



## Agenda

### Ordinary (Planning) Meeting Thursday, 21 November 2019

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

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

Mark Arnold  
General Manager

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## CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

### Disclosure and participation in meetings

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

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

**Non-pecuniary Interests** - Must be disclosed in meetings.

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

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

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## RECORDING OF VOTING ON PLANNING MATTERS

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

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

# BYRON SHIRE COUNCIL

## ORDINARY (PLANNING) MEETING

### BUSINESS OF ORDINARY (PLANNING) MEETING

1. PUBLIC ACCESS
2. APOLOGIES
3. REQUESTS FOR LEAVE OF ABSENCE
4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY
5. TABLING OF PECUNIARY INTEREST RETURNS (CL 4.9 CODE OF CONDUCT FOR COUNCILLORS)
6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS
  - 6.1 Ordinary (Planning) Meeting held on 17 October 2019
7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS
8. MAYORAL MINUTE
9. NOTICES OF MOTION
10. PETITIONS
11. SUBMISSIONS AND GRANTS
12. DELEGATES' REPORTS
13. STAFF REPORTS

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

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| 13.1 | Community Participation Plan - Submissions Report.....   | 5  |
| 13.2 | Coastal Management Program (Stage One) Scoping Study for Cape Byron to South Golden Beach .....  | 11 |
| 13.3 | PLANNING - Planning Proposal for the former Byron Hospital Site 26.2019.7.1 .....  | 20 |
| 13.4 | PLANNING - Planning Proposal to rezone the part of the Rail Corridor in Byron Bay that is subject to Byron Bay Railroad Company licence, to SP2 Infrastructure, Byron Bay 26.2019.5.1 .....  | 25 |
| 13.5 | PLANNING - Development Application 10.2019.301.1 demolition of existing dwelling house and construction of two (2) new dwellings and two (2) swimming pools to create dual occupancy (detached) at 16 Short Street Brunswick Heads.....  | 30 |
| 13.6 | PLANNING - Development Application 10.2019.349.1 Stage 1: De-commissioning of existing dual occupancy to form one (1) dwelling, Stage 2: Construction of new dwelling house to form a dual occupancy and alterations & additions to existing dwelling house at 14 Short Street Brunswick Heads ..... | 51 |
| 13.7 | PLANNING - Development Application 10.2019.516.1 Alterations & additions to existing dwelling, 36 Roses Road, Federal.....   | 65 |
| 13.8 | 5G Technology.....   | 73 |
| 13.9 | PLANNING - Development Application 10.2019.345.1 Subdivision of Five (5) Lots into Four (4) Lots at 46 Bay Vista Lane Ewingsdale .....   | 80 |

# BYRON SHIRE COUNCIL

## ORDINARY (PLANNING) MEETING

13.10	PLANNING - S8.2 Review - Rural Tourist Accommodation 6 Cabins and Swimming Pool, Montecollum Road, Wilsons Creek.....	94
13.11	PLANNING - Development Application 10.2019.375.1 Alterations and additions to existing commercial development, including extension to outdoor dining area, Porter Street, Byron Bay .....	111
13.12	Memorandum of Understanding between Byron Shire Council and North Coast Community Housing .....	116
13.13	PLANNING - Development Application 10.2019.196.1 Use of Existing Buildings as a Detached Dual Occupancy and Demolition / Removal of Five (5) buildings at 541 Friday Hut Road Possum Creek.....	119
13.14	Byron Shire Local Heritage Grants Program 2019-20.....	144

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

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 13.1      Community Participation Plan - Submissions Report****Directorate:** Sustainable Environment and Economy5 **Report Author:** Sam Tarrant, Planning Support Officer**File No:** I2019/138810 **Summary:**

This report summarises the exhibition outcomes of the draft Community Participation Plan (CPP).

15 A number of changes are proposed to the exhibited draft CPP, based on the submissions, community workshop, farmers markets and internal staff comments. The changes are primarily for clarification purposes and to provide accurate and helpful information to the community on how they can be involved in planning matters. The changes are identified in this report.

20 The Community Participation Plan is to be adopted and uploaded to the NSW Planning Portal by 1 December 2019 as per the Environmental Planning and Assessment Act 1979. The plan takes Council's current practices from Part A: Preliminary of the Byron DCP 2014. A review of DCP 2014 and DCP 2010 is required to reference the CPP and remove overlap.

25 It is recommended that the CPP is adopted as attached, with the changes as a result of the exhibition period.

## NOTE TO COUNCILLORS:

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

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**RECOMMENDATION:**

1. **That Council adopt the Community Participation Plan as attached (Attachment 1 E2019/77091) and upload the plan to the NSW Planning Portal by 1 December 2019.**
2. **That staff review Part A of the Byron DCP 2014 and DCP 2010 to reference the Community Participation Plan and remove overlapping content and proceed to exhibition with any amendments.**

**Attachments:**

- 40
- 1 Byron Shire Council Community Participation Plan Final, E2019/77091 
  - 2 CPP Community Engagement Report, E2019/77090 
  - 3 Combined Submissions Community Participation Plan, E2019/74408 

**REPORT**

The purpose of this report is to summarise the exhibition outcomes of the draft Community Participation Plan (CPP).

5 The draft CPP was placed on exhibition for a period of 6 weeks from 28 August to 11 October. The CPP was available on Council’s website and notice of the exhibition was given in the Echo, on Public Notices and social media.

10 During the exhibition period staff held four drop-in sessions at farmers markets throughout the shire. The drop in sessions allowed staff to discuss the draft with the wider public and gain informal feedback. A small survey was also available to provide specific feedback on the CPP.

15 A workshop was also held on 18 September in Mullumbimby. The workshop, facilitated by the consultants, looked at the draft CPP in detail and allowed the community to provide in depth consultation on specific sections. A report of the feedback received from this workshop as well as the surveys and submissions was compiled by the consultant and is contained in Attachment 2. The submissions received are contained in Attachment 3.

20 ***Exhibition outcomes***

25 During the exhibition period five formal submissions and two internal submissions were received. The specific feedback from the workshop, drop-in sessions and submissions relevant to the CPP is summarised below. Majority of the feedback received was already covered in the CPP, or outside of the scope of this document. The entirety of the feedback is covered in the attached report (Attachment 2). There was a lot of positive feedback for the document especially with regard to its readability and helpfulness. A number of the suggestions and informal feedback was already covered in the document suggesting that Council’s current approach to community consultation is generally positive.

30 The points raised in the submissions and the proposed changes to the draft as a result of the exhibition are shown in the table below.

**Table 1: Public submissions**

35

<b>No.</b>	<b>Issue</b>	<b>Response</b>
1.	More information should be provided by social media	Council actively uses social media to advertise strategic planning documents that are on exhibition. Social media as a notification tool for strategic planning has been added to page 17 to reflect this.
2.	Street stalls are great for consulting about plans of management	Street stalls have been included in the notification methods for plans of management.
3.	Need more clarity about what triggers a DA to be determined by delegated authority or by the Councillors	A text box has been added explaining why some DAs go to a Council meeting and why others do not.
4.	The stages of strategic planning have good procedural themes but could it also include the opportunity for good design, change management and conflict resolution.	These aspects are all considered in strategic planning but are outside of the scope of the CPP.
5.	Page 20 discusses statutory criteria as a merit based system and wonder if that may be interpreted as the highest bidder	The merit based system is a statutory way for assessing development applications to allow for flexibility in planning regulations.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.1

No.	Issue	Response
	wins.	This is explained in the CPP.
6.	"for any other reasons" relating to why information may be redacted in E.I.S. is a sweeping statement rather than a measure of due diligence.	Staff agree that this is a sweeping statement; however this is taken directly from the Act and cannot be changed.
7.	I support the visions and values in the document and like the clarity of the pre-consultation for community significant development.	Noted.
8.	The notification requirements shown in Table 4 (Page 27) for developments above Level 0 should include a site notice and a newspaper notice so that the less technology proficient community members continue to be advised of DA's through conventional media channels.	<p>A recent amendment to the DCP has included a site notice in level 2 notification and this has already placed a lot of extra work and increased costs as staff have to drive out to the properties to install the sign and take it down after exhibition. Having this apply to level 1 development would not be appropriate and dramatically increase the costs and time required.</p> <p>A newspaper notice and installation of signage for every development application is considered to be unnecessarily burdensome.</p>
9.	Minimum exhibition periods in Table 4 are very tight unless pre-lodgement consultation has been invoked. Would therefore recommend the following: High value level 1 - 21 days Level 2 - 28 days Level 3 - 28 days	<p>Council can alter the notification methods or increase the exhibition period if it believes it is necessary. This could occur for a perceived high value DA.</p> <p>The increased exhibition timeframes are not recommended as Council has a limited timeframe to assess applications. Extending the exhibition to 28 days would make this timeframe unachievable.</p>
10.	A 14 day notice is inadequate for DAs	The increased exhibition timeframes are not recommended as Council has a limited timeframe to assess applications. Extending the exhibition would make this timeframe unachievable. Many of the 14 day DAs are minor developments.
11.	The five stages of the DA process shown in Appendix B have no reference to any community participation, an unfortunate omission given basic objectives.	Staff also noted that this diagram was out of date and not very useful or applicable to this plan as it is taken straight from the Department of Planning. It has been removed from the CPP.
12.	The full-page council advertisement in the local newspaper should be redesigned to inform residents of new information and upcoming events including timeline for submissions etc. Content, such as 'council contact details' etc., should be produced in a form that can be kept for easy access in the home.  The use of a full page is both challenging	<p>A lot of information is required in the full page advertisement. Council's contact details are provided in a separate box along with where to address a submission which could easily be cut out and kept for easy access in the home. This info is also in the CPP.</p> <p>The deadlines for submissions are bolded and underlined to highlight this information.</p>

No.	Issue	Response
	and provides great opportunities. Improved design and variety of colours with 'deadlines' highlighted would be more effective, and appreciated.	
13.	That Council recognising the difficulties and work required for community consultation appoint a Community Engagement Officer. The objective is to bring expertise to the problem of improving a two-way flow of information between council and residents. The intention would be, for this Officer, to work across all departments of council, with recognised community groups, and the community at large as far as possible. There are numerous ways for achieving this but without a designated experienced officer, appointed by council, frustrations and fairly mediocre numbers responding to council initiatives are likely to continue.	Noted. Outside the scope of the CPP.
14.	The concerns being made in the submission are not openly assessed by either council planning staff or at council meetings. There is no system in place that the concerns being made by the community are given sufficient weight or even discussed. No one can know what is discussed by the planning staff when they get the submissions. Even when the DA goes before Council, the communities' submissions are just summarized by the Planning Department in a few words which gives the Councillors very little information regarding the communities concerns and most of them go unheard. Just putting a small notice in the paper or a notice in the Councils DA website or at best a letter to the immediate neighbours, with the minimum time of just two weeks to deal with it, can in no way be regarded as a real attempt to engage the community in the DA assessment process.	<p>Staff address submissions for DAs in an assessment report and in the Council report if the DA goes to a Council meeting. Staff do summarise the points raised in the submissions in order to present and address them, however the full submissions are attached to the council reports. Reports for DAs that go to Council are available on Council's website.</p> <p>Council is looking at putting the assessment report on the DA Tracker, which we allow the public to easily see how the submissions have been addressed online.</p> <p>The CPP advises that there is more opportunity for community engagement in the strategic planning phase and that it becomes more prescriptive during the DA stage.</p>

5 In addition to the feedback received from the community, a number of staff noted some changes and additions that should occur to the draft prior to its adoption. The changes include clarification changes and amending inconsistencies stemming from the differences in strategic planning and development assessment. Additional information is also proposed to help the community participate and understand the processes. These proposed changes and reasoning are described below.



**Table 2: Internal submissions**

<b>No.</b>	<b>Issue</b>	<b>Response</b>
1.	The plan states that applications are available at Council offices, however this is only via the customer kiosks and not hard copy files.	The CPP has been updated to clarify that applications are available at Council offices via the customer kiosks
2.	Page 30 states that council will contact community members regarding the determination if they were involved in pre-lodgement consultation.	This is not the case. Community members who provide their details during the pre-lodgement consultation will be contacted by Council when the DA is lodged for a level 3 development, not determined. This paragraph has been removed.
3.	DA submissions can be submitted through the DA Tracker.	Update Page 38 to reflect this
4.	All DA information is available on the DA tracker post exhibition and a GIPA request is unnecessary.	Update Page 41 to reflect this
5.	Appendix E states that personal information will be redacted from submission. This is not true with DAs and we are looking at making submissions available on the website.	Update Appendix E to reflect this
6.	It would be helpful to include information that if a DA goes to Council those who made a submission will be notified and given the opportunity to speak at the Council meeting.	This has been added into Page 30
7.	On Page 38 it gives the general Council phone number however it should be made clearer that those wanting to make a submission should contact the relevant officer.	The general Council phone number has been removed and replaced with "contact the relevant officer".
8.	The timeframes in Appendix C are way out and we no longer have a fast track team. This should be removed	A formal submission also noted that this diagram is not accurate for the purpose of the CPP. This diagram has been removed.

<b>Other changes</b>
Inserted the community engagement framework (Page 8) to show the relationship of the CPP with other Council engagement documents.
Additional detail on notifying indigenous stakeholders to reflect existing clause A14.4 in the DCP (Pages 12 and 28)
Clarifying some of the provisions for community significant development (Page 23)
Minor change to Table 4 for Level 1 DAs to reflect that levels 1-3 are viewable at Council's office through the information kiosks (Page 27 and also in the Appendix)
Addition of a text box about viewing DAs on DA tracker (Page 28)
Some minor changes to FAQ

- 5 As demonstrated in the above tables, the changes are predominately for clarification purposes to ensure that correct information is presented. Additionally, extra information has been added as a result of the workshop and submissions.

**Next steps**

After the CPP is adopted by Council, the plan must be uploaded to the NSW Planning Portal and come into effect by 1 December 2019.

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**STRATEGIC CONSIDERATIONS**

**Community Strategic Plan and Operational Plan**

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 5: We have community led decision making which is open and inclusive</b>	5.1	Engage and involve community in decision making	5.1.1	Facilitate inclusive community consultation and stakeholder engagement to inform Council decision making (SP)	5.1.1.5	Prepare a Community Participation Plan

10 **Legal/Statutory/Policy Considerations**

The CPP must be uploaded to the NSW Planning Portal by 1 December 2019. The CPP is governed by the Environmental Planning and Assessment Act 1979.

15 **Financial Considerations**

There will be no further costs involved in publishing the Community Participation Plan. The remaining CPP budget will be used to review Part A of the DCP.

20 **Consultation and Engagement**

The consultation and engagement undertaken is outlined in the body of this report.

25 After the CPP is adopted, notice will be given through the planning e-newsletters and on Council's website.

**Report No. 13.2 Coastal Management Program (Stage One) Scoping Study for Cape Byron to South Golden Beach****Directorate:** Sustainable Environment and Economy**Report Author:** Chloe Dowsett, Coastal and Biodiversity Coordinator5 **File No:** I2019/1203**Summary:**

10 In September 2018 Council was successful in obtaining 50% funding through the Coastal and Estuary Grants Program (Department of Planning, Industry and Environment – *former Office of Environment and Heritage*) to prepare a Scoping Study for the Byron Shire Coastline from Cape Byron to South Golden Beach. The preparation of a Scoping Study is the first stage of developing

15 a Coastal Management Program (CMP) under the new coastal legislation, the *Coastal Management Act 2016*.

A CMP aims to provide a long-term, coordinated strategy for management of the coastal zone.

20 The first stage of the project is nearing completion with the development of the draft CMP Stage 1 Scoping Study for Cape Byron to South Golden Beach (Attachment 1).

In accordance with the new NSW Coastal Management Framework and CMP process **no formal public exhibition process of a Scoping Study is required**. However, staff recommend that the

25 draft Scoping Study report is publicly distributed on Council's website. This is not a formal public exhibition process, however, brief comment from the broader community on whether the draft Scoping Study has adequately captured the key threats, risks and values of the coastline will be valuable.

30 Preliminary conversations have been held with key state agencies on the content of the draft Scoping Study and the Forward Plan which outlines the recommended studies, investigations or assessments required for the subsequent stages of the CMP. Agencies with a role or responsibility associated with recommended actions/studies/components in the Forward Plan are requested to provide formal support and clarification of their role and/or responsibility.

35 This report to Council provides an update on the development of the draft Scoping Study and the recommended next steps.

**RECOMMENDATION:**

1. **That Council upload the draft CMP Stage 1 Scoping Study for Cape Byron to South Golden Beach (Attachment 1 – E2019/80086) for public comment to 10 January 2020.**
2. **That Council send the draft CMP Stage 1 Scoping Study for Cape Byron to South Golden Beach (Attachment 1– E2019/80086) to key stakeholders and state agencies for their review and comment. Agencies with a role or responsibility associated with recommended actions/studies/components in the Forward Plan are requested to provide formal support and clarification of their role and/or responsibility.**
3. **That staff report back to Council in February 2020 on the outcomes of public comment, key stakeholder and state agency review.**

40 **Attachments:**

- 1 CMP - Stage 1 Scoping Study Report (draft) - Cape Byron to South Golden Beach, E2019/80086 



REPORT

**Background**

In September 2018 Council was successful in obtaining 50% funding through the Coastal and Estuary Grants Program (Department of Planning, Industry and Environment – *former Office of Environment and Heritage*) to prepare a Scoping Study for the Byron Shire Coastline from Cape Byron to South Golden Beach. The preparation of a Scoping Study is the first stage of developing a Coastal Management Program (CMP) under the new coastal legislation, the *Coastal Management Act 2016* (CM Act).

