



Agenda

Ordinary (Planning) Meeting

Thursday, 17 October 2019

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

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

Mark Arnold
General Manager

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.

BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING

BUSINESS OF ORDINARY (PLANNING) MEETING

1. PUBLIC ACCESS
2. APOLOGIES
3. REQUESTS FOR LEAVE OF ABSENCE
4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY
5. TABLING OF PECUNIARY INTEREST RETURNS (CL 4.9 CODE OF CONDUCT FOR COUNCILLORS)
6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS
 - 6.1 Ordinary (Planning) Meeting held on 19 September 2019
7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS
8. MAYORAL MINUTE
9. NOTICES OF MOTION AND RESCISSION
 - 9.1 Integrated Pest Management Strategy 2019-20295
10. PETITIONS
11. SUBMISSIONS AND GRANTS
12. DELEGATES' REPORTS
13. STAFF REPORTS
 - Sustainable Environment and Economy**
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BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING

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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

5 Notice of Rescission Motion No. 9.1
File No:

Integrated Pest Management Strategy 2019-2029
I2019/1530

We move that Council rescind Resolution No. 19-455 from its Ordinary meeting held on 19 September 2019 which reads as follows:

1. *That Council adopt the Integrated Pest Management Strategy 2019-2029 (Attachment 2 E2019/63575) with the following changes:*
 - a. *Improve readability by use of more appropriate placement of text, particularly over graphics, and choice of ink colours and transparency.*
 - b. *Redesign layout to ensure better coherence and relationship of text and adjacent graphics.*
2. *That Council include the 'Implementation of the Integrated Pest Management Strategy 2019-2029' as an activity in the 2019/20 Delivery Program and Operational Plan.*
3. *That Council note that implementation of the Integrated Pest Management Strategy 2019-2029 will be accommodated within the Infrastructure Services Directorate budgets.*
4. *That further information regarding control methods of weeds on roadsides be developed with a view of incorporating them into an amended strategy after a 12 month review and that:*
 - b. *During that period, consult with Goonengerry Landcare to provide full description of the development and practice of partnership with Goonengerry Landcare including acknowledgement of volunteers, pictures and demonstrated understanding of the role of Small Steps in achieving IPSM objectives.*
5. *Amend the first paragraph on page 3 to add the sentence "Whilst maximising our best practice weed management of our biodiversity rich areas."*

If successful we intend to move:

10 That Council review the draft Integrated Pest Management Strategy 2019 – 2029 (IPMS) as follows:

1. Improve readability by use of more appropriate placement of text, particularly over graphics, and choice of ink colours and transparency.
- 15 2. Redesign layout to ensure better coherence and relationship of text and adjacent graphics.
3. Amend all statements that refer to the cessation of chemical/pesticide/spraying on rural roadsides and redraft to align with actual practice between 2013 and the present, ensuring
20 that all such statements are consistent and able to be clearly understood by readers.
4. Include full description of weed removal and native vegetation replacement methodology for weed management on roadsides (Small Steps to Healthier Roadside Vegetation) and contrast these with other weed management methodologies presented in the IPMS.
- 25 5. Consult with Goonengerry Landcare to provide full description of the development and practice of partnership with Goonengerry Landcare including acknowledgement of volunteers, pictures and demonstrated understanding of the role of Small Steps in achieving IPSM objectives.

6. Amend the first paragraph on page 3 to add the sentence “Whilst maximising our best practice weed management of our biodiversity rich areas.”
- 5 7. On completion of items 1-6 above, present the revised draft to a Strategic Planning Workshop prior to presentation for adoption at a Planning Meeting of Council.

Attachments:

- 10 1 Integrated Pest Management Strategy - IPMS - Roadside Vegetation Management – Discussion Paper, E2019/72463 
- 2 Integrated Pest Management Strategy - IPMS - Notice of Motion May 2019 - Small Steps, E2019/72464 
- 15 3 Presentation - Integrated Pest Management Strategy - IPMS - Small Steps 3, E2019/72465 

Signed: Cr Basil Cameron
Cr Cate Coorey
Cr Jan Hackett

20

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.1 **PLANNING - Minor Local Environmental Plan Amendments
Housekeeping Planning Proposal - Submissions Report 26.2017.1.1**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Sam Tarrant, Planning Support Officer
File No: I2019/1192

10 **Summary:**

The purpose of this report is to present to Council the Minor Amendments Housekeeping Planning Proposal and exhibition outcomes.

15 A planning proposal to correct a number of minor mapping errors and inconsistencies in the Byron LEP 2014 was initiated by staff and placed on exhibition as per the gateway determination. The 22 proposed amendments are to correct out-of-date mapping, incorrectly mapped lots and maps not aligning with cadastral boundaries. There are also changes to Schedule 5 Environmental Heritage
20 which update incorrect information such as parcel numbers that are now historical. All of the amendments are minor in nature and none change Council's policy position.

25 During the exhibition period no submissions were received from the public. The State agencies, Office and Environmental Heritage and Rural Fire Service reviewed the planning proposal and raised no issues.

The Minister for Planning and Public Spaces has issued an authorisation for Council to exercise delegation to make this LEP amendment.

30 The report recommends that Council proceed with the planning proposal without amendment

NOTE TO COUNCILLORS:

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

40

RECOMMENDATION:

1. **That Council forward the planning proposal to amend Byron LEP 2014, as exhibited and included in Attachment 1 (E2019/45986), to NSW Parliamentary Counsel's Office requesting that a draft LEP instrument be prepared.**
2. **That Council liaise with Parliamentary Counsel's Office (PCO) as necessary to finalise the content of the draft LEP and to enable PCO to issue an Opinion that the plan can be made.**
3. **That Council make the draft LEP under delegated authority and forward the plan to the NSW Department of Planning, Industry and Environment for notification on the NSW Government legislation website.**

Attachments:

- 1 LEP Minor Housekeeping Planning Proposal - Exhibition Version 26.2017.1.1, E2019/45986 
- 2 Table of property details affected by the planning proposal 26.2017.1.1, E2019/34092 
- 5 3 Submission from OEH, S2019/6797 
- 4 Submission from Rural Fire Services, E2019/70599 
- 5 Form of Special Disclosure of Pecuniary Interest, E2012/2815 

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REPORT

The purpose of this report is to present to Council a Minor Local Environmental Plan Amendments Housekeeping Planning Proposal and exhibition outcomes.

5

Staff routinely catalogue minor errors and inconsistencies in the Byron LEP 2014 and address them in a grouped housekeeping planning proposal. Housekeeping planning proposals are prepared periodically to ensure that Council's principle planning instrument is current and correct.

10 In 2014 Council considered the first minor amendments planning proposal for the 2014 LEP and resolved (**14-509**) that a minor amendments (non-policy) planning proposal be prepared and that any additional minor corrections or amendments to the Byron LEP 2014 that are not policy related may be undertaken under delegated authority and Council be advised of any such amendments.

15 Resolution (**14-509**)

1. *That a minor corrections and amendments planning proposal be prepared that seeks to amend Byron LEP in the manner set out in Table 1 of this report (#E2014/66629).*
- 20 2. *That the General Manager (or delegate of his choice) be delegated the authority to include additional non-policy amendments in the planning proposal (not already identified in this report) for minor corrections and amendments to Byron LEP 2014.*
- 25 3. *That the General Manager (or delegate of his choice) be delegated the authority to assume the role of the relevant planning authority pursuant to the Environmental Planning & Assessment Act 1979 in relation to preparation and finalisation (whether Council has delegated authority to make the plan or not) of any other planning proposals consisting of non-policy matters such as corrections and consequential and/or minor amendments; and that Council be advised of any such amendments made under delegated authority.*

30

In accordance with the above resolution, staff initiated a planning proposal comprising of 22 non-policy proposed amendments. The 22 amendments address issues with incorrectly mapped lots, out-of-date mapping and mapping not aligning with cadastral boundaries. There are also changes to Schedule 5 Environmental Heritage which update incorrect information such as parcel numbers that are now historical. Specifically the 22 amendments in the planning proposal include amendments to:

35

- Heritage item mapping to accurately reflect the heritage item area and remove unjustified mapping on neighbouring lots
- 40 - Heritage item mapping to reflect State heritage mapping
- Schedule 5 to update and correct errors on certain heritage items
- Land zoning maps to reflect gazettal of land to National Parks and Nature Reserves
- Land zoning to match cadastral boundaries and recent subdivisions
- Floor space ratio and lot size mapping as a consequence of the land zone map amendments
- 45 - Acid sulfate soils mapping to ensure the mapping is up to date and accurate

This planning proposal also contains the rezoning of the Suffolk Park sports field from SP2 Infrastructure to RE1 Public Recreation after Council resolved (**16-587**) to purchase the lot and rezone the land to RE1 Public Recreation in the next housekeeping amendment.

50

Resolution (**16-587**) – Relevant part only

4. *That upon completion of the purchase the General Manager does all acts and things necessary to classify the land as community land and amend the Byron Local Environmental Plan to rezone the land to RE1 Public Recreation in the next housekeeping amendment*

55

Further detail on each proposed amendment is available in the planning proposal (Attachment 1).

5 A summarised table is also available (Attachment 2) which outlines the 22 items, the corresponding property details and a brief description of the proposed change.

Ensuring the Byron LEP 2014 is accurate and up to date helps to minimise potential problems and allows for better planning and land use outcomes.

10 **Public exhibition**

15 This planning proposal obtained Gateway approval on 24 June 2019 and was placed on public exhibition from 24 July to 16 August 2019. As per the Gateway determination, NSW Rural Fire Service (RFS) and Office of Environment and Heritage (OEH) and Rural Fire Service (RFS) were sent a copy of the planning proposal and asked to provide comment. OEH & RFS raised no issues (Attachment 3 and 4).

20 A letter was sent to the owner of each property included in this planning proposal and it was advertised in the Echo. A copy of the planning proposal, the Gateway determination and information for each proposed amendment was available on Councils website.

25 During the exhibition period staff met with one affected land owner and explained the proposed amendments and there reasoning. A number of phone calls were also received from landowners to clarify what the proposed changes meant for their property. There was no objection received from any of the landowners. No formal written submissions were received during the exhibition period

It is recommended that the planning proposal be forwarded to the Department of Planning, Industry and Environment and the Parliamentary Counsel Office to be finalised.

30 **Next steps**

The planning proposal will be forwarded to the Department of Planning, Industry and Environment and the Parliamentary Counsel Office to be finalised subject to Council resolution.

35 **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	4.1.3	Manage development through a transparent and efficient assessment process	4.1.3.10	Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps

40 **Legal/Statutory/Policy Considerations**

This planning proposal will amend the Byron Local Environmental Plan 2014 to correct a number of identified errors and anomalies.

Financial Considerations

This is a Council initiated planning proposal funded through the existing operational budget.

5 *Consultation and Engagement*

Discussed in the report.

Report No. 13.2 **PLANNING - Development Application 10.2019.126.1 – Subdivision:
Two (2) Lots at 37 Granuaille Road Bangalow**
Directorate: Sustainable Environment and Economy
Report Author: Ben Grant, Planner
5 **File No:** I2019/1210

Proposal: Development Application 10.2019.126.1 – Two (2) lot subdivision

10 **DA No:** 10.2019.126.1
Proposal description: Boundary Adjustment Between Two (2) Lots
Property description: LOT: 17 SEC: 1 DP: 4358, LOT: 18 SEC: 1 DP: 4358
37 Granuaille Road BANGALOW
Parcel No/s: 64460, 27070
Applicant: Balanced Systems Planning Consultants
Owner: Premium Custody Services Pty Ltd
Zoning: R2 Low Density Residential
Date received: 14 March 2019
**Integrated / Designated
Development:** Integrated Designated Not applicable
Concurrence required No
**Public notification or
exhibition:** – Level 1 advertising under DCP 2014 Part A14 – Public
Notification and Exhibition of Development Applications
– Exhibition period: 1/7/2019 – 14/7/2019
– Submissions received: Nil
**Planning Review
Committee:** Not applicable
**Concurrent approvals
(S68/138):** Not applicable
Variation request Clause 4.6 SEPP 1 Not applicable
**Delegation to
determination:** Council. Clause 4.6 variation for minimum subdivision lot size
greater than 10%.
Issues: • Subdivision contravenes 600m² minimum subdivision lot size,
although both lots are already less than the development
standard. Clause 4.6 variation request submitted.

Summary:

15 This development application seeks consent to re-subdivide Lot 17 and Lot 18 in Deposited Plan 4358, otherwise known as 37 Granuaille Road, Bangalow. The proposed subdivision will rearrange the lot boundaries so that the existing garage and dwelling are contained within a single lot facing Granuaille Road. Remaining land to the east will form a vacant lot facing Campbell Street.

20 The site is zoned R2 Low Density Residential and is within the Bangalow Heritage Conservation Area. A locally listed heritage item known as Avalon House is situated 40m to the north.

25 Proposed Lot A has an area of 420m² and proposed Lot B has an area of 497.8m². The lot sizes contravene the 600m² minimum lot size standard under Clause 4.1 of Byron LEP 2014 by 30% for lot A and 17% for lot B.

5 The application is referred to the Council for determination as the proposal for the lot size variation standard is exceeded by more than 10%. The applicant has submitted a request to vary the standard pursuant to Clause 4.6 of Byron LEP 2014. For reasons outlined in the body of this report, the variation to the standard is considered to have sufficient planning merit to warrant support in this instance. In this regard, the development realigns two existing residential lots and does not generate any additional dwelling entitlements.

10 The application was notified for a period of 14 days from 1 July 2019 to 14 July 2019. No public submissions were received.

15 In conclusion, the proposed subdivision is considered to be an appropriate response to the characteristics of the site and is capable of accommodating a built form that is sympathetic to the surrounding area. Subdivision works associated with the development are relatively minor and unlikely to have a significant impact on the heritage values of the conservation area or heritage listed item.

The application is recommended for approval subject to 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.

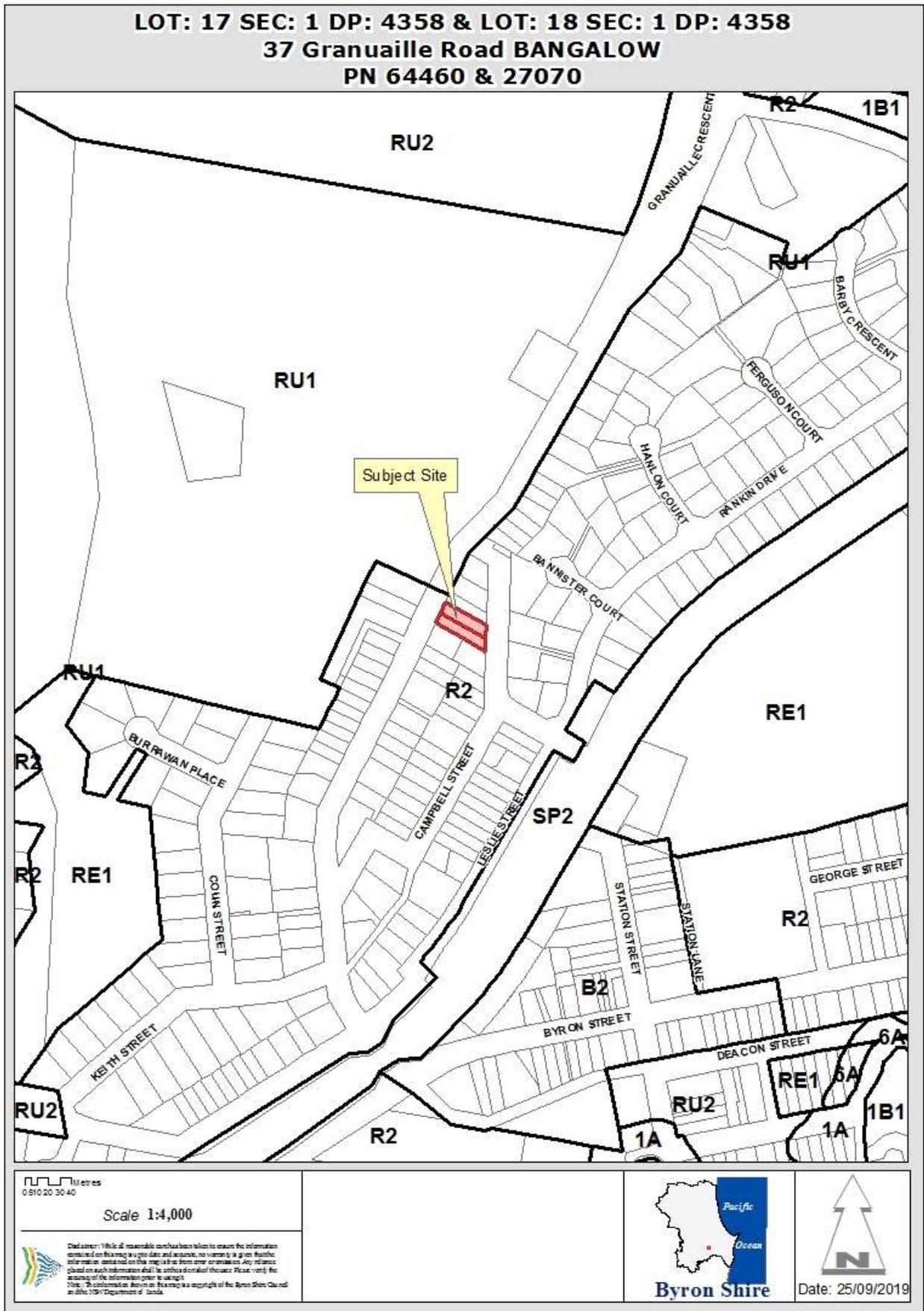
RECOMMENDATION:

That pursuant to Section 4.16 of the *Environmental Planning & Assessment Act 1979*, Development Application no. 10.2019.126.1 for subdivision: two (2) lots, be granted consent subject to the attached conditions (#E2019/71153).

Attachments:

- 30 1 Attachment A – Recommended conditions of consent DA10.2019.126.1, E2019/71153 
- 2 Attachment B – Subdivision Plans DA10.2019.126.1, E2019/71158 
- 3 Attachment C – Clause 4.6 Variation Request DA10.2019.126.1, E2019/71160 

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REPORT

1. INTRODUCTION

5

1.1. History/Background

Building Application 71/2114 for a detached double garage was approved on 8 October 1971.

10 Development Application 10.2007.689.1 for alterations and additions to an existing dwelling house was granted consent on 19 December 2007. A notice of surrender of consent was filed to Council on 17 September 2013, indicating the consent is not longer valid.

15 The site contains an old timber dwelling house that pre-dates the records in Council's Authority database.

1.2. Description of the site

20 The site has a legal description of Lot 17 and Lot 18, Section 1 in Deposited Plan 4358, and is commonly known as 37 Granuaille Road, Bangalow.

25 The site is located on the eastern side of Granuaille Road; a State classified Road, and is bounded to the east by Campbell Street providing rear lane access. Both lots are rectangular in shape with frontages of 11.5m. Lot 17 has an area of 481.9 m² and Lot 18 has an area 435.9m². The land slopes away from Granuaille Road towards Campbell Lane in an easterly direction.

30 Currently the site accommodates a timber dwelling house, thought to date to the early 20th century, and a detached double garage that was approved in 1971. The backyard contains a mixture of turfed lawn, garden beds and landscaping. A white picket fence and hedge addresses the primary street frontage to Granuaille Road.

Located on either side of the allotment are residential dwellings of similar scale and character. Further to the north is Avalon House, a locally listed heritage item.

35 The site is within the R2 Low Density Residential zone and the Bangalow Heritage Conservation area under LEP 2014.

Site photos are shown in **Figures 1 – 3**.



Figure 1: Subject site viewed from Granuaille Road, looking east.



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Figure 2: Building envelope location for proposed Lot B.



Figure 3: Campbell Street, looking south. Proposed Lot B will have access off this laneway.

5 **1.3. Description of the proposed development**

This application seeks approval to re-subdivide Lot 17 and Lot 18 in Deposited Plan 4358. The two lots currently contain a wooden dwelling house and a detached fibro garage and are used as a single residential property.

10 The proposed subdivision will rearrange the lot boundaries so that the garage and dwelling are contained within a single lot facing Granuaille Road. Remaining land to the east will form a vacant lot facing Campbell Street. The new lots will be of a similar size to the lots currently in existence as shown in the tables below:

15 **Table 1: Existing lot layout**

Existing Lot	Land Area	Development
Lot 18	435.9m ²	Existing dwelling
Lot 17	481.9m ²	Existing garage

Table 2: Proposed lot layout

Proposed Lot	Land Area	Development
Lot A	420m ²	Existing dwelling and garage
Lot B	497.8m ²	Vacant

20 A stormwater easement is proposed along the northern boundary of proposed Lot B to allow Lot A to drain via gravity to Campbell Street. Additional easements for services, phone, water and a right of footway are also proposed. The application does not propose any physical subdivision works,

Development Engineer

5 Council's Development Engineer reviewed the proposed development and offered support from an engineering perspective subject to a range of conditions. The main issues identified in the engineering assessment are summarised below.

Garbage collection

10 Council garbage collection is not available to the northern end of Campbell Street. Provision to be made for a right-of-footway to accommodate bin collection service for Lot B inside Lot A at the Granuaille Road frontage. A condition is recommended.

Development with frontage to classified road

15 The existing informal driveway access in Granuaille Road is unformed and must be upgraded to Council's standard. Concurrence from RMS will be required as part of the Roads Act application. In addition, the footpath should be extended for the full frontage of the site.

Upgrade of Campbell Street

20 The development will generate additional traffic on Campbell Street and therefore the road shall be upgraded in accordance with Section 6.4.3 of the DCP.

25 Access for Lot B shall be via Campbell Street. There is adequate area to accommodate a driveway to service the future dwelling in Lot B. Future access will be constructed as part of the future dwelling in the Lot.

Stormwater

30 Provision must be made to drain Lot A to the lawful point of discharge which is the south eastern corner of the site and into the table drain. Conditions are recommended.

Roads & Maritime Services

35 RMS provided no specific objections to the proposal, noting that the Council has responsibilities to consider the safety, efficiency and ongoing operation of the classified road in accordance with clause 101 of *State Environmental Planning Policy (Infrastructure) 2007*. RMS commented that should Council require any upgrade to the existing driveway from proposed Lot A onto Granuaille Road, concurrence of Roads and Maritime will be required for the section 138 Roads Act approval.

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3. SECTION 4.14 – BUSH FIRE PRONE LAND

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

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

50 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

State Environmental Planning Policy No 55—Remediation of Land

5 SEPP 55 requires the consent authority to consider whether the subject land is contaminated and, if so, whether it requires remediation.

10 The land has a long standing history of residential use. A review of Council's Authority database did not reveal any approvals for contaminating land uses on the site or on surrounding sites and the property is not recorded on Council or EPA contaminated lands registers.

Based on the available information, the site is considered to be suitable for residential use in its current state and no further investigations are warranted.

15 State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure)

The provisions of SEPP Infrastructure 2007 have been considered in the assessment of the development application. The relevant clauses have been addressed below:

20 Clause 101 Development with frontage to classified road

The application is subject to Clause 101 of the SEPP Infrastructure as the site has a frontage to Granuaille Road, which is a State classified road.

25 The application is considered to satisfy Clause 101 of the SEPP Infrastructure, as the access for proposed Lot B will be obtained off Campbell Street rather than Granuaille Road. The subdivision is unlikely to affect the safety or efficiency of the classified road.

30 Traffic noise and vehicle emissions will not be significant concerns given the location of the proposed building envelope approximately 30m from the classified road frontage.

4.2 Byron Local Environmental Plan 2014 (LEP 2014)

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

Part 1	<input checked="" type="checkbox"/> 1.1 <input checked="" type="checkbox"/> 1.1AA <input checked="" type="checkbox"/> 1.2 <input checked="" type="checkbox"/> 1.3 <input checked="" type="checkbox"/> 1.4 <input checked="" type="checkbox"/> Dictionary <input checked="" type="checkbox"/> 1.6 <input checked="" type="checkbox"/> 1.7 <input checked="" type="checkbox"/> 1.8 <input checked="" type="checkbox"/> 1.8A <input checked="" type="checkbox"/> 1.9 <input checked="" type="checkbox"/> 1.9A
Part 2	<input checked="" type="checkbox"/> 2.1 <input checked="" type="checkbox"/> 2.2 <input checked="" type="checkbox"/> 2.3 <input checked="" type="checkbox"/> Land Use Table <input checked="" type="checkbox"/> 2.4 <input checked="" type="checkbox"/> 2.5 <input checked="" type="checkbox"/> 2.6 <input checked="" type="checkbox"/> 2.7 <input checked="" type="checkbox"/> 2.8
Part 4	<input checked="" type="checkbox"/> 4.1 <input checked="" type="checkbox"/> 4.3 <input checked="" type="checkbox"/> 4.4 <input checked="" type="checkbox"/> 4.5 <input checked="" type="checkbox"/> 4.6
Part 5	<input checked="" type="checkbox"/> 5.10
Part 6	<input checked="" type="checkbox"/> 6.2 <input checked="" type="checkbox"/> 6.6 <input checked="" type="checkbox"/> 6.7

- 40 In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:
- (a) The proposed development is defined in the LEP 2014 Dictionary as Subdivision - Boundary Adjustment;
 - (b) The land is within the R2 Low Density Residential zone according to the Land Zoning Map;
 - (c) The proposed development is permitted with consent; and
 - 45 (d) Regard is had for the Zone Objectives as follows:

Zone Objective R2 Low Density Residential	Consideration
To provide for the housing needs of the community within a low density residential environment.	The proposed subdivision is not incompatible with the zone objectives. No additional dwelling entitlements will be created and the resulting lot sizes are similar to those in the surrounding area.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	

5 The remaining checked clauses have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act. The proposed development complies with all clauses of LEP 2014 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

Characterisation of the proposal

10 The application was submitted to Council as a boundary adjustment on the basis that it comprised only a realignment of existing boundaries with no additional lots or new dwelling opportunities being created.

15 Having regard to recent case law, notably, *Johnson v Coffs Harbour City Council* [2018] NSWLEC 1094, the proposal cannot be considered a boundary adjustment because the two resulting lots do not bear sufficient resemblance to the lots currently in existence. Rather, the proposal is properly characterised as a two lot subdivision. This makes little difference in terms of the application of planning controls, but it does alter the way the application is advertised under the provisions of DCP 2014. The application was advertised for a period of 14 days, whereas no advertising would have been required for a boundary adjustment.

20 Clause 4.1 Minimum subdivision lot size

25 The site is subject to a minimum subdivision lot size of 600m². Proposed Lot A has an area of 420m² and proposed Lot B has an area of 497.8m². The proposed lots contravene the minimum lot size standard by 30% for lot A and 17% for lot B.

The applicant has made a written submission seeking to vary the development standard which is addressed in the LEP 2014 issues section below.

30 Clause 4.3 Floor Space Ratio

35 A floor space ratio of 0.5:1 applies to the subject site. The existing dwelling has a floor plan area of approximately 120m². Proposed Lot A will have an area of 420m², which results in a floor space ratio of 0.29:1.

Clause 5.10 Heritage conservation

40 The site is within the Bangalow Heritage Conservation Area and is located 40m south of Avalon House, a locally listed heritage item under Schedule 5 of LEP 2014. Clause 5.10 (4) requires Council to consider the effect of the proposed development on the heritage significance of the item or area concerned.

45 Works associated with the subdivision (including works required by Council) will comprise construction of a concrete pathway within a right-of-footway to facilitate garbage collection for proposed Lot B, along with an extension of the footpath in Granuaille Road and an upgraded driveway for the existing dwelling. These works are minor in nature and will not have a significant impact on the streetscape or heritage values of the conservation area or nearby heritage listed item.

In terms of future development outcomes, the proposed subdivision is capable of accommodating a built form that is sympathetic to the established character of the area. Lot B can provide a 10m by 15m building envelope; offering room for a small dwelling, car parking and a modest garden.

5 The building envelope has a 4m setback to the Campbell Street and setbacks of 5.5m and 4.7m to side boundaries, allowing new development to achieve appropriate spacing and separation from neighbouring dwellings and the laneway frontage.

10 In terms of subdivision pattern, the proposal is similar to neighbouring lots, including an adjoining subdivision to the south that was approved by Council in 2003.

15 Overall, it is considered that the new lot has a suitable area, shape and frontage for future development. Subdivision works associated with the development are relatively minor and unlikely to have a significant impact on the heritage values of the conservation area or heritage listed item.

Clause 6.5 Drinking water catchments

20 The proposed subdivision is unlikely to have adverse impacts on the quality or quantity of water entering the drinking water catchment. The site is approximately 450m from Byron Creek and is capable of connecting to reticulated water, sewer and stormwater systems. A condition is recommended for sediment and erosion controls to be implemented during subdivision works.

Clause 6.6 Essential services

25 The proposed lots are capable of being connected to reticulated services subject to conditions of consent. Stormwater is able to be directed to the table drain in Campbell Street. Vehicular access to proposed Lot B will be provided off Campbell Street. Council's Development Engineer has indicated that the driveway for Lot B does not need to be constructed at the subdivision stage.

30 **4.3 Byron Local Environmental Plan 2014 - Issues**

Clause 4.1 Minimum subdivision lot size

35 A minimum lot size of 600m² applies to the site. Proposed Lot A has an area of 420m² and proposed Lot B has an area of 497.8m². The subdivision exceeds the minimum lot size standard by 30% for lot A and 17% for lot B.

Clause 4.6 Exceptions to development standards

40 A written request has been submitted to Council in accordance with Clause 4.6 (3) (a) and (b) of the Byron LEP 2014 seeking to justify the contravention of the development standard by demonstrating:

- 45 (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
 (b) that there are sufficient environmental planning grounds to justify contravening the standard.

