of these challenges.

10 There were some key lessons learnt on the other challenges though and how risk may be mitigated on future projects. In the case of the design changes required for unknown services, contaminated soil, poor subgrade and the heritage find, this could have been mitigated by undertaking a more substantial pre-construction regime including ground penetrating radar and geotechnical investigations. It is highly likely that the additional cost of those investigations would have provided a substantial cost benefit ratio, when compared to the ultimate cost of the variations associated with those issues.

15 In the case of the EPBC Act referral, the determination that Council received from the Department of Environment and Energy ultimately supported the recommendation from Council's consultants however the delay still cost the project a substantial amount of money to resolve. The lesson in this is that even if Council is confident in our consultant's recommendation regarding the EPBC Act we should refer the matter to the Australian Government. If there is a potential impact to critically endangered wildlife there should be a voluntary referral under the act nonetheless. The potential issue with this is that the process is lengthy and may impact on preferred project time frames, the impact on the delivery timeframe is far less than the impact from the requirement for additional funding. For higher profile projects the risk of cost impacts over delays in approval and assessment times will be evaluated by staff on a case by case basis.

25 Regarding the overall Contract arrangement and the ongoing negotiations as the project progressed, the chosen conditions of contract and statement of requirements provided a reasonable level of protection for Council, although Council's legal advisors from HWL Ebsworth advised that for a larger project at a smaller Council, it can be more beneficial to have customised conditions of contract written up by a professional. However staff are of the opinion that there is still an adequate level of protection provided by general conditions of contract and custom clauses in the Statement of Requirements and any applicable special conditions of contract.

Local Government Act 1993 Section 67 (Private Works)

35 In accordance with the section 67 and Resolution 20-226, details of the private works are provided below. Council has or will receive final work packs for each premises with more exact details that will be kept on record, unless the registered proprietor chose to undertake the works themselves and be reimbursed by Council. The requirement for reporting is as follows;

1. The person for whom the work was carried out: The registered proprietor of each property requiring noise abatement works.
- 40 2. The nature of the work: The nature of the work was to install noise abatement to protect each property from the additional noise generated by the Bypass.

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3. The type and quantity of materials used: The works varied on each property but generally consisted of replacing or upgrading windows, doors, air conditioning, front and side boundary fencing and in some instances wall, roof and underfloor insulation/protection.
- 5 4. The charge made for those materials: There was no charge made to any of the proprietors for the required works.
- 5 5. The total of the number of hours taken by each person who carried out the work: The exact number of hours for each property is detailed within each report, however the overall Contract with Bishton group was undertaken over 8 months.
- 10 6. The total amount charged for carrying out the work (including the charge made for materials): There was no charge made to any proprietor for the required works.
7. The reason for carrying out the work: To install noise abatement as a condition of consent to protect each property from the additional noise generated by the Bypass.

Financial Implications

15 Comment by Manager Finance

Over the course of the 2014/2015 to 2020/2021 financial years, the funded cost of the Byron Bay Bypass Project has accumulated to \$25,725,600. At the time of preparing this report, Council has incurred costs of \$25,424,200. Currently there is \$301,400 remaining for expenditure which will be used to fund the following items mentioned in this report:

- 20
 - Maintenance of the Bio-banking site.
 - Funding the 'Above and Beyond' program.
 - Payment of rent for use of the former Countrylink Building as an office during the construction period.
 - Validation of noise works.
- 25 To fund the current and final anticipated expenditure, Council will need to source an additional \$1,750,000 in funding. As it is unlikely there will be further funding from government towards the project, it is proposed to borrow via an external loan \$1,750,000. Council included this funding provision in the 2020-2021 Budget when it considered the 31 December 2020 Quarterly Budget Review.
- 30 Given the timing in the 2020-2021 financial year, Council will need to have a loan drawn down by 30 June 2021 to match the funding outlined in the 2020-2021 Budget. Between now and the 30 June 2021, an expression of interest for loan borrowings will be conducted to source the best loan outcome for Council although it will be unlikely there is enough time to consider a NSW Treasury Corporation loan and their approval process.

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Given timing of the borrowings, there will be no loan repayments in the 2020-2021 financial year. Repayments will commence in 2021-2022 and it is proposed to fund the loan repayments ongoing from the 2017-2018 Special Rate Variation funding.

- 5 Section 55 of the Local Government Act 1993 provides an exemption for Council needing to conduct a tender process for the purposes of borrowing a loan but Council is required to make a formal resolution to authorise loan borrowings given it is a decision that cannot be delegated to the General Manager under Section 377 of the Local Government Act 1993.

To formalise authorisation of the loan borrowing required of \$1,750,000, necessary recommendations are provided with this report for Council to consider.

10 **Community Strategic Plan and Operational Plan**

This report is intended to advise Councillors that the OP Activity 1.1.5.1 is now complete.

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.1	Provide a road network which is safe, accessible and maintained to an acceptable level of service	1.1.5	Deliver road network new works program	1.1.5.1	Complete construction of the Byron Bay Bypass