A CMP aims to provide a long-term, coordinated strategy for management of the coastal zone. Coastal councils are required to lead the development of CMPs through coordination with state agencies and key stakeholders and prepare them in accordance with legislative requirements and a five-staged process (Figure 1).

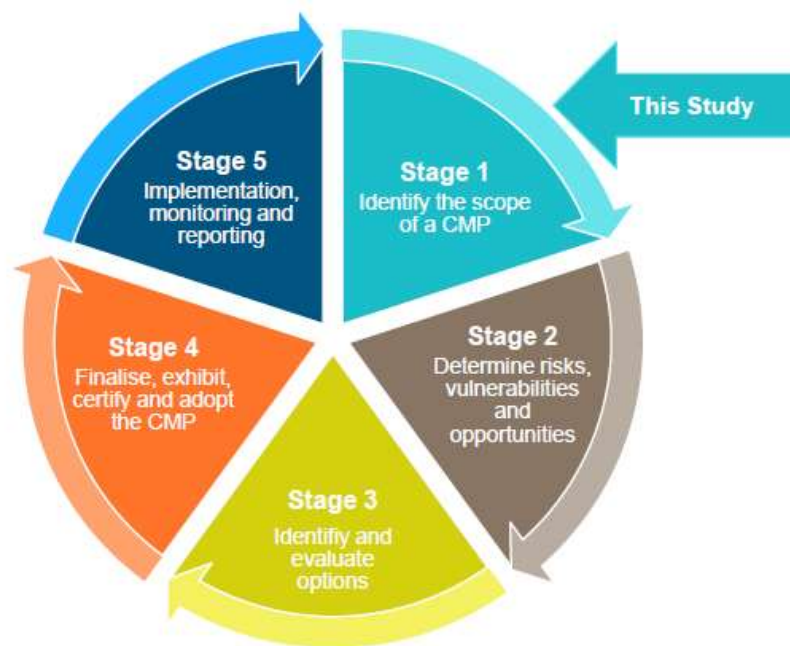


Figure 1: Five-staged process for developing a CMP (adapted from the Coastal Management Manual; NSW Govt, 2018)

The Water and Environment Group of BMT WBM Australia developed the study supported by sub-consultant Elton Consulting for stakeholder activities. The Scoping Study for Cape Byron to South Golden Beach (the draft Scoping Study) is the first Scoping Study to be undertaken by Council under the new NSW Coastal Management Framework.

**Study Area**

The project primarily focusses on the open coastline and coastal hazards, and areas of concern where property and/or infrastructure are at risk. The study area for this CMP includes open beaches, foreshores and coastal waters from Cape Byron to the Shire boundary north of South Golden Beach. The landward extent of the study area extends inland to the predicted maximum year 2100 coastal hazard as previously assessed by Council (BMT WBM, 2013) while the oceanic extent stretches to 3 nautical miles offshore. The study area includes most of the open beaches in the Shire, and regions that have proven both complex and challenging for coastal management over an extended period of time.

The study area excludes the catchments of Belongil and the Brunswick River estuaries but includes entrances inasmuch as they influence the condition and future management of the open coast.

- 5 Generally, the study area can be thought of as having high to very high environmental, social and cultural values tied to its extensive local and tourist usage for a variety of recreational, commercial and cultural activity. The values and use of the study area support local tourism which has been seen to increase markedly over the past few years. The study area also has an overlay of complex coastal processes where current day coastal hazards have been extensively investigated in the
- 10 past. Coastal hazards are exacerbated in the future associated with the effects of climate change, and other key drivers of change may relate to increased use of the coast if its popularity for living and recreating continue to increase.

### ***Study Aims***

- 15 The overall purpose of a CMP is to set the long-term strategy for the co-ordinated management of land within the coastal zone with a focus on achieving the objects of the CM Act, and specifically the Scoping Study seeks to determine the scope of the overall CMP (which consists of five stages) and provides a business case and costed forward program in this regard.

- 20 In accordance with the NSW Coastal Management Framework, the aims of a Scoping Study for an area of interest are to:

- Review management arrangements and supporting technical information to determine elements that should be retained in the CMP
- 25 • Develop a shared understanding of the strategic context of the CMP, identifying priorities;
- Establish the focus (purpose, vision, objectives and scope) of the CMP
- Provide a 'Forward Plan' for undertaking subsequent stages (Stages 2-5) of the CMP
- Provide a Business Case to develop the CMP, and
- 30 • Provide a Stakeholder and Community Consultation and Engagement Strategy for the preparation of the CMP.

### ***Project Methodology***

- 35 The methodology and project outputs are described in Figure 2 below with the end result being a Stage 1 Scoping Study report.

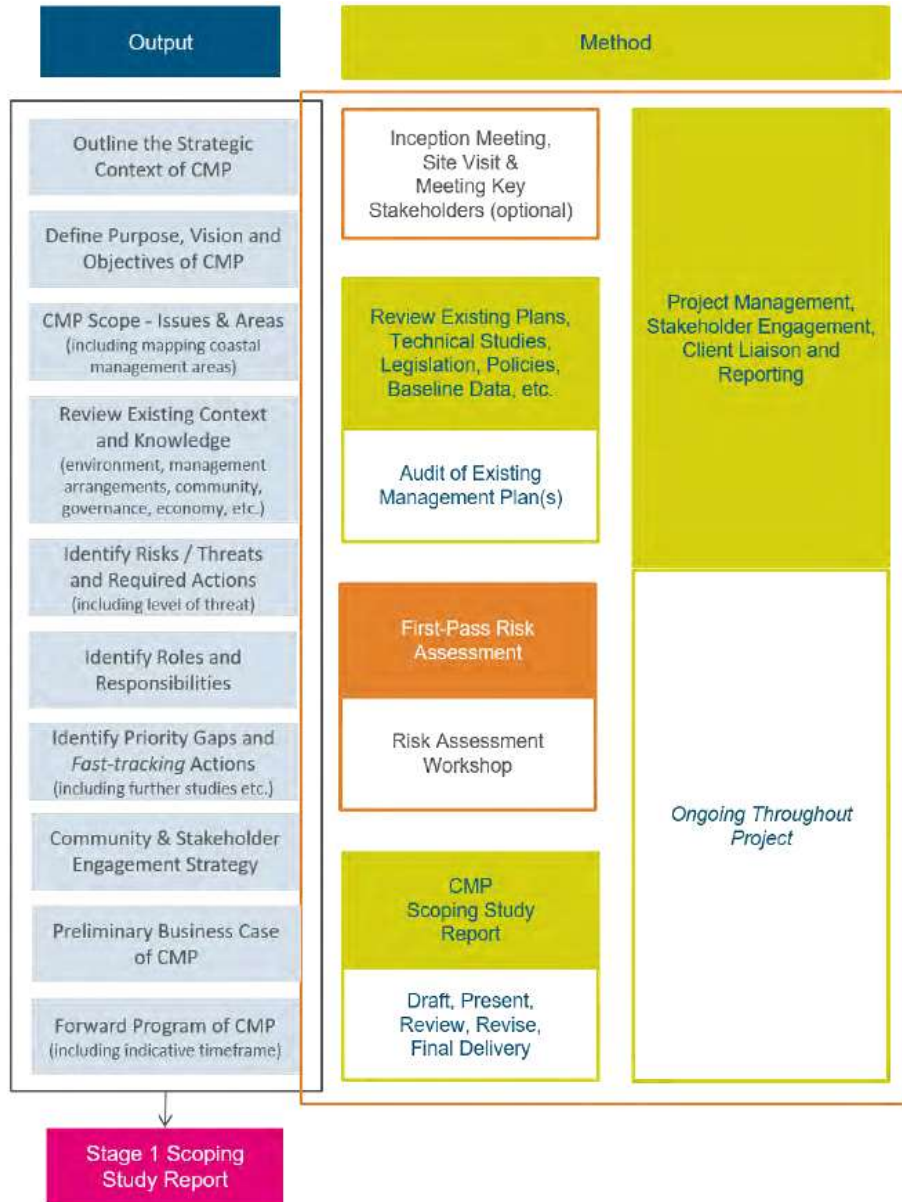


Figure 2: Project outputs and methodology from the Consultant’s proposal

5 **Project Delivery**

Key project milestones and dates are outlined in Table 1 below.

Table 1: Key project milestones completion dates

Project Milestones	Dates
Project Kick-off - <b>complete</b>	Aug 2018
Engagement activities with the broader community - <b>complete</b>	Oct/Nov 2018
Targeted First-Pass Risk Assessment Workshop with Key Stakeholders - <b>complete</b>	Feb 2019
Development of draft Scoping Study report including a draft Stakeholder and Community Engagement Strategy - <b>complete</b>	Dec - May 2019

Draft report delivered to Council - <b>complete</b>	May 2019
DPIE Regional Staff First-Pass Assessment of the draft Scoping Study report - <b>complete</b>	Jul/Aug/Sep 2019
Presentation of the draft Scoping Study report to Councillors at the Strategic Planning Workshop for preliminary comment - <b>complete</b>	1 Aug 2019
Presentation of the draft Scoping Study report to the Coast and Estuary Catchment Panel for preliminary comment - <b>complete</b>	8 Aug 2019
Preliminary discussions on the draft Scoping Study report with key agency staff - <b>complete</b>	Oct 2019
Report to Council for the draft Scoping Study report to go for public comment and more detailed agency review and endorsement - <b>this report</b>	21 Nov 2019
<i>Public comment due by 10 Jan 2020</i>	<i>Jan 2020</i>
<i>Formal agency comment/endorsement due by 31 Jan 2019</i>	<i>Jan 2020</i>
<i>Report to Council - Final Scoping Study for adoption</i>	<i>Feb 2020</i>

**Study Components**

There are many components to the overall CMP which are established within this Scoping Study such as the Vision. The **Vision** established for coastal management of the Cape Byron to South Golden Beach section is to:

5

*“Adequately resource and fund management of the iconic and internationally recognised Byron coastline to conserve and promote its inherent natural values.*

10 *These inherent values underpin the coasts enviable cultural, amenity, recreational use, local and tourism values and they will be kept central in the development of future management approaches.*

15 *Future management approaches will address existing and emerging threats such as climate change through planning for a resilient coastline that is prepared to address multiple challenges in a flexible and adaptive manner; including consideration of novel funding approaches.”*

A review of available literature for this section of the coast along with targeted community consultation and engagement activities were able to identify relevant **values** of the coast and **issues** or **threats** that exist and may compromise or reduce these values over time.

20

Adopted **values** for the study area include:

- *Natural character and geodiversity*
- *Biodiversity and ecosystem integrity*
- 25 • *Clean waters*
- *Accessibility and safety*
- *Amenity and recreation*
- *Socialisation and participation*
- *Heritage and cultural*
- 30 • *Education / scientific*
- *Tourism*
- *Fishing*



Adopted **threats** include:

- 5 • *Beach erosion;*
- *Shoreline recession;*
- *Coastal inundation: wave run up and overtopping;*
- *Coastal entrance instability;*
- *Dune slope instability;*
- 10 • *Coastal cliff instability;*
- *Loss of amenity due to conflicts between user groups on the beach and foreshore;*
- *Loss of amenity and habitat disturbance due to increasing use, overuse, and overcrowding at the beach and associated infrastructure and facilities;*
- *Loss of amenity due to poorly located, poorly maintained or inappropriate beach access and supporting facilities;*
- 15 • *Antisocial behaviour and unsafe practices (e.g. partying, fires on the beach);*
- *Adverse social or environmental impacts resulting from passive recreational use, swimming, surfing and dog walking;*
- *Adverse social or environmental impacts resulting from recreational boating and fishing;*
- *Loss of plant and animal species (habitat disturbance or loss) due to coastal development;*
- 20 • *Reduced water quality in ocean due to run off from coastal development (new and old);*
- *Coastal development encroaching onto natural coastal processes to exacerbate hazard impacts;*
- *Impacts resulting from a lack of compliance with regulations or lack of compliance effort by Council;*
- 25 • *Impacts resulting from an insufficient community awareness of the values and threats to the coastal environment, and lack of engagement with managing this environment; and*
- *Insufficient or inappropriate governance and management of the coastal environment.*

30 To better understand the severity of known threats in the study area, at present and in the future a 'first-pass risk assessment' (FPRA) process was applied. For each threat the FPRA identified a current, future and overall risk rating that took into consideration current management arrangements and their adequacy to manage the threats.

35 To provide directive going forward for later CMP stages, key knowledge gaps were identified along with recommended studies.

### **Forward Plan**

40 The Forward Plan identifies a future Governance Arrangement that will engage Council, relevant State Agencies and stakeholders in the implementation and coordination of coastal management activities associated with the CMP. Additionally, the Forward Plan provides costed actions, timelines and responsibilities (considering the Governance Arrangement) for completion of Stages 2 to 5 of the CMP.

45 The total cost of preparing the CMP is estimated to be between \$360,000 and \$705,000, with the next stage of the CMP expected to cost between \$90,000 and \$175,000. As identified in the Forward Plan there will be a Lead Agency who will generally be the sole resource/funder for the delivery of the action, with Support Agencies which may be required and/or requested to assist in the delivery of the action. Further discussions are required to be held with public authorities to discuss the Forward Plan actions in more detail and which agency is responsible to lead each  
50 action.

**Consultation and Engagement**

Stakeholder consultation during the development of the draft Scoping Study report was an important component of the project and included:

- 5
- Community Drop In Sessions at two locations (Byron Bay and Ocean Shores), among other engagement activities including a stall at the New Brighton Farmers Market
  - Online Community Survey
  - A more targeted First-Pass Risk Assessment Workshop (Public Agencies, Dune Care groups, Council staff and Council's Coast and Estuary Catchment Panel)
- 10
- Presentation for Councillors
  - Presentation for Council staff
  - Review and discussions with DPIE Regional Staff
  - Preliminary review and discussions with key state agency staff.
- 15
- Preliminary conversations have been held with key public authorities on the content of the draft Scoping Study and the Forward Plan which outlines the recommended studies, investigations or assessments required for the subsequent stages of the CMP. It is critical to the success of the CMP process and development that agencies have early buy-in to the new coastal management process due to the intent of CMPs being fully integrated.
- 20
- A more detailed assessment is required by public authorities to adequately assess the draft Scoping Study. Agencies with a role or responsibility associated with recommended actions/studies/components in the Forward Plan will be requested to provide formal support and clarification of their role and/or responsibility.
- 25
- In accordance with the new NSW Coastal Management Framework and CMP process **no formal public exhibition process of a Scoping Study is required.** However, staff recommend that the draft Scoping Study report is publicly distributed on Council's website for comment from the broader community. This is not a formal public exhibition process and request for submissions,
- 30
- however, brief comment from the broader community on whether the draft Scoping Study has adequately captured the key threats, risks and values of the coastline will be valuable.

**Next Steps**

- 35
- Staff recommend the following next steps:
- Council upload the draft CMP Stage 1 Scoping Study for Cape Byron to South Golden Beach to the Council website for public comment to 10 January 2020.
  - The draft CMP Stage 1 Scoping Study for Cape Byron to South Golden Beach is sent to key stakeholders and public authorities for their review and comment. Agencies with a role or responsibility associated with recommended actions/studies/components in the Forward Plan will be requested to provide formal support and clarification of their role and/or responsibility.
  - DPIE undergo a full assessment of the draft Scoping Study in accordance with the provisions of the NSW Coastal Management Framework, to ensure its suitability for moving into the subsequent stages of the CMP process.
  - Staff report back to Council in the New Year 2020 on the outcomes of public comment, key stakeholder and state agency review.
- 40
- 45

**STRATEGIC CONSIDERATIONS**

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

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 3: We protect and enhance our natural environment</b>	3.3	Partner to protect and enhance the health of the Shire's coastlines, estuaries, waterways and catchments	3.3.1	Implement Coastal Management Program	3.3.1.1	Continue preparing a Coastal Management Program (CMP) in accordance with the staged process

5

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

*Coastal Management Act 2016* and associated framework documents

***Financial Considerations***

10 Development of a Coastal Management Program (Stage One) Scoping Study for Cape Byron to South Golden Beach is action in the operational Plan and funded in this year's budget (FY2019/20). The total cost of preparing the CMP is estimated to be between \$360,000 and \$705,000, with the next stage of the CMP expected to cost between \$90,000 and \$175,000. Not all of these costs are Council funded costs, some will require other agencies contribution should they

15 accept the action.

Financial considerations for next year's 2020/21 budget will reported to Council in line with budget preparation and once the actions and costs in the Forward Plan have been confirmed.

**Report No. 13.3**            **PLANNING - Planning Proposal for the former Byron Hospital Site  
26.2019.7.1**

**Directorate:**            Sustainable Environment and Economy

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

**File No:**                I2019/1444

5

10 **Summary:**

In May 2019, Council resolved to acquire the Byron Bay Hospital Site from the NSW State Government and classify it as Operational land. The purchase came following a lengthy process of consultation with the broader Byron community and negotiations with the State Government.

15

A community-led steering committee, supported by Council, put together a proposal to adaptively reuse the hospital site for a range of community purposes, including education, community facilities and administrative offices for arts, community and welfare organisations. As work on the physical building progresses, it is now appropriate to consider potential planning pathways to achieve these intended outcomes.

20

The site is zoned R2 Low Density Residential under Byron Local Environmental Plan 2014, which restricts the permissibility of some of the desired uses.

25

Negotiations are advancing with tertiary education institutions to establish an education precinct on the site. Tertiary education is permissible with consent on this property subject to *State Environmental Planning Policy (Education establishments and Child Care Facilities) 2017*, despite the R2 zoning.

30

However, in order to achieve the remaining nominated uses, including the provision of office space, a commercial kitchen and a café, a planning proposal is required to amend the Byron Local Environmental Plan 2014.