A copy of the applicant's written request is provided at Attachment C.

50 **Applicants Written Request - Clause 4.6(3)(a) and (b)**

The following is a summary of the applicant's justification to vary the minimum lot size standard:

- 55 (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:

- (i) The numerical variation being sought is relatively minor compared to the existing lot format on the site, being a 3-4% change in areas from existing circumstances;
- 5 (ii) The proposed variation is unavoidable considering the existing lot sizes and compliance with the development standard is unreasonable in these circumstances.
- 10 (iii) The proposed subdivision is consistent with the objectives the development standard, because: (1) local environmental values, including local built environment and streetscape will not be negatively impacted, and (2) the subdivision facilitates the efficient use of land for residential purposes and maximises the use of two existing residential allotments, where it is not currently viable to utilise the existing two dwelling entitlements. The proposal provides an efficient lot layout to achieve the purposes of the original allocation of two residential lots.
- 15 (iv) The proposed subdivision is consistent with the zone objectives because it will allow for the two existing allotments to be arranged in a way that supports a dwelling on each for which they both benefit from dwelling entitlement. The site is located within an existing residential precinct in Bangalow, while the proposal will result in minimal adverse environmental impacts and will meet the needs of residents by providing for a residential opportunity in which the site was originally intended.
- 20
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- 25 (i) There are sufficient environmental planning grounds to justify the minor change in lot sizes from the existing, by being able to provide a suitable sited dwelling envelope on the vacant allotment, Proposed Lot B.
- 30 (ii) The proposal is consistent with surrounding development in terms of lot sizes and will facilitate suitable residential development in an existing residential precinct.
- (iii) The proposal will allow for the two existing allotments to be arranged in a way that supports a dwelling on each for which they both benefit from dwelling entitlement.
- 35 (iv) the proposed variations are required to achieve an orderly and economic use of the subject land in accordance with the site's zoning and the underlying objectives of the Environmental Planning and Assessment Act 1979.

Consideration of Applicants Written Request - Clause 4.6(4) (a) (i) and (ii)

40

Development consent must not be granted unless the consent authority is satisfied that:

- 45 (a) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
- 50 (b) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at Clause 4.6(3)?

55

Is compliance unreasonable or unnecessary in the circumstances of the case?

The request is considered to have adequately demonstrated that strict compliance with the development standard is unreasonable or unnecessary in the circumstances, primarily on the basis that the underlying objectives of the standard and the zone are achieved notwithstanding the numerical non-compliance.

5

The objectives of clause 4.1 are:

- To ensure that lot sizes are compatible with local environmental values and constraints.
- To facilitate efficient use of land resources for residential and other human purposes.

10

The objectives of the R2 Low Density Residential zone are:

- 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.

15

The proposed lots are demonstrated to be of a satisfactory area, shape and frontage to accommodate a built form that is compatible with surrounding development in the conservation area. Environmental constraints such as access, drainage, service and garbage are able to be addressed through conditions of consent. The subdivision facilitates an improved building envelope and offers better development opportunities to achieve a more efficient use of land than the existing situation.

20

The lot size and subdivision pattern is similar to adjoining properties and are unlikely to produce a built form that is significantly out of character with the surrounding low density residential setting, notwithstanding that further assessment will be required at the development application stage for a future dwelling on Lot B.

25

30 Are there sufficient environmental planning grounds?

The request is considered to have adequately demonstrated that there are sufficient environmental planning grounds to justify varying the standard.

The subdivision will provide for a more efficient and orderly use of land and offers a superior building envelope with greater width and separation from surrounding development to accommodate future built form compared to the existing situation. The proposal will facilitate development of two dwellings on the site as originally intended with minimal environmental impacts on the surrounding natural or built environment.

35

40 **Is the development in the public interest?**

The proposal does not raise any matters that are contrary to the public interest.

45 **Conclusion**

For the reasons stated above the proposed subdivision is considered to have sufficient planning merit to warrant support in the circumstances of the case.

50 **4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority**

There are no proposed instruments that have particular relevance to the development.

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

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

Part A	<input checked="" type="checkbox"/> Preliminary
Part B Chapters:	<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"/> B8 <input checked="" type="checkbox"/> B9 <input checked="" type="checkbox"/> B14
Part C Chapters:	<input checked="" type="checkbox"/> C1 <input checked="" type="checkbox"/> C4
Part D Chapters	<input checked="" type="checkbox"/> D1 <input checked="" type="checkbox"/> D6
Part E Chapters	<input checked="" type="checkbox"/> E2

10 These checked Parts/Chapters have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act. The proposed development complies with all sections of these Parts/Chapters (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to certain prescriptive measures which are considered further (having regard to the DCP 2014 Section A1 Dual Path Assessment) as follows:

15

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>D6.4.1 Lot Size and shape</p> <p><u>Prescriptive Measures</u> Lot sizes must not be less than the minimum area specified in Byron LEP 2014 on the lot size map.</p> <p><u>Proposal</u> A 600m² minimum lot size applies to the site. The subdivision contravenes the minimum lot size standard by 18% for lot A and 28% for lot B.</p>	<p>Yes. The lot sizes are considered be of an acceptable size and shape to accommodate a future built form that is sympathetic to the established character of the area.</p> <p>Refer to Section 4.3 f this report.</p>	<p>Yes. Proposed Lot B has sufficient room to accommodate a small dwelling, including provisions for car parking and private open space.</p> <p>Refer to section 4.3 of this report.</p>

20 The proposal has been assessed against the provisions of DCP 2014 and is considered to meet the relevant objectives for each chapter. Consideration of certain DCP requirements for subdivision within the conservation area is addressed in detail below.

Chapter C1 Non-Indigenous Heritage

C1.4.9 Subdivision		
Performance Criteria	Comment	Complies
1. The allotment and building spacing, including frontage widths, side and front boundary setbacks must not impact	As indicated in Figure 3 , views to nearby heritage item Avalon House are unlikely to be interrupted or obscured by future development on proposed Lot B. Avalon	Yes

	adversely on vistas and views to and of heritage items and Heritage Conservation Areas. In particular the principal elevations of buildings must not be interrupted or obscured.	House is not clearly visible from Campbell Street and existing development facing Granuaille Road will remain unchanged.	
2.	The setting of a heritage item and a satisfactory curtilage, including important landscape and garden elements, must be retained.	New development on proposed lot B will not affect the setting, curtilage or important landscape elements of Avalon House.	Yes
3.	The subdivision must not require rearranged vehicular access and car parking (on or off the site of the proposal) that would adversely affect the principal elevation of the heritage item or components of a Heritage Conservation Area.	Car parking arrangements to the principal elevations facing Granuaille Road will remain unchanged. Vehicular access to proposed Lot B will be provided off Campbell Street, consistent with surrounding properties.	Yes
4.	Landscape quality of the streetscape in Heritage Conservation Areas must be retained.	Proposed Lot B contains planted vegetation that will likely be cleared to accommodate a new dwelling. The building envelope has sufficient room to accommodate a garden that will be sympathetic to the conservation area. Landscaping details can be addressed as part of the application for a future dwelling house.	Yes

Chapter D6 Subdivision

D6.4.3 Infill subdivision with rear lane access		
Prescriptive Measures	Comment	Complies
1) Construction of the laneway to provide a nominal minimum width of 3 metres bitumen seal with controlled drainage for the full laneway frontage of the property. Where required Council may require sealing to be extended to finalise a laneway or to connect with the nearest cross street.	Campbell Lane will require upgrading to 3m wide sealed road for the length of the property frontage.	Yes. Condition recommended.
2) Driveways are to be installed, and, where crossing of an existing table drain is proposed, installation of appropriate sized concrete pipe and headwalls may be required.	Council's Development Engineer has commented that driveway installation is not necessary for this subdivision. Appropriate driveway location to be determined as part of a future development application for a dwelling.	N/A
3) Legal pedestrian access is to be provided back to the main street frontage by way of a Right of	Council garbage collection is unavailable from the northern end of Campbell Street. As such, a right-of-	Yes. Condition recommended.

<p>footway, common property or battle-axe subdivision design. This can also be used for the provision of services (water, sewer, power and telecommunications) to the rear dwelling house / lot and enable garbage and postal services to be collected from the street as opposed to the laneway. Where it is to be used for pedestrian purposes only, the handle to be a minimum 1.2 metres wide to facilitate easy access and manoeuvring of a garbage bin, whilst also providing a main street frontage for visitors and delivery services. Where infrastructure services are also sited in the handle, this may need to be increased to a width of three (3) metres. The access handle should be appropriately fenced for privacy purposes, but must not restrict sight distances to adjoining driveways.</p>	<p>footway will be provided along the southern boundary to enable garbage collection from Granuaille Road.</p> <p>The width of the right-of-foot way is 1.3m and satisfies the Prescriptive Measures. Conditions are recommended for a concrete pathway to be constructed to allow bins to be moved easily to the road frontage.</p>	
<p>4) Applicants are to demonstrate that each lot can accommodate an unconstrained building envelope of 12 x 15 metres. Dwelling houses and garages are to be set back a minimum of 3 metres from the laneway boundary.</p>	<p>Proposed Lot B is able to accommodate a building envelope with dimensions of 12m by 15m with a 4m setback to Campbell Street. Please refer to Figure 5.</p>	<p>Yes</p>
<p>5) No gates or doors are to open out onto the public road reserve including the laneway.</p>	<p>No fencing or gates are proposed.</p>	<p>N/A</p>
<p>6) Landscaping is to comply with the requirements of Chapter B9 Landscaping.</p>	<p>Proposed Lot A offers adequate deep soil and landscaped areas for the existing dwelling. No additional landscaping for the subdivision (i.e. street trees or other embellishments) are necessary.</p>	<p>Yes</p>

Chapter E2 Bangalow

E2.3 Development within the Conservation Area		
Performance criteria	Comment	Complies
<p>E2.2.1 Character, Bulk and Scale of Development</p>	<p>Proposed Lot B is capable of supporting accommodating a built form that is sympathetic to the conservation area and the nearby heritage listed item.</p>	<p>Yes</p>

	Existing built form facing Granuaille Road will not be significantly altered.	
E2.3.1 Urban Design	The proposed subdivision is demonstrated to satisfy the design principles specific to Bangalow in Section E2.3.2	Yes
E2.3.3 Development in Remainder of Conservation Area	Detail assessment of form, scale and materials will need to be undertaken upon lodgement of a development application for a dwelling house on proposed lot B.	N/A

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

4.5 Any Planning Agreement or Draft Planning Agreement?

5

Not applicable.

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

10 Clause 92 Additional matters that consent authority must consider

The provisions of AS 2601—1991: *The Demolition of Structures*

15 A condition is recommended that requires any demolition works associated with the reinstatement of the detached garage to be carried out in accordance with AS2601.

Clause 94 Consent authority may require buildings to be upgraded

20 Existing buildings on the site will have adequate separation from boundaries to achieve the deemed-to-satisfy provisions of the BCA for fire separation at the completion of the subdivision. No upgrades to existing buildings are considered necessary at the current time.

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

25

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	<p><u>Use of detached garage</u></p> <p>The double garage facing Granuaille Road has been converted into a home office or similar, resulting in a loss of car parking for the existing dwelling. Vehicular access is blocked by a fence erected in front the building.</p> <p>The fence will need to be removed and the building converted back to its approved purpose as a garage. Conditions are recommended for these works to be carried out prior to the release of the subdivision certificate.</p> <p><u>Collection of garbage</u></p> <p>Council garbage collection is not available off Campbell Street.</p>

	<p>Instead, the applicant has proposed that Lot B can leave bins at Granuaille Road for pickup. This will be achieved by a right-of-foot-way over Lot A providing access for lot B to Granuaille Road.</p> <p>To improve accessibility, a concrete pathway within the proposed right-of-footway will need to be constructed. Conditions are recommended.</p> <p><u>Views, solar access and amenity of neighbouring dwellings</u></p> <p>The proposed building envelope has adequate separation from neighbouring dwellings and can accommodate a small dwelling that is unlikely to burden surrounding properties through loss of solar access, views or privacy. These issues will need to be considered in the assessment of a future development application for a dwelling on Lot B.</p>
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.

4.8 The suitability of the site for the development

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

4.9 Submissions made in accordance with this Act or the regulations

The development application was publicly notified for a period of 14 days in accordance with Part A14 of DCP 2014. No public submissions were received.

4.10 Public interest

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

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

No Section 64 levies will be required as there are no additional dwelling entitlements being created.

5.2 Section 7.11 Contributions

No development contributions will be required as there are no additional dwelling entitlements being created.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

Environment Division.	
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7. CONCLUSION

- 5 The proposed development is consistent with the relevant environmental planning instruments and planning controls applicable to the site, except for a variation to the minimum lot size under Clause 4.1 to LEP 2014 which is supported in this instance. The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development. The application is recommended for approval subject to conditions of consent.

Report No. 13.3 **PLANNING - Development Application 10.2019.375.1 Alterations and Additions to Existing Commercial Development Including Expanded Outdoor Dining Area Associated with Existing Restaurant 1 Porter Street Byron Bay (Habitat)**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Chris Larkin, Manager Sustainable Development
 Shannon Burt, Director Sustainable Environment and Economy
File No: I2019/1425

10

Proposal:

DA No: 10.2019.375.1
Proposal description: Alterations and Additions to Existing Commercial Development
Property description: LOT: 2 DP: 2711119
 1 Porter Street BYRON BAY
Parcel No/s: 268926
Applicant: Planners North
Owner: Bayshore Development Pty Ltd
Zoning: B4 Mixed Use
Date received: 13 July 2019
Integrated / Designated Development: Integrated Designated Not applicable
Concurrence required No
Public notification or exhibition: – Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
 – Exhibition period: 1/8/19 to 14/8/19
 – Submissions received: 10 in support; 4 objections
Planning Review Committee: Not applicable
Concurrent approvals (S68/138): Not applicable
Variation request Clause 4.6 SEPP 1 Not applicable
Issues: • Noise

15 **Summary:**

The Development Application proposes a number of changes to the existing commercial precinct at Habitat including:

- 20 • *“an expansion of the dining area of Barrio to include the adjacent outdoor quadrangle for the purpose of a “licensed restaurant”;*
 • *improvements to deliveries in Penny Lane changing the direction of flow to reduce noise as trucks wait to enter the site and improve delivery access efficiency;*
 • *the provision of acoustic enclosure of rear back-of-house component of Barrio restaurant to*
 25 • *further reduce noise and improve restaurant efficiency;*
 • *codification of delivery times to 6:30am to 5pm daily; and*
 • *alterations to the hours of operation of business premises in the commercial precinct from the current “daylight hours” to opening hours of “sunrise–8pm”*

5 Because the development application proposes an expansion to the dining area of the existing Barrio Restaurant (license area LIQO 660034315) the applicant completed a community consultation of the proposal, prior to its lodgement. This consultation which forms part of the Social Impact Assessment required under Development Control Plan 2014, enabled nearby residents and interested community, to raise concerns about this aspect of the proposal for specific inclusion in the application submitted for assessment.

A merit assessment of the development application has been undertaken.

10 The report recommends consent be granted subject to conditions.

NOTE TO COUNCILLORS:

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

20

RECOMMENDATION:

That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application 10.2019.375.1 Alterations and Additions to Existing Commercial Development Including Expanded Outdoor Dining Area Associated with Existing Restaurant 1 Porter Street Byron Bay (Habitat) be granted consent subject to conditions in Attachment 2 (#E2019/72944).

Attachments:

- 25
- 1 Proposed Plans 10.2019.375.1, E2019/73017 
 - 2 Proposed conditions of consent 10.2019.375.1, E2019/72944 
 - 3 Submissions received 10.2019.375.1, E2019/72265 

REPORT

1. INTRODUCTION

5 1.1. History/Background

A summary of the key consents / approvals relevant to the subject property is provided below:

DA 10.2008.360.1	Mixed use development comprising 82 residential dwellings, plus commercial, retail and creative industrial units, with the provision of fill, roadworks, carparking, landscaping, water, sewer, drainage and communication services	Deferred Commencement 06/01/2009
DA 10.2009.12.1	Community title subdivision of approved mixed use development Consent surrendered 12/11/2014	Approved 09/12/2009q
DA 10.2011.162.1	Mixed-use development comprising 67 residential dwellings, commercial, retail, live/work and creative industry units, with the provision of road works, car parking, landscaping, water, sewer, drainage and communication services, plus subdivision of the site under a Community Scheme	Approved (JRPP) 24/02/2012
DA 10.2015.353.1	Stage 1 - Mixed use development comprising 28 Residential dwellings, plus commercial and retail units, recreation facilities, associated infrastructure and subdivision	Approved 04/02/2016
DA 10.2017.437.1	Installation of charcoal oven (also included approval of outdoor dining area; patronage of Barrio Restaurant conditioned at a maximum of 216 patrons at any one time)	Approved 30/11/2017
LIQO 660034315	Approval was granted by the Independent Liquor and Gaming Authority for a liquor licence in relation to the Barrio Restaurant. The licence, only applies to the internal component of the restaurant. It provides for the sale of liquor between 10:00am and 10:00pm.	Approved 3/05/2018

10 The Barrio Restaurant was approved in Stage 1 of Habitat (known as 'Canteen in Building C1'), and opened in 2017. Following its opening, Council received noise complaints from residents opposite the site, culminating in the issue of a Direction to Take Preventative Action relating to noise.

15 In response, Bayshore Development Pty Ltd commissioned a detailed Noise Assessment Report (NAR) and, based on the results of that assessment, a Noise Management Plan (NMP). That NMP proposed a number of physical works, primarily involving the construction of a solid wall adjacent to Barrio Restaurant, at the opening to the external courtyard, together with a number of operational strategies to address the noise complaints. The NMP has been in place since mid-2018.

20

1.2. Description of the proposed development

This application seeks development consent for the following alterations and additions to the existing Habitat commercial precinct:

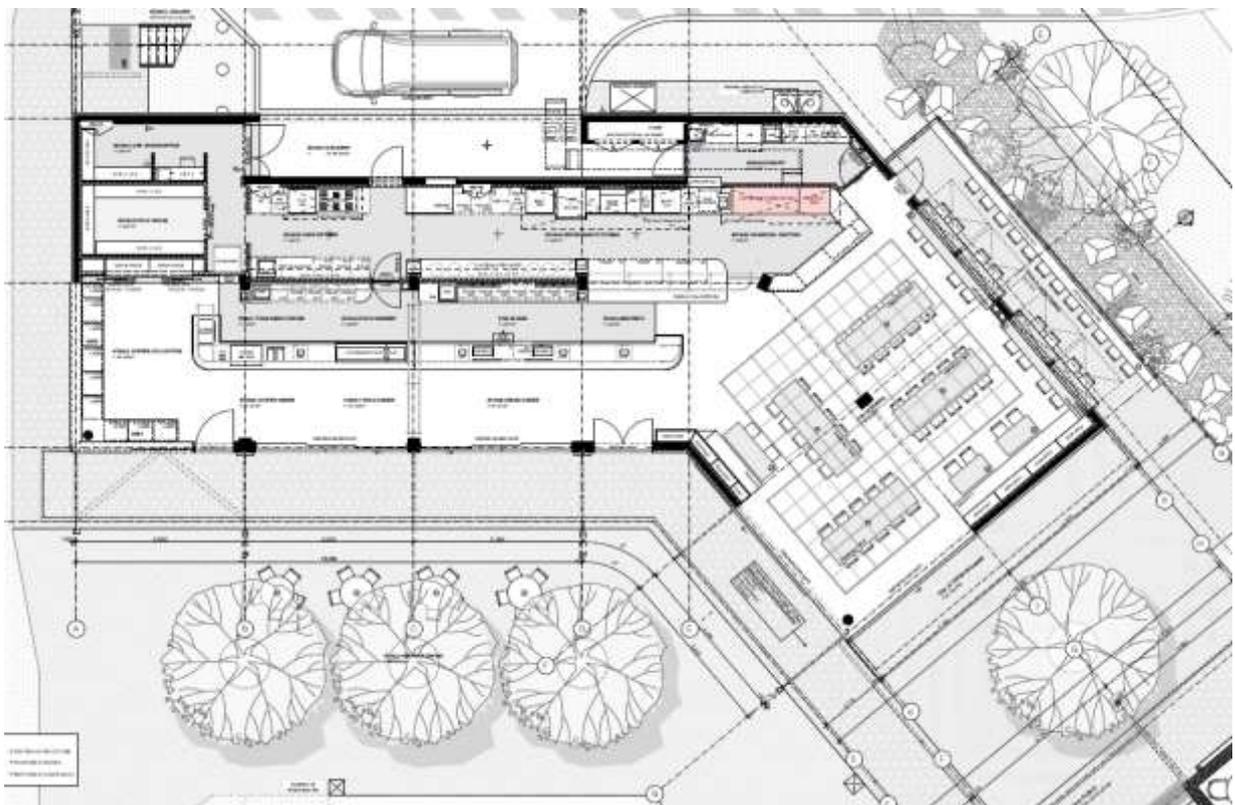
5

1. An expansion of the dining area of Barrio Restaurant to include the adjacent outdoor quadrangle for the purpose of a “licensed restaurant”

The extent of the outdoor dining area has been shown on various approved plans. Most recently, development consent 10.2017.437.1, via Construction Certificate plans provided for the layout below. This layout shows some external tables located between the restaurant and the central raised landscape bed located within the courtyard. This area however was not explicitly approved by the development consent at that time. This area is also not included in the current restaurant license area (LIQO 660034351).

10

15



Condition #10 of Consent 10.2017.437.1 specifies that “The number of patrons permitted at any given time is limited to the extent of the approved floor area of the café in accordance with the Building Code of Australia - 216 persons (1 person per 1m²)”. It is noted that this is significantly higher than the number of seats shown in the approved plan.

20

To remove any ambiguity, the application proposes to extend the area within which the outdoor dining associated with the Barrio restaurant can occur, as shown below. The application does not propose to increase patron numbers above the approved 216 persons.

25

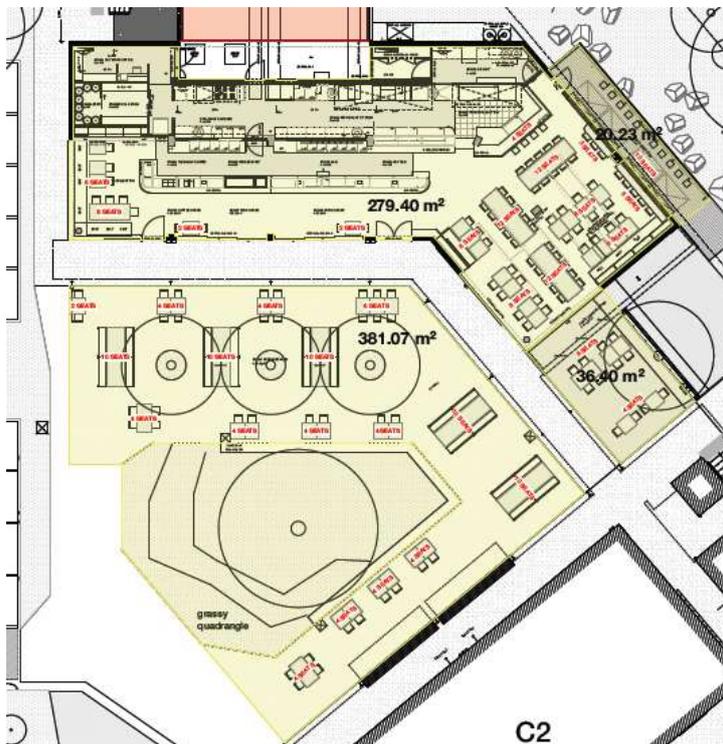
The expanded outdoor dining area will include the central grassed quadrangle area and the paved area to its south.

Staff recommendation

The expanded outdoor dining area associated with Barrio Restaurant is supported subject to the condition that restricts the total patron numbers permitted at any given time (internal and external to Barrio Restaurant) to 216 persons as per condition #10 Consent 10.2017.431.1.

5 Further, an additional condition be imposed that restricts the hours of operation of the expanded outdoor dining area associated with Barrio Restaurant to between 7am and 10pm as per the Noise Impact Assessment submitted with the application. (Discussed separately in the report.)

10 It is noted that plans attached to the application show an outdoor dining area and a separate proposed license area plan. The plans do not accord. The proposed license area plan is not supported for approval as part of this application.



15 **2. Improvements to deliveries in Penny Lane changing the direction of flow to reduce noise as trucks wait to enter the site and improve delivery access efficiency**

20 Penny Lane is a single-lane delivery road off Bayshore Drive, located immediately north of the restaurant. As approved, the direction of travel was one-way into the site, to access loading docks and garbage storage areas for the restaurant and the commercial precinct. The application proposes to reverse the direction of travel and install a boom-gate.

25 After the Habitat commercial precinct became operational, it was noticed that Penny Lane was being used by the general public to access the on-site parking. To remedy this, a lockable bollard was installed, this had the unintended consequence of requiring delivery drivers to stop and unlock the bollard in making deliveries.

30 Noise from idling delivery vehicles has been raised by, and is noted as being of an ongoing concern to some nearby residents the result of this arrangement.

The reversal of the direction of travel and installation of a boom gate is proposed to remedy this situation.

5 Delivery vehicles will therefore access the site from Wallum Place and leave via Penny Lane. Idling vehicles will therefore be located further within the site, eliminating vehicle idling noise from the current location of concern. Vehicles will leave onto Bayshore Drive via Penny Lane. The control of service access out of the site will be managed through the installation of a keypad security gate.

10 Staff recommendation

The redirection of the delivery vehicles has been assessed as acceptable having regard to the Noise Impact Assessment (NIA) submitted with the application, and resident concerns subject to conditions. (Discussed separately in the report.)

15 **3. The provision of acoustic enclosure of rear back-of-house component of Barrio restaurant to further reduce noise and improve restaurant efficiency;**

20 The application also proposes the construction of a solid wall enclosing the restaurant 'back of house' / delivery / store areas. This area which contains the refrigeration condensers, a specific source of noise will also be enclosed. The enclosure will serve to further assist in reducing noise emanating from the restaurant 'back of house' area and operations.

25 Staff recommendation

The construction of the acoustic wall has been assessed as acceptable having regard to the NIA submitted with the application, and resident concerns subject to conditions. (Discussed separately in the report.)

30 **4. Alterations to the hours of operation of business premises in the commercial precinct from the current "daylight hours" to opening hours of "sunrise–8pm**

The current hours of operation are established by Condition #80 of Development Consent 10.2015.353.1 (as amended):

35 *The opening hours of the various land uses contained within the development are limited to those provided below;*

- *Commercial and Retail areas within Buildings B1 and C1 - C5: daylight hours.*
- *Creative Industry uses within Buildings LW1-1, LW1-2 & LW1-3: daylight hours.*
- *Office uses within Dwelling Types A1, A2 & A5 daylight hours.*
- *Workspace uses within Dwelling Types D4, D5A, D7A, D8, D8B & D9: daylight hours.*
- 40 • *Canteen within Building C1: daylight hours until midnight.*
- *Recreation facilities: 6am to 10pm Monday to Sunday.*

The application proposes to change the hours for the commercial precinct to 'sunrise to 8pm'.

45 This would not apply to the Barrio restaurant (internal), for which the hours (above) of 'daylight hours until midnight' will remain in place.

Staff recommendation

5 There remain some peculiarities with Condition 80 of Development Consent 10.2015.353.1 and in particular the use of the words 'daylight hours'. It is considered this is confusing with longer days in summer and shorter days in winter depending upon the hours of sunrise and sunset, and some argument could be made that twilight is also part of daylight hours.

10 To avoid this confusion and for clarity for Council, tenants, the land owners, surrounding residents and the broader community it is recommended that this consent amend Condition 80 of Development Consent 10.2015.353.1 under S4.17(5) of the EPA Act 1979 to provide for clear time limits for the uses within the development. (Discussed separately in the report.)

This change has been discussed with the applicant who is agreeable to staff recommendation.

15 **5. Codification of delivery times to 6:30am to 5pm daily; and**

While not established by any condition of consent, as part of the discussions associated with noise abatement, the proponent agreed in practice to restrict commercial deliveries to between 8am to 5pm.

20 It has been submitted that this arrangement has proved to be inefficient for the commercial operators on site. As a result, the application is requesting a condition of consent be included to 'codify' delivery times to 6.30am to 5pm daily.

Staff recommendation

25 The codification of delivery times has been assessed having regard to the NIA submitted with the application, and resident concerns and is acceptable subject to conditions for 7am-5pm Monday to Saturday and 8am – 5pm Sunday deliveries. (Discussed separately in the report.)

30 **1.3. Description of the site**

A site inspection was carried out on 23 August 2019.

Land is legally described as	LOT: 2 DP: 271119
Property address is	1 Porter Street BYRON BAY
Land is zoned:	B4 Mixed Use
Land area is:	7,356m ²
Property is constrained by:	Acid Sulfate Soils Class 3 Bushfire prone land HEV Vegetation (mapped along Bayshore Drive frontage – note vegetation no longer in place)

35 The subject application relates only to the existing commercial precinct at Habitat, located toward the Bayshore Drive frontage of the property. In addition to Barrio Restaurant, this precinct contains a number of retail uses at ground level, with commercial uses on the upper floor. All existing businesses overlook the central quadrangle.

2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer*	No objection subject to conditions of consent – noise comments provided below.
Building Certifier	No objection.
ET Engineer	No objection subject to conditions of consent.

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

5

3. SECTION 4.14 – BUSH FIRE PRONE LAND

Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document 'Planning for Bush Fire Protection 2006'.

10

The site is mapped as bush fire prone land. However, the application raises no issues that would increase the bush fire risk. No further assessment is required for this application.