35

The drafted planning proposal (Attachment 1) contains provisions intended to be inserted into Byron LEP *Schedule 1 Additional Permitted Uses*. This would retain the current R2 zoning of the site, but allow office premises, restaurants/cafes and light industry (commercial kitchen) to be permitted with development consent.

40

The use of Schedule 1 is preferred to a change to the zoning of the site, as that would require consideration of the wider precinct, involving a greater range of studies and assessment.

It is now appropriate to forward the planning proposal to the Department of Planning, Industry and Environment to request a gateway determination in order to progress the planning proposal.

45

**NOTE TO COUNCILLORS:**

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

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**RECOMMENDATION:**

**1. That Council forward the planning proposal for the former Byron Hospital Site**

**(Attachment 1 #E2019/78939) to the Department of Planning, Industry and Environment for Gateway determination.**

- 2. That the planning proposal be put on public exhibition in accordance with the Gateway determination, and that Council receive a further report at the end of the exhibition period detailing submissions made.**

**Attachments:**

- 1 26.2019.7.1 Draft Planning Proposal Byron Hospital Site version #1 - PDF, E2019/78939 

5

**REPORT**

**Background**

- 5 April 2016 In response to enquiries from members of the public about the future of the former Byron Hospital property, Local Health District advised that it is normal practice for Health Administration Corporation to work with Government Property NSW in the disposal of surplus properties at the appropriate time.
- 10 2017 Community group hold community meetings to discuss future of the site
- Dec 2017 Council resolved (Res **17-692**):
- That Council write to NSW Health and Health Minister to:*
- 15 1. *outline Council’s interest in working alongside the Byron Bay community to provide a community focused use of the old Byron Bay hospital site.*
- 20 2. *request NSW Health to defer any decision on any potential sale of the site for six months, in order for Council and a partnership with the community to form and develop a proposal to either purchase the site or pursue a long term lease arrangement.*
- Jan 2018 State Government announces a 6-month moratorium on sale of the site to enable community group to prepare and submit their proposal to NSW Government.
- 25 June 2018 Byron Shire Council, on behalf of the community (Res **18-427**), submitted a proposal to the Department of Premier and Cabinet to return the Byron hospital to the local community (Attachment 1) to provide “*vital and currently lacking welfare, social, cultural and educational services*”.
- 30 Feb 2019 Council received an update on the hospital project including governance models to be investigated (Res **19-077**)
- May 2019 Council resolved to purchase the site from the NSW Health Administration Corporation (Res **19-223**) and classify it as operational land
- 35 July 2019 Council notes the intention of the steering committee to form a not-for-profit incorporated association to manage the project and nominates the incorporated association formed by said group to be the direct lessee for the site. (Res **19-286**)

**Future Uses of the Site**

40 The steering committee, supported by Council, put together a proposal to adaptively reuse the hospital site for a range of community purposes, including education, community facilities and administrative offices for arts, community and welfare organisations. There is also a desire to adaptively reuse the previous hospital kitchen as a commercial kitchen available for hire.

45 It is anticipated that the existing café/ kiosk would be retained as a café, to service students and other site users.

50 As work on the physical building progresses, it is now appropriate to consider potential planning pathways to achieve these intended outcomes.

The site is zoned R2 Low Density Residential under Byron Local Environmental Plan 2014, which restricts the permissibility of many of the desired uses.

Negotiations are advancing with tertiary education institutions to establish an education precinct on the site. Tertiary education is permissible with consent on this property subject to *State Environmental Planning Policy (Education establishments and Child Care Facilities) 2017*, despite the R2 zoning.

5 However, in order to achieve the other nominated uses on the site, including the provision of office space, a commercial kitchen and a café, a planning proposal is required to amend the Byron Local Environmental Plan 2014.

10 The drafted planning proposal (Attachment 1) contains provisions intended to be inserted into Byron LEP Schedule 1 Additional Permitted Uses. This would retain the current R2 zoning of the site, but allow office premises, restaurants/cafes and light industry (commercial kitchen) to be permitted with development consent.

15 The use of Schedule 1 is preferred to a change to the zoning of the site, as that would require consideration of the wider precinct, involving a greater range of studies and assessment.

**Proposed Schedule 1 addition**

20 The proposed clause to be inserted into Schedule 1 of the Byron LEP 2014 and will read as follows:

**9 Use of certain land at Shirley Street, Byron Bay**

(1) *This clause applies to land at 10-12 Shirley Street (known as the "Old Byron Hospital Site") being Lot 1, DP 847910, and identified as "Area F" on the Local Clause Map.*

(2) *Development for the following purposes is permitted with consent:*

(a) *Office premises;*

(b) *Light Industry, being for a commercial kitchen with a maximum floor space of 100m<sup>2</sup>; and*

(c) *Restaurant/ café.*

**Key issues**

25 **Remediation of the Site and condition of the building**

During preliminary investigations, parts of the site were identified as being contaminated. The sources of contamination identified on the site include:

- 30
- Asbestos sheeting;
  - PCB electrical fittings;
  - Lead painted windows;
  - Non-compliant air conditioning units with ozone depleting gas;
  - Mould; and
  - 35 • Radioactive Sands.

Council has prepared a remediation action plan and has commenced the remediation of the affected areas.

40 **Access and car parking**

While the property has a long history of use as a community hospital, car parking was never provided on the site. As such, it will not be possible to retain the existing building and cater for the parking demand generated by its adaptive reuse.

45

As consideration of the planning proposal progresses, it will be necessary to undertake a more detailed assessment of the traffic and parking implications associated with the intended uses. This will rely, in part, on the parking ‘credits’ associated with the historical use.

5 It is suggested that these assessments not commence until the State Government issues a Gateway determination for the planning proposal. In issuing such a determination, the Department will consider and advise as to the scope of such assessment and any other studies considered to be required.

10 It is anticipated that the current budget allocation for this project will be sufficient to procure these studies.

***Next steps***

15 The next step is to forward the planning proposal to the Department of Planning, Industry and Environment for gateway approval.

**STRATEGIC CONSIDERATIONS**

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

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 4: We manage growth and change responsibly</b>	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.1	Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.1.8	Amend Local Environmental Plan and Development Control Plan in accordance with Byron Hospital plan

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

25 All statutory matters have been addressed in the Planning Proposal (Attachment 1)

***Financial Considerations***

30 There is currently \$85,000 allocated in the 2019/2020 budget for the planning proposal.

***Consultation and Engagement***

Public exhibition will be undertaken in accordance with the Gateway determination.



**Report No. 13.4**      **PLANNING - Planning Proposal to rezone the part of the Rail Corridor in Byron Bay that is subject to Byron Bay Railroad Company licence, to SP2 Infrastructure, Byron Bay 26.2019.5.1**

**Directorate:**                      Sustainable Environment and Economy

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

**File No:**                              I2019/1536

10 **Summary:**

15 Council has received a request to prepare a planning proposal to amend Byron Local Environmental Plan (BLEP) 2014. The proposal seeks to rezone a section of the rail corridor located between Bayshore Drive and Lawson Street, Byron Bay. The Byron Bay Railroad Company operates the solar train on this section.

20 Most of the land within this section of the corridor is deferred under Byron LEP 2014, other than the small section containing a bridge over Belongil Creek; that particular section is zoned W1 Natural Waterway.

The deferred parts of the corridor retain the zoning under BLEP 1988, which is a combination of 5(a) Special Uses (Bayshore Drive to Kendall Street) and 7(f2) Urban Coastal Land (Kendall Street to Lawson Street).

25 The planning proposal intends to rezone the whole of this part of the corridor (between Bayshore Drive and Lawson Street) to SP2 Infrastructure. This will match the zoning of the corridor within the Town Centre.

30 A new "additional permitted uses" clause is also proposed to be added to Schedule 1 of Byron LEP 2014, to enable works associated with the maintenance of the rail infrastructure to be carried without consent by the rail operator. This reflects the existing provision within Schedule 12 of Byron LEP 1988.

35 Consequential amendments to BLEP 2014 Land Application Map and Acid Sulfate Soils Map will be required to reflect the zoning under BLEP 2014.

The planning proposal is consistent with the Byron Bay Town Centre Masterplan, Community Strategic Plan and the North Coast Regional Plan 2036.

40 It is recommended that Council proceed with the planning proposal, and forward it to the Department of Planning, Industry and Environment for a Gateway Determination.

**NOTE TO COUNCILLORS:**

45 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.

50

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**RECOMMENDATION:**

- 1. That Council forward the planning proposal to rezone a section of the rail corridor located between Bayshore Drive and Lawson Street, Byron Bay (Attachment 1 E2019/71925) to the Department of Planning, Industry and Environment for Gateway**

**determination.**

- 2. That the planning proposal be put on public exhibition in accordance with the Gateway determination, and that Council receive a further report at the end of the exhibition period detailing submissions made.**

**Attachments:**

- 1 26.2019.5.1 Rail Corridor Planning Proposal pre-exhibition version, E2019/71925 

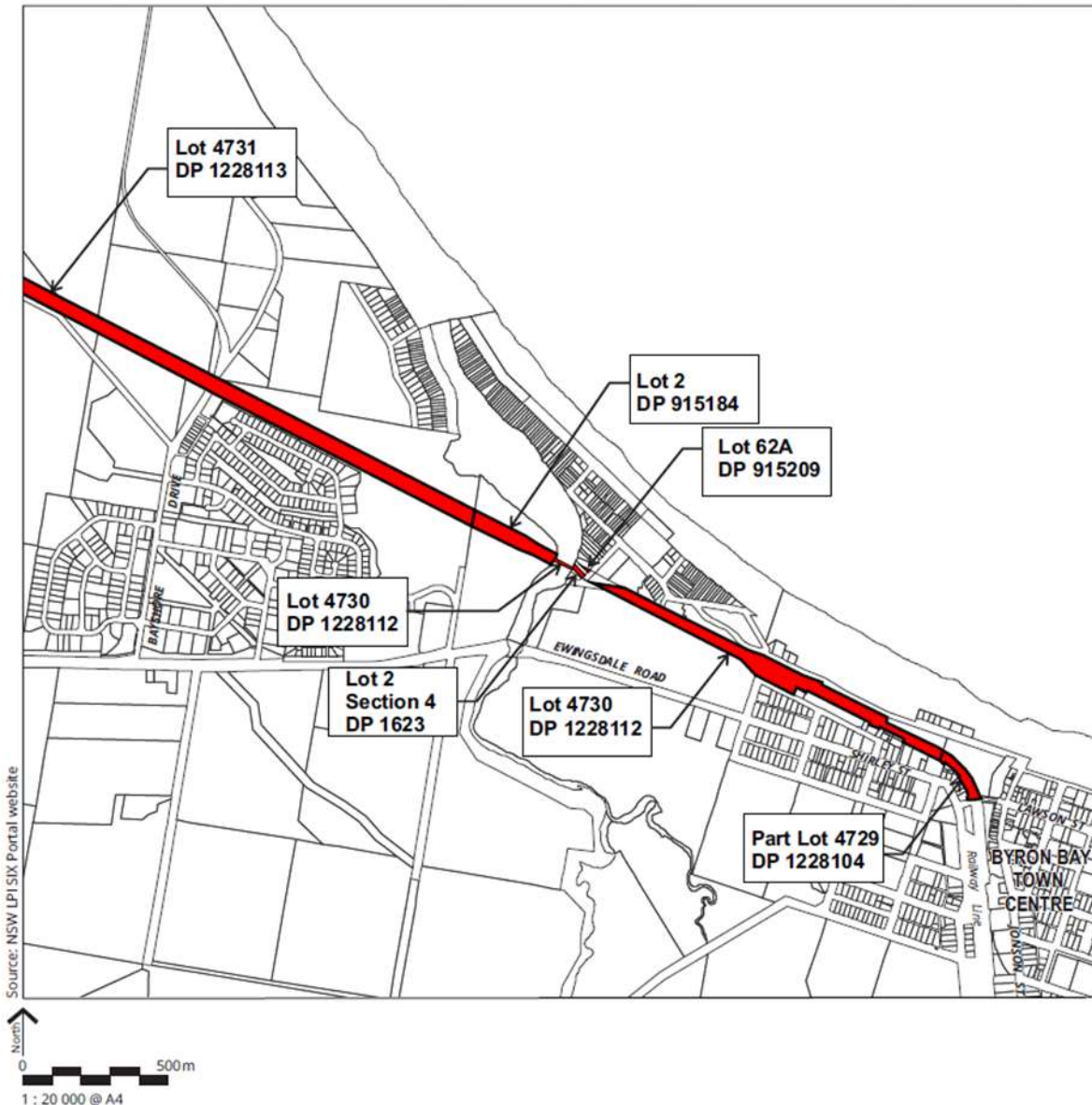
5

REPORT

**Subject land**

5 The planning proposal relates to a section of the North Coast Rail Line located between Bayshore Drive and Lawson Street Byron Bay. This is made up of a number of individual lots, as identified in Figure 1.

10 The Byron Bay Railroad Company operates the solar train on this section under licence from the NSW State Government.



**Figure 1. Subject site**

15 **The planning proposal**

The planning proposal (see Attachment 1) seeks to rezone the subject site from Deferred Matter and W1 Natural Waterways to SP2 Infrastructure. Additionally, a Schedule 1 Additional Permitted Uses amendment is proposed that seeks to maintain the existing provisions of BLEP88 applying to the corridor, enabling certain maintenance works related to rail infrastructure to be undertaken without development consent.

Zoning:

5 The majority of this section of the rail corridor is currently a Deferred Matter under Byron LEP 2014, other than a short section of the corridor, consisting of the rail bridge over Belongil Creek, which is zoned W1 Natural Waterway.

10 Currently, the deferred areas retain the zoning under BLEP 1988, which is a combination of 5(a) Special Uses (Bayshore Drive to Kendall Street) and 7(f2) Urban Coastal Land (Kendall Street to Lawson Street).

The change of zoning from W1 Natural Waterways will only occur on the area of the existing bridge across Belongil Creek.

15 The SP2 Infrastructure zone is the appropriate zoning for an operational rail corridor under BLEP2014. The objectives and permissibility of the SP2 zone are shown below.

**Zone SP2 Infrastructure**

**1 Objectives of zone**

- To provide for infrastructure and related uses.
- 20 • To prevent development that is not compatible with or that may detract from the provision of infrastructure.

**2 Permitted without consent**

*Environmental protection works*

**3 Permitted with consent**

25 *Environmental facilities; Roads; The purpose shown on the [Land Zoning Map](#), including any development that is ordinarily incidental or ancillary to development for that purpose*

**4 Prohibited**

*Any development not specified in item 2 or 3*

30 Additional Permitted Uses:

An additional clause is proposed to be added to Schedule 1 of BLEP 2014 to permit nominated rail-related works to be undertaken within this section of the rail corridor without development consent, in accordance with Clause 2.5 of BLEP14.

35 The proposed amendment to Schedule 1 BLEP 2014 will copy the existing provisions in Schedule 12 BLEP88, which permits nominated railway undertakings without consent.

40 It will also refine the provisions contained within clause 79 of *State Environmental Planning Policy (Infrastructure) 2007*, which allows railway works, including maintenance, to be undertaken without development consent, but only where those works are carried out “by or on behalf of a public authority”.

45 The Byron Bay Railroad Company is not a public authority, and operates the existing rail operation under licence from Transport for NSW.

The clause will allow the railroad operator to undertake *any development required in connection with the movement of traffic by rail, including the construction, reconstruction, alteration, maintenance and repair of ways, works and plant* without development consent.

50

***Relationship to endorsed strategies***

5 The planning proposal is consistent with the Byron Bay Town Centre Masterplan, as the solar train provides a sustainable and alternative transport option connecting the Arts and Industry Estate, Sunrise and the town centre. Reducing cars in the town centre is a key message throughout the Masterplan.

10 The change to zoning and additional permitted uses clarify existing provisions that are relative to the railroad operation, and currently ‘spread across’ Byron LEP 2014, Byron LEP 1988 and State Environmental Planning Policy (Infrastructure) 2007. It will clarify that maintenance works may be carried out by the licenced operator despite the fact that they are a private entity rather than a public authority.

15 Providing alternative and sustainable transport options, without requiring increased infrastructure or negatively impacting the environment is consistent with both the Community Strategic Plan and the North Coast Regional Plan 2036. Further details are available in the planning proposal.

***Conclusion***

20 There is sufficient information to support the planning proposal as submitted and forward it to the Department of Planning, Industry and Environment for a Gateway Determination. This forms the basis of the report recommendation.

**STRATEGIC CONSIDERATIONS**

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

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 4: We manage growth and change responsibly</b>	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.3	Manage development through a transparent and efficient assessment process	4.1.3.10	Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps

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

30 This planning proposal will amend the Byron Local Environmental Plan 2014

***Financial Considerations***

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

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

***Consultation and Engagement***

45 Consultation for this proposal has not yet occurred. If Council decides to move forward with the planning proposal, consultation will occur in accordance with the Gateway determination.

# BYRON SHIRE COUNCIL

**Report No. 13.5**      **PLANNING - Development Application 10.2019.301.1 demolition of existing dwelling house and construction of two (2) new dwellings and two (2) swimming pools to create dual occupancy (detached) at 16 Short Street Brunswick Heads**

5      **Directorate:**                      Sustainable Environment and Economy  
**Report Author:**                Luke Munro, Planner  
**File No:**                              I2019/1631

10      **Proposal:**

<b>DA No:</b>	10.2019.301.1		
<b>Proposal description:</b>	Demolition of existing Dwelling House and Construction of Two (2) New Dwellings and Two (2) Swimming Pools to create Dual Occupancy (Detached)		
<b>Property description:</b>	LOT: 4 SEC: 25 DP: 758171		
	16 Short Street BRUNSWICK HEADS		
<b>Parcel No/s:</b>	83930		
<b>Applicant:</b>	Ardill Payne & Partners		
<b>Owner:</b>	Short St Long Stay Pty Ltd		
<b>Zoning:</b>	R2 Low Density Residential		
<b>Date received:</b>	7 June 2019		
<b>Integrated / Designated Development:</b>	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input checked="" type="checkbox"/> Not applicable
<b>Concurrence required</b>	No		
<b>Public notification or exhibition:</b>	<ul style="list-style-type: none"> <li>- Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications</li> <li>- Exhibition period: 18/6 - 1/7/2019</li> <li>- Submissions received: 135 see the following link  <a href="https://www.byron.nsw.gov.au/Council/Council-meetings/Additional-Supporting-Information">https://www.byron.nsw.gov.au/Council/Council-meetings/Additional-Supporting-Information</a> (E2019/78081, #E201979205)</li> </ul>		
<b>Variation request</b>	<input type="checkbox"/> Clause 4.6	<input type="checkbox"/> SEPP 1	<input checked="" type="checkbox"/> Not applicable
<b>Delegation to determine</b>	Council		
<b>Issues:</b>	<ul style="list-style-type: none"> <li>• Minor intrusion into the BHP</li> <li>• Use of dwellings</li> </ul>		

**Summary:**

15      An application has been received for Demolition of existing Dwelling House and Construction of Two (2) New Dwellings and Two (2) Swimming Pools to create Dual Occupancy (Detached) over 16 Short Street, Brunswick Heads.

20      The site has frontage on to both Short Street and Galleon Lane. The proposal will result in a single dual occupancy dwelling addressing each street frontage. Both dwellings are double storey with ground floor parking with living areas and bedrooms on both floors comprising 5 bedrooms each. The proposal will generally retain the existing streetscape within Short Street, whilst additional residential development off rear lanes is not uncommon in any of the urban areas of Byron Shire where large yard areas exist. It is noted a dual occupancy development is proposed at 14 Short Street is also proposing rear lane access.

25      With the land of a suitable size and area for a dual occupancy, the proposed development is largely consistent with the provisions of the Byron LEP 2014 and DCP 2014 other than minor

variations to the building height plane controls being sought. The dual occupancy is unlikely to generate deleterious impacts on the built or natural environment and the site is considered suitable for the development. The application is recommended for approval subject to conditions of consent.

5

NOTE TO COUNCILLORS:

10

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

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**RECOMMENDATION:**

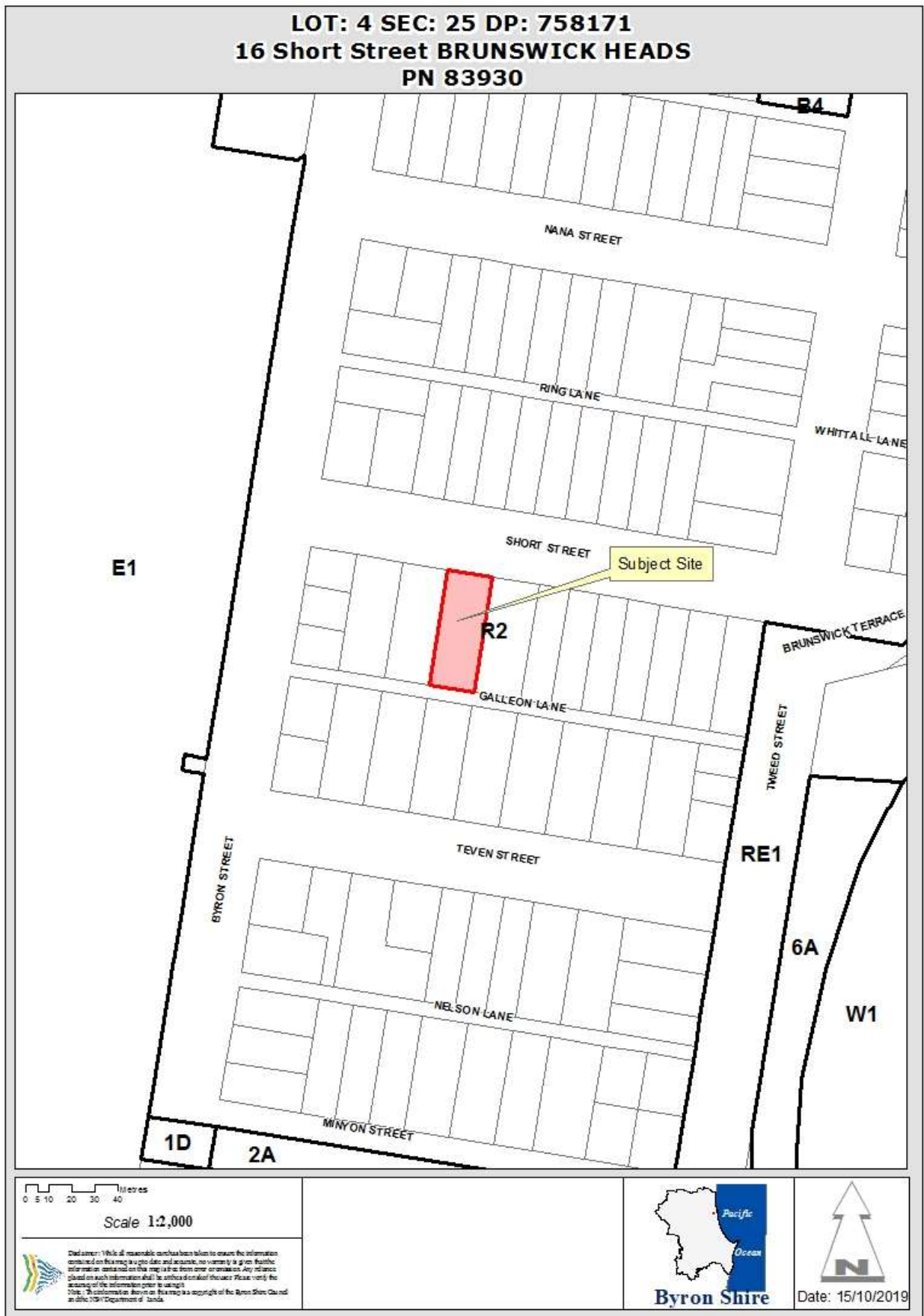
15

**That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application 10.2019.301.1 for demolition of existing dwelling house and construction of two (2) new dwellings and two (2) swimming pools to create dual occupancy (detached), be granted consent subject to the conditions (Attachment 2 #E2019/81078).**

**Attachments:**

20

- 1 10.2019.301.1 - Proposed plans, E2019/78080 
- 2 10.2019.301.1 - Proposed conditions of consent, E2019/81078 





**Assessment:**

**1. INTRODUCTION**

**5 1.1. History/Background**

The site is subject to the previous applications:

	BA 71/2065	Additions	Application	09.06.1971
10	BA 78/2334	Additions	Determined	23.11.1978
	BA 80/2271	Garage	Determined	11.07.1980
	BA6.1997.2039.1	Pergola	Approved	05.02.1997

15 A sewerage drainage diagram identifies that sewer was connected to the site and inspected on the 30 June 1971.

**1.2. Description of the proposed development**

20 This application seeks approval for Demolition of existing Dwelling House and Construction of Two (2) New Dwellings and Two (2) Swimming Pools to create Dual Occupancy (Detached).

25 The existing lowset dwelling will be demolished as part of the current proposal to make way for two new dual occupancy (detached) dwellings which will be two (2) storeys in height. The dwellings will each be constructed with a weatherboard FC cladding with colourbond roof with predominantly a hipped and gabled roof form and provide an articulated façade to each street frontage.

30 Dwelling 1 will have frontage onto Short Street with a stepped setback of 6.5m to the dwelling and approximately 8m setback to the garage. A swimming pool is proposed in the front setback with the front fence being 1.8m in height and stepped back of the boundary by 750mm to provide landscaping in front of the fence. A 1.2m wide footpath for the benefit of Dwelling 2 to allow for pedestrian access to Short Street (for garbage collection, mail collection and visitor access) from the rear dwelling is proposed.

35 Dwelling 2 will have frontage onto Galleon Lane with a stepped setback of 4.5m to the dwelling and 5.918m to the garage. The dwelling will maintain the private outdoor space along the northern elevation of the dwelling which will include a swimming pool.

Each dwelling will contain the following:

<b>Dwelling 1 &amp; 2</b>	
<b>Ground Floor</b>	Three (3) bedrooms (each with en-suite)
	Billiard room
	Powder room
	Double garage
	Separate laundry and walk in linen.
	Front entry and porch
	Alfresco area leading onto swimming pool
<b>First Floor</b>	Two (2) bedrooms (each with WIR and en-suite)
	Combined living, dining and kitchen
	Powder room
	Large balcony directly accessible from living area
	Narrow balcony accessible from master suite and entry stairs.

40

Two trees at the rear of the site are to be removed. Advice received and information supplied in submissions received during public notification indicate that the existing three (3) hoop pines at the rear of the property were planted and therefore do not require approval for removal as identified in Chapter B2 of the Byron DCP 2014.

5 Following Council’s information request the applicant has incorporated a number of changes in the overall design of the dwellings which included:

- Removal of external staircases to the first floor of each dwelling;
- Widening of the openings between the entry and downstairs living areas;
- 10 • Removal of doors between the Entry staircase and the first floor;
- Increasing the side setbacks on the upper levels;
- Removal of wet bars and cabinetry in secondary living areas;
- Providing a 1.2m wide footpath for the benefit of Dwelling 2 to allow for access to Short Street (for garbage collection, mail collection and visitor access);
- 15 • Reduction of the overall height by 150mm from 7.449m to 7.299m
- Increasing the frontage setback to Dwelling 1 from 4.5m to 6.5m allowing greater private useable outdoor space (more consistent with surrounding streetscape);
- Increased front setback to the swimming pool from 1.0m to 1.75m (dwelling 1 only);
- 20 • Front fence stepped back from the front boundary providing 750mm of landscaping between the fence and property boundary (dwelling 1 only).

**1.3. Description of the site**

25 A site inspection was carried out on 5 August 2019

Land is legally described as	LOT: 4 SEC: 25 DP: 758171
Property address is	16 Short Street BRUNSWICK HEADS
Land is zoned:	R2 Low Density Residential
Land area is:	1012 m2
Property is constrained by:	Acid Sulfate Soils Class 4



Photo 1 – 16 Short Street – front

Photo 1 – 16 Short Street – rear



Photo 2 – Looking south at 16 Short Street and surrounding development



Photo 3 – Looking north to the opposite side of Short Street – mix of 1 and 2 storey dwellings.



Photo 5 – 14 Short Street – 2 storey residential flat building (subject to separate application for Dual Occupancy (Detached))



Photo 6 – West of subject site showing 18 and 20 Short Street – mix of 1 and 2 storey dwellings



Photo – 7 Galleon Lane – looking east

Photo – 8 Galleon Lane – looking west – showing laneway upgrades to the southern laneway frontage as part of dual occupancy development (10.2016.730.1) at 13 Teven Street, Brunswick Heads

**2. SUMMARY OF REFERRALS**

Referral	Issue
Development Engineer	No objections subject to conditions. Refer to Doc #A2019/18254
S64 / Systems Planning Officer	No objections subject to conditions. Refer to Doc #A2019/18262
S94 / Contributions Officer	No objections subject to conditions. Refer to Doc #A2019/18258
Department of Biological Sciences Macquarie University, Sydney - Ecologist (Comment)	E2019/54198

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

**Trees**

Council's enforcement team investigated the potential poisoning of trees at the rear of the property. It was concluded that the trees were planted, which is also supported by numerous submissions received stating that the trees were planted by the previous owners.

As the trees were planted they do not require approval for removal as identified in Chapter B2 of the Byron DCP 2014.

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

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

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

The site is not classified as Bushfire Prone Land and therefore the 10/50 rule does not apply to the site.

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

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

10

**4.1 State Environmental Planning Instruments**

	<b>Satisfactory</b>	<b>Unsatisfactory</b>
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The site has been utilised for residential occupation with no evidence of contamination. Appropriate conditions of consent o apply in relation to demolition of the existing dwelling.		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<a href="#">State Environmental Planning Policy (Coastal Management) 2018</a>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The site is located in the Coastal Environment and Coastal Use Areas.  The application does not propose any removal of native vegetation or aquatic plants and will have no impact on the coastal environmental values and natural coastal processes. The proposal does not impact on foreshore access or any known item or place of aboriginal cultural heritage.  The proposal raises no issues in terms of the Coastal Management SEPP and the provisions contained within Clause 13 and 14 in particular.		

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

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:

20

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 checked="" 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 checked="" 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 Dual Occupancy (detached);
- (b) The land is within the R2 Low Density Residential according to the Land Zoning Map;
- (c) The proposed development is Permitted with Consent; and
- (d) Regard is had for the Zone Objectives as follows:

<b>Zone Objective</b>	<b>Consideration</b>
To provide for the housing needs of the community within a low density residential environment.	The proposed dual occupancy (detached) will provide an additional dwelling in the locality and is in accordance with the anticipated dwelling types within a residential low density environment.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	Not Applicable – the proposal does not include land uses other than residential uses.

The following clauses are of relevance to the development

**Characterising of the proposed Development**

The proposed development is defined as a Dual Occupancy (detached) development. Conditions are recommended to restrict the use of the dual occupancy to residential use only and not to be used for any other purpose.

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

The Byron LEP 2014 identifies that the minimum lot size for Dual Occupancy (Detached) development is 800m<sup>2</sup>. The subject site commands an area of 1,014m<sup>2</sup> and therefore complies with the minimum lot size requirements for a dual occupancy (detached) under the LEP 2014.

**Clause 4.3 Height of buildings**

The Height of Buildings map identifies the site has a maximum allowable height of up to 9m. The proposed new dual occupancy (detached) dwellings will each have a height of 7.299m above ground level which is below the 9.0m height limit.

Of note the height of the proposed new dwellings will be below that of an existing neighbouring residential flat building at 14 Short Street which has a height of 7.6m above ground level.

**Clause 4.4 Floor space ratio**

The site has an allowable FSR of 0.50:1. The original plans proposed a FSR of 0.53:1 but have now been amended and reduced in size resulting in a compliant floor area of 0.499.1.

**Clause 6.1 Acid Sulfate soils**

The site is identified as containing Class 4 Acid Sulfate Soils which are located at a depth of 2 metres or more. The proposal is unlikely to result in ASS being excavated during construction and an ASS management plan is not required.

**Clause 6.6 Essential Services**

The subject site has full access to essential services or the ability to make such services available as required.

**Clause 6.7 Affordable Housing**

The proposed development is not for affordable housing purposes, nor does it result in the removal of any affordable housing currently on the property as defined under the EPA Act 1979. **Affordable housing** means housing for very low income households, low income households or moderate

income households. It is considered the development will add to the housing stock of Brunswick Heads for rental accommodation or permanent accommodation. As the property is not used for Affordable housing purposes, there is no nexus to levy conditions requiring the dwellings be utilised for that purpose in this instance.

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

Not Applicable.

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**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:

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

The following comments are provided on relevant DCP provisions.

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<b>What Section and prescriptive measure does the development not comply with?</b>	<b>Does the proposed development comply with the Objectives of this Section? Address.</b>	<b>Does the proposed development comply with the Performance Criteria of this Section? Address.</b>
<b>Chapter B2 – Preservation of Trees and Other Vegetation</b>	Chapter B2 does not apply to the removal of the trees at the rear of the property as they are planted vegetation on a residential allotment and are not located within a heritage conservation area.  The trees can be removed without requiring consent from Council.	The site contains three (3) hoop pines in the rear of the property with the application indicating one (1) hoop pine and an additional smaller unknown species to be removed.  The removal of planted vegetation does not require approval under Chapter B2, <i>Table B2.1. – Types of vegetation removal to which this Chapter does not apply.</i>  Advice received from the Department of Biological Sciences Macquarie University, Sydney concluded that the trees were planted. This is also supported by numerous submissions received stating that the trees were planted by the previous owners.
<b>B4.2.5 Car Parking Requirements and table</b>	Yes  The development therefore complies with the provision of car	Yes Chapter B4 requires a minimum of 2 spaces per 3 or more bed unit for parking onsite for a Dual Occupancy.