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

15

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

20

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 44—Koala Habitat Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The subject site is less than 1ha in size and the development control provisions of the SEPP therefore do not apply. In any case, the site does not contain koala food trees and therefore has no potential or core koala habitat.		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Detailed consideration of this SEPP was undertaken as part of previous approvals for the site. The current proposal does not create new or additional risks in regard to soil contamination issues.		

4.2 Byron Local Environmental Plan 2014 (LEP 2014)

25

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

30

Part 1	<input checked="" type="checkbox"/> 1.1 <input checked="" type="checkbox"/> 1.1AA <input checked="" type="checkbox"/> 1.2 <input checked="" type="checkbox"/> 1.3 <input checked="" type="checkbox"/> 1.4 <input checked="" type="checkbox"/> Dictionary <input checked="" type="checkbox"/> 1.5 <input checked="" type="checkbox"/> 1.6 <input checked="" type="checkbox"/> 1.7 <input checked="" type="checkbox"/> 1.8 <input type="checkbox"/> 1.8A <input checked="" type="checkbox"/> 1.9 <input type="checkbox"/> 1.9A
Part 2	<input checked="" type="checkbox"/> 2.1 <input checked="" type="checkbox"/> 2.2 <input checked="" type="checkbox"/> 2.3 <input checked="" type="checkbox"/> Land Use Table <input type="checkbox"/> 2.4 <input type="checkbox"/> 2.5 <input type="checkbox"/> 2.6 <input type="checkbox"/> 2.7 <input type="checkbox"/> 2.8
Part 3	<input type="checkbox"/> 3.1 <input type="checkbox"/> 3.2 <input type="checkbox"/> 3.3
Part 4	<input type="checkbox"/> 4.1 <input type="checkbox"/> 4.1A <input type="checkbox"/> 4.1AA <input type="checkbox"/> 4.1B <input type="checkbox"/> 4.1C <input type="checkbox"/> 4.1D <input type="checkbox"/> 4.1E <input type="checkbox"/> 4.2 <input type="checkbox"/> 4.2A <input type="checkbox"/> 4.2B <input type="checkbox"/> 4.2C

	<input type="checkbox"/> 4.2 <input type="checkbox"/> 4.3 <input type="checkbox"/> 4.4 <input type="checkbox"/> 4.5 <input type="checkbox"/> 4.6
Part 5	<input type="checkbox"/> 5.1 <input type="checkbox"/> 5.2 <input type="checkbox"/> 5.3 <input type="checkbox"/> 5.4 <input type="checkbox"/> 5.5 <input type="checkbox"/> 5.6 <input type="checkbox"/> 5.7 <input type="checkbox"/> 5.8 <input type="checkbox"/> 5.9 <input type="checkbox"/> 5.9AA <input type="checkbox"/> 5.10 <input type="checkbox"/> 5.11 <input type="checkbox"/> 5.12 <input type="checkbox"/> 5.13
Part 6	<input checked="" type="checkbox"/> 6.1 <input type="checkbox"/> 6.2 <input type="checkbox"/> 6.3 <input type="checkbox"/> 6.4 <input type="checkbox"/> 6.5 <input checked="" type="checkbox"/> 6.6 <input type="checkbox"/> 6.7 <input type="checkbox"/> 6.8 <input type="checkbox"/> 6.9

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

- (a) The application proposes a number of amendments / modification relating to existing land uses that are within the LEP 2014 definition of *Commercial Premises*;
- 5 (b) The land is within the B4 Mixed Use according to the Land Zoning Map;
- (c) Commercial premises are permitted with consent in the B4 zone; and
- (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
<i>To provide a mixture of compatible land uses. To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling</i>	There are no aspects of the subject application that raise inconsistencies in relation to these zone objectives.

10 The remaining checked clauses have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act. The proposed development complies with all clauses of LEP 2014 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

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

None relevant.

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

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

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

Chapter D4.2.10 Restaurants, Cafes, Small bars, Pubs Registered Clubs, Function Centres and other Licensed Premises in the Urban Areas of Byron Shire

30 **Objectives:**

- 1. *To ensure restaurants or cafes, pubs, small bars, registered clubs, function centres and other licensed premises or venues (e.g. entertainment facility,) operating in the urban areas of Byron
35 Shire do not adversely impact upon the amenity of the area.*

Staff comment

Previous operation of Barrio has resulted in some impacts on the amenity of the area, as evident by previous noise complaints and noise abatement orders issued by Council.

5 In response, Habitat management and Barrio have instigated a range of measures, including noise wall construction and management / operational changes that have successfully mitigated noise issues.

10 Previous complainants have acknowledged that the situation has improved such that certain amenity impacts are no longer occurring. They are now concerned that the current application to extend the outdoor dining area will 'undo' previous good work and result in additional noise issues.

15 This concern is based on an assumption that the expansion of the outdoor dining area will result in a significant increase in patron numbers and that will then result in increased noise.

These assumptions are incorrect in two ways:

- 20 • As highlighted above, the Barrio restaurant is currently approved for a maximum of 216 people (Condition #10 of Consent 10.2017.437.1). The current application does not propose any increase in this approved number;
- Notwithstanding this, the acoustic assessment submitted in support of the application, and subsequent additional clarifying information, demonstrates that increasing the number of patrons does not necessarily result in a direct increase in noise levels.

25 Modelling undertaken for the assessment assumed 130 patrons spread across the whole of the proposed outdoor dining area, all talking simultaneously and continuously.

The modelled results showed that the noise from this scenario, when measured at the outside face of the closest residential dwelling opposite the site, is 9dB below the 'intrusive noise' criteria (i.e. background noise level plus 5dB).

30 Given that the noise measurement scale is logarithmic not linear, an increase of 9dB (i.e. to the 'intrusive noise' criteria) would require the addition of a significantly larger number of people, estimated by the acoustic consultant to be in the order of 900 people more than the 130 modelled, all talking simultaneously and continuously.

35 Given this, it is considered that the expansion of the dining area associated with Barrio Restaurant to include the adjacent outdoor quadrangle for a licensed restaurant will not result in any further amenity impacts to the area.

40 2. *To ensure venues operate in a manner that does not generate offensive noise or create anti social behaviour.*

Staff comment

45 See above. Continuation of the existing NMP will successfully manage noise. The proposed measures to enclose the Barrio 'back of house' and modify deliveries so that trucks do not need to idle at the Bayshore Drive frontage, will further assist in reducing existing noise levels.

3. *To prevent the proliferation of poorly managed late night premises*

Staff comment

The current proposal will not add to the number of approved premises at Habitat.

5 **Prescriptive Measures:**

1. *Hours of operation:*

The maximum hours of operation for licensed premises are:

- 10 *Friday and Saturday 10am to 2am*
Sunday (and public holidays) 10am to 12 midnight
Good Friday and ANZAC Day 12 noon to 12 midnight
New Years Eve 10am to 3am
Any other day 10am to 1am

15 *Premises proposing to operate without a liquor license or outside of the liquor license (when alcohol is not available for sale) are able to propose earlier opening times to cater for breakfast*

Staff comment

20 The Barrio restaurant is currently approved to operate from 'daylight hours to midnight'. This application does not propose to alter these hours.

Notwithstanding this, a condition is recommended to amend the hours to 7am – midnight.

25 This change has been discussed with the applicant who is agreeable to staff recommendation.

2. *Noise reports:*

30 *Premises (licensed and unlicensed) that are proposed to open during the evening hours (6 pm onwards) will need to be accompanied by a detailed noise assessment report prepared by a suitably qualified and experienced acoustic engineer.*

Staff comment

35 An appropriate NIA has been provided, demonstrating that the proposed expansion of the outdoor dining associated with the Barrio Restaurant will not result in the generation of 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997*.

3. *Liquor licence*

40 *Applicants are required to nominate whether the premises will be licensed for the sale of alcohol.*

Staff comment

45 It is noted that plans attached to the application show an expanded outdoor dining area and a separate proposed expanded liquor license area plan. The plans do not accord. The proposed liquor license area plan is not supported for approval as part of this application.

4. *Management Plan*

Where premises are proposed to be open past 10.00 pm, applications are to include a Management Plan

Staff comment

A NMP is in place and will be updated to account for the NIA measures proposed in this application to mitigate any potential noise impacts from the proposal.

5

Chapter E5.5 Habitat

The current application relates to Precinct 4, described in this Chapter as:

10

This area offers a mix of business, retail and living spaces including; approx. 1200m² of retail space; approx. 1700m² of commercial office space plus a café/restaurant, gym and pilates studio, as well as 10 x two bedroom apartments, with attached retail or commercial workspaces. The recreational precinct includes a swimming pool, change rooms, barbecue areas, bicycle storage and shaded lawn.

15

Staff comment

There are no specific controls in this Chapter that are directly relevant to the current application.

20

4.5 Any Planning Agreement or Draft Planning Agreement?

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

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

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

25

4.7 Any Coastal Zone Management Plan?

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

30

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

Impact on:	Likely significant impact/s?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	Noise Impacts are the primary concern in relation to the built environment and the potential impacts on surrounding land owners

	from the increased operations of the Barrio. Further comments provided below.
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.

Noise Assessment Comments

5 A Noise Impact Assessment Ref: 26/2019- Ext dining prepared by Tim Fitzroy & Associates dated 4 July 2019 was submitted with the DA. The report indicates the following noise is to be generated by the development:

- Increase in external dining area to encompass the entire commercial precinct courtyard between the hours of 6am and 10pm for the current approved patron limit for the café; and
- 10 • Extension of hours for delivery and waste collection vehicles from 6.30am to 5pm.

It is considered the increase in noise can be adequately managed through the following mechanisms:

- Eastern facing windows and doors are to remain closed from 6pm until closing;
- 15 • The breezeway noise barrier is to remain closed from 6pm until closing;
- Southern door is to remain closed from 6pm until closing;
- Exhaust fans in mechanical ventilation should be operated at medium speed;
- Condensers Louvers are to remain in place as per recommendations in
- 20 *Environmental Noise Impact Assessment of Mechanical Plant, Habitat Development, 2 Porter Street Byron Bay (5 February 2018).*

It is recommended that a revised NMP be prepared and implemented for the development to reflect the matters raised above to ensure adequate measures, roles and responsibilities are in place and to reflect the conditions of this consent to achieve the project specific noise criteria once this consent is operational.

Hours of use and operation comments

30 Notwithstanding the above, there remain some peculiarities with Condition 80 of Development Consent 10.2015.353.1 and in particular the use of the words ‘daylight hours’. It is considered this is confusing with longer days in summer and shorter days in winter depending upon the hours of sunrise and sunset, and some argument could be made that twilight is also part of daylight hours.

35 To avoid this confusion and for clarity for Council, tenants, the land owners, surrounding residents and the broader community it is recommended that this consent amend Condition 80 of Development Consent 10.2015.353.1 under S4.17(5) of the EPA Act 1979 to provide for clear time limits as follows:

- 40 *80. The opening hours of the various land uses contained within the development are limited to those provided below;*
- Commercial and Retail areas within Buildings B1 and C1 - C5: ~~daylight hours.~~ 7am to 8pm
 - Creative Industry uses within Buildings LW1-1, LW1-2 & LW1-3: ~~daylight hours.~~ 7am to 8pm
 - Office uses within Dwelling Types A1, A2 & A5 ~~daylight hours.~~ 7am to 8pm
 - 45 • Workspace uses within Dwelling Types D4, D5A, D7A, D8, D8B & D9: ~~daylight hours.~~ 7am to 8pm

- ~~Canteen Restaurant within Building C1: daylight hours until midnight.~~ 7am to midnight
- Recreation facilities: 6am to 10pm Monday to Sunday.

5 Further, it is recommended that the proposed outdoor dining area associated with the Barrio Restaurant as proposed under this DA now be regulated with a time limitation on its use from 7am to 10pm. This is consistent with the NIA submitted with this application. A condition is included in the recommendation.

4.9 The suitability of the site for the development

10 The site is suitable for the proposed development, subject to the existing Noise Management Plan and the recommendations of the NIA submitted with the application.

4.10 Submissions made in accordance with this Act or the regulations

15 The development application was publicly exhibited.

There were **14** submissions made on the development application:

- 20 - 10 For; and
- 4 Against

Issues raised are addressed below:

<i>Issue</i>	<i>Comment</i>
Objection:	
Local residents' noise complaints after the opening of Barrio resulted in Council issuing orders requiring implementation of measures to reduce night-time noise from the restaurant operations. Extension of the outdoor dining area will result in a significant increase in patrons and significantly increase the generation of noise. Noise assessment not considered to be independent and is misleading.	See commentary above – patron numbers not proposed to increase above previously approved limit. Noise impact assessment concludes that expanded outdoor dining area will not result in the generation of 'offensive noise' as defined in Protection of Environment Operations Act. Council's Environmental Health Officer has reviewed the noise assessment report and concluded that it is rigorous. Its conclusions are supported with conditions in the recommendation.
Reversal of traffic direction in Penny Lane will be dangerous, with delivery vehicles exiting onto Bayshore Drive close to existing intersections and opposite driveway to unit complex.	Council's Development Engineer has reviewed the proposal and is satisfied that the concerns are unfounded.
Application is a pathway for the doubling of patron numbers, because the current liquor license sets a 122 patron limit.	See commentary above. It is important to note that the acoustic assessment modelled the noise generation of 130 patrons spread across the proposed outdoor dining area, all talking continuously and simultaneously and concluded that the resultant noise generated will be 9dB <u>below</u> the offensive noise threshold (i.e. background + 5dB).
Aspects of the application are misleading in presenting Barrio as a 'laid back' venue for	The acoustic assessment does not rely on a specific type of clientele. It models 130 people

Issue	Comment
locals, where it is advertised as destination restaurant and as an events venue.	spread across the outdoor dining area. The existing Noise Management Plan contains provisions addressing live music, which is all located internally.
Proposal to have earlier deliveries is unacceptable, as this reverts to previous operation which resulted in noise impacts for residents.	It is understood that previous impacts were primarily associated with delivery vehicles idling within Penny Lane, close to Bayshore Drive. The reversal of direction in the Lane, and installation of a boom gate will address this, such that delivery vehicles will have no option other than stopping (idling) further into the site, behind buildings. This would then allow earlier deliveries to occur without the current associated noise impacts.
Proposal is inconsistent with Council's <i>Liquor Licensing and Approval Policy 2019</i> .	Section 2.5 of the Policy states: <i>(a) The location of licensed premises should not impinge upon residential properties. Council encourages the 'clustering' of licensed premises within the central business districts of Byron Shire in preference to development of isolated licensed premises in or near residential properties.</i> <i>(b) Council may not support any application proposing to locate a licensed premise within 100 metres of a school, child care facility, place of worship, hospital, aged care facility or residential area.</i>
Acoustic assessment does not address cumulative impact of patrons inside the premises together with the outdoor patrons.	The existing Noise Management Plan and the recommendations of the Noise Impact Assessment submitted with the application adequately address this issue of concern.

4.11 Public interest

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

5. DEVELOPER CONTRIBUTIONS

10 **5.1 Water & Sewer Levies**

Section 64 levies will be payable.

5.2 Section 7.11 Contributions

15 Proposal raises no nexus to levy developer contributions.

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

5 7. CONCLUSION

10 The proposed development is consistent with the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development. The application is recommended for approval subject to conditions of consent listed in Attachment 2 (#E2019/72944).

8. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED

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

Statement of Reasons

The proposed development complies with the provisions of Byron Local Environmental Plan 2014.
The proposed development complies with relevant provisions of Development Control Plan 2014
The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The proposed development is unlikely to prejudice or compromise the public interest.

How community views were addressed

The DA was advertised in accordance with Development Control Plan 2014. The submissions received were considered on merit and addressed during assessment of the application.

Report No. 13.4 **PLANNING S8.2 Review - Use of unauthorised additions to existing dual occupancy (conversion of garage to bedroom), car parking and tree removal at 3 Comet Close Byron Bay.**

Directorate: Sustainable Environment and Economy

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

File No: I2019/1464

10 **Summary:**

15 In accordance with Section 8.3(4)(b) of the Environmental Planning and Assessment Act 1979 (the Act), a Review of Determination Application lodged in accordance with section 8.2 of the Act is to be conducted by another delegate of Council who is not subordinate to the delegate who made the determination or decision. A determination of such review must be made within 6 months of the original determination date.

20 This report provides a review of determination of development application DA 10.2019.220.1, for use of unauthorised additions to an existing dual occupancy (conversion of garage to a bedroom), car parking and tree removal, which was refused by staff under delegation on 27 June 2019. The reasons for refusal were:

- 25 1. **Pursuant to Section 4.15(1) (a) (iii) the proposal has not demonstrated compliance with the requirements of part B4.2.2.4 and the objectives and performance criteria of part D1.2.2 of Development Control Plan 2014.**
- 30 2. **Pursuant to Section 4.15(1)(b) the proposed development would create an unreasonable visual amenity impact on the streetscape.**
- 30 3. **Pursuant to Section 4.15(1) (e) the proposed development is not in the public interest as it would create an undesirable precedent.**

35 In essence the subject land is a small constrained parcel of only 281 m² and the addition of a bedroom to the dwelling house results in a nexus for two car parking spaces to be provided onsite. This has been complicated further as the existing garaged space is now a bedroom resulting in the two spaces now to be provided in the front setback in a tandem arrangement. This has resulted in a poor planning outcome that impacts adversely character and amenity of the area, and sets an undesirable precedent for the abandonment of the existing DCP controls.

40 As such the need to maintain the existing setback controls is critical in the circumstances, to demonstrate to the community, planning consultants, architects and designers that the setback controls have not been abandoned by Council. It is noted that Council is dealing with other similar applications within Comet Street, including the adjacent neighbour. As such the circumstances of the case are an important factor.

45 On the basis of a complete review of information submitted, it is recommended that pursuant to Section 8.2 of the Environmental Planning and Assessment Act 1979 that the refusal be reaffirmed for the reasons outlined in this report. Ultimately the bedroom needs to be converted back to a garage and subject to the determination of this application by Council further compliance proceedings will commence.

NOTE TO COUNCILLORS:

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

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

RECOMMENDATION:

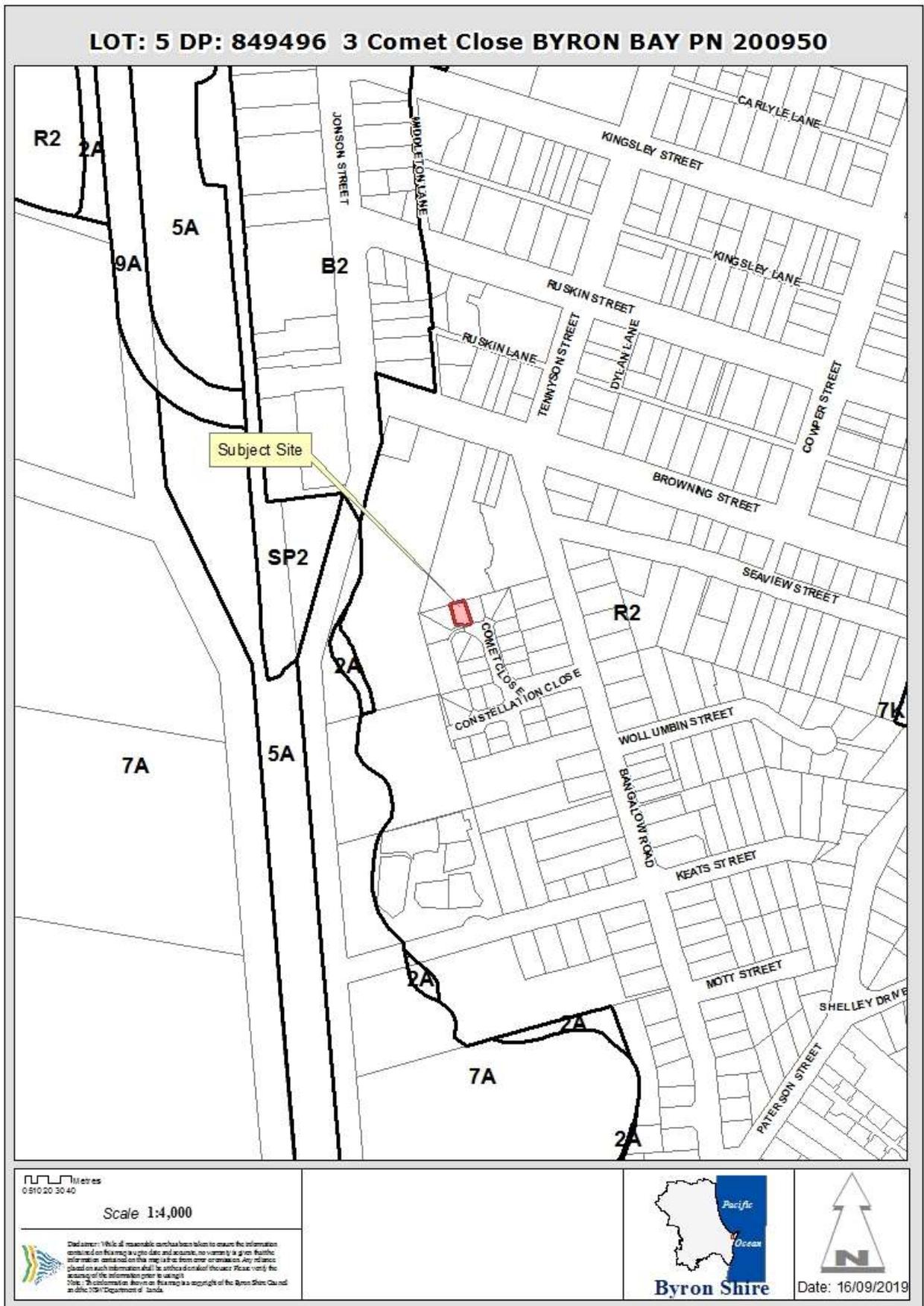
1. **That Council reaffirm the determination (refusal) of DA10.2019.220.1 dated 27 June 2019 for Use of Unauthorised Additions to Existing Dual Occupancy Dwelling (Conversion of Garage to Bedroom), Carparking and Tree Relocation, at 3 Comet Close, Byron Bay.**
2. **That Council reissue the determination notice (refusal) of DA10.2019.220.1 dated 27 June 2019 for Use of Unauthorised Additions to Existing Dual Occupancy Dwelling (Conversion of Garage to Bedroom), Carparking and Tree Relocation, at 3 Comet Close, Byron Bay.**

5 **Attachments:**

- 1 Byron Bay Planning & Property Consultants - 10.2019.220.1 - PR200950 - Revised parking Plan, E2019/58012 
- 2 Byron Bay Planning & Property Consultants - 10.2019.220.1 - Development Assessment Report, A2019/13319 
- 3 Original DA Plans prepared by Byron Bay Planning & Property Consultants - 10.2019.220.1, E2019/71033 

15

REPORT



1.1. History/Background

5 The subject dwelling was approved as a two bedroom dwelling as part of a “Type 1” dual occupancy in accordance with Development Consent 5.1992.433.1 for 12 x Dual Occupancies and subdivision to create 24 lots on the 5/5/1993.

10 The subject DA 10.2019.220.1, for use of unauthorised additions to an existing dual occupancy (conversion of garage), car parking and tree removal was refused by staff under delegation on 27 June 2019.

1.2. Description of the site

A site inspection was carried out on 6 May 2019

Land is legally described as	LOT: 5 DP: 849496
Property address is	3 Comet Close BYRON BAY
Land is zoned:	R2 Low Density Residential
Land area is:	281 m2
Property is constrained by:	Bushfire prone land; Acid Sulfate Soils Class 2



15 *Existing converted garage viewed from Comet CI looking NW*

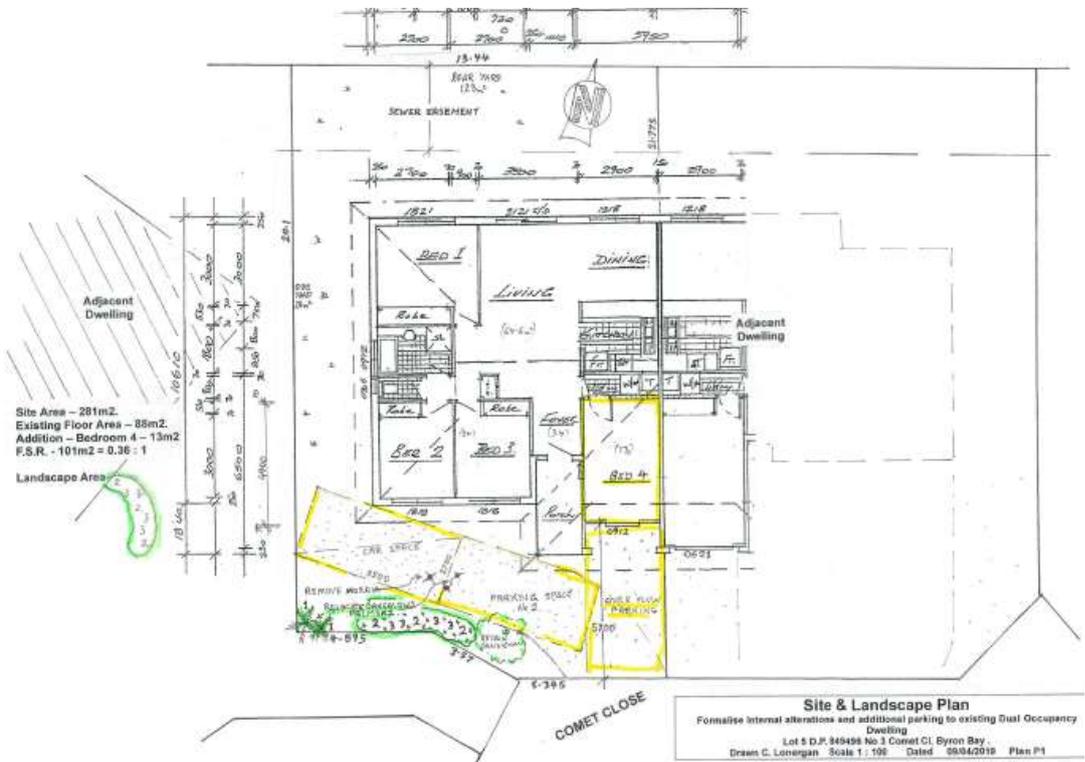
1.3. Reasons for refusal

20 DA10.2019.220.1 for Use of Unauthorised Additions to Existing Dual Occupancy Dwelling (Conversion of Garage to Bedroom), Carparking and Tree Relocation, at 3 Comet Close, Byron Bay was refused by staff under delegation on 27 June 2019. The reasons for refusal are listed below:

- 25
1. Pursuant to Section 4.15(1) (a)(iii) the proposal has not demonstrated compliance with the requirements of part B4.2.2.4 and the objectives and performance criteria of part D1.2.2 of Development Control Plan 2014.
 2. Pursuant to Section 4.15(1) (b) the proposed development would create an unreasonable visual amenity impact on the streetscape.

3. Pursuant to Section 4.15(1) (e) the proposed development is not in the public interest as it would create an undesirable precedent.

5 An extract from the submitted plans below shows the Bedroom 4 where the garage was previously located.



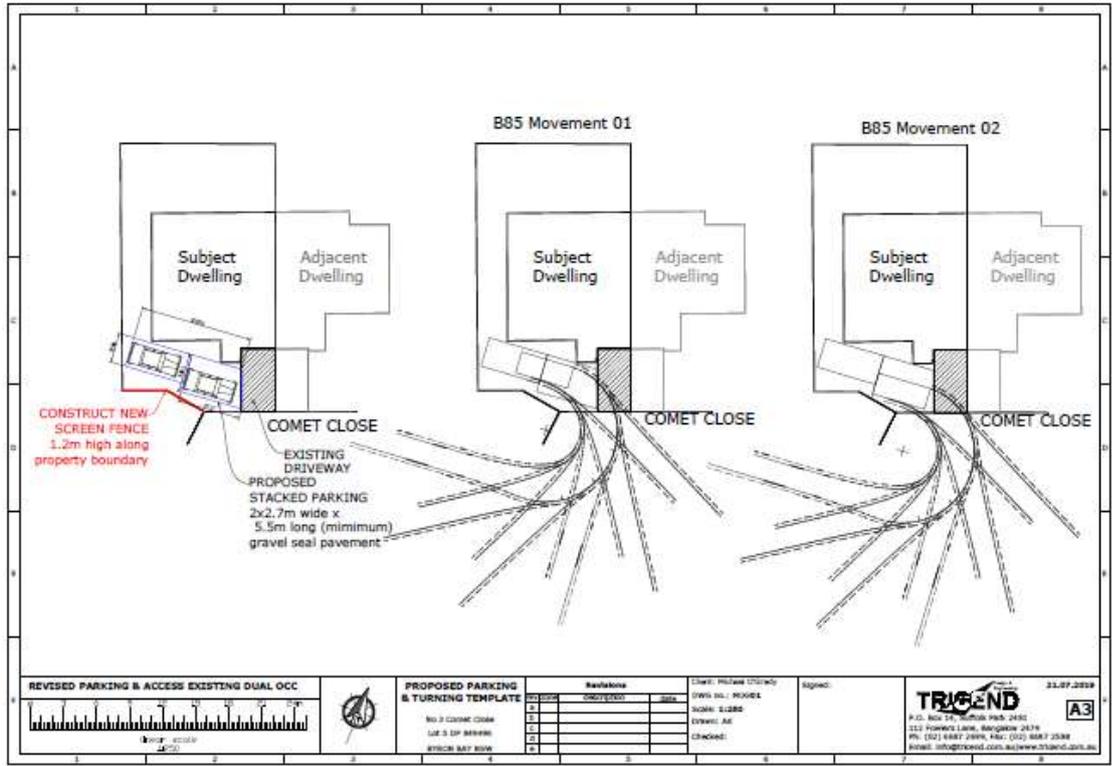
Floor and Site Plans

10

1.4. Revised submissions – review of reasons for refusal

The Section 8.2 review application was submitted with a plan titled *Proposed Parking and Turning Template*, prepared by *Tricend Design and Engineering*, dated 21.07.2019 (See Attachment 1)

15



Proposed Parking and Turning Template

5 The proposed layout involving tandem parking is unchanged. None of the reasons for refusal have been addressed. A copy of the original development assessment report is enclosed at Attachment 2.