<p><b>B4.2.12 Parking Schedules</b></p>	<p>parking as required under Chapter B4.</p>	<p>The development has provided 2 garage spaces per dwelling and complies with the minimum parking requirement. Additional tandem parking will be available on the driveways for visitors.</p>
<p><b>Chapter B9 – Landscaping</b></p>	<p>Yes</p>	<p>Yes The applicant has provided a concept landscaping plan as part of the information response.</p>
<p><b>B9.5 Dual Occupancies and Semi Detached Dwellings</b></p>	<p>The development provides adequate onsite landscaping and deep soils zones as required under Clause B9.5 of the DCP 2014.</p>	<p>The development provides a landscaping area of over 90m<sup>2</sup> per dwelling (<i>excluding any area used for vehicle circulation or parking and swimming pools</i>).</p> <ul style="list-style-type: none"> <li>• Residence 1 – 170m<sup>2</sup></li> <li>• Residence 2 – 220m<sup>2</sup></li> </ul> <p>The total area available as deep soil areas onsite is &gt; 375m<sup>2</sup> (over 35% of the site) not including impervious areas and therefore exceeds the minimum 25% deep soil requirement under B9.5.</p>
<p><b>D1.2.1 Building Height Plane</b></p>	<p>Yes The intrusions into BHP on both dwellings will not detrimentally impact on the amenity and privacy of adjoining properties or adversely affect solar access given the progressive setbacks to the proposed dwellings and orientation of the subject site.</p>	<p>The proposal is satisfactory. Yes</p> <p>The development has been designed to progressively provide greater set backs from the side boundaries as the overall height increases, with the encroachments in both dwelling through the upper portions of second storey and through the eaves.</p> <p>It is considered both dwellings being detached are well articulated in both height, width and length, with an element of each dwelling being single storey only. See images below.</p> <p>Given the orientation of the lots on a north-south orientation the dwellings with an overall height of 7.29m, pitched roofs and 2.4 m floor to ceiling heights minimises impacts of overshadowing on adjacent properties</p> <p>There is some potential for overlooking into the two adjacent properties from the upper level living areas. Conditions of consent recommended requiring privacy screens or use of opaque glazing on those windows</p> <p>The intrusions into the BHP are considered minor and are unlikely to impact on the</p>



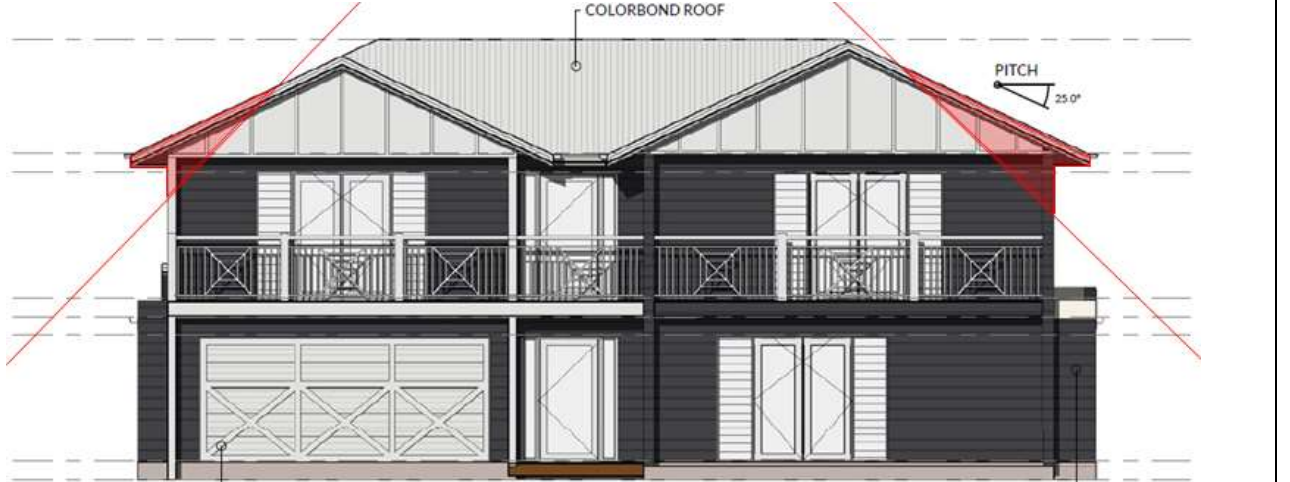
privacy to minor of each of the proposed dwellings will have no impact on adjoining dwellings in terms of access to sunlight, impacts on privacy or overbearing bulk and scale and is considered acceptable in this instance.



Residence 1



Residence 2





**D1.2.2 Setbacks from Boundaries**

Yes  
The proposed dual occupancy (detached) dwellings exceed the

Yes  
The frontage setbacks for the proposed dual occupancy (detached) fully comply to the dwellings, the location of the swimming pool

**Minimum Street**

<p><b>Frontage Setbacks</b></p>	<p>minimum front setback requirements.</p> <p>The location of the swimming pool to Residence 1 is acceptable in this instance as the location is consistent with the private open space for this dwelling and will not impact on the existing streetscape through the provision of landscaping in front of the front pool fence.</p>	<p>to Residence 1 is separately discussed below.</p> <p>Residence 1 provides a setback of 6.5m to the dwelling and 8.8m to the garage (minimum required 4.5m to dwelling and 5.5m to garage)</p> <p>Residence 2 provides a setback of 4.5m to the dwelling and 6.98m to the garage (minimum required 3.0m to dwelling and 5.5m to garage).</p> <p>A swimming pool is proposed within the frontage setback to Residence 1 which is considered acceptable in this instance as:</p> <ul style="list-style-type: none"> <li>• Residence 1 is setback to provide consistent setbacks within the streetscape;</li> <li>• the private open space for the Residence 1 is provided in the front setback as a result of the large front setback; and</li> <li>• the pool will take advantage of the northern solar orientation</li> </ul> <p>The required 1.8m high pool fencing adjacent to the front boundary will be setback 750mm to allow landscaping in accordance with D1.2.5 Fences (separately addressed).</p>
<p><b>D1.2.2 Setbacks from Boundaries</b></p> <p><b>Minimum Setbacks for Dual Occupancies and Secondary Dwellings</b></p>	<p>Yes</p> <p>The proposed side setbacks exceed the minimum side setback requirements.</p>	<p>Yes</p> <p>The development requires a setback of 1.5m from the side boundaries.</p> <p>The proposed dual occupancy (detached) exceeds the minimum side setback requirements with setbacks varying from 1.9m to 2.312m.</p>
<p><b>D1.2.5 Fences</b></p>	<p>Yes</p> <p>Although a 1.8m front fence is proposed adjacent to the Residence 1 pool area the fence is setback 75cm with landscaping provided in front of the fence which exceeds the minimum 50cm setback required under Prescriptive Measures 1(c).</p> <p>In this instance the front</p>	<p>Yes</p> <p>Given a swimming pool is proposed in the front setback to Residence 1 the front fence is required to be 1.8m where the pool fence is also a boundary fence.</p> <p>The front fence to Residence 1 is setback 75cm from the boundary with landscaping provided, this exceeds the 50cm setback required by Prescriptive Measures 1(c).</p>

<p><b>D1.5.2 Character</b></p>	<p>fence will not detrimentally impact on the existing streetscape.</p>	<p>Yes</p>
<p><b>And</b></p>	<p>Yes The development of a dual occupancy is consistent with the character of the area and provides a consistent build form with other dwellings within Short Street.</p>	<p>The proposed dual occupancy (detached) dwellings have been designed as dwelling houses.</p>
<p><b>D1.5.3 Adjoining and Adjacent Development</b></p>	<p></p>	<p>The proposed dwellings are large but are in keeping with the existing pattern of development proximate to the subject site with double storey dwellings located at 14, 15 and 20 Short Street as shown below which are of a similar scale to the proposal when viewed from Short Street.</p>
<p> Subject Site  Existing Double Storey buildings</p>		
<p><b>D1.5.4 Private Open Space</b></p>	<p>Yes Each dwelling will have adequate provision of private open space as shown on the proposal plans.</p>	<p>Yes Each dwelling will have adequate provision of private open space of a minimum 30m<sup>2</sup>.</p>
<p><b>D1.5 Dual Occupancy and Semi-Detached Dwellings</b></p>	<p>Yes The rear dwelling has adequate access to Short Street for manoeuvring of a garbage bin, whilst also providing a main street frontage for visitors and delivery services for this dwelling.</p>	<p>Yes Legal pedestrian access is to be provided back to the main street frontage by way of a footway. The handle is 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.</p>
<p><b>And</b></p>	<p></p>	<p>A condition is proposed to ensure that the rear dwelling has adequate access to Short Street for manoeuvring of a garbage bin,</p>
<p><b>D6.4.3 Infill Subdivision with Rear Lane Access</b></p>	<p></p>	<p></p>

<b>D1.5.6 Sound Proofing</b>	<p>Yes The proposed dual occupancy (detached) dwellings are for a residential purpose within a residential environment.</p>	<p>whilst also providing a main street frontage for visitors and delivery services for this dwelling.</p> <p>Yes The proposal is for residential uses only and a swimming pool is ancillary to this use.</p> <p>Boundary fencing will also mitigate noise from pools and outdoor private open space areas.</p>
<b>E4.2.1 Character, Bulk and Scale of Development</b>	<p>Yes The development is consistent with the mix of existing development in the area which includes a number of dual occupancies and secondary dwellings.</p> <p>The proposed dwellings are large but are in keeping with the existing pattern of development proximate to the subject site with double storey dwellings located at 14, 15 and 20 Short Street as shown below which are of a similar scale to the proposal when viewed from Short Street.</p> <p>The development is considered to be consistent with the existing streetscape and uses proximate to the site and provides high quality dwellings which address both street frontages.</p>	<p>Yes The proposed development maintains a low density residential amenity with a single dwelling fronting onto each adjoining road.</p> <p>The proposal is satisfactory having regards to Councils planning controls for the property, and it is noted the LEP would permit a medium density development on the site (e.g. 3 or more dwellings).</p>

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

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

**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	NA	NA
93	No	NA	NA
94	No	NA	NA
94A	No	NA	NA

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

5 **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"/>

**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**

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

Standard conditions of consent to apply in relation to hours of work, builders waste, construction noise, and the like.

15 **4.9 The suitability of the site for the development**

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

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

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The development application was publicly exhibited

There were **135** submissions made on the development application:

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The submissions can be viewed at <https://www.byron.nsw.gov.au/Council/Council-meetings/Additional-Supporting-Information> (Docs E2019/78081, #E201979205)

30

The following issues were raised

Submission	Comment
<b>Zoning</b> The zoning is low density and the proposal is	Dual occupancy dwellings are allowable within a Residential Low Density Zone where the subject

<p>not consistent with the zoning.</p>	<p>site contains greater than 800m<sup>2</sup>. In this regard the property has an area in excess of 1000 m2 and complies with Clause 4.1E of the LEP 2014.</p>
<p><b>Use of the Dwellings</b></p> <p>The floorplans depict internal access areas, which could easily be enclosed and turned into separate residential areas.</p> <p>The unusual nature of the development (10 bedrooms each with its own bathroom) suggests that the development is aimed at holiday rentals - a motel in disguise.</p>	<p><b>Characterising of the proposed Development</b></p> <p>The proposed development is defined as a Dual Occupancy (detached) development. Conditions are recommended to restrict the use of the dual occupancy to residential use only and not to be used for any other purpose.</p> <p>The proposed plans as amended have:</p> <ul style="list-style-type: none"> <li>• removed external access to the first floor;</li> <li>• removed wetbars from downstairs living spaces; and</li> <li>• widened internal openings to ensure each dwelling is a single dwelling.</li> </ul>
<p><b>Precedent - Character and Streetscape</b></p> <p>Approval of this plan would set a precedent for the intensification of density in this residential area.</p> <p>The size and scale of this proposed development does not seem in character with the look and feel of the area</p>	<p>The proposed dual occupancy (detached) development is consistent with existing built form and developments proximate to the subject site.</p> <p>Dual occupancy developments have been approved behind the site at 13 Teven Street which have been recently constructed and included laneway upgrades.</p> <p>The adjoining site at 14 Short Street is currently a Residential Flat Building and is also seeking approval for a dual occupancy (detached) development at this time.</p> <p>Given the site area of 1,014m2 a dual occupancy development is allowable under Clause 4.1E of the Byron LEP 2014.</p> <p>The development presents as a single residential dwelling to both street frontages. It is not considered that the development will set a precedent which has not already been set for low density residential developments in the area.</p>
<p><b>Setbacks</b></p> <p>The development of 2 very large double storey buildings does not comply with the setback requirements.</p>	<p>The development exceeds all front and side boundary setbacks as addressed in Section 4.4A.</p> <p>The location of the Residence 1 Pool is addressed separately below.</p>
<p><b>Height</b></p> <p>The height of this development is totally unsuited to this residential area of Brunswick Heads.</p>	<p>The proposed new dual occupancy (detached) dwellings will each have a height of 7.299m above ground level which is below the 9.0m height limit under the Byron LEP 2014.</p> <p>Of note the height of the proposed new</p>

	<p>dwelling will be below that of an existing neighbouring residential flat building at 14 Short street which has a height of 7.6m above ground level.</p>
<p><b>BHP intrusion</b> The double storey buildings do not comply with the Building Height Plane and Council should not allow the BHP to be exceeded.</p>	<p>The intrusion into the BHP is addressed in Section 4.4A of this report and is considered to be minor in this instance. The BHP intrusion will not have a detrimental impact on access to sunlight, privacy and views for adjoining neighbours.</p>
<p><b>Size, scale and bulk</b> The size, scale and bulk does not suit the surrounding streetscape.</p>	<p>The development proposed detached dual occupancy dwellings which address both Short Street and Galleon Lane frontages of the site. This design element ensures that within each street the development presents as a single residential dwelling.</p> <p>Given the existing development in Short Street with a number of large two storey structures in close proximity to the site, the current proposal is consistent with the existing streetscape.</p>
<p><b>Relationship to Adjoining Residences.</b> The proposal will sit in stark contrast to adjoining dwelling by creating an imposing structure on all four boundaries. The dwelling fronting Short Street will sit approximately 4 metres further forward than adjoining residences and be several metres higher.</p>	<p>The development as described above is consistent with the existing pattern of development with a mixture of one and two storey dwellings in Short Street.</p> <p>As discussed above the development is well articulated in height, width and length and is two detached dwellings as opposed to a single attached structure. With good setbacks to both Short street and Galleon Lane, reflective of councils controls and the streetscape.</p>
<p><b>Parking</b> There is only provision for 2 off street parking spaces per building and the result will be overcrowded parking and blocking access in Galleon Lane and Short Street.</p>	<p>The development complies with the parking provisions under Chapter B4 which require two (2) parking spaces per dual occupancy dwelling. With additional space in the driveway of both dwellings for overflow parking.</p>
<p><b>Holiday letting</b> Dwellings will be holiday let</p>	<p>Submissions received believe the dwelling will be used as tourist and visitor accommodation (this is addressed under the characterisation of the development) however the applicant has applied for a dual occupancy and not any other use and Council must assess the application based on the information as submitted.</p> <p>Conditions are recommended limiting the use of the dwellings for residential use only.</p>
<p><b>Swimming Pools</b> According to Byron DCP 2014 D1.2.2</p>	<p>The provision of swimming pools to each dual occupancy dwelling is not prohibited. The siting</p>


# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.5

<p>Swimming Pools should not be located within the street frontage setback</p>	<p>of the swimming pool to Residence 1 is addressed in Section 4.4A of this report which demonstrates that the pool in the site frontage is an appropriate location in this instance.</p> <p>Noise generation from the proposed swimming pools will be commensurate with normal residential activity expected within a low density residential zone.</p>
<p><b>Noise</b> This quiet residential street is going to be impacted by noise pollution if there is loud music and people partying.</p>	<p>The proposal is for a residential use and it is anticipated that any noise generated from the site will be consistent with that of a residential environment.</p> <p>Noise generated from tourist and visitor accommodation has not been considered given the current application is for residential purposes only. Conditions to apply in relation to the dwelling use.</p>
<p><b>Landscaping Plan</b> Lack of landscaping</p>	<p>The applicant has provided a concept landscaping plan as part of their information response.</p> <p>As discussed above in the report landscaping is considered satisfactory for the development and complies with the DCP requirements.</p>
<p><b>Tree removal</b> The three Hoop pines should remain as important top story trees for birdlife in the village.</p>	<p>Given the trees onsite were planted as evidenced in submissions received the trees can be removed without consent under Chapter B2 of the DCP 2014.</p>
<p><b>BASIX and Ecologically sustainable development</b></p>	<p>The development has provided a BASIX Certificate demonstrating the dwellings achieve the minimum energy efficiency required.</p>
<p><b>Affordability</b> Byron Shire Council has been encouraging the concept of "affordable housing" and environmentally friendly developments. This proposal is the total opposite of Councils guidelines.</p>	<p>The proposal does not propose affordable housing under Clause 6.7 of the Byron LEP 2014 or the State Environmental Planning Policy (Affordable Rental Housing) 2009.</p> <p>The development will provide additional dwellings within Brunswick Heads, adding to the availability of housing stock.</p>
<p><b>Infrastructure</b> The infrastructure in Brunswick Heads for this type of development is inadequate.</p> <p>Galleon Lane is a single lane hardtop in very poor condition. It is already getting too busy with the number of back lane developments taking place.</p>	<p>The development will require payment of contributions and will also require the upgrade of Galleon Lane to include the widening and installation of layback kerb for the length of the site (similar to the upgrade of the 13 Teven Street frontage to Galleon Lane).</p>



	
<p><b>Traffic</b> The claims of no adverse impacts from traffic and parking are unsubstantiated.</p>	<p>The development is for a dual occupancy (detached) which includes two separate dwellings. Two (2) parking spaces have been provided per dwelling in accordance with Chapter B4 of the DCP 2014. Additional informal parking is available on the driveways.</p> <p>The dual occupancy development will not generate traffic above that generated by two (2) residential dwellings).</p>
<p><b>Vision for Brunswick Heads</b> This development is definitely not compatible with our village ethos or our motto, "Simple Pleasures" nor the local area.</p>	<p>The development is a dual occupancy development which is consistent with existing dual occupancy developments within the area and residential flat buildings. The dwellings will each address separate street frontages and will not dominate the streetscape.</p>
<p><b>Heritage</b> This property is a heritage item .</p>	<p>The site is not located in a Heritage Conservation Area and is not identified as a Heritage Item under the Byron LEP 2014.</p>
<p><b>Water quality</b> Is not considered within the Stormwater Management Plan prepared by Ardill Payne (2019).</p>	<p>Run-off from the development will generally be roof stormwater and treatment of stormwater for quality purposes is not required for Dual occupancy developments under Chapter B3 Services of the Byron DCP 2014</p>
<p><b>Profit</b> The only reason this development is proposed is to make greedy amounts of money with no considerations for neighbours, the neighbourhood or the character of our streets or Brunswick Heads.</p>	<p>Profit for the developer is not a valid planning consideration.</p> <p>Character of the area has been addressed separately above.</p>

**4.11 Public interest**

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

**5. DEVELOPER CONTRIBUTIONS**

**5.1 Water & Sewer Levies**

Section 64 levies will be payable.