10 Having reviewed the determination and the revised submissions, it is recommended that the previous determination of refusal be reaffirmed.

1.5. Review of Determination

15 **Reason for refusal No.1 - Pursuant to Section 4.15(1)(a)(iii) the proposal has not demonstrated compliance with the requirements of part B4.2.2.4 and the objectives and performance criteria of part D1.2.2 of Development Control Plan 2014.**

Conclusion

20 Tandem / stacked car parking is proposed which is not permitted for residential development. The plans still propose stacked parking. There is no reasonable justification or environmental planning grounds to support approval of the proposed stacked car parking, which is not permitted for residential development.

Reason for Refusal No. 1 should be retained within the determination notice issued to the applicant.

25 **Reason for refusal No. 2 - Pursuant to Section 4.15(1)(b) the proposed development would create an unreasonable visual amenity impact on the streetscape.**

Conclusion

30 The proposed stacked car parking and manoeuvring areas will result in the majority of the open space between the existing dwelling and the street having a hardstand surface, which will remove space intended for deep soil landscaping. The proposed parking layout will have a negative

impact on the general attractiveness of the streetscape and would not integrate with the existing built and natural environment along Comet Close.

5 Reason for Refusal No. 2 should be retained within the determination notice issued to the applicant.

Reason for refusal No. 3 - Pursuant to Section 4.15(1)(e) the proposed development is not in the public interest as it would create an undesirable precedent.

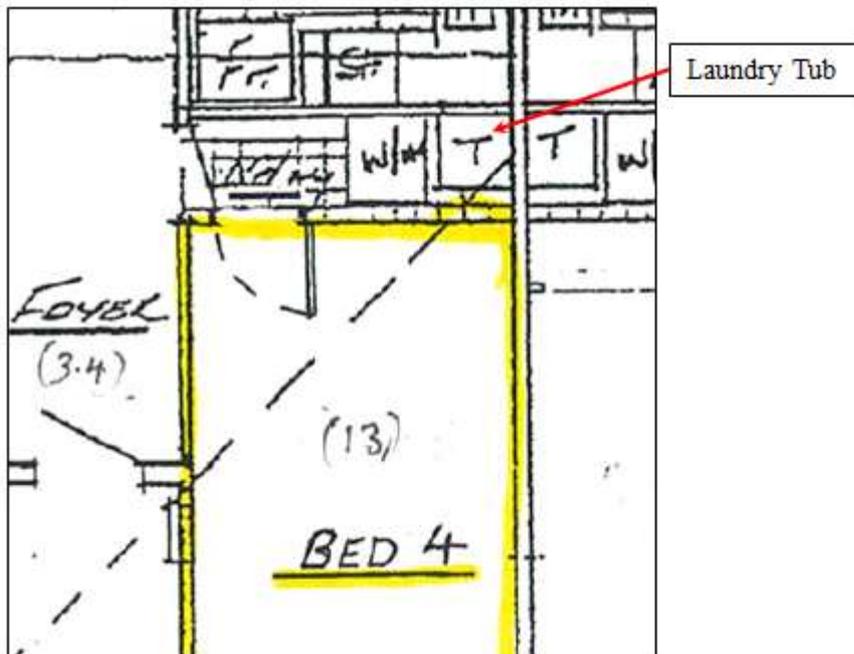
10 Conclusion

The site is not suitable for the proposed layout of tandem parking; there is insufficient space for the provision of parking required for the resultant number bedrooms.

15 The subject dwelling was approved as a two bedroom dwelling as part of a "Type 1" dual occupancy in accordance with consent 5.1992.433.1 for 12 x Dual Occupancies and subdivision to create 24 lots.

20 Therefore, the layout on the site was approved within the context of a wider development and it is considered that the site has an insufficient land area (281m²) to support an increase in the number of bedrooms and appropriate car parking on the site. The proposed parking layout does not represent orderly development; it would impede pedestrian access to the rear of the dwelling via the existing side setback when parking is in use.

25 The proposed floorplan results in a loss of functionality as it appears that access to the laundry tub is obstructed by a wall that's been constructed to create the fourth bedroom, and is sited behind the washing machine. Previously the laundry was located and accessible from the garage.



30 The proposed development is not in the public interest as it would create an undesirable precedent in Comet Close and elsewhere in Byron Shire.

35 Reason for Refusal No. 3 should be retained within the determination notice issued to the applicant.

1.6. Planning assessment conclusion

5 The request to formally review the application DA10.2019.220.1 has been undertaken in accordance with Division 8.2 (Reviews) under the Act, also having regard to relevant provisions of section 4.15 (Evaluation). As such, it is recommended that the refusal be reaffirmed.

10 The proposed conversion of the garage to a bedroom is without justification and as such not supported in this instance. The site is small and constrained and the subject design does not meet Council's standard planning controls for car parking and setbacks. The S8.2 Review is not supported and the reasons for refusal remain in the circumstances of the case.

1.7. Legal Implications

15 An appeal with the Land and Environment Court is possible in the event of a refusal of the application.

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

20

Report No. 13.5 **PLANNING - Development Application 10.2019.146.1 Alterations and Additions to existing Child Care Centre including increase in enrolment numbers to Fifty (50) Children and Tree Removal at 49 Bottlebrush Crescent Suffolk Park**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Shannon Burt, Director Sustainable Environment and Economy
 Chris Larkin, Manager Sustainable Development
File No: I2019/1487

10

Proposal:

DA No: 10.2019.146.1
Proposal description: Alterations and Additions to Existing Child Care Centre including Increase in Enrolment Numbers to Fifty (50) Children and Tree Removal
Property description: LOT: 126 DP: 1121466
 49 Bottlebrush Crescent SUFFOLK PARK
Parcel No/s: 240275
Applicant: Planners North
Owner: Byron Shire Council
Zoning: R2 Low Density Residential
Date received: 28 March 2019
Integrated / Designated Development: Integrated Designated Not applicable
Concurrence required No
Public notification or exhibition: – Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
 – Exhibition period: 11/4/19 to 1/5/19
 – Submissions received: two
Variation request Clause 4.6 SEPP 1 Not applicable
Delegation to determination: Council
Issues: • Privacy to neighbouring dwellings
 • Noise

The application has been assessed by a Consultant Planner in accordance with Council's Management of Conflicts of Interest Procedure in Development Matters.

15 **Summary:**

20 Development consent is sought to make alterations and additions to the Suffolk Park Community Preschool. This will double student numbers from 25 to 50 and increase staff members by 3. The proposed single storey additions comprise new floor area of 220.7m² and an additional external play space. The floor plan will include an open playroom, storage areas, kitchen, interview room and multi-purpose room plus new paths, fencing and landscaping.

25 Additional car parking spaces as previously identified on the approved plans associated with the 2008 approval will be constructed. The removal of four native landscape trees is required. Minor changes have been made to the plans post exhibition as follows:

5 Main preschool building has been moved 2.275 metres closer to Bottlebrush Crescent; GFA of main preschool building increased by 30 m² and the outdoor play area expanded by approximately 25 m². Acoustic fences are also to be installed along the car park and at the rear of two Beech Drive residences in addition to a fence top privacy screen to address privacy concerns of neighbours. A covered internal walkway has been deleted.

The proposal raises no major planning issues and is recommended for approval subject to conditions of consent.

10 NOTE TO COUNCILLORS:

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

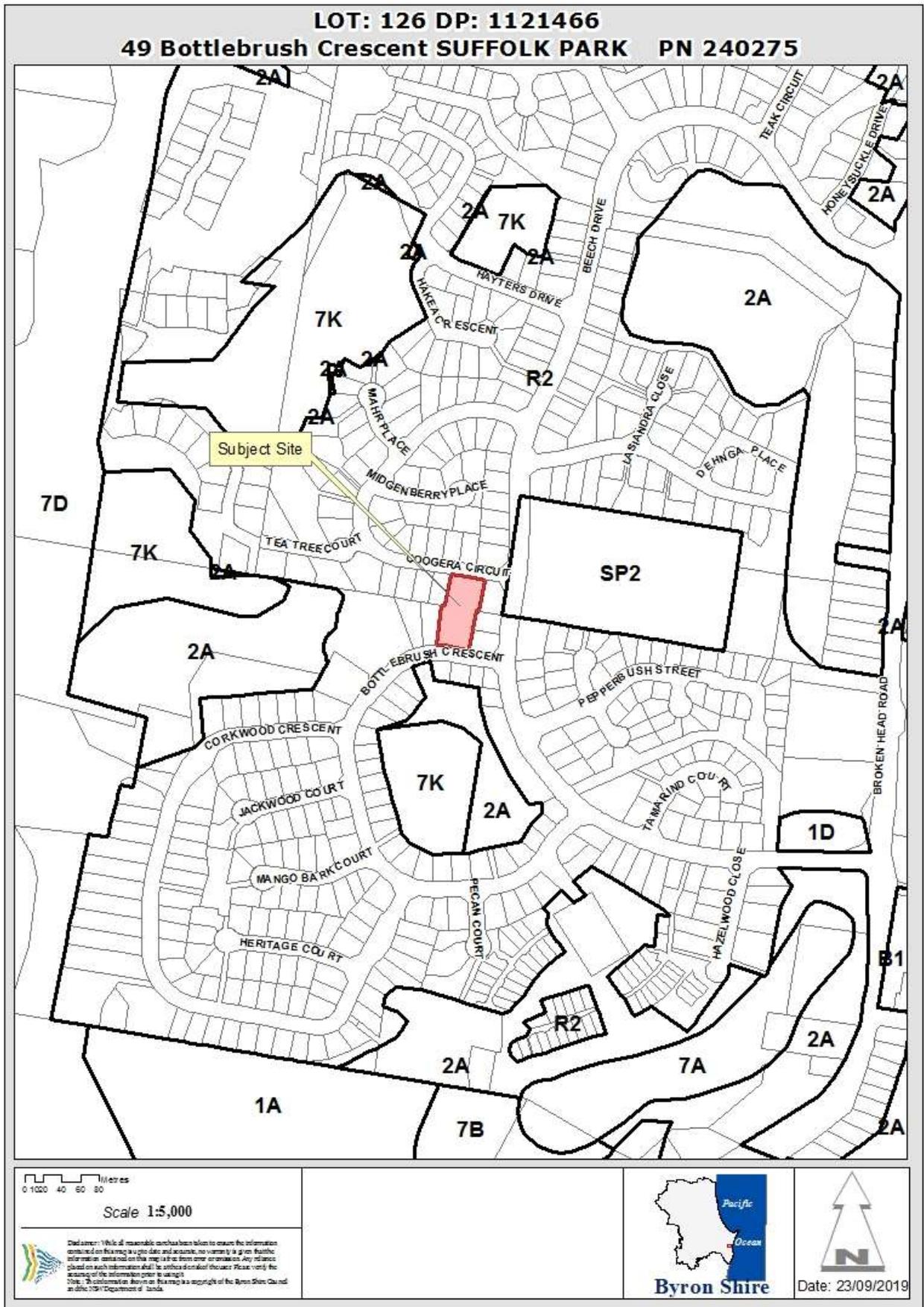
RECOMMENDATION:

That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, development application 10.2019.146.1 for Alterations and Additions to Existing Child Care Centre including Increase in Enrolment Numbers to Fifty (50) Children and Tree Removal, be granted consent subject to the conditions listed in Attachment 2 (#E2019/72455).

20 **Attachments:**

- 1 10.2019.146.1 - Revised Plans prepared by Thomson Adsett, E2019/71784 
- 2 10.2019.146.1 - Recommended conditions of consent, E2019/72455 
- 3 10.2019.146.1 - Submissions received, E2019/71809 

25



Assessment:

1. INTRODUCTION

1.1. History/Background

Development Consent No. 10.2008.361.1 for a Community Building incorporating a preschool, education and health rooms and associated car parking and tree removal was approved by Council on 3 November 2008. A section 96 Application No. 10.2008.361.2 was approved by Council on 23 April 2009. A Construction Certificate No. 2009.05.14 was approved by Council on 14 May 2009.

Existing development on the site comprises a single storey building with a floor plan area of approximately 396m². The approved plans include car parking for 13 vehicles with another 4 indicated as future car parking. The approved DA plans also show a future possible Stage 2 and the assessment report relating to the determination of the application notes that a development application would be required. The approved development provided for a community building consisting of a preschool and for provision and administration of children’s services including early intervention and a toy library service. The preschool presently provides for 25 preschool students at any one time.

1.2. Description of the proposed development

This application seeks approval for Alterations and Additions to Existing Child Care Centre including Increase in Enrolment Numbers to Fifty (50) Children and Tree Removal. The development includes

- A single storey building with floor area of 220.7m² and an additional external play space. The floor plan of the new building will include an open playroom, storage areas, kitchen, interview room and multi-purpose room. The development will include paths, fencing and landscaping.
- An additional 4 car parking spaces as previously identified on the approved plans associated with the 2008 approval will be constructed.
- Removal of four native landscape trees.

1.3. Description of the site

Land is legally described as LOT: 126 DP: 1121466
 Property address is 49 Bottlebrush Crescent SUFFOLK PARK
 Land is zoned: R2 Low Density Residential
 Land area is: 2813 m²
 Property is constrained by: Flooding and Bushfire hazard

2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer*	No objections subject to conditions in relation to acoustic fencing and use of kitchen
Development Engineer	No concerns subject to construction in accordance with plans
Water & Sewer Engineer (Local Approvals Officer)	The Development generates demand for water and sewerage services. Council requires Payment of Developer Servicing Charges (prior to issue of a construction/subdivision certificate) of: <ul style="list-style-type: none"> • 1.68 ET for Water & • 1.68 ET Bulk Water; and

Referral	Issue
S94 / Contributions Officer	<ul style="list-style-type: none"> • 2.80 ET for Sewer. <p>This is non residential development so the Section 7.12 levy (EPA Act 1979) applies. Prior to the issue of a construction certificate the section 7.12 levy required by the Byron Developer Contributions Plan 2012 must be paid to Council.</p>

3. SECTION 4.14 – BUSH FIRE PRONE LAND

5 The subject land is identified as a buffer to bushfire prone lane and the development is identified as Integrated Development under the Act. As such a Bushfire Safety Authority is required under S100B of the Rural Fires Act 1997. The application was referred to the Rural Fire Service who has raised no objection to the development subject to Conditions of Consent in relation to construction standards, services and the provision of an Evacuation Plan.

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

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

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: An assessment of site contamination was undertaken for the existing preschool development in September 2008 that covered the entire site. It did not find any areas of concern and concluded that further soil contamination assessment was not required. The Council in approving the preschool accepted that the land is not contaminated. No further assessment is required for the subject DA. It is consistent with SEPP 55.		
State Environmental Planning Policy (Coastal Management) 2018	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The coastal environment area mapping comes close but does not affect the subject land. There are no mapped wetlands or littoral rainforest areas that affect the subject land.		
State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: Clause 23 of the SEPP provides that before determining a development application for the purposes of a centre based child care facility, the consent authority must take into consideration any applicable provisions of the <i>Child Care Planning Guideline</i> in relation to the proposed development. The applicant provides a checklist (Appendix G of the SEE) which demonstrates the consistency of the development application with the provisions of the SEPP.</p> <p>Clause 22 requires the concurrence of the Regulatory Authority for certain development that does not comply with the indoor or outdoor unencumbered area requirements of the Education and Care Services National Regulations. The indoor requirement is 3.25 m² per child and the outdoor requirement is 7 m² per child. The proposal provides unencumbered indoor space of 3.87 m² per child and unencumbered outdoor space of 7.3 m² per child. This meets the requirements of the Regulation and concurrence is therefore not required.</p> <p>(<i>Regulatory Authority</i> means the Regulatory Authority for New South Wales under the Children (Education and Care Services) National Law (NSW) (as declared by section 9 of the Children</p>		

Satisfactory	Unsatisfactory
(Education and Care Services National Law Application) Act 2010).	

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

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

10 **Clauses 1.4 and 2.1 – 2.3**

- (a) The proposed development is defined in the LEP 2014 Dictionary as a *Centre-based child care facility*;
- (b) The land is within the R2 Low Density Residential according to the Land Zoning Map and a *Centre-based child care facility* is permitted with consent in this zone;
- (c) The proposed alterations and additions will improve the service offered by the *Centre-based child care facility* and is considered to be consistent with the objective of the Zone, viz : “To enable other land uses that provide facilities or services to meet the day to day needs of residents”. The intention to expand the pre school was flagged in the original approval.

20

Clause 2.7 Demolition

Complies. Minor demolition is limited to fence removal and tree removal and these works will be approved as part of this consent.

25

Clause 4.3 Height of Buildings

Complies. The LEP prescribes a 9 metre building height limit. The proposed building is single storey, from finished floor level to roof peak is 4.4 metres. However, the existing ground level varies from RL 9.59m to 10.88m. With a roof peak of RL 15.79m the building is a maximum of 6.2 metres in height. The site will be partly filled but the resulting building will be well below the 9 metre maximum height.

30

Clause 4.4 Floor Space Ratio

35

Complies. The LEP prescribes a FSR of 0.5:1. On a site of 2,813.6m² this would permit 1,406 m² of buildings. The existing building is 396m² and the extension is 220.7m² for a total Gross Floor Area of 616.7m² and an FSR of 0.22:1.

Clause 6.2 Earthworks

Complies. Approximately 153 m³ of clean fill will be placed on the site in the location of the proposed building. This will allow the floor level to be at RL 11.39 m. It will not have a detrimental effect on drainage patterns and soil stability in the locality of the development. Clean fill will be used and needs to be properly compacted. It will take about 20 truck movements to bring the fill to the site. Impacts on neighbours will occur during the construction period from noise and dust and these will need to be managed. Standard conditions on all these matters are required.

Clause 6.3 Flood Planning

Complies. A flood assessment undertaken in Feb 2019 which confirmed that: the Flood Planning Level for this site is 11.39m AHD (2050 FPL); it is not a filling exclusion area; all buildings will be at least 0.5 m above the 2050 FPL; the proposed developable area is located in a 'low hazard' category; overland flow paths will be maintained with no afflux of flow; the development will not significantly affect flood behaviour; no adverse environmental impact is anticipated as a result of the development; all disturbed areas to be sealed or revegetated after construction; developable areas are not located within riparian vegetation areas and will not impact on riverbank stability; there are no known social or economic costs to the community that are likely to occur as a consequence of the site being flooded. Standard conditions on flood issues are required.

Clause 6.6 Essential Services

Complies. The subject land is fully serviced urban land and all services are adequate to cater for the expansion of the floor area of the *Centre-based child care facility*. A Stormwater Management Plan has been prepared. The report concludes that an underground pipe drainage system has already been constructed within the site to convey site runoff to the existing underground pipe system present within Bottle Brush Crescent. The existing driveway and car park already discharges to the street. On site detention of stormwater has been designed in accordance with Council's requirements and over land flow paths will be maintained in accordance with the approved design for the existing car park. Conditions include small contributions for water and sewer.

The proposed development will provide a total of 50 places for children requiring a total of 12.5 car parking spaces (rounded up to 13). No separate staff car parking is required. The proposed development makes adequate provision for car parking and pick up and drop off with a total of 17 car parking spaces. Children are dropped off and picked up in a period of about 1 hour between 8 to 9 AM and 3 to 4 PM. Cars normally stay only 5 to 10 minutes on the site other than staff. The toy library can create traffic between 10 AM and 2 PM on days when it is open. The Early Intervention group use the site as required but have small numbers of staff and children.

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

No draft EPI's affect the proposal

4.4A Byron Shire Development Control Plan 2014 (DCP 2014)**Chapter B4 - Traffic planning, vehicle parking circulation and access**

The proposed development will provide a total of 50 places for children (25 in the original approval and 25 in this approval) requiring a total of 12.5 car parking spaces (rounded up to 13 at one space per four children). It is noted that the site also creates demand for additional car parking being a toy library and early intervention facility which generate a demand for a further 5 spaces. The proposed development has applied for 17 spaces, however adequate room is available for an 18th space. Conditions to apply.

5 Vehicle circulation will remain the same with one way traffic entering from Coogera and exiting in a forward direction onto Bottlebrush. Typically a drop off is based on a car remaining on the site for a short period while a child is walked to the premises and it then departs to return for a short period at the pick up time. The local road network has the capacity to provide for traffic likely to be generated by the proposal.

Chapter B13 – Access and Mobility

10 The alterations are able to comply with this Chapter. There is no footpath along Coogera or Bottle Brush only grassed verge. The front entry from Coogera provides a narrow concrete footpath from the street to the existing building entry. A matching footpath will link the Bottle Brush frontage to the building entry. The front building is linked by a path to the rear building. The existing car park has two disabled car parking spaces which are located between the existing and proposed
15 buildings under a carport. Ramps will be fitted to the new building to allow disabled access.

The proposed building and infrastructure are in accordance with the provisions of the BCA and *AS1428.1 – Design for Access and Mobility – General Requirements for Access – New Buildings*.

20 The existing parking is in accordance with *Australian Standard AS/NZS 2890.6:2009 Parking Facilities – Part 6: Off-street parking for people with disabilities*.

Chapter B14 – Excavation and Fill

25 Fill will be confined to the footprint of the proposed building and will not exceed one metre in depth. Shadow diagrams enclosed with the application show that the building height in combination with fill will not create unreasonable impacts on the adjacent properties. The existing building was elevated on fill to achieve flood planning levels and this building will be consistent with that. It will not detract from the existing and desired future residential character of the immediate locality.
30 Engineering detail will be required at construction stage to ensure that filled areas on the site do not subside and remain stable.

Chapter C2 - Areas Affected by Flood

35 The subject site is affected by low hazard flooding predominantly linked to a poorly designed detention basin located two lots west of the subject land. This detention basin is scheduled to be altered to improve flood outcomes but the work has never been carried out. Based on the existing flood situation the applicable Flood Planning Level (FPL) for the development is RL 11.39m AHD. The proposed development complies with the required FPL as it has a finished floor level of 11.39
40 m AHD.

Chapter E1 – Suffolk Park

45 The proposed low rise development is consistent with the scale and bulk of the surrounding residential development and will present a landscaped frontage to Bottlebrush Crescent. It will have a 4.525 m front setback consistent with residential standards and a single driveway access. Side setbacks are not less than 1.5 metres (1.865 metres proposed). The side wall to the east has no windows to maintain privacy to the rear yards along Beech Drive. The subject land is not
50 affected by coastal hazards and is not visually prominent.

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

5

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	N/A		
93	N/A		
94	N/A (addition is less than 50% expansion)		
94A	N/A		

* Non-compliances and any other significant issues discussed below

4.7 Any COASTAL ZONE MANAGEMENT PLAN?

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

10

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

Impact on:	Likely significant impact/s?
Natural environment	No. The four trees to be removed are not significant. Although they are native species (Syzigium, Sterculia and Glochidion) they are less than 5 metres tall and provide minimal habitat. Their loss will be off set by native vegetation used in landscaping. Stormwater will be detained on site before discharge to the public system. The proposal will not have a significant adverse impact on the natural environment of the locality.
Built environment	No. The low rise character of the proposed building has a residential feel and is well suited to the coastal residential area. Parking meets Council standards and traffic will not stress road or intersection capacity. The proposal will not have a significantly adverse impact on the built environment of the locality. A noise impact assessment recommends acoustic fencing on the side boundaries and this has now been included in the design. A 500mm privacy screen will be included on the eastern side fencing to increase visual privacy to the Beech Drive dwellings. Location of the 4.4 metre high eastern wall at a 1.865 metre setback means that it encroaches on the building height plane. The building height plane provisions only apply to residential accommodation but the underlying objectives are still important. This wall does give visual and acoustic privacy to the eastern side neighbours. It does not impact unduly on solar access. Shadow diagrams show that the dwellings to the west are not affected at all and the dwelling directly to the east retains not less than 3 hours of sun to both dwelling and yard at the winter solstice.
Social Environment	No. The proposal will not have a significant adverse social impact on

	<p>the locality. It will have a positive impact being the addition of preschool places for local children. Many family homes are within walking distance or a short drive from this location. Most children that attend the site are from Suffolk Park (pers comm Director). The potential for noise and visual privacy impacts on neighbours has been addressed.</p>
Economic impact	<p>No. The proposal will not have a significant adverse economic impact on the locality. During the construction phase the economic impacts will be positive through employment and materials purchase. Once operational a further three preschool workers will be employed creating jobs for locals for the long term.</p>

Are there any Council Policies that are applicable to the proposed development? No.

4.9 The suitability of the site for the development

5 The site is considered suitable for ongoing use and expansion of a *Centre-based child care facility* in Suffolk Park. The alterations and additions are well suited to improving the function of the facility and were foreshadowed as part to the original approval. The site is capable of providing preschool services for 50 children (25 in this approval and 25 previously approved) and the service is in demand.

4.10 Submissions made in accordance with this Act or the regulations

15 The development application was publicly exhibited from 11 April to 1 May 2019.

There were 2 submissions made on the development application both oppose the proposal on a number of grounds as follows:

20 Privacy – An adjacent Beech Drive resident states that their privacy has been impacted by staff being able to view their bathroom and backyard from existing office windows that were meant to be screened. The new building does not have any east facing windows so this problem won't be repeated. However, Council should ensure that privacy is restored for neighbours by installing a fence top screen along the eastern fence as required. This should cover the proposed building site and extend along the fence of the existing building to provide privacy to all three dwellings that abut the eastern boundary. A 500 mm fence top privacy screen is now part of the revised plans. Visual privacy will be addressed.

30 Noise – A new outdoor play area is likely to be a source of noise for the neighbours to the east. Preschool children are not as noisy as primary school children and spend a significant time in doors in small groups as well. Although the preschool is not usually in use before 8AM or after 4PM and not on weekends it is a matter than can be assisted by a noise abatement wall along this boundary either in addition to or instead of a dividing fence. The revised plans now include an acoustic fence up to 2 metres high on the Beech Drive side and 1.8 metre high on the western side. An acoustic study shows that this should be effective in noise reduction.

35 Drainage – A stormwater management plan has been prepared for the site that demonstrates that roof water will be collected in a detention system at the Bottlebrush frontage and surface water will be channelled using the driveway and an existing drain along the eastern boundary. There will be minimal impact on neighbouring land from this development from stormwater.

40 Traffic - A traffic and parking impact assessment indicates that there will be sufficient parking on site and additional street parking issues are not anticipated. Traffic volumes will increase with more children attending but it is typically confined to a drop off and pick up peak period and both roads and intersections will not be over stressed by the extra volume. Locals will notice the difference but

it won't be excessive. The one way in and out system will be retained so all traffic can leave in a forward direction which increases safety for all parties.

4.11 Public interest

5 The proposed development is unlikely to prejudice or compromise the public interest or create a dangerous precedent. The public interest is served by an expanded *Centre-based child care facility* that is located in a residential community providing a valuable service to families and jobs for local people.

5. DEVELOPER CONTRIBUTIONS

10 This is non residential development so the Section 7.12 levy (EPA Act 1979) applies. Prior to the issue of a construction certificate the section 7.12 levy required by the Byron Developer Contributions Plan 2012 must be paid to Council.

5.1 Water & Sewer Levies

20 Section 64 levies will be payable.

5.2 Section 7.11 Contributions

No Section 7.11 Contributions will be required.

6. CONCLUSION

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

7. 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

8. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED

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

Statement of Reasons

The proposed development complies with the provisions of Byron Local Environmental Plan 2014.
The proposed development complies with relevant State Environmental Planning Policies
The proposed development complies with relevant provisions of Development Control Plan 2014
The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The development application was notified/advertised in accordance with Development Control Plan 2014. Issues raised in the submissions have been addressed during assessment of the application. The development has been modified in response to submissions.

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

How community views were addressed

The DA was advertised in accordance with Development Control Plan 2014. The two submissions received were considered on merit and addressed during assessment of the application. The development has been modified in response to the concerns raised. Conditions have been imposed to specifically address concerns raised in the submissions.

9. RECOMMENDATION

- 5 It is recommended that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, development application no. 10.2019.146.1 for alterations and additions to existing *Centre-based child care facility* including increase in enrolment numbers to a total of fifty (50) children and tree removal, be granted consent subject to conditions listed in Attachment 2 (#E2019/72455).

Report No. 13.6 **PLANNING - Development Application 10.2019.60.1 New Subdivision - Boundary Adjustment to create Two (2) Lots at 148 Woodford Lane Ewingsdale**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Ivan Holland, Planner
File No: I2019/1492

10 **Proposal:**

DA No: 10.2019.60.1
Proposal description: Initial application: New Subdivision - Boundary Adjustment to create Three (3) Lots
Amended application: New Subdivision - Boundary Adjustment to create Two (2) Lots
Property description: LOT: 2 DP: 871477, LOT: 23 DP: 858323
148 Woodford Lane EWINGSDALE, 178 Woodford Lane EWINGSDALE
Parcel No/s: 216660, 213010
Applicant: Newton Denny Chapelle
Owner: Mrs N M McDonald
Zoning: RU1 Primary Production, RU2 Rural Landscape, 1(a) General Rural
Date received: 1 February 2019
Integrated / Designated Development: Integrated Designated Not applicable
Concurrence required Yes – NSW RFS & Department of Planning
Public notification or exhibition: – Advertising as per the EPA Regulation 2000
– Exhibition period: 30 days from 08/02/19
– Submissions received: 4 (in opposition)
Variation request Clause 4.6 SEPP 1 Not applicable
Delegation to determination: Council
Issues: • Current and proposed lots are under the minimum lot size for the applicable land zoning;
• Proposed subdivision will enhance the agricultural viability of lot 23 with a reduction in size of lot 2.