**5.2 Section 7.11 Contributions**

Section 7.11 Contributions will be payable.

**5 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**

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.

**15 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 modifications were minor and substantially the same as the original development approval with no detrimental environmental impacts.
The proposed development complies with the provisions of Byron Local Environmental Plan 2014.
The proposed development complies with relevant State Environmental Planning Policies
The proposed development complies with relevant provisions of Development Control Plan 2014
The proposed development complies with Environmental Planning & Assessment Regulation 2000 considerations.
The proposed development complies with the Coastal Zone Management Plan.
The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The development application was notified/advertised in accordance with Development Control Plan 2014. Issues raised in the submissions have been addressed during assessment of the application.
The proposed development is unlikely to prejudice or compromise the public interest.

**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.
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# BYRON SHIRE COUNCIL

**Report No. 13.6**      **PLANNING - Development Application 10.2019.349.1 Stage 1: De-commissioning of existing dual occupancy to form one (1) dwelling, Stage 2: Construction of new dwelling house to form a dual occupancy and alterations & additions to existing dwelling house at 14 Short Street Brunswick Heads**

**Directorate:** Sustainable Environment and Economy  
**Report Author:** Luke Munro, Planner  
**File No:** I2019/1632

**Proposal:**

<b>DA No:</b>	10.2019.349.1		
<b>Proposal description:</b>	Stage 1: De-commissioning of existing Residential Flat Building to form One (1) Dwelling and construction of new Dwelling to form a Dual Occupancy. Stage 2: Alterations & Additions to existing Dwelling		
<b>Property description:</b>	LOT: 5 SEC: 25 DP: 758171		
	14 Short Street BRUNSWICK HEADS		
<b>Parcel No/s:</b>	122410		
<b>Applicant:</b>	Ardill Payne & Partners		
<b>Owner:</b>	Mr R W Stinson & Ms F E Jackson		
<b>Zoning:</b>	R2 Low Density Residential		
<b>Date received:</b>	15 July 2019		
<b>Integrated / Designated Development:</b>	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input checked="" type="checkbox"/> Not applicable
<b>Concurrence required</b>	No		
<b>Public notification or exhibition:</b>	<ul style="list-style-type: none"> <li>- Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications</li> <li>- Exhibition period: 24/7/19 to 6/8/19</li> <li>- Submissions received: None</li> </ul>		
<b>Variation request</b>	<input type="checkbox"/> Clause 4.6	<input type="checkbox"/> SEPP 1	<input checked="" type="checkbox"/> Not applicable
<b>Delegation to determine</b>	Council		
<b>Issues:</b>	<ul style="list-style-type: none"> <li>• Conversion of existing duplex units (residential flat building) into a single dwelling.</li> <li>• Minor intrusion into Building Height Plane</li> <li>• Minor intrusion into Galleon Lane setbacks</li> </ul>		

**Summary:**

An application has been received for a dual occupancy at 14 Short Street, Brunswick Heads. The application is to be carried out in two stages as follows:

- Stage 1: De-commissioning of existing Residential Flat Building to form One (1) Dwelling and construction of second single storey dwelling (Dual Occupancy) at the rear of the site and accessed off Galleon Lane.
- 
- Stage 2: Further alterations & additions to the original building comprising of a ground floor office and an upper level balcony overlooking short street.

The proposal will generally retain the existing streetscape within Short Street, whilst additional residential development off rear lanes is not uncommon in any of the urban areas of Byron Shire where large yard areas exist. It is noted a dual occupancy development is proposed at 16 Short Street also proposing rear lane access.

5 Other than minor variations to setbacks and the building height plane provisions, the proposed development is largely consistent with the provisions of the Byron LEP 2014 and DCP 2014 with the land of a suitable size and area for a dual occupancy, The dual occupancy is unlikely to generate deleterious impacts on the built or natural environment and the site is considered suitable for the site. The application is recommended for approval subject to conditions of consent.

NOTE TO COUNCILLORS:

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



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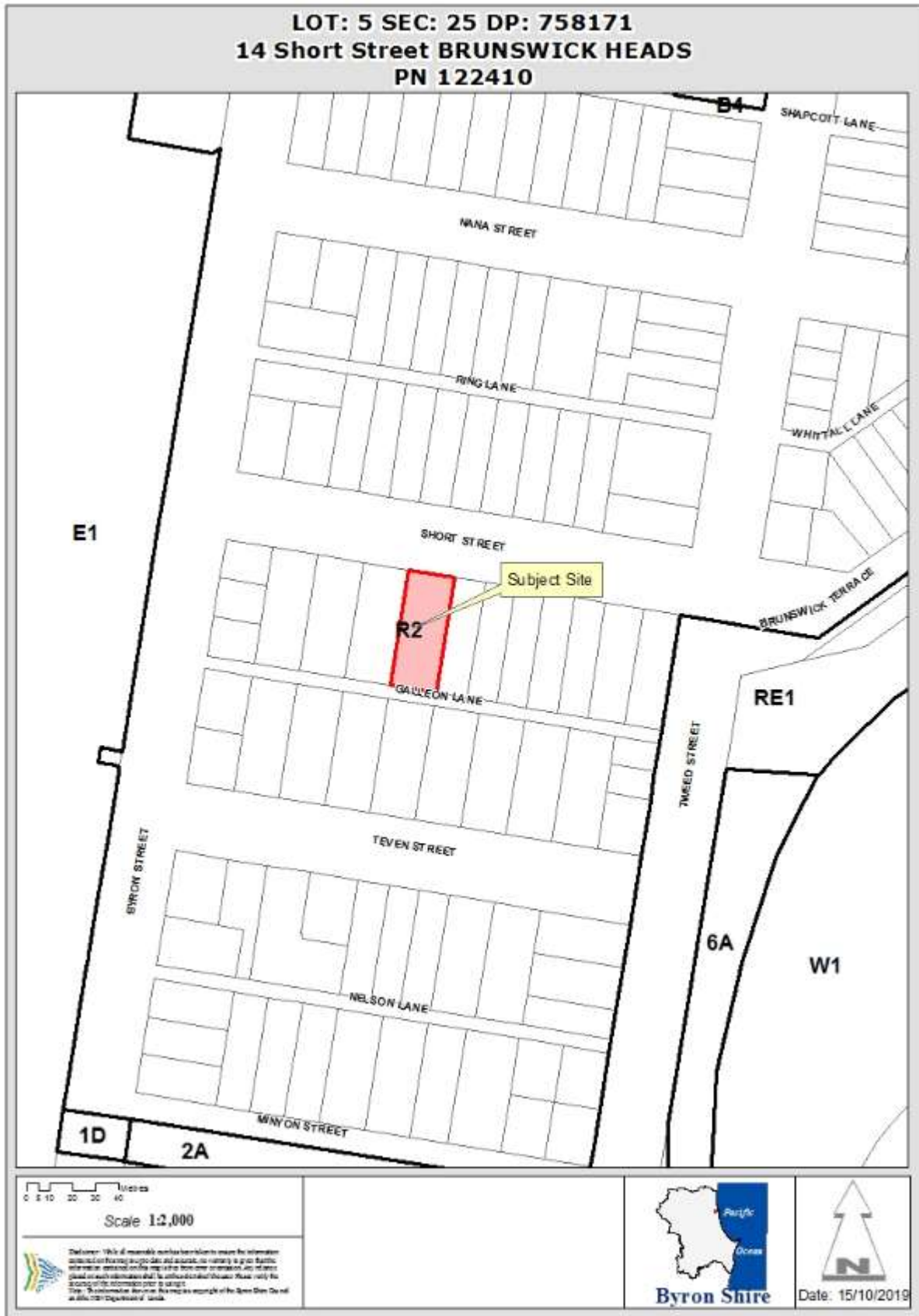
**RECOMMENDATION:**

**That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.349.1 for Stage 1: De-commissioning of existing residential flat building to form one (1) dwelling and construction of new dwelling to form a dual occupancy. Stage 2: Alterations and additions to existing dwelling, be granted consent subject to the conditions listed in Attachment 2 (E2019/78359).**

**Attachments:**

- 1 10.2019.349.1 - Proposed Plans, E2019/78331 
- 25 2 10.2019.349.1 - Proposed Conditions of Consent, E2019/78359 

REPORT



**1. INTRODUCTION**

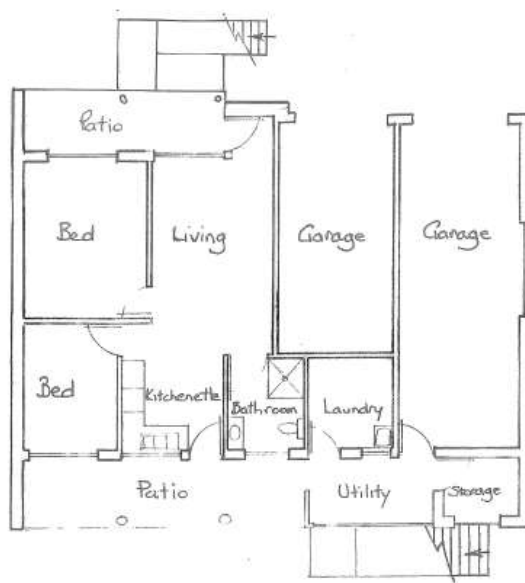
**1.1. History/Background**

5 Development consent for duplex units (residential flat building) was issued on 4 November 1980 for the subject site. The residential flat building consisted of two x two bedroom dwellings.

10 The building was constructed and a Certificate of Compliance was issued on the 27 May 1981.



Existing First Floor Plan



Existing Ground Floor Plan

**1.2. Description of the proposed development**

15 This application seeks approval for Stage 1: De-commissioning of existing Residential Flat Building to form One (1) Dwelling and construction of new Dwelling to form a Dual Occupancy. Stage 2: Alterations & Additions to existing Dwelling over 14 Short Street, Brunswick Heads.

20 The development will retain the existing residential flat building (converted to a single dwelling) fronting onto Short Street with the proposed new dual occupancy dwelling at the rear of the site with access gained via Galleon Lane.

The staging of the development is summarised as:

**Stage 1**

- 25 • De-commissioning of existing residential flat building to form one (1) dwelling; and
- Construction of new dwelling to form a Dual Occupancy (detached)

**Stage 2**

- 30 • Alterations & Additions to existing Dwelling House

35 The existing double storey brick building onsite is configured as a residential flat building (duplex) with each level containing a two bedroom dwelling. These 'flats' will be reconfigured into a single dwelling with new internal stairs connecting the two levels and kitchen facilities in the ground floor decommissioned as part of Stage 1 of the development. Stage 2 of the development will incorporate alterations and additions at the front of this dwelling to create a new office and covered deck area.

5 A new single storey dwelling will be constructed in the rear portion of the property facing onto Galleon Lane which will result in the site being identified as a dual occupancy (detached) development. Galleon Lane will be upgraded along the site frontage. The development will result in the following onsite:

<b>Existing Dwelling (alterations and additions)</b>	
<b>Ground Floor</b>	Two (2) bedrooms
	Combined lounge and sitting room
	Bathroom
	Two garage spaces
	Workshop and storage areas and utility room
	Front entry
	Office <b>(Stage 2)</b>
<b>First Floor</b>	Two (2) bedrooms (main with en-suite)
	Combined living, dining and kitchen
	Bathroom
	Front and rear balconies
	Large covered front balcony (over office) <b>(Stage 2)</b>
<b>Proposed Dwelling (Rear)</b>	
<b>Ground Floor</b>	Four (4) bedrooms (main with En-suite and WIR)
	Combined Family, dining and kitchen
	Lounge room
	Bathroom
	Laundry
	Double garage and large alfresco



Southwestern View



Southeastern View



Northeastern View



Northwestern View

SPECIAL NOTE  
3D ELEVATIONS ARE INDICATIVE ONLY. REFER  
WORKING DRAWINGS FOR FULL DETAILS.

10 **Perspectives of the proposed rear dwelling on the Galleon Lane frontage.**

**1.3. Description of the site**

A site inspection was carried out on 5 August 2019

Land is legally described as	LOT: 5 SEC: 25 DP: 758171
Property address is	14 Short Street BRUNSWICK HEADS
Land is zoned:	R2 Low Density Residential
Land area is:	1,012 m <sup>2</sup>
Property is constrained by:	Acid Sulfate Soils Class 4
	The land is not mapped as prone to bushfire or flooding

5



**Photo 1 – Short Street frontage of the site showing the existing residential flat building looking south**



**Photo 2 – Rear yard of the site viewed from Galleon Lane looking north.**



**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 subject to conditions.

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

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

**10 3.1 State Environmental Planning Instruments**

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 55—Remediation of Land Consideration: The site has been approved for residential occupation as a duplex units (residential Flat Building) under development consent issued on 4 November 1980 for the subject site. The building was constructed and a Certificate of Compliance was issued on the 27 May 1981. Further the site is not identified as being contaminated or having previous contaminating land uses in Council’s records.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 Consideration: A Valid BASIX Certificate has been provided with the application.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<a href="#">State Environmental Planning Policy (Coastal Management) 2018</a> Consideration: The site is located in the Coastal Environment and Coastal Use Areas. The application does not propose any removal of native vegetation or aquatic plants and will have no impact on the coastal environmental values and natural coastal processes. The proposal does not impact on foreshore access or any known item or place of aboriginal cultural heritage.  The proposal raises no issues in terms of the Coastal Management SEPP and the provisions contained within Clause 13 and 14 in particular.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

15 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 checked="" 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 checked="" 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:

- 5 (a) The proposed development is defined in the LEP 2014 Dictionary as Dual Occupancy (detached);
- (b) The land is within the R2 Low Density Residential according to the Land Zoning Map;
- (c) The proposed development is Permitted with Consent; and
- (d) Regard is had for the Zone Objectives as follows:

<b>Zone Objective</b>	<b>Consideration</b>
encourage a range of housing types,	The proposed dual occupancy (detached) will provide a range of housing types in the locality and will generally maintain the character of the residential area by retaining the existing dwelling within the Short Street frontage of the site.
ensure non residential uses have a domestic scale and character	No non-residential uses proposed.

10 *The following clauses are of relevance to the development*

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

15 The Byron LEP 2014 identifies that the minimum lot size for Dual Occupancy (Detached) development is 800m<sup>2</sup>. The subject site commands an area of 1,012m<sup>2</sup> and therefore complies with the minimum lot size requirements for a dual occupancy (detached) under the LEP 2014.

**Clause 4.3 Height of buildings**

20 The Height of Buildings map identifies the site has a maximum allowable height of up to 9m. The existing dwelling on the Short Street frontage of the site has an existing height of 7.6m which is below the 9m height limit.

The new rear dwelling on the Galleon Lane frontage is single storey and will have a maximum height of 5m which is well below the 9m height limit.

25

**Clause 4.4 Floor space ratio**

The site has an allowable FSR of 0.5:1, the current proposal has a total FSR of 0.38:1 and complies with the allowable FSR for the site.

30 **Clause 6.6 Essential Services**

The subject site has full access to essential services or the ability to make such services available as required.

35 **4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority**

Not Applicable.