Summary:

15 The original development application lodged in February sought consent to a boundary adjustment to create Three (3) Lots.

20 An amended development application was subsequently lodged in 25 July 2019, which proposed instead a subdivision (boundary adjustment) of Lot 2 DP 871477 and Lot 23 DP 858323. The proposed subdivision will result in Lot 23 increasing in size by approximately 3 ha to 27.7 ha and Lot 2 decreasing in size by the same to 1.7 ha.

25 The application relies upon Clause 4.1C under Byron LEP 2014 as a minor Boundary Adjustment. It is considered the proposal satisfies the requirements under the LEP and raises no specific issues.

The application is recommended for approval subject to Conditions of Consent.

NOTE TO COUNCILLORS:

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

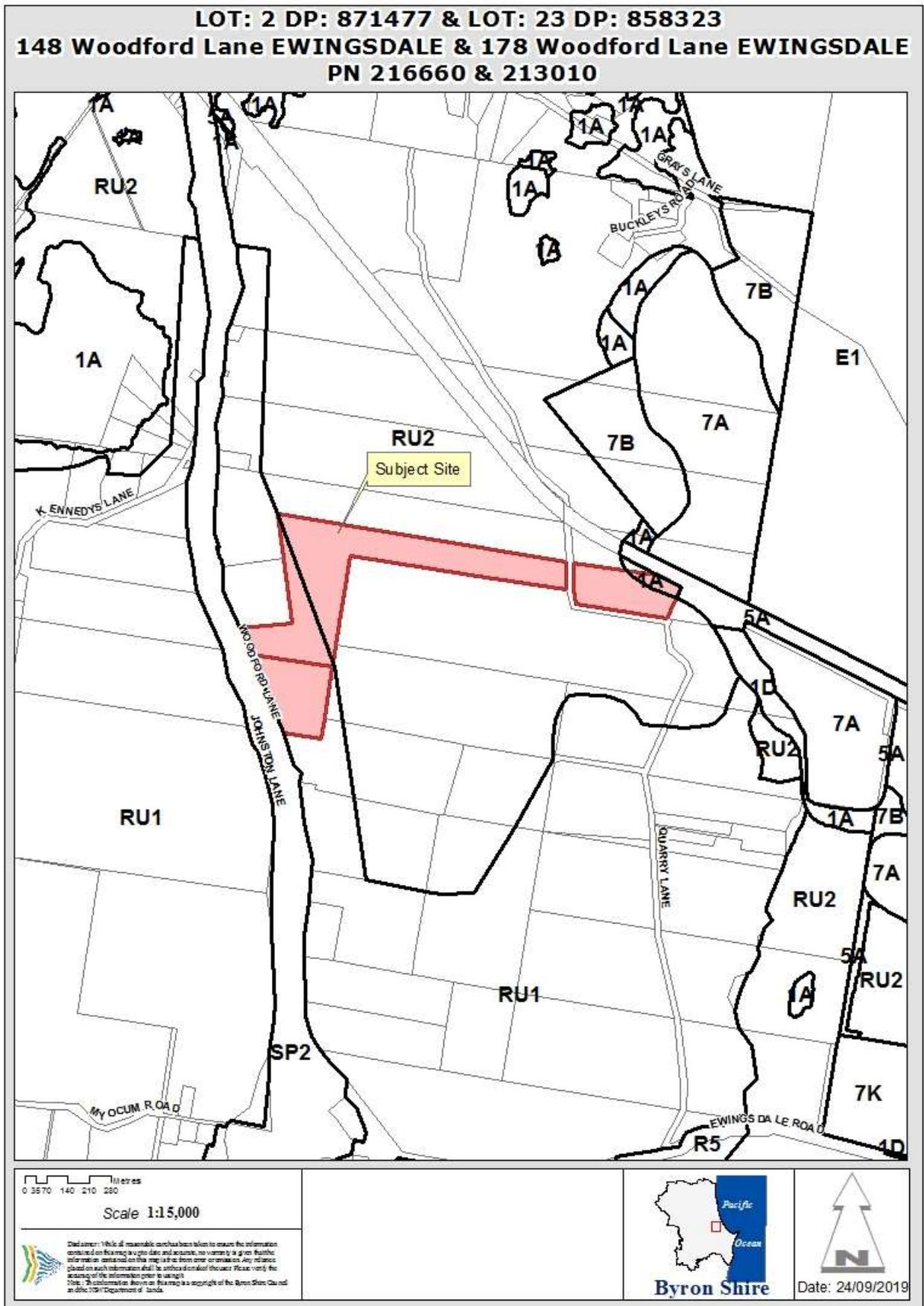
RECOMMENDATION:

That, pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application no. 10.2019.60.1 for new subdivision - boundary adjustment to create two (2) lots, be granted consent subject to the recommended conditions of consent in Attachment 2 (#E2019/70624).

Attachments:

- 15
- 1 Proposed boundary adjustment Plan prepared by NDC dated 23 July 2019, E2019/71980 
 - 2 Recommended conditions of consent on DA 10.2019.60.1, E2019/70624 
 - 3 Submissions on DA 10.2019.60.1, E2019/71073 

20



Assessment:

1. INTRODUCTION

1.1. History/Background

Council's records indicate the following development history for the properties:

Lot 2 DP 871477

- Dwelling additions (DA 5.1992.6.1) – approved 31/1/92;
- Subdivision – 2 lots (DA 5.1994.307.1) – approved 9/11/95;
- Dwelling additions (DA 5.1996.456.1) – approved 15/1/97; and
- Relocated dwelling (DA 10.1998.670.1) approved 1/4/1999.

Lot 23 DP 858323

There are no records for the existing dwelling under this parcel or the previous property descriptions of Lot 6 DP 587773 or Lot 1 DP 557820. This is not unusual having regards to the age of the dwelling which may have been constructed prior to the gazettal of the Interim Development Order No.1 in 1968 and the introduction of a planning scheme for Byron Shire. The property does have a dwelling entitlement though with previous parcel description (DP587773) is nominated under Byron LEP 1988 in Schedule 7.

1.2. Description of the proposed development

The initial application sought approval for New Subdivision - Boundary Adjustment to create Three (3) Lots. An amended development application and statement of environmental effects was received by Council on 25 July 2019 which proposed subdivision (boundary adjustment) of Lot 2 DP 871477 and Lot 23 DP 858323 only, to create two lots only. An extract from the plans is provided below

Lot	Current area (ha)	Proposed area (ha)
2	4.75	1.69 (Proposed Lot 2)
23	24.66	27.72 (Proposed Lot 1)



Figure 1. Proposed subdivision (current lot boundary shown by yellow line).

1.3. Description of the site

Land is legally described as	LOT: 2 DP: 871477; and LOT: 23 DP: 858323.
Property address is	148 and 178 Woodford Lane EWINGSDALE;
Land is zoned:	RU1 Primary Production, RU2 Rural Landscape, 1(a) General Rural
Land area is:	LOT: 2 DP: 871477 – 4.7 ha LOT: 23 DP: 858323 – 24.66ha.
Property is partly constrained by	Acid Sulfate Soils. Bushfire prone land Flood Liable Land High Environmental Value vegetation

A site inspection was carried out on 25/09/2019 – see photos below.

5



Photo 1 – Dwelling at 178 Woodford Lane (on Lot 23) viewed from Woodford Lane to the south. Approximate current lot boundary runs left to right of photo through trees near dwelling.



Photo 2 - Dwelling at 148 Woodford Lane (on Lot 2) and approximate proposed lot boundary (current fence line).



Photo 3 - Dwelling at 178 Woodford Lane (on Lot 23).



Photo 3 - Dwelling at 148 Woodford Lane (on Lot 2).

2. SUMMARY OF REFERRALS

Referral	Issue
Development Engineer	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to conditions.
S94 / Contributions Officer	No objections, no conditions.
Ecologist	No objections subject to conditions.
Rural Fire Service (100B/4.14/4.14)	The amended application was referred to the NSW Rural Fire Service (RFS) on 7 August 2019. General Terms of Approval were provided by the RFS on 29 August 2019.
Department of Planning, Industry & Environment	The amended application was referred to the Department of Planning, Industry & Environment (DPIE) on 7 August 2019. The Secretary's concurrence for the requested variation to a development standard (minimum lot size of the zone) was granted on 29 August 2019.
Rous Water	The amended application was referred to Rous County Council on 9 August 2019. No objections subject to conditions.

3. SECTION 4.14 – BUSH FIRE PRONE LAND

5 Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land that the development complies with the document Planning for Bush Fire Protection 2006. The site is bush fire prone land. The development application was referred to the NSW Rural Fire Service, which provided conditions which are included in the conditions of consent.

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

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

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 1—Development Standards	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: A SEPP 1 Objection request was provided for the amended application, which sought a variation to the minimum lot size development standard (clause 11, LEP 1988). As the variation sought is greater than a 10% change to a numerical standard, the Secretary's concurrence may not be assumed (Circular – PS18-003). However, the Secretary of the Department of Planning & Environment has provided concurrence for the variation to the development standard and consent may be granted by Council pursuant to clause 7.		
State Environmental Planning Policy No 44—Koala Habitat Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: This SEPP is a relevant consideration as both Lot 2 and Lot 23 are greater than 1 ha in area (Cl.6). Lot 2 does not include any mapped potential koala habitat however the far east of lot 23 is mapped as potential koala habitat (Cl.7). The mapped vegetation is not considered to be core koala habitat as Council's records do not show recent sightings or evidence of resident koalas and consequently the application is not prevented from approval (Cl.8).		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The subject lots are not identified as being contaminated or having previous		

	Satisfactory	Unsatisfactory
contaminating land uses in Council's records. The proposed boundary adjustment raises no issues in terms of contamination from past land uses.		
State Environmental Planning Policy (Coastal Management) 2018	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: Parts of Lot 23 are mapped as coastal wetlands and coastal wetlands buffer and a small area of coastal wetlands buffer is mapped on the eastern boundary of Lot 2. The proposed subdivision does not propose or require any "physical works", such as building, construction, earthworks or vegetation removal.</p>  <p><i>Wetland Areas identified by blue hatched areas and are predominantly narrow water courses (upper reaches of Simpsons Creek) running through the property.</i></p> <p>The proposal raises no issues in terms of the Coastal Management SEPP and the provisions contained within Clauses 10 and 11 in particular.</p>		
State Environmental Planning Policy (Primary Production and Rural Development) 2019	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: No specific provisions were identified in this policy that are relevant to this application. The application states that the purpose of the subdivision is to "...create a more viable agricultural holding out of two existing undersized allotments by establishing a larger landholding" which is consistent with aim of the policy (c.2) such as:</p> <p>(a) to facilitate the orderly economic use and development of lands for primary production, (e) to encourage sustainable agriculture...</p>		

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

Part 1	<input checked="" type="checkbox"/> 1.1	<input checked="" type="checkbox"/> 1.1AA	<input checked="" type="checkbox"/> 1.2	<input checked="" type="checkbox"/> 1.3	<input checked="" type="checkbox"/> 1.4	<input checked="" type="checkbox"/> Dictionary	<input checked="" type="checkbox"/> 1.5	<input checked="" type="checkbox"/> 1.6	<input checked="" type="checkbox"/> 1.7	<input checked="" type="checkbox"/> 1.8	<input type="checkbox"/> 1.8A	<input checked="" type="checkbox"/>
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	1.9 <input type="checkbox"/> 1.9A
Part 2	<input checked="" type="checkbox"/> 2.1 <input checked="" type="checkbox"/> 2.2 <input checked="" type="checkbox"/> 2.3 <input checked="" type="checkbox"/> Land Use Table <input type="checkbox"/> 2.4 <input type="checkbox"/> 2.5 <input checked="" type="checkbox"/> 2.6 <input type="checkbox"/> 2.7 <input type="checkbox"/> 2.8
Part 3	<input type="checkbox"/> 3.1 <input type="checkbox"/> 3.2 <input type="checkbox"/> 3.3
Part 4	<input checked="" type="checkbox"/> 4.1 <input type="checkbox"/> 4.1A <input type="checkbox"/> 4.1AA <input type="checkbox"/> 4.1B <input checked="" type="checkbox"/> 4.1C <input type="checkbox"/> 4.1D <input type="checkbox"/> 4.1E <input type="checkbox"/> 4.2 <input type="checkbox"/> 4.2A <input type="checkbox"/> 4.2B <input type="checkbox"/> 4.2C <input type="checkbox"/> 4.2 <input type="checkbox"/> 4.3 <input type="checkbox"/> 4.4 <input type="checkbox"/> 4.5 <input type="checkbox"/> 4.6
Part 5	<input type="checkbox"/> 5.1 <input type="checkbox"/> 5.2 <input type="checkbox"/> 5.3 <input type="checkbox"/> 5.4 <input type="checkbox"/> 5.5 <input type="checkbox"/> 5.6 <input type="checkbox"/> 5.7 <input type="checkbox"/> 5.8 <input type="checkbox"/> 5.9 <input type="checkbox"/> 5.9AA <input type="checkbox"/> 5.10 <input type="checkbox"/> 5.11 <input type="checkbox"/> 5.12 <input type="checkbox"/> 5.13 <input type="checkbox"/> 5.14 <input type="checkbox"/> 5.15 <input checked="" type="checkbox"/> 5.16 <input type="checkbox"/> 5.17 <input type="checkbox"/> 5.18 <input type="checkbox"/> 5.19
Part 6	<input checked="" type="checkbox"/> 6.1 <input type="checkbox"/> 6.2 <input checked="" type="checkbox"/> 6.3 <input type="checkbox"/> 6.4 <input type="checkbox"/> 6.5 <input checked="" type="checkbox"/> 6.6 <input type="checkbox"/> 6.7 <input type="checkbox"/> 6.8 <input type="checkbox"/> 6.9

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

- 5
- (a) The proposed development is defined in the EP&A Act (s.6.2) as Subdivision;
 - (b) Part of the land is within the RU1 Primary Production and RU2 Rural Landscape zones according to the Land Zoning Map;
 - (c) The proposed development is permitted with consent (Cl.2.6); and
 - (d) Regard is had for the Zone Objectives as follows:

Zone Objectives (Zone RU1)	Consideration
• To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.	The proposed subdivision will result in an increase in the size of lot 23 (by ~3ha) which will increase the primary production capacity of this lot. Lot 2 will decrease in size to ~1.7ha rendering this lot too small for most (if not all) primary production.
• To encourage diversity in primary industry enterprises and systems appropriate for the area.	The proposed subdivision will not impact on the diversity or opportunity for diversity in primary industry in the area.
• To minimise the fragmentation and alienation of resource lands.	The proposed subdivision will not result in further fragmentation or alienation of resource land.
• To minimise conflict between land uses within this zone and land uses within adjoining zones.	The proposed subdivision is not likely to result in actual or potential land use conflict as no new neighbours or land uses are authorised by the subdivision. The dwelling on the smaller parcel (Lot 2) will be ~50m from the proposed new boundary.
• To encourage consolidation of lots for the purposes of primary industry production.	Not applicable.
• To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality.	Not applicable.
• To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.	The proposed subdivision will not have an impact on significant scenic landscapes or the scenic quality of the locality.
Zone Objectives (Zone RU2)	Consideration
• To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.	See RU1 discussion above.
• To maintain the rural landscape character of the land.	The proposed subdivision will not have an impact on the rural landscape character of

	the land.
• To provide for a range of compatible land uses, including extensive agriculture.	The proposed subdivision will not further restrict the land uses possible on Lot 23. Lot 2 will decrease in size to ~1.7ha rendering this lot too small for most (if not all) primary production.
• To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality.	Not applicable.
• To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.	See RU1 discussion above.

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

5 The development proposal seeks consent through the provisions contained within Clause 4.1 which permit boundary adjustments. The proposal will result in a transfer of some 3 ha from the smaller parcel to the larger holding resulting in Lot 2 at 1.7 ha and Lot 1 at 27.7 ha. Both proposed lots are less than the minimum lot size for RU1 zoned land being 40 ha (clause 4.1).

10 However, consent may be granted for the proposed subdivision under clause 4.1C(3) if it “...consists of an adjustment of boundaries between existing lots where the size of one or more of the resulting lots will be less than the minimum subdivision lot size” and a series of criteria are met. The proposed subdivision is considered to be an adjustment of boundaries under this clause as follows:

- 15
- The applicant argues that the proposed changes to the boundaries are to increase the size of lot 23 to enable the better use of the parcel for agricultural purposes, which is consistent with zone objectives
 - No significant changes will be made to the configuration of any current allotments; and
 - The resulting parcels of land will bear some resemblance to the lots which existed before the
- 20 subdivision

Further, the proposed subdivision is considered to be consistent with the additional criteria set out under clause 4.1C (3) in that:

- 25
- the subdivision will not result in the creation of any additional lots or the opportunity for additional dwellings as it is restricted to an adjustment of current lot boundaries (sub a);
 - the subdivision will not result in further fragmentation or alienation of land (sub b) as the large parcel will be increased in size by ~3ha and will become a more viable parcel, whilst the smaller lot although containing some agricultural potential is of insufficient size by itself to be a viable farm holding,
 - the subdivision is not likely to result in actual or potential land use conflict (sub c) and no new neighbours or land uses are authorised by the subdivision as the dwelling on the smaller parcel (Lot 2) will be approximately 50m from the proposed new boundary, and
 - the subdivision is not likely to affect the rural character, environmental heritage and scenic quality of the land (sub d) particularly as no additional lots, land uses or the opportunity for
- 30 additional dwellings will be created by the subdivision.
- 35

Clause 6.1 Acid Sulfate Soils

40 Lot 23 contains a mapped area of class 3 and class 2 acid sulfate soils however there is no mapped acid sulfate soils within lot 2. This mapped area does not overlap the current or proposed boundary with lot 2. As no physical works are proposed, development consent is not required under clause 6.1.

Clause 6.3 Flood Planning

Lot 23 contains a mapped area of flood liable land; there is no mapped flood liable land within lot 2. This mapped area does not overlap the current or proposed boundary with lot 2. Council's Development Engineer has assessed the proposal in relation to flooding risk and found it to be acceptable subject to conditions.

Clause 6.6 Essential Services

Both Lots 2 and 23 appear to have essential services or the ability to make such services available when required (clause 6.6).

The Proposal raises no other issues under Byron LEP 2014.

4.2B Byron Local Environmental Plan 1988 (LEP 1988)

A small portion of Proposed Lot 1 is zoned 1(a) under Byron LEP 1988 and is therefore an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development. The LEP 1988 clauses that are checked below are of relevance to the proposed development:

Part 1	<input checked="" type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input checked="" type="checkbox"/> 2A <input checked="" type="checkbox"/> 3 <input checked="" type="checkbox"/> 4 <input checked="" type="checkbox"/> 5 <input checked="" type="checkbox"/> LEP 1988 Dictionary <input checked="" type="checkbox"/> 7
Part 2	<input checked="" type="checkbox"/> 8 <input checked="" type="checkbox"/> 9
Part 3	<input checked="" type="checkbox"/> 10 <input checked="" type="checkbox"/> 11 <input type="checkbox"/> 11A <input type="checkbox"/> 11B <input type="checkbox"/> 12 <input type="checkbox"/> 13 <input type="checkbox"/> 14 <input type="checkbox"/> 15 <input type="checkbox"/> 16 <input type="checkbox"/> 17 <input type="checkbox"/> 17A <input type="checkbox"/> 17B <input type="checkbox"/> 18 <input type="checkbox"/> 19 <input type="checkbox"/> 22 <input type="checkbox"/> 22 <input type="checkbox"/> 23 <input checked="" type="checkbox"/> 24 <input type="checkbox"/> 25 <input type="checkbox"/> 27 <input type="checkbox"/> 29 <input type="checkbox"/> 29AA <input type="checkbox"/> 29A <input type="checkbox"/> 30 <input type="checkbox"/> 31 <input type="checkbox"/> 32 <input type="checkbox"/> 33 <input type="checkbox"/> 34 <input type="checkbox"/> 35 <input type="checkbox"/> 36 <input type="checkbox"/> 37 <input type="checkbox"/> 38 <input type="checkbox"/> 38A <input type="checkbox"/> 38B <input type="checkbox"/> 39 <input type="checkbox"/> 39A <input type="checkbox"/> 39B <input type="checkbox"/> 39C <input type="checkbox"/> 40 <input type="checkbox"/> 41 <input type="checkbox"/> 42 <input type="checkbox"/> 43 <input type="checkbox"/> 44 <input checked="" type="checkbox"/> 45 <input type="checkbox"/> 46 <input type="checkbox"/> 47 <input type="checkbox"/> 47AA <input type="checkbox"/> 47A <input type="checkbox"/> 48 <input type="checkbox"/> 49 <input type="checkbox"/> 51 <input type="checkbox"/> 52 <input type="checkbox"/> 53 <input type="checkbox"/> 54 <input type="checkbox"/> 55 <input type="checkbox"/> 56 <input type="checkbox"/> 57 <input type="checkbox"/> 58 <input type="checkbox"/> 59 <input type="checkbox"/> 60 <input type="checkbox"/> 61 <input type="checkbox"/> 62 <input checked="" type="checkbox"/> 63 <input type="checkbox"/> 64

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

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

Zone Objective	Consideration
(a) to encourage and permit a range of uses creating a pattern of settlement, at a scale and character that maintains or enhances the natural, economic, cultural, social and scenic amenity of the rural environment of the Shire of Byron,	The proposed subdivision does not propose a change of use (however Lot 2 will decrease in size to ~1.7ha rendering this lot too small for most (if not all) primary production).
(b) to encourage and permit a pattern of settlement which does not adversely affect the quality of life of residents and visitors and maintains the rural character,	The proposed subdivision does not propose any additional dwellings and will not result in additional dwelling entitlements. The dwelling on the smaller parcel (Lot 2) will be ~50m from the proposed new boundary.
(c) to ensure development only occurs on land which is suitable for and economically capable of that development and so as not to create conflicting uses,	The proposed subdivision is not likely to result in actual or potential land use conflict as no new neighbours or land uses are authorised by the subdivision. The dwelling on the smaller parcel (Lot 2) will be ~50m from the proposed new boundary.
(d) to allow the use of land within the zone for	The proposed subdivision will result in an

agricultural purposes and for a range of other appropriate purposes whilst avoiding conflict between other uses and intensive agriculture,	increase in the size of lot 23 (by ~3ha) which will increase the primary production capacity of this lot. Lot 2 will decrease in size to ~1.7ha rendering this lot too small for most (if not all) primary production.
(e) to identify lands (shown hatched on the map) which in the opinion of the council possess a limited capability for more intensive uses or development,	Not applicable.
(f) to restrict the establishment of inappropriate traffic generating uses along main road frontages other than in road side service areas,	Not applicable.
(g) to ensure sound management of land which has an extractive or mining industry potential and to ensure that development does not adversely affect the potential of any existing or future extractive industry,	Not applicable.
(h) to enable the provision of rural tourist accommodation and facilities only where such facilities are compatible with the form and density of the nature of the locality, and	Not applicable.
(i) to permit the development of limited light industries which do not pose any adverse environmental impact, (e.g. software manufacture and film processing), and	Not applicable.
(j) to ensure that the development and use of land shown cross-hatched on the map adjacent to areas of significant vegetation and wildlife habitat do not result in any degradation of that significant vegetation and wildlife habitat, and that any development conserves and protects and enhances the value of the fauna and flora.	Not applicable.

What clause does the development not comply with and what is the nature of the non-compliance?	Further consideration, including whether the development application is recommended for approval or refusal accordingly.
Clause 11 Subdivision in rural areas for agriculture etc. Both the proposed lots are less than the minimum lot size of 40 ha prescribed for Zone 1(a) land.	As noted above, the application included a SEPP 1 Objection request. The Secretary of the Department of Planning & Environment has provided concurrence for the variation to the development standard for the reasons detailed below.

Clause 11 Subdivision in rural areas for agriculture etc.

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

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

Is the requirement a development standard?

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

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

10 The development application is accompanied by an objection in writing. It is an objection that compliance with the development standard is unwarranted in the circumstances of the case and specifies the grounds of the objection as follows:

The variation to the development standard is considered warranted as the area zoned 1(a) is to be retained within proposed Lot 2. No further subdivision or works within the 1(a) land is proposed as part of the boundary adjustment.

It is noted that the land is likely to be afforded the RU2 zoning once Council completes the Environmental Zone review process. In this regard, the land is not identified to be zoned as an E zone pursuant to Planning Proposal 3 of the Environmental Zone process currently being undertaken by Council.

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

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

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

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

- a) No additional lots will be created;
- 45 b) Further opportunities for additional dwellings will not be created;
- c) No additional dwelling entitlements will be created; and
- d) The current lots are under the minimum lot size, with no change proposed to this scenario. .

The SEPP 1 objection is well founded and it is recommended it be supported.

Clause 24 development of Flood Liable Land

5 None of the subject property that is zoned 1(a) General Rural Zone is mapped as flood prone land.

Clause 63 Acid Sulfate Soils

10 The area of Land within Proposed Lot 1 that is zoned 1(a) is mapped as containing Acid Sulfate soils. No physical works are proposed in the mapped areas and An ASS Management Plan is not required.

The proposal raises no other Issues under Byron LEP 1988

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

15

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

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

20

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:

25

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

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

B6 - Buffers and Minimising Land Use Conflict

30

The proposed subdivision is not likely to result in actual or potential land use conflict as no new neighbours or land uses will be created by the subdivision. Table B6.1 recommends a buffer distance of 50m between residential areas and grazing of stock which is consistent with that proposed in this application in that the dwelling on the smaller parcel (Lot 2) will be ~50m from the proposed new boundary.

35

D6 - Subdivision

40

It is considered that no benefit would be obtained from requiring a consideration of the subdivision design guidelines (D6.2.1) for the proposed subdivision, being a relatively minor adjustment of the boundary between two rural lots with no changes to dwellings, access, wastewater disposal, water supply, stormwater management or vegetation. As discussed above the proposal seeks a variation to the lot size requirements with the following additional comments provided in terms of the DCP Controls

What Section and prescriptive measure does the development not comply	Does the proposed development comply with the Objectives of this Section?	Does the proposed development comply with the Performance Criteria of this Section?
---	---	---

with?	Address.	Address.
<p>D6.3.1 Lot Size, Shape and Configuration The proposed lots are less than the minimum area specified in Byron LEP 2014 on the lot size map contrary to Prescriptive Measure 1.</p>	<p>Yes The proposed lots are similar to the current lots and will:</p> <ul style="list-style-type: none"> • Not prevent the orderly and economic use and development of the land (Objective 1). • Not impair the ability to use lot 23 for agricultural/rural purposes (the proposed increase in size will enhance this potential). As lot 2 is a relatively small rural lot (~4.8ha), it is arguable that the decrease in size of this lot will have a minor impact on potential use of this lot for agricultural purposes (Objective 2). 	<p>Yes The proposed lots are similar to the current lots and the dwelling on lot 2 will have an ~50m separation from the proposed new lot boundary which is consistent with the buffer recommended by Chapter B6 (PC.1). Each lot currently has a dwelling. This application does not propose new/any additional dwellings/buildings (PC2).</p>

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

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

5

Part B4 Subdivision

The proposed subdivision will:

- Benefit the agricultural use potential of the large lot (lot 23) by increasing its size (B2.6);
- Reduce the relatively low agricultural potential of lot 2 (due to its small size of ~4.8ha) by further reducing the size of this lot (B2.6);
- Provide a ~50m buffer between the dwelling on lot 2 and the proposed boundary. It is recommended that this boundary be vegetated to enhance the buffer should this application be approved (B2.6);
- does not require the removal of native vegetation (B2.7); and
- provide a range of lots sizes (B3.6) and maintains road frontages (B3.7).

10

15

Access, traffic, stormwater management, flooding and servicing aspects of the proposal have been adequately considered by Council’s engineer who has no objections to the development subject to conditions.

20

The following comments are made in relation to Part B4 Subdivision

What Section and prescriptive measure does the development not meet?	Does the proposed development meet the Element Objectives of this Section? Address.	Does the proposed development meet the Performance Criteria of this Section? Address.
<p>B4.1 Element – Lot Size and Shape The amended lot 23 will remain less than 40 ha (the minimum area specified in Byron LEP 1988 for zone 1(a) land – clause 11).</p>	<p>Yes. The proposed lots are largely consistent with defined planning objectives but for the minimum area requirement (see comments above). Adequate access to the lots is maintained.</p>	<p>Yes. The proposed subdivision retains agricultural land and is consistent with other relevant performance criteria (see comments above).</p>

The proposal raises no other issues under the DCP 2010.

4.5 Any Planning Agreement or Draft Planning Agreement?

5

	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

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

4.7 Any COASTAL ZONE MANAGEMENT PLAN?

10

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

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

15

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.

4.9 The suitability of the site for the development

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

4.10 Submissions made in accordance with this Act or the regulations

25 The development application was publicly exhibited and Council received four submissions raising the following issues.

Note: The submissions were made on the original application (New Subdivision - Boundary Adjustment to create Three (3) Lots and not the subsequently amended application (New Subdivision - Boundary Adjustment to create Two (2) Lots).

30

Key issues raised in submissions	Consideration
Fragmentation of agricultural land	As noted above, the amended, proposed boundary adjustment will increase the size of

	Proposed Lot 1 by 3 ha and reduce the size of Proposed lot 2 by a similar amount. No additional lots are proposed or additional dwelling entitlements created. It is considered there is no fragmentation of rural land created the result of the proposal.
Increased risk of land use conflict	The proposed subdivision will provide approx. 50m buffer between the dwelling on lot 2 and the new boundary. The proposed buffer is consistent with that recommended for residential uses and grazing of stock (DCP B6 and Table B6.1). It is recommended that this boundary be vegetated to enhance the buffer should this application be approved.
Potential for more housing	The subdivision will not result in the creation of any new/additional lots or the opportunity for additional dwellings as it is restricted to an adjustment of current lot boundaries.