40 **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

# BYRON SHIRE COUNCIL

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 type="checkbox"/> B6  <input type="checkbox"/> B7  <input checked="" type="checkbox"/> B8  <input checked="" type="checkbox"/> B9  <input type="checkbox"/> B10  <input type="checkbox"/> B11  <input type="checkbox"/> B12  <input type="checkbox"/> B13  <input type="checkbox"/> B14
Part C Chapters:	<input type="checkbox"/> C1  <input type="checkbox"/> C2  <input type="checkbox"/> C3  <input type="checkbox"/> C4
Part D Chapters	<input checked="" type="checkbox"/> D1  <input type="checkbox"/> D2  <input type="checkbox"/> D3  <input type="checkbox"/> D4  <input type="checkbox"/> D5  <input 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 checked="" type="checkbox"/> E4  <input type="checkbox"/> E5  <input type="checkbox"/> E6  <input type="checkbox"/> E7

5 The following comments are provided on relevant DCP provisions

What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Objectives of this Section? Address.	Does the proposed development comply with the Performance Criteria of this Section? Address.
<p><b>B4.2.5 Car Parking Requirements</b></p> <p><b>and table</b></p> <p><b>B4.2.12 Parking Schedules</b></p>	<p>Yes</p> <p>The rear dwelling will have a 1.2m wide footway providing access to Short Street. It is considered that parking is available to visitors from Short Street.</p> <p>The development therefore complies with the provision of car parking as required under Chapter B4.</p>	<p>Yes</p> <p>Chapter B4 requires a minimum of 2 spaces per 3 or more bed unit for parking onsite for a Dual Occupancy.</p> <p>The development has provided 2 garage spaces per dwelling and complies with the minimum parking requirement.</p> <p>Of note dual occupancies are not required to provide visitor parking where on-street car parking is available within close proximity to the development. Galleon Lane cannot support visitor parking. The rear dwelling will have a 1.2m wide footway providing access to Short Street for visitors to the rear dwelling.</p>
<p><b>Chapter B9 – Landscaping</b></p>	<p>Yes</p> <p>The applicant has indicated that they would accept a condition on any Consent requiring the preparation of a landscaping plan.</p> <p>In this instance a condition is recommended requiring a Landscaping Plan be prepared.</p>	<p>Yes – conditions of consent to apply requiring a landscaped plan to be prepared prior to the issue of the construction certificate</p>
<p><b>D1.2.1 Building Height Plane</b></p>	<p>Yes</p> <p>The minor intrusions into BHP on both dwellings will not impact on the amenity and privacy of adjoining properties</p>	<p>Yes</p> <p>The development includes minor intrusions for both dwellings into the building height plane (BHP).</p>

	<p>or detrimentally affect solar access given the large setbacks to the existing dwelling and the proposed single storey at the rear.</p>	<p>The existing duplex will be converted into a single dwelling which will include a new staircase on the western elevation of the dwelling to enable connectivity to both levels of the dwelling. This results in a minor intrusion into the BHP of approximately 1.0m.</p> <p>The new rear dual occupancy dwelling is a single storey dwelling and a small section of the eaves encroaches into the building height plane on the eastern side boundary. This is due to the articulated eastern side elevation where 2.2m of the family room extends to within 1.337m of the side boundary (See the below table which illustrates the intrusion into the BHP for the rear dwelling).</p> <p>The minor intrusions to each of the proposed dwellings will have no impact on adjoining dwellings in terms of access to sunlight, impacts on privacy or overbearing bulk and scale. A variation is considered acceptable in this instance.</p>
<p><b>D1.2.2 Setbacks from Boundaries</b></p> <p><b>Minimum Street Frontage Setbacks</b></p>	<p>Yes</p> <p>The location of the OSD tanks can be screened by either appropriate use of landscaping or hard landscape screens without impacting on the character of the laneway. Screening the OSD tanks will ensure that the development minimises any negative impacts of the development on the character of Galleon Lane, and as such a condition is recommended requiring screening devices to the OSD tanks where located within the frontage setbacks.</p>	<p>Yes</p> <p>The rear dual occupancy dwelling has provided Onsite Stormwater Detention tanks within the front setback to Galleon Lane (within 1.0m).</p> <p>As discussed conditions of consent proposed in relation to screening and landscaping.</p>
<p><b>D1.2.2 Setbacks from Boundaries</b></p>	<p>Yes</p> <p>The proposed side setbacks of</p>	<p>Yes</p> <p>The provisions require a 1.5</p>

<p><b>Minimum Setbacks for Dual Occupancies and Secondary Dwellings</b></p>	<p>between 1.337m and 1.3m will ensure that the rear dwelling will achieve good orientation and spacing of residential development to achieve a high quality living environment relative to sunlight, shade, wind and weather protection, residential amenity and proximity of neighbouring development as required in the Objectives.</p>	<p>metre setback to side and rear boundaries for dual occupancies.</p> <p>The single storey dual occupancy encroaches into this setback by 200 mm on the western boundary and 163 mm on the eastern boundary. Having regards to the height of the dwelling, it is considered that the minor encroachment will not negatively impact on the adjacent properties.</p>
<p><b>D1.5.4 Private Open Space</b></p>	<p>Yes – Although not shown on the plans, each dwelling will have adequate provision of private open space of a minimum 30m<sup>2</sup></p>	<p>Yes</p>
<p><b>D1.5 Dual Occupancy and Semi-Detached Dwellings</b></p>	<p>Yes</p>	<p>Yes</p>
<p><b>And</b></p>	<p>A condition and amendments to the proposal plan in red are proposed to ensure that the rear dwelling has adequate access to Short Street for manoeuvring of a garbage bin, whilst also providing a main street frontage for visitors and delivery services for this dwelling.</p>	<p>Legal pedestrian access is to be provided back to the main street frontage by way of a Right of footway. The handle is 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.</p>
<p><b>D6.4.3 Infill Subdivision with Rear Lane Access</b></p>	<p>A condition and amendments to the proposal plan in red are proposed to ensure that the rear dwelling has adequate access to Short Street for manoeuvring of a garbage bin, whilst also providing a main street frontage for visitors and delivery services for this dwelling.</p>	<p>A condition and amendments to the proposal plan in red are proposed to ensure that the rear dwelling has adequate access to Short Street for manoeuvring of a garbage bin, whilst also providing a main street frontage for visitors and delivery services for this dwelling.</p>

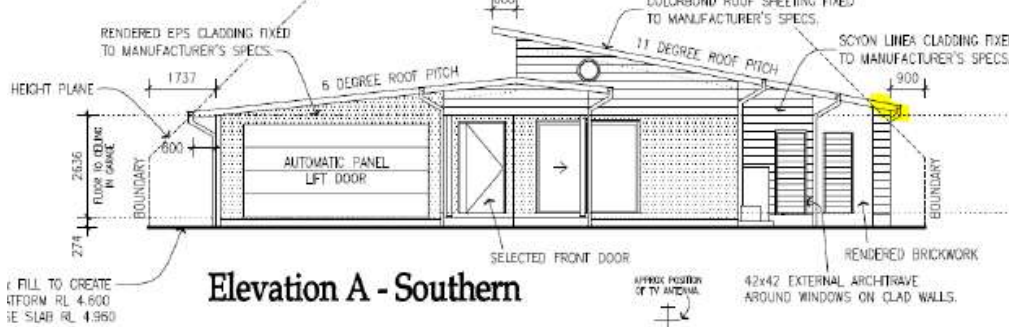
Building Height Plane encroachments

Stage 2 - Existing dwelling on Short Street

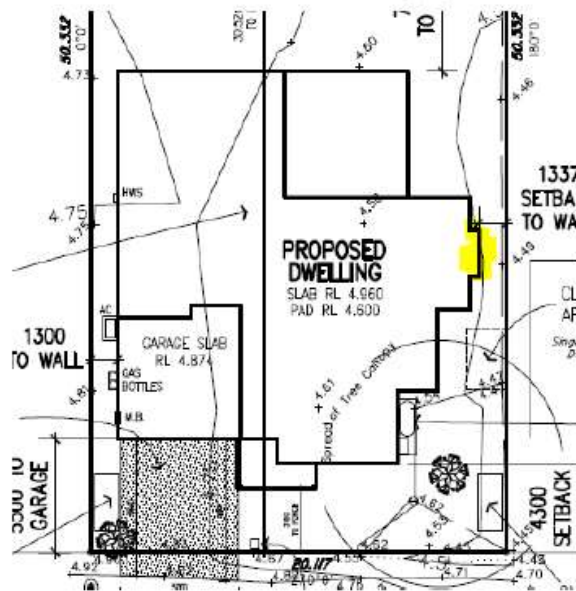


North Elevation  
Stage 2

Rear dwelling BHP encroachment



Elevation A - Southern



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

5

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

Not planning or draft planning agreements apply to the development.

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

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

**4.7 Any Coastal Zone Management Plan?**

5

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

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

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

10

Standard conditions of consent to apply in relation to hours of work, builders waste, construction noise, and the like.

**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**

20

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

**5. DEVELOPER CONTRIBUTIONS**

**5.1 Water & Sewer Levies**

25

Section 64 levies will be payable.

**5.2 Section 7.11 Contributions**

30

Section 7.11 Contributions will be payable.

**5.5 Public interest**

5 The proposed development is unlikely to prejudice or compromise the public interest or create an undesirable precedent. Conditions to apply in relation to ensuring the dwellings are used for residential purposes not as tourist and visitor accommodation/ "holiday letting".

**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

10 **7. CONCLUSION**

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

**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 2014.
The proposed development complies with relevant State Environmental Planning Policies
The proposed development complies with relevant provisions of Development Control Plan 2014
The proposed development complies with Environmental Planning & Assessment Regulation 2000 considerations.
The proposed development complies with the Coastal Zone Management Plan.
The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The development application was notified/advertised in accordance with Development Control Plan 2014.
The proposed development is unlikely to prejudice or compromise the public interest.

**How community views were addressed**

The DA was notified/advertised in accordance with Development Control Plan 2014. No submissions were received.
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# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.7

**Report No. 13.7**      **PLANNING - Development Application 10.2019.516.1 Alterations & additions to existing dwelling, 36 Roses Road, Federal**  
**Directorate:**      Sustainable Environment and Economy  
**Report Author:**      Rob Van Iersel, Major Projects Planner  
**File No:**              I2019/1685

### Proposal:

**DA No:**                      10.2019.516.1  
**Proposal description:**      Alterations and Additions to Existing Dwelling House  
**Property description:**      LOT: 4 DP: 1003205  
    36 Roses Road FEDERAL  
**Parcel No/s:**                226140  
**Applicant:**                 Julie Lipsett Architect  
**Owner:**                      Mr S G Richardson & Ms J K Fullerton  
**Zoning:**                      RU5 Village  
**Date received:**             30 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  
**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 a new study, relocation of an existing master bedroom and internal modifications to laundry and bathroom.

The additions will add 17.5m<sup>2</sup> to the floor space of the existing dwelling, which is currently 123.5m<sup>2</sup>. The additions are single storey and generate no issues in terms of privacy or overshadowing. The subject property is located within the Village of Federal and is zoned RU5 under Byron LEP 2014. The extensions to the house are permissible with consent.

The application appropriately addresses the relevant constraints of the site and raises no planning issues. It is recommended for approval subject to Conditions of Consent.

### NOTE TO COUNCILLORS:

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

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



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**RECOMMENDATION:**

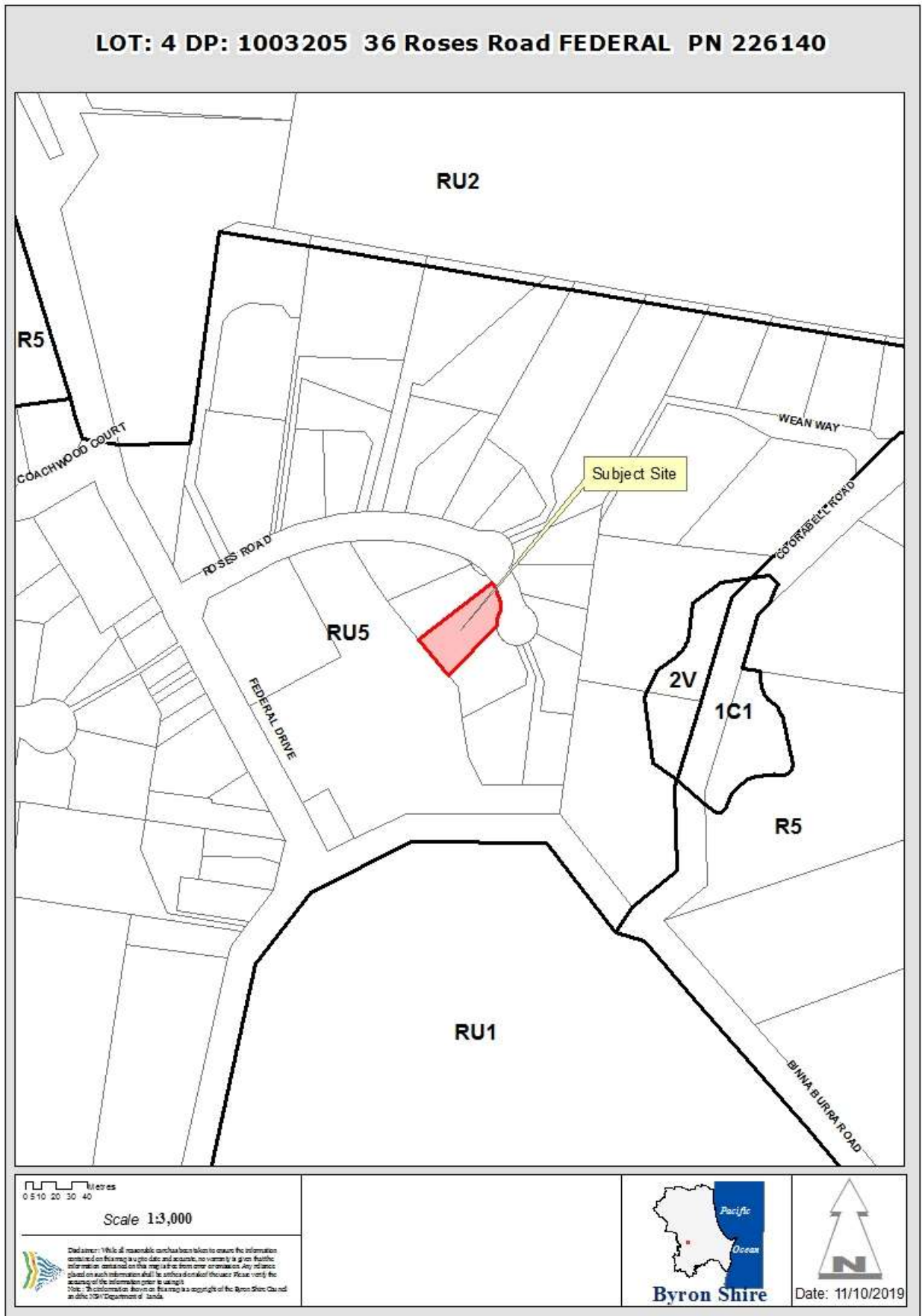
**That, pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application 10.2019.516.1, for alterations and additions to an existing dwelling house, be granted consent subject to the conditions of approval in Attachment 2 (#E2019/75226).**

5

**Attachments:**

- 1 10.2019.516.1 - Development Application Plans, E2019/72176 
- 2 10.2019.516.1 - Recommended Conditions of Consent, E2019/75226 

10



**REPORT**

**Assessment:**

5 **1. INTRODUCTION**

**1.1. History/Background**

10 Council's records indicated that the lot was created by way of a Council-approved subdivision registered in 1999. Since that time, the following development approvals have been granted:

10.2001.710.1	Dwelling	Approved 23/04/2002
10.2006.467.1	Double garage / shed	Approved 13/10/2006

**1.2. Description of the proposed development**

15 Development consent is sought for alterations and additions to an existing dwelling house, comprising a new study, relocation of an existing master bedroom and internal modifications to laundry and bathroom.

The additions will add 17.5m<sup>2</sup> to the floor space of the existing dwelling, which is currently 123.5m<sup>2</sup>.

20 The additions will be constructed in a timber frame, with composite timber weatherboard cladding, corrugated steel roof sheeting, timber framed windows and door, and solid timber flooring, all to match the existing dwelling.

25 The ridgeline of the additions will sit lower than that of the existing dwelling and reflects the general heritage character of Federal.

**1.3. Description of the site**

Land is legally described as	LOT: 4 DP: 1003205
Property address is	36 Roses Road FEDERAL
Land is zoned:	RU5 Village
Land area is:	1,491m <sup>2</sup>
Property is constrained by:	Drinking water catchment

30 **2. SUMMARY OF REFERRALS**

There were no referrals for this application

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

35 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.

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

45 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 has an area less than 1ha. Therefore, the development control provisions of this SEPP do not apply.		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The application proposes a minor addition to an existing dwelling that has been in place for over a decade. It will not increase the risk of contamination and no further assessment is considered to be required.		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The estimated cost of the alterations and additions is less than \$50,000. The proposal is therefore not BASIX affected development and no certificate is required.		
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).		

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

5 LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development. 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 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 type="checkbox"/> 6.2  <input type="checkbox"/> 6.3  <input type="checkbox"/> 6.4  <input checked="" 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:

- 15
- (a) The proposed development is defined in the LEP 2014 Dictionary as *Dwelling House*;
  - (b) The land is within the RU5 Village according to the Land Zoning Map;
  - (c) The proposed development is permissible with consent; and
  - (d) Regard is had for the Zone Objectives as follows:

**Zone Objective**

*To provide for a range of land uses, services and facilities that are associated with a rural village*

**Consideration**

The proposed development raises no issues in regard to the zone objective.

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.

5

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

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

10

**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 relevance to the proposed development:

15

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 checked="" 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

**C4 – Development in a Drinking Water Catchment**

20

The proposed alterations and additions do not involve the addition of any new bedrooms, and will therefore not generate additional loads for the existing onsite sewage management system.

The application is therefore consistent with the requirements of this Chapter.

25

**E6 – Federal Village**

The subject site is located within a residential area as nominated within Chapter E6. The proposed extensions to the dwelling are of a bulk, scale and design consistent with the provisions contained within the DCP.

30

The proposal raises no other issues under the DCP.

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

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

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

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

**4.7 Any Coastal Zone Management Plan?**

5

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

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

<b>Impact on:</b>	<b>Likely significant impact/s?</b>
<b>Natural environment</b>	No. The proposal will not have a significantly adverse impact on the natural environment of the locality. The existing onsite sewage management system does not require upgrading for the development.
<b>Built environment</b>	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
<b>Social Environment</b>	No. The proposal will not have a significant social impact on the locality.
<b>Economic impact</b>	No. The proposal will not have a significant economic impact on the locality.

10

Standard conditions of consent to apply in terms of hours of work, builders waste, construction noise and the like.

**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**

20

No Submissions were received.

**4.11 Public interest**

25

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

**5. DEVELOPER CONTRIBUTIONS**

30

There is no nexus to levy contributions or headworks charges.

**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 minor alterations and additions to an 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.

10

**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. 13.8**            **5G Technology**  
**Directorate:**            Sustainable Environment and Economy  
**Report Author:**        Kylie Graine, Business Improvement Officer  
                                 Shannon Burt, Director Sustainable Environment and Economy  
5 **File No:**                I2019/1697

**Summary:**

10 Council considered a Mayoral Minute at the Ordinary Meeting 27 June 2019 and resolved as follows:

**Resolved 19-324** that Council:

- 15 1. Notes that there is some community concern with respect to reports that 5G network technologies may affect the health of the community and animal populations;
- 20 2. Convenes and facilitates a public information event to share information and knowledge about the proposed 5G technology and its roll out in the Byron Shire;
- 25 3. Includes within its' list of invited speakers, representatives from Telstra, ARPANSA, the Member for Richmond, Justine Elliot MP, any pertinent accredited experts in this field and representatives from the Stop 5G Northern Rivers group;
- 30 4. Writes to the Federal Minister for Communications, the Shadow Minister for Communications, and Member for Richmond, Justine Elliot MP seeking assurance that community concerns with respect to 5G network technologies are being assessed and taken into consideration;
- 35 5. Writes to Telstra, seeking assurances that community concerns with respect to 5G network technologies are being assessed and taken into consideration and that the precautionary principle has been applied when progressing the 5G rollout;
- 40 6. Writes to those listed in 4 and the State Government requesting a review of the cumulative impacts and an identification of who holds responsibility for monitoring cumulative impacts of microwave frequency technologies of 'small cell installations' on the residential community and, in light of the findings of this review, request the State Government to re-consider the appropriate planning process for the installation of small cells;
- 45 7. Writes to LGNSW and Member for Ballina, Tamara Smith MP with a request to support this review and possible planning adjustments as outlined in 6; and
8. Receives a report on any potential for Council's infrastructure being used to house 5G.
- The purpose of this report is to update Council on parts of that resolution.