4.11 Public interest

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

5. DEVELOPER CONTRIBUTIONS

10 There is no nexus to levy Contributions or water and sewer charges on the development.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

7. CONCLUSION

15 The proposed boundary adjustment raises no significant planning, environmental issues or site constraints to not support the proposal. The application is recommended for approval subject to conditions of consent.

8. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED

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

Statement of Reasons

The proposed development complies with the provisions of Byron Local Environmental Plan 1988.
The proposed development complies with the provisions of Byron Local Environmental Plan 2014.
The proposed development complies with relevant State Environmental Planning Policies
The proposed development complies with relevant provisions of Development Control Plan 2014
The proposed development complies with relevant provisions of Development Control Plan 2010
The proposed development will not have significant adverse impact on the natural, built or social

environment or economic impacts on the locality.

The proposed development is considered suitable for the proposed site.

The development application was notified/advertised in accordance with Development Control Plan 2010/2014. Issues raised in the submissions have been addressed during assessment of the DA.

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

How community views were addressed

The DA was advertised in accordance with Development Control Plan 2014. The submissions received were considered on merit and addressed during assessment of the application.

To view the considerations, please contact Council to view a copy of the assessment report relating to this DA.

BYRON SHIRE COUNCIL

Report No. 13.7 **PLANNING - Development Application 10.2019.158.1 Agricultural Produce Industry including Use of Existing Wind Turbine and Ancillary Rural Infrastructure and Roadside Stall at 219 The Saddle Road Brunswick Heads**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Chris Larkin, Manager Sustainable Development
File No: I2019/1518

10

DA No: 10.2019.158.1

Proposal description: Mixed use development including intensive plant agriculture, agriculture structures (wind turbine, water tank, stockyards, farm dam), stormwater management system, agricultural produce industry, wholesale plant nursery, wholesale landscaping supplies, garden centre, roadside stall, business identification sign, and extractive industry.

Property description: LOT: 4 DP: 810118
219 The Saddle Road BRUNSWICK HEADS

Parcel No/s: 137160

Applicant: Mr M O'Reilly

Owner: Koresoft Pty Ltd

Zoning: Part RU2 Rural Landscape (LEP 2014)

Date received: 4 April 2019

Integrated / Designated Development: Integrated Designated Not applicable

Concurrence required No

Public notification or exhibition:

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 18/4/19 to 8/5/19
- Submissions received: Four (two in favour and two with concerns or against)

Planning Review Committee: Date of PRC - 13 June 2019

Concurrent approvals (S68/138): None requested. But Section 138 of the Roads Act for works on Gulgan Road will be required in due course if the development is approved.

Variation request Clause 4.6 SEPP 1 Not applicable

Height of Building (wind turbine/windmill)

Delegation to determination: Full Council

Issues: Privacy to neighbouring dwellings from proposed uses
Approval of works already constructed (without consent)
Farm dam
Signage on Gulgan Road
Use of Saddle Road by trucks for access to stockyards
Traffic impacts to Gulgan Road generated by multiple uses
Gulgan Road intersection type and timing of works

Summary:

5 Development consent is sought for a mixed use development including intensive plant agriculture, agriculture structures (wind turbine, water tank, stockyards, and farm dam), stormwater management system, agricultural produce industry, wholesale plant nursery, wholesale landscaping supplies, garden centre, roadside stall, business identification sign and extractive industry. It was originally lodged in relation to two properties (219 The Saddle Road and 21 Tandys Lane) but 21 Tandys Lane property has been withdrawn and no longer forms part of the application.

10 The development is proposed over two stages with stage 1 being intensive plant agriculture, agriculture structures (wind turbine, water tank, stockyards, and farm dam), stormwater management system, roadside stall, business identification sign and extractive industry. Stage 2 is the balance of the application. The staging defers most of the traffic generating development to stage 2.

15 Changes to the DA made over the period of the assessment include deleting the Tandys Lane activities, deleting one of the two proposed business identification signs along Gulgan Road, moving the proposed stockyard ramp along The Saddle Road back onto private property, and deleting the information and education facility.

20 The application raises no planning issues and is permissible with consent in the zone. It is noted the wind turbine exceeds the 9 metre height limit and a Clause 4.6 variation is supported in this instance. The application is recommended for approval subject to Conditions of consent.

25 **NOTE TO COUNCILLORS:**

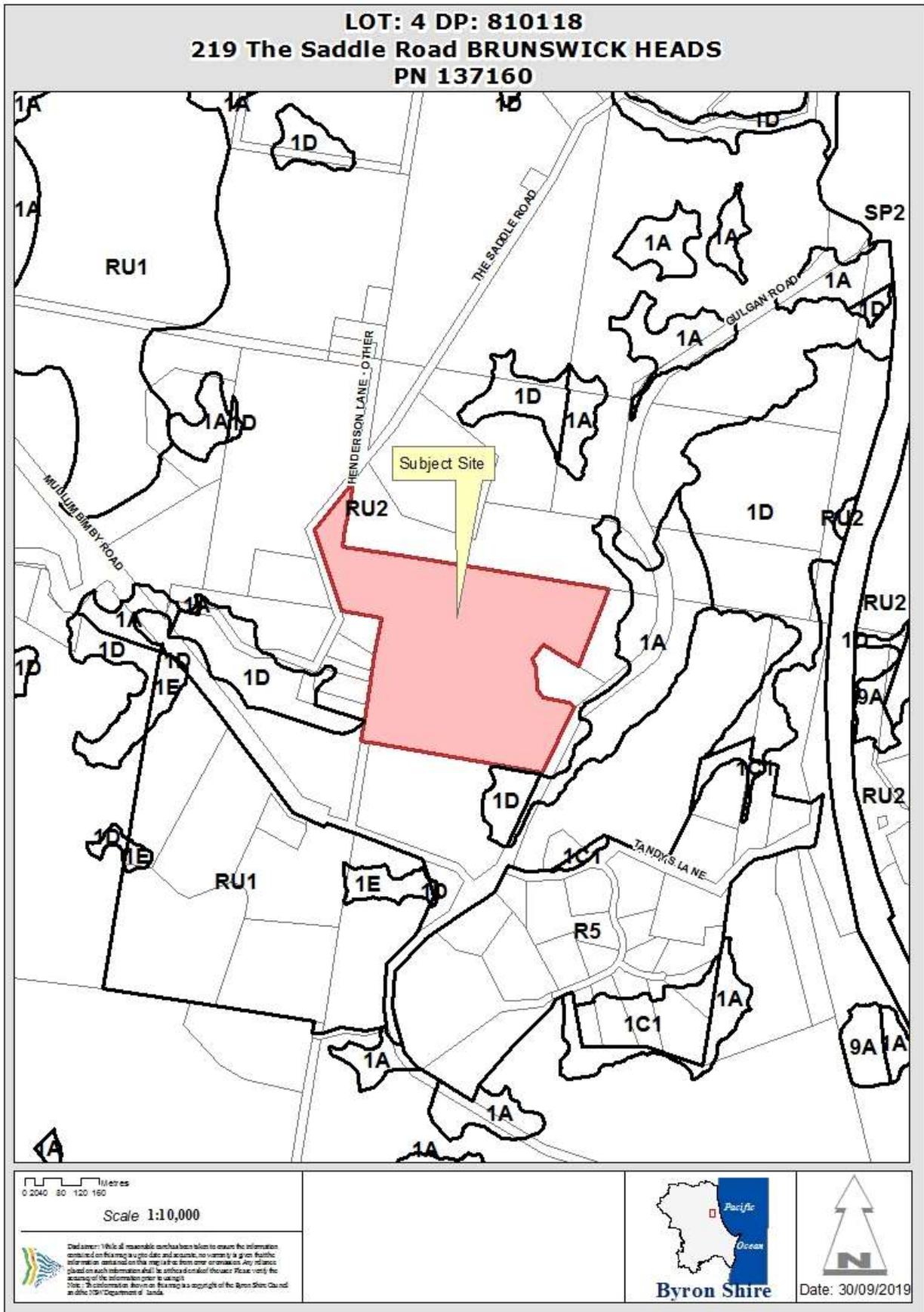
30 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes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

RECOMMENDATION:

35 **That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, development application 10.2019.158.1 for mixed use development including intensive plant agriculture, agriculture structures (wind turbine, water tank, stockyards, and farm dam), stormwater management system, agricultural produce industry, wholesale plant nursery, wholesale landscaping supplies, garden centre, roadside stall, business identification sign, and extractive industry be granted consent subject to the following conditions listed in Attachment 2 #E2019/72055.**

Attachments:

- 1 10.2019.158.1 - Proposed Plans, E2019/72482 
- 2 10.2019.158.1 - Proposed conditions of consent, E2019/72055 
- 40 3 10.2019.158.1 - Submissions received 219 The Saddle Road Brunswick Heads, E2019/72077 
- 4 4 Confidential - 10.2019.158.1 - Submission received 219 The Saddle Road Brunswick Heads, E2019/72076



Assessment:

1. INTRODUCTION

5 1.1. History/Background

The following development applications have previously been approved on the site:

DA 90/394 – Subdivision of land to create two (2) lots

DA 91/123 – Dwelling house, carport and shed

10 DA 742/2017 – Alterations and additions to the existing dwelling, a dual occupancy dwelling and two (2) studios was approved on the 20th of September 2018.

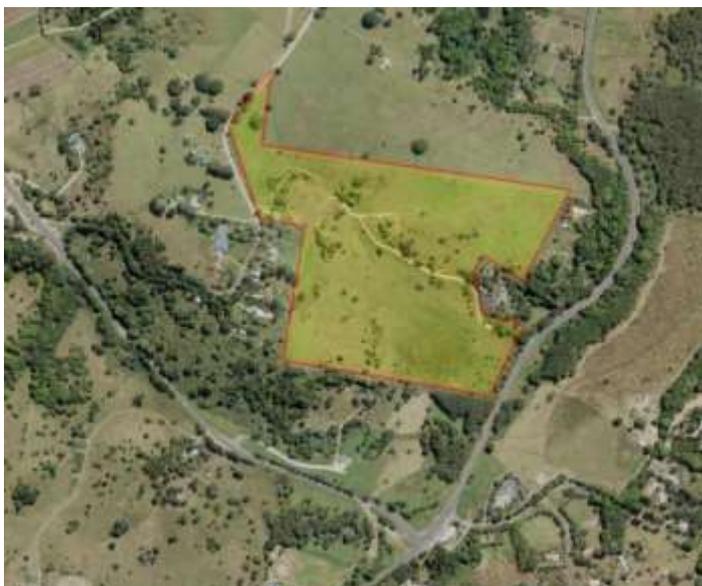
15 The subject land includes the long abandoned Borrodales Quarry which was used by NSW Department of Public Works to supply basalt boulders for the Brunswick Heads rock walls in a period between 1959 and 1969.

1.2. Description of the proposed development

20 This application seeks approval for a mixed use development including intensive plant agriculture, agriculture structures (wind turbine, water tank, stockyards, and farm dam), stormwater management system, agricultural produce industry, wholesale plant nursery, wholesale landscaping supplies, garden centre, roadside stall, business identification sign and extractive industry. It was originally lodged in relation to two properties (219 The Saddle Road and 21 Tandys Lane) but 21 Tandys Lane property has been withdrawn and no longer forms part of the application.

25 The development is proposed over two stages with stage 1 being intensive plant agriculture, agriculture structures (wind turbine, water tank, stockyards, and farm dam), stormwater management system, roadside stall, business identification sign and extractive industry. Stage 2 is the balance of the application. The staging defers most of the traffic generating development to stage 2.

30 Changes to the DA made over the period of the assessment include deleting the Tandys Lane activities, deleting one of the two proposed business identification signs along Gulgan Road, moving the proposed stockyard ramp along The Saddle Road back onto private property, and deleting the information and education facility.



Aerial of 219 Saddle Road, Brunswick Heads

1.3. Description of the site

Land is legally described as LOT: 4 DP: 810118
 The site has a 325 metre frontage to The Saddle Road and a 145 metre frontage to Gulgan Road.

Property address is 219 The Saddle Road BRUNSWICK HEADS

Land is zoned: RU2 Rural Landscape (LEP 2014).
 Land area is: 19.32 ha.

Flood Liable Land 219 The Saddle Road is not mapped as flood prone (in blue below). It has been subject to short term inundation by stormwater at its lower slopes during high rainfall events before the culverts under Gulgan Road were cleaned out by the current landowners.

Bushfire prone land 219 The Saddle Road is affected by a bushfire hazard buffer (in green below) in two locations but does not contain any mapped bushfire hazard vegetation.



Acid Sulfate Soils Class 3 219 The Saddle Road is mapped as class 3 ASS in the south east corner (in yellow below). A preliminary ASS assessment has been undertaken and no ASS was present to a depth of 4 metres.



High 219 The Saddle Road is mapped as containing minimal high conservation

Environmental Value value vegetation (in green below). No vegetation is proposed to be removed by this development.



Property is constrained by: Small areas of remnant native vegetation and access issues.

2. SUMMARY OF REFERRALS

5 External referrals were made to DPI Water, RMS, Dept of Health, Tweed Byron LALC and Crown Lands. Only DPI Water and Crown Lands did not respond.

Referral	Issue
Environmental Health Officer*	<p>No concerns in relation to acid sulfate soils or land contamination.</p> <p>The wastewater generated from the proposed development is to be disposed of on-site. It is proposed that a commercial wastewater management system will be installed at stage 1 and will manage the wastewater for the proposed development (all stages) and also cater for the existing dwelling (and approved alterations, 70.2017.1112.2) and the approved dual occupancy (70.2017.1160.1) hence, the proposal will supersede any previous approvals for on-site wastewater management for the site.</p> <p>It is proposed that a centralised commercial Aerated Wastewater Treatment System will allow for treatment of wastewater from the dwellings, ancillary buildings of the dwellings and the proposed agricultural amenities and use of the amenities by stage 2 works. A series of pump wells will be required to transfer the wastewater to the AWTS as described in the On-Site Wastewater Feasibility assessment. It is proposed that the treated wastewater will be pumped to an area that has been previously approved for disposal, utilising subsurface irrigation. Conditions will be imposed requiring a revised section 68 approval.</p> <p>A farm shed is proposed that this will be utilised by the sharefarmers for the purposes of cleaning, washing, sorting, drying and packing, and storage of the produce grown on the site. Conditions will be imposed with respect to registration and compliance with the Food Act and Food Standards Code.</p>

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Referral	Issue
	<p>Conditions will be imposed with respect to the requirement for a Water Quality Assurance Program to be prepared and implemented for the proposed Private Water Supply in accordance with the provisions of the Public Health Act 2010 and Regulation 2012.</p>
Development Engineer	<p>The key engineering issues are parking, stormwater and site access. The development can be supported subject to conditions that cover these matters. These are discussed in more detail in other sections.</p>
Water & Sewer Engineer (Local Approvals Officer)	<p>The proposed development does not generate additional loading onto Council's Water, Bulk Water and or Sewer systems beyond the existing ET entitlements.</p> <p>A section 307 certificate from Rous is required if tanks are to be filled from the Rous water supply connection to the site.</p>
S94 / Contributions Officer	<p>The applicant has demonstrated that the use of Saddle Road as the primary access is not safe nor practicable given the width, condition and intersection connections to the network of Saddle Road (refer page 26 of the Alderson Traffic Report).</p> <p>This development does not involve an increase in population. The s7.11 contribution plan does not apply. The fixed development levy of the s7.12 plan will apply. A condition of consent should be imposed to require payment of contributions.</p>
Roads & Maritime Services	<p>RMS advised that works on Gulgan Road require its approval under section 138 of the Roads Act and expressed its position on the proposed road treatment and design (see engineering comments).</p> <p>The submitted Traffic Impact Assessment (TIA) had not taken into account the cumulative impacts of the proposed development, dual occupancy and veterinary surgery into consideration or applied a 10 year horizon. This will need to be taken into account for both stages of the proposed development. This will need to be demonstrated with AM and PM peak hour traffic movements at the access.</p> <p>It was noted the approved dual occupancy and veterinary surgery has not constructed the required road works on Gulgan Road. This will require a S138 application and referral to Roads and Maritime for concurrence. (Council Note Vet Surgery/ Dual Occupancy has commenced driveway upgrades as per there approvals)</p> <p>All rural driveways should be designed and constructed in accordance with Austroads standards to cater for the higher speeds and larger vehicles. AS2890 is generally only used for urban situations.</p> <p>The proposed arrangement for the shared access connections for the three developments will need to be physically defined to regulate traffic movements. No swept paths were shown to</p>

Referral	Issue
	<p>demonstrate the largest vehicle can negotiate the arrangement. This will need to be illuminated and delineated to define any obstructions.</p> <p>The proposed loading of cattle within The Saddle road reserve should be discouraged or a traffic management plan should be implemented each time if there is no safer alternative available.</p>
Tweed Byron Local Aboriginal Land Council	TBLALC responded via a site based report to the applicant. It stated "There are now multiple registered Aboriginal sites surrounding this location which has long been known for its access routes to bora grounds, food/tool resource areas, burials, ceremonial and creation story places as well as gender specific areas. There is very real potential for future discoveries of tangible cultural material and experiences of the intangible aspects of the Aboriginal culture of the area. TBLALC CHU advocate all ground disturbing activity proceed with caution. In regard to Aboriginal Cultural Heritage, in so far as it relates to the proposal that is the subject of this report, in <i>TBLALC's opinion there is nothing at this stage to halt or delay the project.</i> "
Dept of Health	Dept of Health advised that the applicant needs to comply with requirements for Private Water Suppliers under Section 34A and 34C of the Public Health Regulation, 2012.

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

3. SECTION 4.14 – BUSH FIRE PRONE LAND

5 The site has minimal areas of native vegetation what is there is typically isolated rainforest trees. Bushfire is not a significant issue on this site.

EFFECT OF 10/50 RULE ON SIGNIFICANT VEGETATION

10 A farm shed with 5 bays is proposed in a bushfire buffer near Gulgán Road. Two of the bays are proposed for agriculture processing. These are non habitable structures.

15 The intensive plant agriculture is not expected to disturb any native vegetation and will not trigger vegetation clearing for bushfire purposes.

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

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

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 44—Koala Habitat Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: A SEPP44 assessment was undertaken and submitted with the original SEE but was considered inconsistent with the Policy. A revised assessment (21 Aug 2019) meets the		

BYRON SHIRE COUNCIL

	Satisfactory	Unsatisfactory
<p>requirements of the SEPP. The revised report concluded that although 12 koala food trees were recorded in the development area (near the old quarry) this constitutes 3.7% of the 322 trees on the land. This means that the area is not potential koala habitat. As no Koala faecal pellets were identified around any of the koala food trees present in the development area, the trees are not 'areas of major activity' and hence not being used by koalas, including breeding animals. It is considered that koalas could access the koala food trees on a transient basis, however, according to SEPP 44; a koala plan of management is not required for the proposed development. No food koala trees are proposed to be removed as part of this development in any case.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>State Environmental Planning Policy No 55—Remediation of Land</p> <p>Consideration: A preliminary contamination investigation was carried out for 219 The Saddle Road in Nov 2017. It found that based on air photography back to 1958:</p> <ul style="list-style-type: none"> • There was no evidence that the investigation was subject to cropping or plantations; • There was no evidence that buildings or structures had ever been constructed in the investigation area (other than those recent ones that exist now); • There was no evidence that any other contaminating activities had occurred in the investigation area. It is highly unlikely that the subject land has been contaminated by past land use. The SEPP has been addressed adequately. 	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>State Environmental Planning Policy No 64—Advertising and Signage</p> <p>Consideration: The key objectives of SEPP 64 are to ensure signage:</p> <ul style="list-style-type: none"> (i) is compatible with the desired amenity and visual character of an area, and (ii) provides effective communication in suitable locations, and (iii) is of high quality design and finish <p>In the original application two double sided signs were proposed. The applicant has advised that 21 Tandys Lane is no longer part of this application so only the sign at the Gulgan Road frontage to Lot 4 DP 810118 is subject to this application and any approval.</p> <p>The business identification sign will identify more than one business and is to be shared by multiple landowners (Vet and Rainbow Farm) which reduces clutter and confusion given the shared entrance to both businesses. Road users need warning that the businesses are up ahead so having a sign for drivers approaching from the south will aid in early signalling by drivers. The height and size of the signs reflects the location and directions related purpose. A high quality finish is anticipated.</p> <p>The application is for double sided signs that inform you of the business after you have passed it. This is not supported as it distracts a driver urging them to read a sign on the opposite road side relating to something that is behind them. A condition will be imposed requiring a single sided sign. It will be limited in area to 3m².</p> <p>The assessment criteria specified in Schedule 1 are addressed in the DCP section of this report. The proposed sign is substantially consistent with the assessment criteria, subject to appropriate conditions.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>State Environmental Planning Policy (Infrastructure) 2007</p> <p>Consideration: This SEPP is relevant because clause 101 applies to “Development with frontage to a classified road”. The relevant objective is to “ensure that new development does not compromise the effective and ongoing operation and function of classified roads”. Gulgan Road is a classified road, The Saddle Road is not. The applicant addresses this issue in the Traffic Impact Analysis.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

	Satisfactory	Unsatisfactory		
<p>To ensure the continued operation and function of Gulgan Road the SEPP requires that Council must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:</p> <p style="padding-left: 40px;"><i>(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road,</i></p> <p>Comment: The key traffic generators in this development are the roadside stall (stage 1) and garden centre (stage 2). The roadside stall needs to generate income from passing traffic by being visible and accessible. This can be achieved from Gulgan Road subject to the driveway being upgraded to allow safe manoeuvring in and out of the site. The Saddle Road has low traffic volumes and is a narrow gravel road with a poor intersection to Mullumbimby Road. If the roadside stall or garden centre were accessed from Saddle Road this would require traffic to drive through a working farm which would be dangerous. Agricultural related traffic already uses the Gulgan Road access as well as The Saddle Road and this has a minimal impact.</p> <p>The applicant has demonstrated that the use of Saddle Road as the primary access is not safe nor practicable given the width, condition and intersection connections to the network of Saddle Road (refer page 26 of the Alderson Traffic Report).</p> <p>It is considered that it is not practicable to use The Saddle Road to access this development and it is safer to upgrade Gulgan Road.</p> <p><i>(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:</i></p> <p><i>(i) the design of the vehicular access to the land, or</i> <i>(ii) the emission of smoke or dust from the development, or</i> <i>(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land,</i></p> <p>Comment: Continued use of the Gulgan Road as a BAL/CHR(s) type intersection is reasonable for stage 1 and agriculture related uses. However, it is also appropriate that stage 2 uses can only take place after a CHR(s) and AUL(s) intersection has been created. These measures should protect the safety, efficiency and ongoing operation of Gulgan Road.</p> <p>It is not anticipated that this development will emit smoke or dust that could affect Gulgan Road.</p> <p>It is not anticipated that nature, volume or frequency of vehicles using the site will negatively impact on Gulgan Road. Work undertaken shows that two medium rigid vehicles can access or egress the proposed development without affecting Gulgan Road.</p> <p>Council is aware that the subject land and the neighbouring vet clinic have combined their driveways to lessen the likelihood of traffic conflict.</p> <p>This development has been referred to RMS because at the time it was lodged the proposed parking required was greater than 50 spaces (clause 104 of the SEPP). This has now been reduced to 45 spaces. Despite this, the RMS comments have been considered in the engineering assessment and a number of changes made and/or conditions imposed as a result.</p>				

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

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

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

5 **LEP 2014 clauses 1.1 - 1.9 and 2.1 – 2.3:**

The application is consistent with the aims of LEP 2014 (clause 1.2) in particular to promote ecologically sustainable development and promote the orderly and economic use and development of land. It also addresses the relevant SEPPs (clause 1.9).

10 The application addresses zones, zone objectives, and landuses in the dictionary as follows:

- (a) The proposed development is subject to multiple definitions in the LEP 2014 Dictionary including: intensive plant agriculture, water body – artificial (farm dam), agricultural produce industry, plant nursery (wholesale), landscaping material supplies (wholesale) , garden centre, roadside stall, business identification sign and extractive industry.

agricultural produce industry means a building or place used for the handling, treating, processing or packing, for commercial purposes, of produce from agriculture (including dairy products, seeds, fruit, vegetables or other plant material), and includes wineries, flour mills, cotton seed oil plants, cotton gins, feed mills, cheese and butter factories, and juicing or canning plants, but does not include a livestock processing industry.

Comment: Two of the five farm shed bays at the Gulgan Road frontage are proposed to be used to prepare produce from the farm for sale.

25 **business identification sign** means a sign:

(a) that indicates:

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

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

30 (b) that may include the address of the premises or place and a logo or other symbol that identifies the business, but that does not contain any advertising relating to a person who does not carry on business at the premises or place.

Comment: One business identification sign is now proposed at the Gulgan Road frontage.

35 **extractive industry** means the winning or removal of extractive materials (otherwise than from a mine) by methods such as excavating, dredging, tunnelling or quarrying, including the storing, stockpiling or processing of extractive materials by methods such as recycling, washing, crushing, sawing or separating, but does not include turf farming.

40 Comment: Some of the farm land contains rocks that have to be removed to permit machinery cultivation. These rocks are mostly used around the farm but excess rocks will be sold either as a wholesale product or eventually through the landscape supplies proposed in stage 2 of the development. This will affect less than 2 hectares of the site and produce less than 30,000 m³ per

year of rocks. It will not take place in or within 40 metres of a natural waterbody, wetland or an environmentally sensitive area, or within 200 metres of a coastline, or in an area of contaminated soil or acid sulphate soil, or on land that slopes at more than 18 degrees to the horizontal. It will not involve blasting and is not within 500 metres of the site of another extractive industry that has operated during the last 5 years.

It is therefore not designated development and an EIS is not required.

garden centre means a building or place the principal purpose of which is the retail sale of plants and landscaping and gardening supplies and equipment. It may include a restaurant or cafe and the sale of any of the following:

- (a) outdoor furniture and furnishings, barbecues, shading and awnings, pools, spas and associated supplies, and items associated with the construction and maintenance of outdoor areas,
- (b) pets and pet supplies,
- (c) fresh produce.

Comment: An open air garden centre primarily for the retail sale of plants (no permanent structures proposed) covering an area of 2,400 m² is proposed. It is not proposed to include a restaurant or café. It will be accessed off Gulgan Road. This is the key facility that is proposed to be accessible to the public with a retail function.

intensive plant agriculture means any of the following:

- (a) the cultivation of irrigated crops for commercial purposes (other than irrigated pasture or fodder crops),
- (b) horticulture,
- (c) turf farming,
- (d) viticulture.

Comment: A development application is required for this use proposed across approximately 8 hectares of the site because the commercial crops are proposed to be irrigated. Horticulture in this location would be exempt development as a result of Schedule 2 of LEP 2014.

landscaping material supplies means a building or place used for the storage and sale of landscaping supplies such as soil, gravel, potting mix, mulch, sand, railway sleepers, screenings, rock and the like.

Comment: An area of 3000m² is identified for the sale of wholesale landscape supplies. The intention is that only the rocks collected from the property will be graded and stored in separate bays on the site. No other material will be imported onto the property for sale. It is not intended that retail customers can purchase the rocks. They will be sold to other users in bulk on a sporadic basis. If over time rocks are no longer uncovered on the farm in cultivated areas then this use will decline.

plant nursery means a building or place the principal purpose of which is the retail sale of plants that are grown or propagated on site or on an adjacent site. It may include the on-site sale of any such plants by wholesale and, if ancillary to the principal purpose for which the building or place is used, the sale of landscape and gardening supplies and equipment and the storage of these items.

Comment: An area of 3500m² is identified for the sale of plants on a wholesale basis (not less than 20 plants per sale). There is an argument that a wholesale plant nursery is a form of horticulture and would in this case be exempt development. It becomes a plant nursery at the point at which retail sale of plants is proposed. A wholesale plant nursery has been included in this application not a plant nursery.

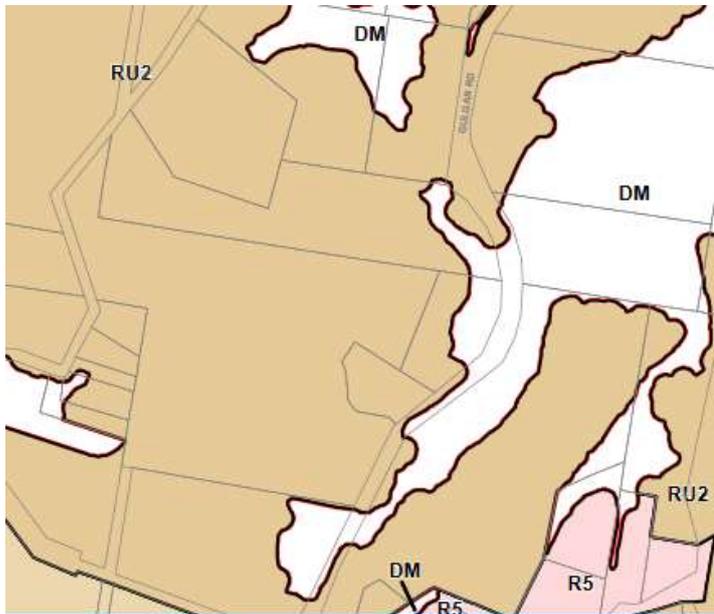
roadside stall means a place or temporary structure used for the retail sale of agricultural produce or hand crafted goods (or both) produced from the property on which the stall is situated or from an adjacent property.

5 Comment: It is proposed to convert an existing garden shed with carport to a roadside stall for the sale of produce that is grown on the property. Parking will be supplied adjacent to the stall which will be accessed off Gulgan Road.

10 **waterbody (artificial) or artificial waterbody** means an artificial body of water, including any constructed waterway, canal, inlet, bay, channel, dam, pond, lake or artificial wetland, but does not include a dry detention basin or other stormwater management construction that is only intended to hold water intermittently.

15 Comment: A 3ML harvestable rights dam is proposed to supplement other water sources for the irrigation of crops. It will be located at the eastern edge of the site, upstream of the low flow discharge to Gulgan Road drainage system. The dam will be constructed as a 'turkeys nest' dam with outlet spillway being approximately at existing ground level. The dam will have an approximate surface footprint of 1350m², an approximate storage volume (to the spillway at existing ground level) of 2650m³, and a bund wall of 600mm. The dam is ancillary to intensive plant agriculture (cultivation of irrigated crops).

25 (b) The proposed development is located entirely on land within the RU2 Rural Landscape zone. All of the proposed land uses are permitted with consent in the RU2 zone either outright or as ancillary to the various agriculture related uses.



30 (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base	The proposed development is focussed on using the land for primary production with an emphasis on irrigated crops. The extractive industry is small scale and will decline over time as resource is exhausted.
To maintain the rural landscape character of the land.	The majority of the land will be used for cropping and grazing consistent with the rural

	character of the locality
To provide for a range of compatible land uses, including extensive agriculture.	The non primary production uses are ancillary and related to the agricultural use of the land and are located near the Gulgan Road access.

Clause 4.3 Height of Buildings

5 Does not comply. The LEP prescribes a 9 metre building height limit for land zoned RU2. The only structures proposed that are subject to this height limit are the water tank stand (enclosed as a shed) which is 4 metres high (or 7 metres including the tank); the agricultural produce industry shed which is 6.99 metres high ; and the roadside stall shed which is approximately 3 metres high.

10 All these buildings comply with the height limit. All the other uses do not include buildings. The wind turbine is 12 metres high and although it is not a building it is a structure and subject to the same height limits as a building. It exceeds the height limit by 3 metres and a variation to the height limit is required to approve the wind turbine. The wind turbine was erected in 2014 as exempt development being 15 metres inside the fence along The Saddle Road. A recent survey showed that it is only 7 metres inside the property boundary and therefore should have obtained development consent.

4.6 Exceptions to development standards

20 Complies. This clause provides that development consent may be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. The 9 metre height limit imposed by clause 4.3 of LEP 2014 can be varied subject to this clause. In this case the 12 metre wind turbine exceeds the 9 metre height limit by 3 metres which is a 33 % variation to the standard. An adequate written request has been received from the applicant that outlines :

- 25 (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,*

30 Comment: The applicant advises that due to the friction between the wind and the earth, wind speed increases rapidly as the distance from the ground increases, especially in the first 20 metres. Typically, the bottom wind turbine rotor should be at least 10 metres above the tallest obstruction within 150m or the nearby prevalent tree height (OEH 2011). Hence, wind turbines need to be on tall towers to work effectively. A wind turbine limited to 9 metres in height would be unreasonable. A 12 metre wind turbine will be considerably more efficient at producing energy.

- 35 (b) *that there are sufficient environmental planning grounds to justify contravening the development standard*

40 Comment: The environmental planning grounds that warrant contravening the height standard in this case include Council’s support of sustainable development and of development that reduces greenhouse gas emissions. Pumps are large users of power and linking this water pump to a wind turbine achieves these environmental outcomes. The absence of significant external impacts such as overshadowing, loss of privacy, views or solar access are also environmental planning outcomes that justify a taller structure than 9 metres. The wind turbine has a 1KW capacity and is located 150 metres from the nearest dwelling to the south west.

- 50 (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,*

Comment: The proposed wind turbine is in the public interest because it is consistent with both the objectives of the RU2 Rural Landscape zone and the objectives of Clause 4.3 as follows:

RU2 Zone Objectives

To encourage sustainable primary industry production by maintaining and enhancing the natural resource base

Comment

The proposed development is required for water supply purposes, which supports sustainable primary industry and production on the property. The ground water bore is licenced.

To maintain the rural landscape character of the land

Wind turbines attached to water bores or pumps are a feature of the rural landscape and this is the modern version. It does not detract from the rural landscape character.

To provide for a range of compatible land uses, including extensive agriculture

The proposed wind turbine is ancillary to the agricultural uses on the property, and supports the continuing agricultural viability of the farm.

To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality

Not applicable – no tourist and visitor accommodation is proposed as part of the development.

To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality

The scenic landscape will not be impacted by the proposed development as the wind turbine is located in a corner of the property that is not visually prominent from surrounding properties, and partially screened by existing vegetation. It is a thinly profiled structure that is not easily seen from a distance.

Objectives of Clause 4.3

To achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,

Comment

A wind turbine is a slim structure that does not have a roof or parapet. This objective is not applicable. Due to the nature of the windmill, it is necessary to exceed the height limit for the wind mill to function properly and effectively.

To ensure the height of buildings complements the streetscape and character of the area in which buildings are located,

The proposed development will complement the existing and proposed agricultural uses of the land and is compatible with the rural character of the neighbourhood. The Saddle Road is a grazing and cropping area with scattered rural dwellings and clusters of remnant vegetation. A wind turbine is not out of place towards the top of a ridge line in this situation.

To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development

Whilst being taller than the 9 metre standard, the windmill structure consists of an unobtrusive thin pole with a 3-blade rotor on top and is difficult to see when viewed from neighbouring sites and the public road. The structure does not cause any overshadowing, loss of solar access, privacy or views to surrounding neighbours and the nearest dwellings

In this case the concurrence of the Secretary has been delegated to Council. In exercising this concurrence Council needs to consider:

- 5 (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning,*

-
Comment: The wind turbine will not impact on any state significant agricultural land or contravene any provisions of the North Coast Regional Plan or other State Environmental Planning Policies.

10

- (b) the public benefit of maintaining the development standard

15

Comment: There is no public benefit in enforcing the 9 metre standard in this case. The wind turbine does not create noise or view impacts or affect neighbours or the public using The Saddle Road.

Clause 6.1 Acid Sulfate Soils

20

Complies. The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. The land mapped at 219 The Saddle Road has been tested down to 4 metres depth and does not contain ASS so the farm dam and earthworks will not cause any issues. The proposed development will not trigger the need to prepare an ASS management plan.

25

Clause 6.2 Earthworks

30

Complies. The earthworks on the site relate to the stormwater management system and the farm dam. The works will control flows across the site that arise from the higher land near The Saddle Road and need to be slowed down so to avoid erosion across the red soils. It will not have a detrimental effect on drainage patterns and will improve soil stability in the locality of the development. No fill is to be imported onto the site. Rocks from the land will be used to slow stormwater down and line drains. Impacts on neighbours will occur during the construction period from noise and dust and these will need to be managed. Standard conditions on all these matters are required.

35

Clause 6.3 Flood Planning

40

Complies. The site is not mapped as flood prone land. It has been subject to short term stormwater inundation in lower areas in the past. This has been exacerbated by lack of maintenance to culverts under Gulgan Road. These have now been cleared and drainage improved.

Clause 6.6 Essential Services

45

Complies. The subject land is rural land with no reticulated sewerage. The wastewater generated from the proposed development is to be disposed of on-site. It is proposed that a commercial wastewater management system will be installed at stage 1 and will manage the wastewater for the proposed development (all stages) and also cater for the existing dwelling (and approved alterations, 70.2017.1112.2) and the approved dual occupancy (70.2017.1160.1) hence, the proposal will supersede any previous approvals for on-site wastewater management for the site.

50

It is proposed that a centralised commercial Aerated Wastewater Treatment System will allow for treatment of wastewater from the dwellings, ancillary buildings of the dwellings and the proposed agricultural amenities and use of the amenities by stage 2 works. A series of pump wells will be required to transfer the wastewater to the AWTS as described in the On-Site Wastewater

Feasibility assessment. It is proposed that the treated wastewater will be pumped to an area that has been previously approved for disposal, utilising subsurface irrigation.

A section 68 application is to be required to submitted as part of the construction certificate.

5 Water is predominantly sourced from ground water pumped to the header tank plus tank water on buildings plus surface water in the proposed farm dam. Potable water is also accessible from the Rous water line that services the site already.

10 Electricity is available and reticulated across the site including in proximity to the proposed garden centre, etc.

15 A Stormwater Management Plan has been prepared. On site detention of stormwater has been designed in accordance with Council's requirements and over land flow paths identified. Sediment and erosion controls have been implemented on works to date and are proposed for additional works.

20 Traffic and Access is complicated with the subject land. The Gulgan Road access is immediately adjacent to the access for the recently approved vet clinic and dual occupancy development. Gulgan Road is a busy trunk road that is funded by RMS (eg it has a role in what can happen along that road). The neighbour has an approval that requires them to upgrade their intersection with Gulgan Road to BAL / BAR. It would not be practical to have an identical intersection to Rainbow Farms upgraded to BAL / BAR as there would be insufficient spatial separation between the two driveways. .

25 The applicant has proposed with the support of the vet clinic to combine and share their access to Gulgan Road as a double size driveway that splits inside the property. This is safer than two driveways side by side but now requires any assessment of traffic to accumulate all traffic from both sites to a single access point. The need to upgrade an intersection is a function of the amount of traffic to be generated by the property (in this case two properties with multiples uses) plus the volume and speed (signposted at 80Km/h) of background traffic on Gulgan Road. The traffic from the Rainbow Farms proposal triggers the need to further upgrade the intersection beyond that required of the vet clinic. A condition will be required imposing a CHR (s) and BAL for stage 1 uses and then CHR (s) and AUL(s) for stage 2 uses. This approach is supported by RMS.

35 The applicant has moved the proposed stockyard loading ramp that required access to the Saddle Road and an internal location is now proposed. This is satisfactory. The access and use of The Saddle Road will remain as it currently is.

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

No draft environmental Planning Instruments affect this proposal.

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

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

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

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

B3 Services

Water, onsite wastewater disposal, stormwater are all addressed adequately in this application and Council referral officers have supplied appropriate conditions to address any concerns.

5

B4 Traffic and Parking

Traffic has been addressed earlier in this report and conditions of consent are proposed for the driveway intersection driveway. Parking is addressed as follows: Intensive plant agriculture, agriculture structures (wind turbine, water tank, stockyards, farm dam), stormwater management system, business identification sign, and extractive industry do not generate parking demand on site other than what would normally occur on a farm.

10

The remaining uses have some potential to generate demand for parking for staff and customers as follows:

15

Proposed Land Use	Standard from DCP	Proposed
agricultural produce industry	no standard specified	2
wholesale plant nursery (no retail sales)	1 per staff	1
wholesale landscaping supplies (no retail sales)	1 per staff	1
garden centre	1 space per 70 m2 and 1 per staff = 36	46
roadside stall	2. 5 spaces per stall (based on market)	6
Total	41	56

On this basis the proposed development is compliant with Council parking requirements.

B6 Buffers and Minimising Land Use Conflicts

The DCP recommends that horticulture have a 200m buffer to unrelated rural dwellings. The existing pattern of dwellings and dual occupancies in this area makes this difficult to achieve on this site without restricting the agricultural uses. This development is heavily focussed on cropping and agriculture related uses. This is consistent with the buffer objective *“To provide for existing, legitimate agricultural and associated rural industry uses to take precedence over other rural land uses within primary production rural zones and where appropriate in other rural zones.”*

20

25

The nearest dwellings are the unbuilt (but approved) dual occupancy dwelling behind the Gulgan Road vet clinic and the concessional lot dwellings along The Saddle Road. Moving the proposed farm sheds has come about as a result of one submission. The fact that Rainbow Farm will be organic will assist with some conflict issues. However, if conflict occurs related to dust or noise it will need to be resolved between landowners. Most forms of agriculture can take place without Council consent.

30

B10 Signage

35

Key Prescriptive Measures

Consents granted for **signage** will typically be conditioned to expire 15 years after the date on which the consent becomes effective.

40

Comment: A condition will be imposed limiting this consent to 15 years.

The **display area of business identification signs** must not exceed 1.5m²; and height above ground level must not exceed 2m.

5 Comment: The proposed sign is 6m² in area on each of two faces. They are proposed to be four metres high. The signs represent two properties (the vet clinic and Rainbow Farm) and reflect multiple businesses that operate from these sites. They are intended to be legible to passing traffic and inform if the business is open or not. Each property is entitled to a 1.5 m² sign so it is reasonable that the sign face be limited to 3m² (effectively a sign face 1.75 m by 1.75 m). However it is not reasonable that it be double sided (effectively 12 m² as submitted¹). The purpose is to inform oncoming traffic and the reverse side is seen only by traffic that has passed the businesses and driveway access already. A condition will be imposed requiring that the sign be single sided with a face of no more than 3 m². The reason the sign is 4 metres in height is because it is to be located approximately 2 metres below the height of the centre of Gulgan Road on private land. The sign needs to be this height in order to be viewed by passing drivers. This is acceptable.

15 Only one **business identification sign** or one **building identification sign** associated with a business or building located on the land may be erected on a property.

20 Comment: One sign is proposed reflecting the two properties that gain access from Gulgan Road at this point. One sign will be located on Lot 4 DP 810118 owned by Rainbow Farms. A second sign was originally to be located on 21 Tandys Lane but this has been deleted from the application.

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"/>

25

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

Clause	This control is applicable to the proposal:	I have considered this control as it relates to the proposal:	If this control is applicable, does the proposal comply?
92	N/A		
93	N/A		
94	N/A		
94A	N/A		

* Non-compliances and any other significant issues discussed below

30 **4.7 Any COASTAL ZONE MANAGEMENT PLAN?**

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

35 **4.8 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

Impact on:	Likely significant impact/s?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality. The land is an agricultural holding with limited natural features or values.
Built environment	No. The proposal will not have a significant adverse impact on the built

	environment of the locality. The area is generally rural and the activities in this development are related to the rural use of this site.
Social Environment	No. The proposal will not have a significant social impact on the locality. The applicant has worked closely with the immediate neighbour to come to an arrangement on a shared access and modified the layout of the development in response to a neighbour's submission.
Economic impact	No. The proposal will not have a significant economic impact on the locality. The development is intended to provide income streams to the rural property that should assist in keeping it viable.

Standard conditions of consent are proposed to control construction activities, hours of work, builders waste and the like.

5 4.9 The suitability of the site for the development

The site is well suited to irrigated agriculture and small crops. The farm related structures and infrastructure is also appropriate. The traffic generating uses proposed in stage 2 are generally related to the agricultural use of the site and are appropriate subject to upgrading the access to Gulgan Road.

The extractive industry is small and based on the rocks being picked up from fields rather than a traditional hard rock or sand quarry. There will be no blasting, drilling, crushing or cleaning of rocks. Sales will be limited to Stage 2 of the development and only wholesale sales through the wholesale landscape supplies business. A limit of 1,000 tonnes per year of rock sales is commensurate with the size of the extraction area. This will limit the truck movements generated by the site. Eventually it will simply run out of rocks.

20 4.10 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited from 18 April to 8 May 2019.

There were 4 submissions made on the development application including two that oppose the proposal on a number of grounds as follows:

Placement of the northern business identification sign on Gulgan Road – One landowner is concerned that the northern most sign will be placed opposite a private driveway and lead to accidental entry of the wrong site. It is agreed that this sign needs to be placed to the south of the alignment of the private driveway. It also needs to avoid impact on the directional sign advising motorists of the Mullumbimby turnoff. This sign has now been deleted from the application and will not be approved.

Placement of the farm shed and proposed agricultural produce industry shed - One landowner expressed concern that the dual purpose shed would impact on the amenity of the approved dual occupancy dwelling on their land. The applicant also received this submission and responded with a revised location for the farm shed and proposed agricultural produce industry shed. It is now proposed to be located 15 metres setback from Gulgan Road near the proposed roadside stall. Although this is inside the normal setback for structures from Gulgan Road (55 metres in DCP 2014) the location is suitable for the uses and alleviates the amenity impacts on the neighbours. The revised plan addresses the issue and no further action is required.

Flooding and the proposed farm dam – Appendix L of the SEE provides some information about the proposed farm dam. The site is not identified as flood prone on Council mapping. Additional information has addressed the design, location and spillway for the proposed dam. It is unlikely to significantly affect water flows on adjacent land.

5 Hazard presented by the old quarry – The DA does not propose landuses in proximity to the disused quarry. The applicant has used the quarry floor for storage of farm related items but this does not require consent. There is no reason to expect the public will proceed beyond the garden centre and signs can be imposed on any approval to require them not to.

10 Inadequate traffic assessment – Appendix I of the SEE provides some information about the traffic impacts of the development and more information has been requested. Conditions will be imposed on any approval to ensure traffic matters are addressed.

15 Garden centre without a building is unlikely – It is agreed that a full garden centre can't function without some buildings or structures to keep valuable items secure and out of the weather. It is possible to start with outdoor components such as plants and pots etc under shade structures. Conditions will be imposed that limit the approval to that requested. Any buildings (if required) will require additional approvals.

20 Inadequate justification for unlawfully erected farm structures – The circumstances by which the structures were erected relates to a misunderstanding of property boundaries. The location of the structures can now only be assessed on merit and will only be approved where circumstances warrant approval. No applicant should assume that existing structures are always approved. In this case the applicant has varied the location of the proposed stockyard loading ramp to enable its approval.

25 DA is not compliant with cl 6.8 of BLEP 2014 – The applicant has withdrawn the information and education facility component and cl 6.8 is no longer applicable. If the applicant holds field days or hosts seminars related to the agriculture taking place on the site this will need to be ancillary to the lawful use of the site.

30 **4.11 Public interest**

The proposed development is unlikely to prejudice or compromise the public interest or create a dangerous precedent. It is predominantly for agriculture and in due course to provide for sale of produce and items grown or obtained from the site. Plus the sale of rocks that are otherwise not required on the site. These can be supplied to the wholesale landscape market legally.

35 **5. DEVELOPER CONTRIBUTIONS**

40 **5.1 Water & Sewer Levies**

No Section 64 levies will be required.

45 **5.2 Section 7.11 Contributions**

No Section 7.11 Contributions will be required.

However, prior to the issue of a construction certificate the section 7.12 levy required by the Byron Developer Contributions Plan 2012 must be paid to Council.

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

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

Environment Division.	
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7. CONCLUSION

5 Council recognises the role of agriculture in the economy of the Byron Shire community. Council supports uses that are compatible both with the site and neighbouring land uses and have adequate infrastructure. This consent does not include approval for an *information and education facility* or an approval for a *food and drink premises* of any type. Staging of the development is linked to construction of suitable access from Gulgan Road initially (stage 1) and then again before the major traffic generating uses in stage 2 can commence.

10 This development meets the Council's requirements. Conditional approval is appropriate.

8. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED

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

Statement of Reasons

The proposed development complies with the provisions of Byron Local Environmental Plan 2014.
The proposed development complies with relevant State Environmental Planning Policies
The proposed development complies with relevant provisions of Development Control Plan 2014
The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The proposed development is unlikely to prejudice or compromise the public interest.

How community views were addressed

The DA was advertised in accordance with Development Control Plan 2014. The submissions received were considered on merit and addressed during assessment of the application.

Report No. 13.8 **PLANNING - Development Application 10.2019.468.1 Alterations and Additions to Existing Dwelling House at 860 The Pocket Road The Pocket**

Directorate: Sustainable Environment and Economy
Report Author: Ivan Holland, Planner
 Shannon Burt, Director Sustainable Environment and Economy
File No: I2019/1519

Proposal:

DA No: 10.2019.468.1
Proposal description: Alterations and Additions to Existing Dwelling House
Property description: LOT: 2 DP: 606791
 860 The Pocket Road THE POCKET
Parcel No/s: 132010
Applicant: Mr M Lyon
Owner: Ms A McQueen & Mr Y Lev
Zoning: RU2 Rural Landscape / PART 1(a) General Rural
Date received: 11 September 2019
Integrated / Designated Development: Integrated Designated Not applicable
Concurrence required No
Public notification or exhibition: – Level 0 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
 – Exhibition period: Not applicable
Planning Review Committee: Not applicable
Variation request Clause 4.6 SEPP 1 Not applicable
Delegation to determine Council
Issues: No issues identified

This development application has been assessed and is reported to Council in accordance with Council's Management of Conflicts of Interest for Development Matters.

Summary:

Development consent is sought for Alterations and Additions to an Existing Dwelling House comprising an upper level extension of two bedrooms, an ensuite, toilet and an area of decking. The site is part of a small Multiple Occupancy consisting of three dwellings and is located within the hinterland known as The Pocket. The application appropriately addresses the relevant constraints applying to the site with bushfire being the only matter. The application raises no planning issues and is recommended for approval subject to conditions.

NOTE TO COUNCILLORS:

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

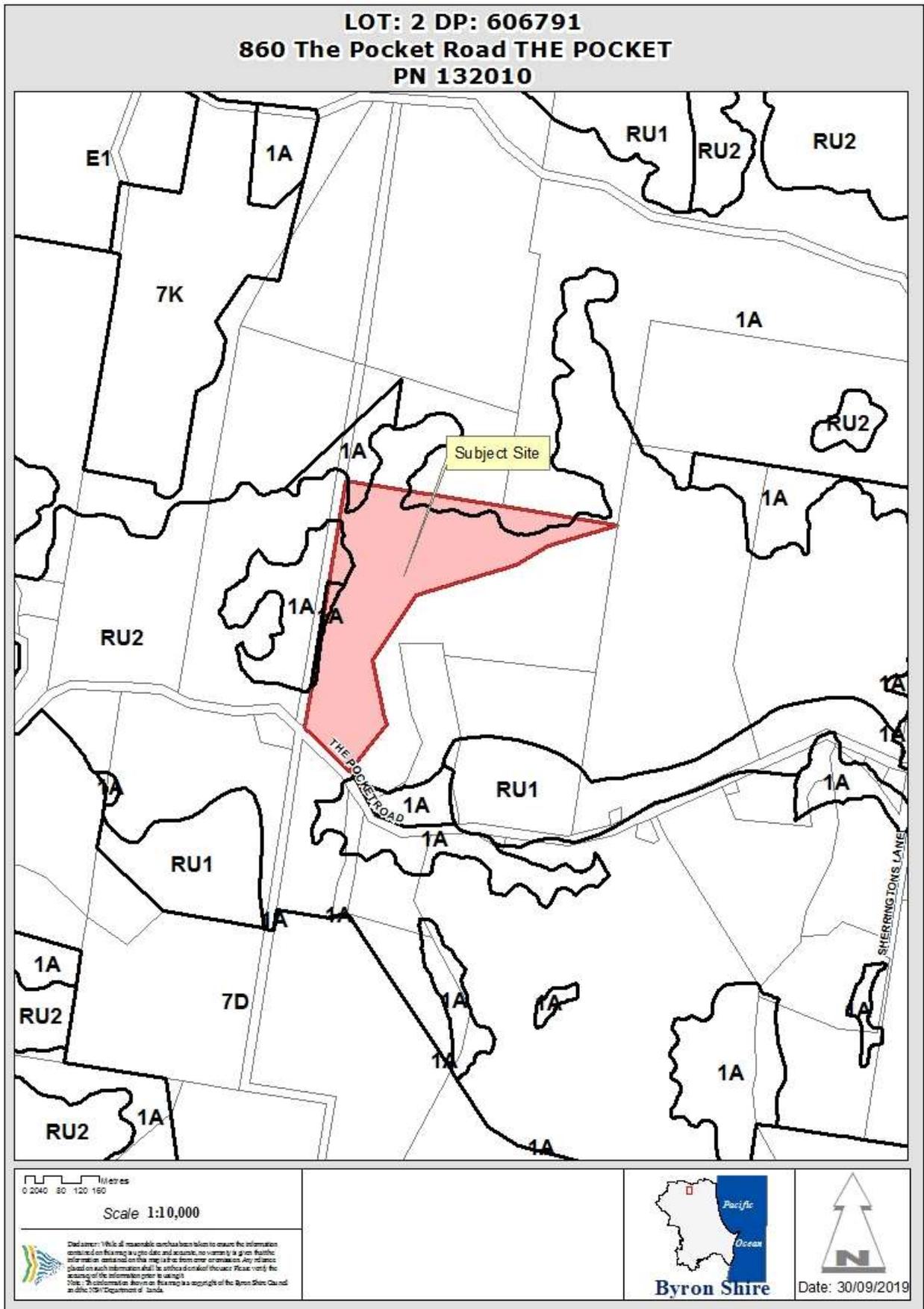
RECOMMENDATION:

That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.468.1 for Alterations and Additions to Existing Dwelling House, be granted consent subject to the conditions of approval in Attachment 3 (#E2019/71995).

Attachments:

- 5 1 Proposed floor plans and elevations, E2019/67122 
- 2 Site plan, E2019/67120 
- 3 Recommended conditions of approval, E2019/71995 

10



1. INTRODUCTION

1.1. History/Background

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

DA number	Description	Determination date	Determination
5.1992.19.1	Multiple Occupancy	17/03/1992	Withdrawn
5.1992.187.1	Dwelling- rural	10/07/1992	Approved
5.1992.187.2	<i>S96 Modification to DA 5.1992.187.1 (Dwelling and detached studio</i>	17/03/2006	Delegation
5.1993.164. 1	Multiple Occupancy	21/10/1993	Approved
10.2004.91.1	Change of use of studio and workshop to laundry, storage and workshop	17/03/2006	Delegation
10.2008.358.1	Multiple occupancy conversion to community title subdivision to	23/08/2008	Refused
			Approved

1.2. Description of the proposed development

10 This application seeks approval for Alterations and Additions to Existing Dwelling House being an addition/extension of the first/upper floor to add two bedrooms, an ensuite, toilet and area of decking. Note: The proposal also appears to include some alterations to the windows/doors on both floors.

1.3. Description of the site

Land is legally described as	LOT: 2 DP: 606791
Property address is	860 The Pocket Road THE POCKET
Land is zoned:	RU2 Rural Landscape / PART 1(a) General Rural
Land area is:	14.6 ha
Property is constrained by:	<ul style="list-style-type: none"> • Bushfire prone land (category 1 and buffer) • High Environmental Value vegetation (subtropical rainforest and north coast wet sclerophyll) • BDAR Mapping - A small area in the southwest corner of the property is mapped as having biodiversity values. The proposed development is >350m from this area.

A site inspection was carried out on 30 September 2019

2. SUMMARY OF REFERRALS

20 There were no referrals for this application; however a separate application will be submitted to upgrade the existing onsite sewage management system under S68 of the Local Government Act 1993. It is recommended this approval be obtained prior to the issue of the construction certificate.

3. SECTION 4.14 – BUSH FIRE PRONE LAND

25 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. Using the procedure provided on 30 the NSW Rural Fire Service webpage titled 'Site Assessment Methodology', the asset protection

zone and bush fire attack levels for this proposed development (which is in fire weather area FDI 80) are as follows:

Direction	North and east
Vegetation formation	Forest
Distance between vegetation formation and building (Actual bush fire risk vegetation was further from the subject dwelling than mapped risk vegetation on Council's GIS system – see photos)	North ~ 50m, East ~50m
Effective slope	Upslope/flat
Asset Protection Zone (APZ)	20m
Bushfire Attack Level (BAL) BAL– 12.5 to the north and east facade, no requirement for other façades.	

- 5 A condition has been included in the recommendation of this report that requires the building construction level to be BAL 12.5 and an APZ of 20m to the north and east.

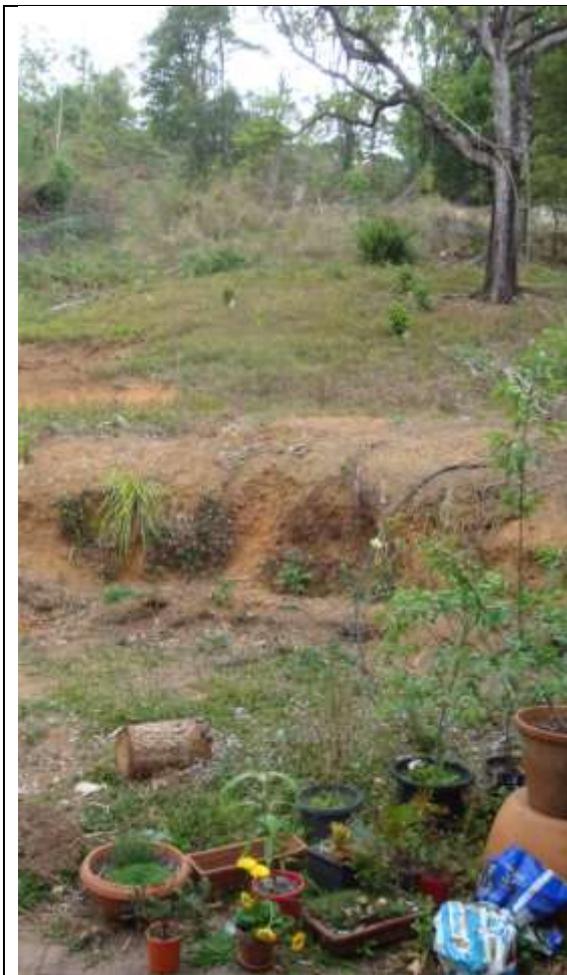


Photo 1 – View east from dwelling showing largely cleared slope for over 50m.



Photo 2 – View north from dwelling showing largely cleared slope to gully for over 50m.

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

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

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 44—Koala Habitat Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The property is greater than 1 ha and as such this SEPP is applicable (cl.6). Council’s GIS system shows koala potential habitat immediately to the west of the subject dwelling (cl.7). The areas mapped as potential koala habitat are not also identified as ‘core habitat’ (cl.8). Further, the proposed development is relatively minor and is not expected to impact on koala habitat. It is considered that a KPOM is not required in this instance.		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The property appears in a search of Council’s contamination records relating to potential pesticide contamination associated with historical use of the land as a banana farm. A Preliminary Contaminated Land Assessment was carried out by Greg Alderson and Associates dated 26/8/03 which was assessed as part of the community title subdivision application (DA10.2008.358.1) which was approved. Based on this and previous residential development approvals for the property, the site is considered suitable for the proposed development and it is considered the proposal satisfies the relevant requirements of this policy.		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposal is BASIX affected development and a BASIX certificate has been provided with the DA.		
State Environmental Planning Policy (Infrastructure) 2007	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Councils GIS shows a pole and electricity substation ~ 27m from the subject dwelling. This is adequate separation to not trigger Essential Energy notification requirements (c.45).		
State Environmental Planning Policy (Primary Production and Rural Development) 2019	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposed development is relatively minor and does not appear to be contrary to any of the relevant aims of this policy (c.3) and is not expected to impact on neighbouring land uses (Schedule 4, Part 2).		

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

10

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

	5.12 <input type="checkbox"/> 5.13
Part 6	<input type="checkbox"/> 6.1 <input type="checkbox"/> 6.2 <input type="checkbox"/> 6.3 <input type="checkbox"/> 6.4 <input type="checkbox"/> 6.5 <input checked="" type="checkbox"/> 6.6 <input type="checkbox"/> 6.7 <input type="checkbox"/> 6.8 <input type="checkbox"/> 6.9

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

- (a) The proposed development is defined in the LEP 2014 Dictionary as Dwelling;
- (b) The land is within the RU2 Rural Landscape / PART 1(a) General Rural zones according to the Land Zoning Map however the subject dwelling is wholly within RU2 zoned land;
- (c) The proposed development is ; and
- (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
<ul style="list-style-type: none"> • To encourage sustainable primary industry production by maintaining and enhancing the natural resource base. • To maintain the rural landscape character of the land. • To provide for a range of compatible land uses, including extensive agriculture. • To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality. • To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality. 	<p>The proposal will not encourage or hinder primary industry or impact on available land uses.</p> <p>The proposed building alterations are relatively minor and will have a minimal impact on the rural landscape and/or scenic quality of the locality.</p>

10 Clause 4.3 Height of Buildings

The building (including the proposed alterations) is under the 9m height limit (clause 4.3).

15 Clause 6.2 Earthworks

The application states that the “*proposed works require minimal earthworks...*”. Provided the necessary earthworks comply with relevant development standards for exempt development (e.g., c2.29, 2.30 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008), consent will not be required for the earthworks (clause 6.2).

20 The applicant confirmed on 26 September 2019 that development consent is not required for proposed excavation and/or retaining walls associated with the proposal (clause 6.2).

25 Clause 6.6 Essential Services

The application states that the dwelling has water supply, wastewater and stormwater management, vehicular access, electricity and communication services (clause 6.6). Regarding wastewater management, a condition has been recommended requiring an approval under Section 68 of the Local Government Act 1993 for on-site effluent disposal to be obtained from Council prior to issue of a Construction Certificate.

30 The proposal raises no other issues under the LEP.

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

35 No proposed instruments were identified that are applicable to this application.

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

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

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

10 B2 – Preservation of Trees and Other Vegetation

The application does not include a request to remove native vegetation. A condition has been recommended to this effect.

B3 – Services

15 A current dwelling is approved (DA 5.1992.187.2) and at the time determined that adequate services were available. An upgrade to the on-site wastewater system will be required and a condition has been recommended to this effect.

B4 – Traffic Planning, Vehicle Parking, Circulation and Access

20 The proposed alterations are expected to have a negligible impact on traffic. Access arrangements are addressed above under the LEP (B4.2.3). The site inspection confirmed that there is ample space is available for the required two car parking spaces for the dwelling (B4.2.5, B4.2.12).

25 D2 - Residential Accommodation and Ancillary Development in Rural Zones

The proposed alterations and additions will not result in a dwelling house that is contrary to the general provisions (D2.2) or specific requirements for dwelling houses (D2.3).

The proposal raises no other issues under the DCP

30

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

35

Clause	This control is applicable to the proposal:	I have considered this control as it relates to the proposal:	If this control is applicable, does the proposal comply?
92	No	N/A	N/A
93	No	N/A	N/A
94	Yes	The dwelling was approved in 1992 and fire mitigation measures are likely to be inadequate compared to current	It would "...be appropriate to require the existing building to be brought into total or partial conformity with the Building Code of Australia."

		standards.	Standard condition recommended.
94A	No	N/A	N/A

4.7 Any Coastal Zone Management Plan?

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

5 4.8 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Impact on:	Likely significant impact/s?
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.

10 Standard conditions of consent apply in relation to hours of work, construction noise, builders waste and sedimentation and erosion control measures.

4.9 The suitability of the site for the development

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

4.10 Submissions made in accordance with this Act or the regulations

No submissions were received.

20 4.11 Public interest

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

25 5. DEVELOPER CONTRIBUTIONS

There is no nexus to levy contributions or headworks charges.

30 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

7. CONCLUSION

5 The DA proposes Alterations and Additions to Existing 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 the conditions listed in Attachment 3 (E2019/71995).

8. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED

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

Statement of Reasons

The proposed development complies with the provisions of Byron Local Environmental Plan 2014.
The proposed development complies with relevant State Environmental Planning Policies
The proposed development complies with relevant provisions of Development Control Plan 2014
The proposed development complies with Environmental Planning & Assessment Regulation 2000 considerations.
The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The proposed development is unlikely to prejudice or compromise the public interest.

How community views were addressed

The DA did not require advertising or notification as per Development Control Plan 2014.
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Report No. 13.9 **Biodiversity Conservation Strategy Vision and Aims**
Directorate: Sustainable Environment and Economy
Report Author: Lizabeth Caddick, Biodiversity Officer
File No: I2019/1520

5

Summary:

10 Council is revising its 2004-2014 Biodiversity Conservation Strategy. This report provides a summary of progress to date, and presents the outcomes from a recent Strategic Planning Workshop with Councillors to craft a vision for the Strategy.

15 Following the Strategic Planning Workshop, four draft visions were presented to Councillors. In view of the comments received on those drafts, a revised vision is presented here.

Staff are now seeking adoption of this draft vision, and the strategy aims, in order to finalise a draft Biodiversity Conservation Strategy by the end of the year.

20

RECOMMENDATION:

1. **That Council adopts the following vision for the revised Biodiversity Conservation Strategy:**

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

2. **That Council adopts the four Biodiversity Conservation Strategy Aims:**

- **Lead – A Council that provides clear direction, guidance and resources to conserve and enhance our biodiversity.**
- **Educate – A community that is well informed about biodiversity and what they can do to protect it.**
- **Support – Land managers that are well supported to maximise biodiversity conservation across the landscape.**
- **Manage – Best-practice land management is used to improve ecological resilience, reduce threats to biodiversity and protect cultural values.**

Attachments:

- 1 Report 17/06/2019 Biodiversity Advisory Committee Update on the review of the Biodiversity Conservation Strategy, I2019/844 
- 25 2 Report 11/02/2019 Biodiversity Advisory Committee Biodiversity Conservation Strategy Consultation, I2019/6 

30

REPORT***Background***

5 Council's Biodiversity Conservation Strategy (BCS) is a key document for guiding planning, decision-making and activities that impact on our environment and community. It will shape future planning and growth, and provide a framework for navigating future environmental challenges and opportunities. It will be based on a 10 year timeframe (2020 – 2030) and will be an overarching reference document, informing a number of other Council strategies, master plans and initiatives. It must direct Council, as well as providing best practice leadership to other stakeholders involved in biodiversity conservation, including the community, landholders, government agencies and neighbouring local governments.

15 Council is reviewing its 2004-2014 Biodiversity Conservation Strategy (BCS) in line with five key objectives (Council resolution **14-334**, 7 August 2014):

1. To ensure the Strategy is in accordance with recent local, regional and national plans, strategies and policies
2. To ensure the Strategy is in accordance with legislative changes completed since 2004
- 20 3. To ensure the Strategy is reflective of current research and best practise in biodiversity conservation and management
4. To review vegetation mapping to reflect changes in vegetation extent and composition over time, and improve accuracy of line work
- 25 5. To identify new actions to be included to direct future work priorities following consultation and input from stakeholders and the community.

Key Issues and Progress to Date

30 As reported to the Biodiversity Advisory Committee on 17 June 2019, the timeline for the BCS review has been delayed, primarily due to the 3-year timeframe required to complete shire-wide vegetation mapping, which included extensive ground truthing, three rounds of public exhibition, plus subsequent changes required by the Office of Environment and Heritage (OEH) to re-map all high conservation value (HCV) vegetation as high environmental value (HEV), using new criteria. In 2015 major changes to NSW biodiversity and other related legislation commenced, causing 35 significant challenges and further delaying delivery of the review.

Whilst the review was stalled by legislative and staff changes, other works programs and biodiversity projects have continued in line with the key objectives of the BCS review. Achievements include:

- 40
 - Byron Shire Flying-fox Camp Management Plan (2018-2023)
 - Pest Animal Management Plan (2018-2023)
 - Integrated Pest Management (IPM) Policy (2018)
 - Integrated Pest Management Strategy (2019-2029)
 - 45 • Byron Coast Comprehensive Koala Plan of Management (2016)
 - SOS Iconic Koala community engagement and koala threat abatement project (2017-2019)
 - Byron Habitat Corridors habitat creation project (2017-2020)
 - Initiation of Flying Improvements flying fox habitat restoration project (2018-2021)

50 During 2018-19, consultants Ecosure were engaged to assist with the BCS review. Ecosure have been working with Council staff to collate information, engage stakeholders and draft the strategy. Elements of the review completed to date include:

- 55
 - Farmers workshop (Huonbrook, Oct. 2018)
 - Community and interest groups workshop (Mullumbimby, Dec 2018)

- Online community survey - BSC website (December 2018 – April 2019)
- Stakeholder meetings with
 - Aboriginal landholders, LALCs and community groups (Jan – Feb 2019)
 - Public Land Managers - NPWS, Marine Parks, Crown Lands (Feb 2019)
 - BSC Council Staff, Managers and Directors (Feb 2019)
- Report to Biodiversity Advisory Committee (11 Feb 2019) – Stakeholder consultation with the Biodiversity Advisory Committee.
- Report to Biodiversity Advisory Committee (June 2019) – Progress update.
- Review of 2004 Biodiversity Strategy Actions (June 2019).

Council staff are now collating this information, in order to finalise a draft 2020-2030 Biodiversity Conservation Strategy for Byron Shire.

Vision Statement and Options

A workshop with Byron Shire Councillors was held on 5 September 2019 to draft a vision statement for the Byron Conservation Strategy. The Strategy vision is a further step towards finalisation of the strategy and will help guide prioritisation of Strategy actions.

During this workshop, Ecosure presented Councillors with the draft strategy aims and a summary of key issues and trends arising from stakeholder consultation, in order that the vision could be guided by community input. From this workshop, four draft Vision Statement options were developed by Ecosure based on key words and phrases sourced from the session, and Councillors were invited to provide feedback on these options by 18 September 2019. The four draft visions proposed by Ecosure were:

Vision Statement 1
 We as a community value, protect and enhance the biodiversity of our natural environment and recognize that the health of our ecosystems is intrinsically linked to our survival.

Vision statement 2
 As a matter of urgency we will protect our shire’s natural environment recognizing the impacts of climate change, population growth and development. We acknowledge the strength within our community to bring about synchrony between protection of the natural environment and human endeavor.

Vision statement 3
 We will act on the best available science regarding the multitude of stresses threatening our natural environment. We recognize that when we act there is hope for the many and varied ecosystems and species that are intrinsically linked to our health and wellbeing.

Vision statement 4
 We recognise the intrinsic link we have with the natural environment and the urgent need to redress that imbalance to protect the regions biodiversity from the many pressures now operating at many levels. Supporting an engaged community we can show leadership in conserving and enhancing the ecological integrity of the shire for future generations.

Responses were received from two Councillors. One respondent supported either of the following:

Vision Statement 1

We as a community value, protect and enhance the biodiversity of our natural environment and recognize that the health of our ecosystems is intrinsically linked to our survival.

Vision statement 4

We recognise the intrinsic link we have with the natural environment and the urgent need to redress that imbalance to protect the regions biodiversity from the many pressures now operating at many levels. Supporting an engaged community we can show leadership in conserving and enhancing the ecological integrity of the shire.

The second respondent noted that: ‘Ideally, if a Vision Statement is the articulation of a desired end state, it should be one sentence.’ This aligns with the sentiment during the workshop that the vision should be short and sharp. The same Councillor also pointed out that some of the words within all the proposed visions could be considered to be Aims. The text box below is included to clarify the distinction between vision, aims, objectives and actions in a strategy.

<p>VISION: Simple, big-picture aspiration of <i>where we want to be</i> (our desired end state), not how we will get there.</p> <p>AIMS: <i>What we want to do</i> to protect and enhance our biodiversity.</p> <p>OBJECTIVES: <i>How</i> we intend to achieve our goals.</p> <p>ACTIONS: <i>Specific, measurable tasks</i>. One objective may have several goals.</p>	<p style="text-align: center;">Example</p> <ul style="list-style-type: none"> • One aim is to have a community that is well informed about biodiversity and what they can do to protect it. • How do we achieve this aim? One objective might be: to provide landowners with accessible information regarding threats to biodiversity and their responsibility to help manage these threats. • There are many ways we can provide this information, so the Strategy would break this objective down into a list of specific actions including: <ul style="list-style-type: none"> – Developing a pest education and awareness plan for target species in Byron Shire. – Providing community workshops regarding weeds. – Partnering with other events to raise awareness of threats across different demographics in the community.
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Given the responses received above, and the points made that the vision:

- should articulate a desired end state,
- should only be one sentence long and
- should not include aims,

a revised draft vision is proposed below:

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

This vision is short, because it simply describes our **desired end state**. The **Aims** that underpin the **Vision** address this end state in greater detail, and are broken down into four key themes in the draft Strategy that relate to Council’s scope of work: lead, educate, support and manage.

Strategy Aims

- **Lead:** A Council that provides clear direction, guidance and resources to conserve and enhance our biodiversity.
- **Educate:** A community that is well informed about biodiversity and what they can do to protect it.
- **Support:** Land managers that are well supported to maximise biodiversity conservation across the landscape.
- **Manage:** Best-practice land management is used to improve ecological resilience, reduce threats to biodiversity and protect cultural values.

The detail of **how** Council is going to achieve the Vision and Aims is articulated through the BCS Objectives and Actions. These relate to specific, measurable ways Council can help to manage issues such as land clearing, protecting wildlife corridors and threatened species, managing pest species, educating the community and visitors about our biodiversity, working with land managers, including Aboriginal groups, to enhance biodiversity on private land, and planning for and improving resilience to climate change, etc. The actions are currently being finalised through consultation with internal and external stakeholders.

Why we need to protect and enhance our biodiversity is discussed in the revised BCS under the heading:

Why does Byron Shire Council need to conserve Biodiversity?

Biodiversity is essential to the survival of all life on earth. Biodiversity provides the ecosystem services that give us food, medicine, clean air, clean water, healthy soils and a safe, resilient environment to live in. It contributes to local livelihoods and economic development, and is a central component of many belief systems, world views and identities. Biodiversity also has its own intrinsic value, and we have an obligation to preserve this for future generations. Biodiversity and conservation are also integral to Byron Shire's 'clean and green' image – we need to manage our biodiversity to maintain the Shire's green identity and character.

Next steps

Council staff and Ecosure are continuing to draft the BCS, including:

- Conducting follow-up conversations with key stakeholders,
- Incorporating additional up to date information on rapidly changing issues including climate change and fire ecology,
- Prioritising a list measurable of strategy actions, based on an analysis of existing threats to biodiversity and stakeholder feedback.

Further progress with development of the Biodiversity Conservation Strategy will be reported to the Biodiversity Advisory Committee on 11 November. This meeting is open to all Councillors with an interest in having further input into the Strategy.

A working draft strategy will be presented to Councillors at the 5 December Strategic Planning Workshop. This will be an opportunity for Councillors to find out more detail about the proposed

Strategy actions, and to advise staff of any additional actions they would like to see prioritised in the Strategy, prior to peer review in January and submission of the draft Strategy for Adoption by Council in February 2020.

- 5 Staff are currently seeking Councillor support for the Strategy vision and aims, in order to progress finalisation of the draft Strategy and actions.

STRATEGIC CONSIDERATIONS

10 ***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	3.1	Partner to protect and enhance our biodiversity, ecosystems and ecology	3.1.1	Protect and enhance our natural environment and biodiversity	3.1.1.1	Continue to undertake the Biodiversity Conservation Strategy review

Legal/Statutory/Policy Considerations

- 15 Legislation relevant to the BCS that has been recently changed or is in the progress of being amended includes:
- *State Environmental Planning Policy 44 (SEPP 44) for Koala Habitat Protection.* Still under review by State Government. Key changes to SEPP 44 relate to definitions of Koala habitat, list of tree species, list of Councils and development assessment process.
 - *Biodiversity Conservation Act (2016):* Act commenced on 25 August 2017, however Plant Community Types (PCTs) still under review.

Financial Considerations

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

Consultation and Engagement

- 30 Summary of consultation undertaken as part of the BCS review contained in the report.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.10 Amendment 4 of Byron Developer Contributions Plan Removal of Waiver for Secondary Dwellings

5 **Directorate:** Infrastructure Services
Report Author: Christopher Soulsby, Development Planning Officer S94 & S64
File No: I2019/1505

10 **Summary:**

15 This report presents the submissions from the exhibition of amendment 4 of the Byron Developer Contributions Plan 2012. This amendment was to remove the waiver on the payment of contributions on secondary dwellings. The exhibition also proposed the removal of the waiver on water and sewer charges imposed under the Division 5 of Part 2 of Chapter 6 of the Water Management Act 2000.

20 The submissions raised concerns about the affordability of housing and this impacts on the provision of affordable housing. It is considered that the potential impacts on housing affordability as raised by the submitters are outweighed by the cost to Council from lost contributions revenue for the provision of infrastructure and that the primary objective of the policy was to lower median rents which was not achieved.

25 It is recommended that Council adopt the plan as exhibited and remove the waiver on the payment of contributions for secondary dwellings.

NOTE TO COUNCILLORS:

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

35

RECOMMENDATION:

1. **That Council adopt Amendment 4 of the Contributions Plan as per Attachment 2 (E2018/72973) to this report.**
2. **That Council imposes a requirement to pay water and sewer contributions for secondary dwellings.**

Attachments:

- 40 1 Submissions Received - Contributions Plan, E2019/72924 
- 2 Developer Contributions Plan 2012 Amendment 4, E2018/72973 

REPORT

The purpose of this report is to have Council resolve to adopt the amendment to the contributions plan to remove the waiver on the payment of developer contributions for secondary dwellings.

5 The public exhibition to Byron Developer Contributions Plan 2012 (amendment 4) for the removal of the secondary dwellings contributions waiver also included notification that Council would remove the waiver on the payment of water and sewer contributions.

10 Council resolved to publicly exhibit an amendment to Byron Developer Contributions Plan 2012 in accordance with the Environmental Planning and Assessment Act, 1979 and Regulation, for a period of 28 days. The amendments consist of:

- 15
1. Deletion of clause 2.14 that allowed for the waiver of contributions on secondary dwellings.
 2. Consequential numerical changes of the plan to reflect the updated numbering of the Environmental Planning and Assessment Act 1979.

20 The amendment to the Byron Developer Contributions Plan 2012 was placed on exhibition from 24 July 2019 until 21 August 2019 and was available for viewing at Council’s administration office and online. In order for Council to make an informed decision on Amendment 4 the Council will need to consider the impacts of removal of the waiver as set out in the submissions.

25 Four submissions were received objecting to the removal of the waiver. An additional submission was received questioning why developer contributions were so high in Mullumbimby.

Representations were made to Council by email from Friends of the Library following a newspaper article in the Echo. In response to this the section of the plan pertaining to the Byron Bay Library has been amended to reflect the fact that the library has been completed. This plan does not make any changes to the works schedules or rates of contribution.

30 The main points of objection to removal of the waiver and a staff comment are set out in the table below:

Objection Issue	Comment
Removal of the waiver will remove affordable housing for the children and grandchildren of residents	<p>Secondary dwellings will still be permissible. This type of housing that cannot be subdivided and is only available for rent will remain as an option under the provisions of the SEPP Affordable Rental Housing.</p> <p>The additional cost imposition is discussed below.</p>
It will make it harder for people to build secondary dwellings.	<p>The approvals process will remain the same. There is an additional cost implication that will likely reduce the number of secondary dwellings constructed.</p> <p>The cost reduction in the provision of secondary dwellings due to the waiver has had no impact on the median weekly rents (refer below).</p>
Creation of family compounds has many benefits.	<p>The benefits to the provision of affordable rental housing are not in dispute. The removal of the waiver of contributions will mean that Council can provide the public facilities demanded by</p>

	the additional population that lives in these dwellings.
The reintroduction of contributions will affect development applications already lodged	The savings and transitional provisions in the plan make it clear that development applications lodged before the plan comes into force will be assessed under the terms of the old plan and that the waiver will apply.
Police the holiday rentals instead	The issue of enforcement of short term rental accommodation was reported to Council on 22 July 2017 and a follow up report updating Council was presented to the meeting of 2 August 2018. Council is undertaking and ongoing compliance and education program with respect to 'short term holiday letting'.
Reintroducing contributions will stop owners producing low cost housing.	It is acknowledged that there will be a reduction in the rate of production of affordable housing due to the reintroduction of contributions. This reduction may be partially offset by the levying of a specific contribution for affordable housing Council has notified the Department of Planning of our intention to prepare a contributions plan for affordable housing under the terms of SEPP 70. This plan is being prepared in parallel with the Housing Strategy. This will enable Council; to levy contributions specifically for the provision of affordable housing.
Why are the contributions in Mullumbimby so high?	<p>The contributions in each catchment are affected by three factors. These are:</p> <ul style="list-style-type: none"> • Cost of the works in each catchment; • Apportionment rate in the catchment; • Total dwelling yield in the catchment. <p>The a cost of works in the Mullumbimby open space works schedule is higher than other catchments plan due to the cost of land acquisitions at Tallowood Estate. The cost of land is the principle driver of the relatively higher cost of contributions when compared to other catchments.</p> <p>The purpose of the draft plan is not to alter the works schedules or the rates of contribution.</p>
If contributions are imposed then there should be a discount or low or zero fee applied. A fee of 50% for secondary dwellings compared to a 3 bedroom house is too high.	<p>This is not supported as it would not support the primary objective of the waiver which was to reduce the median rents for small dwellings.</p> <p>The Percentage reduction for 1 bedroom dwellings compared to a 3+ bedroom dwelling is based on the occupancy rates provided by the Australian Bureau of Statistics.</p>

The aim of the waiver was to make rental housing cheaper by increasing supply and thereby reducing the median weekly rent for these types of dwellings. The waiver was introduced in February 2011. The following table sets out median weekly rents for one bedroom flats / units based on rental bonds in the region by LGA.

5

Median Weekly Rent for 1 Bedroom unit				
	Mar-11	Jun-17	Jun-19	Percentage Change 2011 to 2019
Ballina	205	280	315	53.66%
Byron	285	380	397	39.30%
Lismore	168	193	205	22.02%
Richmond Valley	154	193	NA	
Tweed	262	280	303	15.65%

Source: NSW Family and Community Services

5 Byron has the highest median weekly rent for a single bedroom unit / flat in the region. During this time inflation has increased by 16% (Sydney all groups CPI) but the median weekly rent in Byron Shire has increased by 39%. There has been as significant increase in the number of secondary dwellings with no impact on median rents.

10 By and large the majority of secondary dwellings that have been approved are not being used for the intended purpose of the SEPP Affordable Housing. The predominant use that these dwellings are being put to is for short term rental accommodation (STRA). Council acknowledges this and is working on a strategy to address this through compliance. This is however difficult with the current legislative flux on STRA. Our submission to the STRA option paper and current reform package have strongly advocated with the exclusion of properties SEPP Affordable Housing from the STRA SEPP.

The increased cost for section 7.11 (cf S94) contributions is set out in the following table:

Cost per 1 bedroom unit (0.55 SDU)	
Byron Bay Suffolk Park	7,305.56
Bangalow	5,552.93
Mullumbimby	10,726.39
Ocean Shores	3,876.60
Brunswick Heads	5,207.60
Rural North	10,035.80
Rural South	10,035.80
Next CPI increase	30-Oct-19

20 In addition to these charges, if Council, removes the waiver on water and sewer contributions, the following would become payable to Council per one bedroom secondary dwelling.

Water	0.4	ET @	\$806.00	=	\$322.40
Sewer	0.5	ET @	\$10,576.00	=	\$5,288.00
	Total			=	\$5,610.40

25 Rous Water has their own waiver that would continue to apply.

The adoption of the amendment 4 will also remove the discrepancy in the application of contributions on secondary dwellings in the zones that the SEPP Affordable housing applies to and

the rural zones. The waiver only applies to secondary dwelling approved under the terms of the SEPP Affordable Housing and not the Byron LEP 2014. The Byron LEP 2014 makes secondary dwellings permissible in the rural zones. The SEPP Affordable Housing does not apply in these zones and the waiver also does not apply.

5

Options

Council has three options with the developer contributions plan. It may:

- 10 1 Adopt the contributions plan as exhibited and resolve to remove the waiver on section 64 charges for secondary dwellings; or
- 2 2 Resolve to not adopt the plan and retain the waiver for secondary dwellings for both the section 7.11 contributions and section 64 charges; or
- 15 3 3 Resolve to modify the plan to give a partial waiver for secondary dwellings for both the section 7.11 contributions and section 64 charges as raised in the submissions.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

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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	4.1.3	Manage development through a transparent and efficient assessment process		

Legal/Statutory/Policy Considerations

25 Section 7.17 of the Environmental Planning and Assessment Act affects this Amendment. The relevant part of section 7.17 is set out as follows:

7.17 Directions by Minister (cf previous s 94E)

- 30 (1) *The Minister may, generally or in any particular case or class of cases, direct a consent authority as to:*
 - (a) *the public amenities and public services in relation to which a condition under section 7.11 may or may not be imposed, and*
 - (b) *in the case of a condition under section 7.11 requiring the payment of a monetary contribution:*
 - 35 (i) *the means by which or the factors in relation to which the amount of the contribution may or may not be calculated or determined, and*
 - (ii) *the maximum amount of any such contribution, and*
 - (c) *the things that may or may not be accepted as a material public benefit for the purposes of a condition under section 7.11, and*
 - 40 (d) *the type or area of development in respect of which a condition under section 7.12 may be imposed and the maximum percentage of the levy, and*
 - (e) *the use of monetary contributions or levies for purposes other than those for which they were paid, and*

45 A Ministerial Direction in accordance with section 94e (now s7.17) direction signed by Minister - July 2017 applies to this contributors plan amendment. Council does not need to submit a draft contributions plan to IPART for assessment if the contributions plan falls wholly within the areas

listed in Schedule 1 of the Direction. Byron Shire Council is not listed in schedule 1 of the direction.

5 For all lands (other than exempt land and LIGS transition areas), the following caps on contributions plan charges will apply:

- a capped amount of \$30,000 per dwelling or residential lot in greenfield areas
- a capped amount of \$20,000 per dwelling or per residential lot in infill areas.

10 Council can only levy contributions above the cap if the contributions plan has been reviewed by IPART and council has been implemented any advice given by the Minister. An essential works list will apply when councils are seeking local infrastructure contributions above these caps.

Council should submit the draft contributions plan to IPART for review as either:

- a new contributions plan
- 15 • a new contributions plan that seeks to amend an existing contributions plan consistent with clause 32 of the EP&A Regulation.

20 Council is only required to submit a draft contributions plan to IPART for review if the plan proposes a contributions rate (refer to Table 1, Part 1 of this Practice Note) that exceeds the maximum amounts specified in the Direction.

Amendment 4 of the Byron Contributions Plan has all contributions per dwelling under the \$20,000 cap and on this basis does not have to refer the contributions plan to IPART.

25 The draft plan is compliant with the direction and Council may resolve to adopt the draft plan.

Clauses 31 and 32 of the Environmental Planning and Assessment regulation sets out the way in which a contributions plan may be amended. The clauses are set out as follows:

30 **31 Approval of contributions plan by council(cf clause 30 of EP&A Regulation 1994)**

(1) After considering any submissions about the draft contributions plan that have been duly made, the council—

- 35 (a) may approve the plan in the form in which it was publicly exhibited, or
- (b) may approve the plan with such alterations as the council thinks fit, or
- (c) may decide not to proceed with the plan.

(2) The council must give public notice of its decision in a local newspaper within 28 days after the decision is made.

(3) Notice of a decision not to proceed with a contributions plan must include the council's reasons for the decision.

40 (4) A contributions plan comes into effect on the date that public notice of its approval is given in a local newspaper, or on a later date specified in the notice.

32 How may a contributions plan be amended or repealed?(cf clause 31 of EP&A Regulation 1994)

45 (1) A council may amend a contributions plan by a subsequent contributions plan.

(2) A council may repeal a contributions plan—

- (a) by a subsequent contributions plan, or
- (b) by public notice in a local newspaper of its decision to repeal the plan.

50 Council, if it resolves to adopt the plan, repeal amendment 3 and adopt amendment 4. A notification of the adopted plan will be placed in the newspaper to satisfy the regulations.

Financial Considerations

No additional budget is required. There are no adverse financial implications for Council. The removal of waiver will increase the contributions income to Council.

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Consultation and Engagement

The Contributions Plan was publically exhibited in accordance with clause 28 of the regulation.