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**RECOMMENDATION:**

- 1. That Council note the update provided in the report on 5G technology.**
- 2. That Council acknowledge the divergent views in the community about 5G technology.**
- 3. That Council recognise the limitation of NSW land use planning policies over 5G infrastructure.**

4. That Council as a result of 3, not proceed with a public information event but instead continue to make representations on behalf of the community through the local Federal Member for Richmond Justine Elliot MP.

**Attachments:**

- 1 Letter to Telstra CEO - Mayoral Minute - 5G Technology - Res 19-324, E2019/59814 
- 5 2 Letter to Tamara Smith MP Ballina - Mayoral Minute - 5G Technology - Res 19-324, E2019/59815 
- 3 Letter to Hon Justine Elliot MP Richmond - Mayoral Minute - 5G Technology - Res 19-324, E2019/59821 
- 4 Letter to LGNSW CEO Tara McCarthy - Mayoral Minute - 5G Technology - Res 19-324, E2019/59931 
- 10 5 Letter to Hon Paul Fletcher Minister for Communications - Mayoral Minute - 5G Technology - Res 19-324, E2019/59932 
- 6 Letter to Michelle Rowland MP Shadow Minister for Communications - Mayoral Minute - 5G Technology - Res 19-324, E2019/59933 
- 7 Response from Telstra in relation to 5G Technology, S2019/7024 
- 15 8 Response from Office of the Hon Paul Fletcher MP to Mayor Regarding Deployment of 5G Technology, S2019/7479 
- 9 ARPANSA Presentation 5G and Health, E2019/77882 
- 10 Letter from AMTA re 4G and 5G dated 02/09/2019, E2019/77863 
- 11 AMTA Fact Sheet - Small Cells: A Guide, E2019/77866 
- 20 12 AMTA Fact Sheet - What is 5G?, E2019/77864 
- 13 AMTA Fact Sheet - 5G and EMF Explained, E2019/77867 

**REPORT**

5 The Mayor raised 5G technology through a Mayoral Minute because of the varying community reactions to the introduction of the technology. The roll-out of 5G involves small cell infrastructure at a much higher density than other telecommunications.

10 Resolution 19-324 (parts 4-7) required writing to various Government Departments and Telstra and the Local members, seeking assurances around the safety of 5G technology and or their support to review the planning process (Attachments).

15 Additionally, part 2 required Council to convene and facilitate a public information event to share information and knowledge about the proposed 5G technology and its roll out in the Byron Shire. To date, there has been difficulty in securing representatives from organisations such as Telstra or ARPANSA to attend a public forum.

20 ARPANSA instead offered to provide a private briefing to Councillors with the aim of equipping them with information to handle any concerns raised by the community. This briefing was provided at a Councillor SPW 3 October 2019 (Attachment 9).

25 There was also a 5G presentation by Barrister Raymond Broomhall on behalf of Environment Community Safe from Radiationthstas held in Mullumbimby on the 19 October 2019 (Attachment).

30 Notwithstanding the above, with respect to part 2 above, given the inability of NSW land use planning to influence or restrict the application of the Federal telecommunications legislation and or policy on telecommunications it is recommended that a public information meeting not proceed as per Resolution 19-324.

35 With respect to part 8, Council has previously adopted the Telecommunications Facilities on Council Owned Land Policy. This Policy outlines a set of parameters for Council to consider prior to issuing owners consent for telecommunications infrastructure on Council land: including ... to ensure such facilities when proposed on Council owned land do not have an adverse impact upon the amenity of the area, public heath of residents and that the site is suitable for the proposal.

[https://www.byron.nsw.gov.au/files/assets/public/hptrim/corporate-management-policies-current/policy-telecommunication-facilities-on-council-owned-land-adopted-res-10-1018-current\\_policies.pdf](https://www.byron.nsw.gov.au/files/assets/public/hptrim/corporate-management-policies-current/policy-telecommunication-facilities-on-council-owned-land-adopted-res-10-1018-current_policies.pdf)

**Response to questions submitted to Council by Stop 5G Northern Rivers**

40 Stop 5G Northern Rivers has previously submitted a list of questions to Council; a response is provided below.

	<b>Question</b>	<b>Council's response</b>
1.	What is Byron Shire Council's position on the global 5G crisis?	<a href="#">Council's resolution</a> in June sought further information from Federal and State Governments, and Telstra. There is no official position on 5G at this time.
2.	Will Council follow the lead of local government authorities across Australia and the world by standing alongside its community and calling for a halt to 5G until independent safety testing can be done to ensure safety? (This includes objecting to tower upgrades and small cell installations, lobbying MPs, consider whether the proposed installation is in an "area of environmental significance" and the carrier	This is a decision for the elected Council.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.8

	Question	Council's response
	is required to submit a development application to Council, etc.)	
3.	Has Council already sought – or is it likely to seek – legal advice on 5G based on its prior knowledge of harm caused by 3G/4G towers, and 4GX upgrades already happening in Byron at 32 Fletcher Street and the Paterson Street water tank?	Council does not concede that it has the knowledge referred to. Council holds legal advice in respect of the planning permissibility of telecommunications towers. Council will seek further legal advice as and when the circumstances warrant it.
4.	Will Council immediately inform telcos that no alterations, modifications, upgrades or updates are to be made on existing towers on Council land OR that no new 4GX / 5G small cells, antenna or antenna and cells be installed on Council land until independent long-term testing can prove 5G is safe?	Towers on Council land are subject to conditions within the current lease/license agreements. Council will act in accordance with the terms of lease/licence arrangement.
5.	Will Council explore and use its powers to do so under the Environment Protection and Biodiversity Conservation Act 1999, the Telecommunications Code of Practice 2018, the Mobile Phone Base Station Deployment Code, Telecommunications (Low Impact Facilities) Determination 2018, the Environment Planning and Assessment Act 1979, Local Government Act 1993?	The exercise of Council's powers is undertaken on a case-by-case basis where sufficient evidence exists to do so.
6.	On behalf of the community, will Council formally request information from telcos (under Clause 3.1 of the Mobile Phone Base Station Deployment Code) for as much information as possible about their forward project plans concerning the deployment of mobile phone radiocommunications infrastructure such as new towers, new small cell installations, upgrades to existing towers, etc?	<p>Clause 3.1 of the Mobile Phone Base Station Deployment states:</p> <p>3 GENERAL OBLIGATIONS ON CARRIERS  3.1 Provision of Information  3.1.1 A Carrier must respond to reasonable requests by a Council for information and assistance for the purpose of Council's forward planning.</p> <p><i>NOTE: Examples of the kind of assistance that Carriers should give to Councils include:</i></p> <ol style="list-style-type: none"> <li>1. providing the Council with the Carrier's forward project plans concerning the deployment of Mobile Phone Radiocommunications Infrastructure;</li> <li>2. providing the Council with the Carrier's plans concerning service level targets for planned Mobile Phone Radiocommunications Infrastructure;</li> <li>3. engaging with other Carriers to explore opportunities for colocation and to investigate opportunities for the coordinated, strategic and efficient deployment of Mobile Phone Radiocommunications Infrastructure;</li> <li>4. providing the Council with an assessment of the opportunities for co-location of Mobile Phone Radiocommunications Infrastructure with the facilities of other Carriers; and</li> <li>5. providing the Council with as much forward planning notice as possible.</li> </ol> <p>Council could write to the main telcos requesting forward project plans for deployment of Mobile Phone Radiocommunications Infrastructure in relation to 5G technology within the Byron Shire to get a better understanding of what 5G roll out will involve.</p>

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.8

	Question	Council's response
7.	Did Council approve the heritage listed water tower on Paterson Street for 4GX upgrades or did Telstra go ahead with the works without permission?	<p>Telstra Corporation Limited holds a current licence with Byron Shire Council to 29 April 2032, for the purpose of the installation, inspection, maintenance, construction, excavation, replacement, repair, renewal, alteration, upgrade, cleaning, operation, access to and from and removal of the Facility on the land in accordance with the Licence including the exercise of any rights as set out in the <i>Telecommunications Act 1997</i> (Cth).</p> <p>The Licensed area includes the footprint of the facility on the land next to the base of the reservoir and an area on the reservoir roof for antenna and other.</p> <p>The licence gives the Licensee unrestricted access to the Licensed Area at all times.</p> <p>'Low Impact' upgrades may be included in the current licence agreements with Council.</p>
8.	Heritage listed buildings and areas of environmental significance are protected under the <u>Environment Protection and Biodiversity Conservation Act 1999</u> . Further, the <u>Telecommunications (Low Impact Facilities) Determination 2018</u> states that "a facility in an area of environmental significance cannot be low impact". So when a carrier proposes to install a facility in an area of environmental significance (such as heritage zoned areas), local council or State/Territory planning laws apply. Will Council anytime soon put Byron Bay forward for the UNESCO World Heritage List?	<p>There are no plans to put Byron Bay forward for the UNESCO World Heritage list.</p> <p>This would be a decision for the elected Council.</p>
9.	Will Council consult with and give local Aboriginal elders, as the caretakers of the land, a say on 5G?	Council consults with the local Indigenous community where Council has a regulatory role. 5G network is regulated by the Telecommunications Act 1997 and as such have a limited influence on its installation and operation.
10.	Who owns the light poles in the Byron Shire, and do the owners have the power to approve small cell installation? Who is responsible for liability of harm in the instance of light poles?	<p>Of the 2056 light poles in the Byron Shire, Essential Energy own the majority. Council own approximately 370 poles. Most of these are in parks or are a non-standard installation.</p> <p>Questions of responsibility and liability would need to be directed to Essential Energy.</p>
11.	In what instances can Council serve an Abatement Notice (under the Local Government Act) for the public nuisance of radiation pollution caused by telco towers? (For example, when a specific level above the recommended Australian safety standard is reached)	<p>Nothing in the Licence affects, restricts, limits or derogates from the rights, power and immunity of the Licensee under and by virtue of the <i>Telecommunications Act 1997</i> (Cth).</p> <p>As a result, Council waived its rights under cl17(1) Div5, pt1 of Schedule 3 of the <i>Telecommunications Act 1997</i> (Cth) to be given notice of the Licensee exercising its powers to inspect or install a low impact installation on the Facility. The operation of this right extends beyond termination of the Licence.</p>
12.	Is Council willing to hire an independent (non industry) technician to measure the current EMR levels in the Byron Shire on a regular basis to ensure public safety and keep the community informed?	This is a decision for the elected Council and would require ongoing funding.

	<b>Question</b>	<b>Council's response</b>
13.	Is the Council aware that Barrister Raymond Broomhall of Tasmania has raised the possibility that the implementation of 5G without informed consent could open up city councils to liability in accordance with the legal definition of assault?	Noted.
14.	Given the level of community concern around 5G, how can Council halt any momentum on its Smart City initiative, which relies on the 5G wireless technology network?	The only Smart Cities initiative Council has participated in is the grant received under the Smart Cities and Suburbs program (round 2) for 3D modelling software. The 3D software is cloud-based and works with 3G (or any reasonable internet connection). It does not rely on a 5G network.
15.	Will Council provide copies of any/ all minutes, agenda items, planning documents, pitches and/or submissions, budgets, technology specifications, future and current scopes of work, and ancillary documentation that Byron Shire Council possesses, relating to the 5G technology rollout in Shire and all future plans that require the use of this technology? This request encompasses information related to (but not restricted to) the SMART grid, facial recognition, traffic/ freeway/ transport systems, and sensors/lighting equipment.	This is a very broad request and may need to be reviewed and lodged as a request under the GIPA legislation.
16.	When is the proposed public information event to share information and knowledge about the proposed 5G roll out in the Byron Shire (as unanimously supported by Council on 27 June)? Is Council open to suggestions for the panelists?	Part 3 and 4 of Council's resolution of 27 June called for the facilitation of a community information forum.  Invitations were sent to the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), Telstra and the Australian Centre for Electromagnetic Bioeffects Research (ACEBR). Council was unable to secure attendance by these organisations at a public forum and following discussions with the Mayor and Deputy Mayor, ARPANSA provided a closed briefing to Councillors to assist in responding to community concerns.

**STRATEGIC CONSIDERATIONS**

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

- 5 Licencing and deployment of mobile telecommunications in Australia are dealt with primarily by the Federal Government and as such Council does not have any input into the policies specific to the installation of infrastructure for 5G telecommunications.
- 10 The Australian Communications and Media Authority (the ACMA) is a federal statutory authority responsible for broadcasting, the internet, radio communications and telecommunications. Part of their responsibility is managing and licencing the radio frequency spectrum as well as licencing and monitoring the licenced telecommunications carriers (the carriers).
- 15 ACMA are also responsible for the administration of the Federal Telecommunications Act which regulates the installation of telecommunications infrastructure, including mobile phone infrastructure. In some instances this infrastructure is deemed as a low-impact facility under the Telecommunications (Low-impact Facilities) Determination guidelines because of its size and location. These facilities include:

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- small radio communications dishes and antennae;
- underground cabling and cable pits; and
- public payphones.

5 It is assumed that the installation of some of the 5G infrastructure will fall within the classification of a Low-impact Facility. To review the Federal Government policies in more detail visit ACMA's web page:

10 <https://www.acma.gov.au/Industry/Telco/Infrastructure/Network-facilities/acma-installation-of-telecommunications-facilities-a-guide-for-consumers-fact-----sheet>

<https://www.acma.gov.au/Home/Industry/Telco/Infrastructure/Network-facilities/local-government-network-facilities-i-acma>

15 ***Financial Considerations***

Not applicable.

20 ***Consultation and Engagement***

As discussed in the report.

# BYRON SHIRE COUNCIL

**Report No. 13.9**      **PLANNING - Development Application 10.2019.345.1 Subdivision of Five (5) Lots into Four (4) Lots at 46 Bay Vista Lane Ewingsdale**  
**Directorate:**      Sustainable Environment and Economy  
**Report Author:**      Greg Smith, Team Leader Planning Services  
**File No:**              I2019/1713

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**Proposal:**

<b>Proposal description:</b>	Subdivision of Five (5) Lots into Four (4) Lots		
<b>Property description:</b>	LOT: 1 DP: 1240871, LOT: 3 DP: 1235916, LOT: 6 DP: 792431, LOT: 1 DP: 1208444, LOT: 21 DP: 793702		
	46 Bay Vista Lane EWINGSDALE, 204 Balraith Lane EWINGSDALE, 214 Balraith Lane EWINGSDALE, 345 St Helena Road MCLEODS SHOOT		
<b>Parcel No/s:</b>	269145, 268887, 121960, 267690, 110340		
<b>Applicant:</b>	Balanced Systems Planning Consultants		
<b>Owner:</b>	Mr R A & Mrs V McEwen		
<b>Zoning:</b>	R5 Large Lot Residential, RU2 Rural Landscape, 1(a) (General Rural Zone), 1(c2) (Small Holdings (c2) Zone), 7(b) (Coastal Habitat Zone), 7(d) (Scenic / Escarpment Zone)		
<b>Date received:</b>	28 June 2019		
<b>Integrated / Designated Development:</b>	<input checked="" type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input type="checkbox"/> Not applicable
<b>Concurrence required</b>	Yes – <b>Department of Planning, Infrastructure and Environment</b>		
<b>Public notification or exhibition:</b>	<ul style="list-style-type: none"> <li>– Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications</li> <li>– Exhibition period: 11/7/19 - 24/7/19</li> <li>– Submissions received: Nil</li> </ul>		
<b>Variation request</b>	<input type="checkbox"/> Clause 4.6	<input checked="" type="checkbox"/> SEPP 1	<input type="checkbox"/> Not applicable
<b>Delegation to determine</b>	Council due to SEPP 1 Objection		
<b>Issues:</b>	<ul style="list-style-type: none"> <li>• Variation to the minimum lot size requirements under Byron LEP 1988 (SEPP 1 objection).</li> </ul> <p>1.</p>		

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**Summary:**

The application proposes the re-subdivision of Five (5) Lots into Four (4) Lots.

15 Proposed Lot B is a rural residential parcel with an area of only 1 ha in the 1(a) Zone under Byron LEP 1988. However pursuant to Clause 11 of the BLEP88 the minimum lot size requirements are 40 ha. The lot currently has a dwelling upon it and is only 0.739 ha in area. The lot although already undersized is subject to a SEPP 1 Objection to vary the 40 ha development standard. The matter was referred to the Department of Planning who have issued their concurrence for the lot size variation.

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The other three lots are well in excess of the 40 ha requirements whilst the fifth lot which will be removed, is a small section of closed road is to be consolidated with the adjoining lots.

25 The application appropriately addresses the relevant planning controls applying to the site, and the development raises no environmental issues. It is considered the proposal is unlikely to create a



precedent or compromise the public interest. The application is recommended for approval subject to the conditions of consent.

NOTE TO COUNCILLORS:

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

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**RECOMMENDATION:**

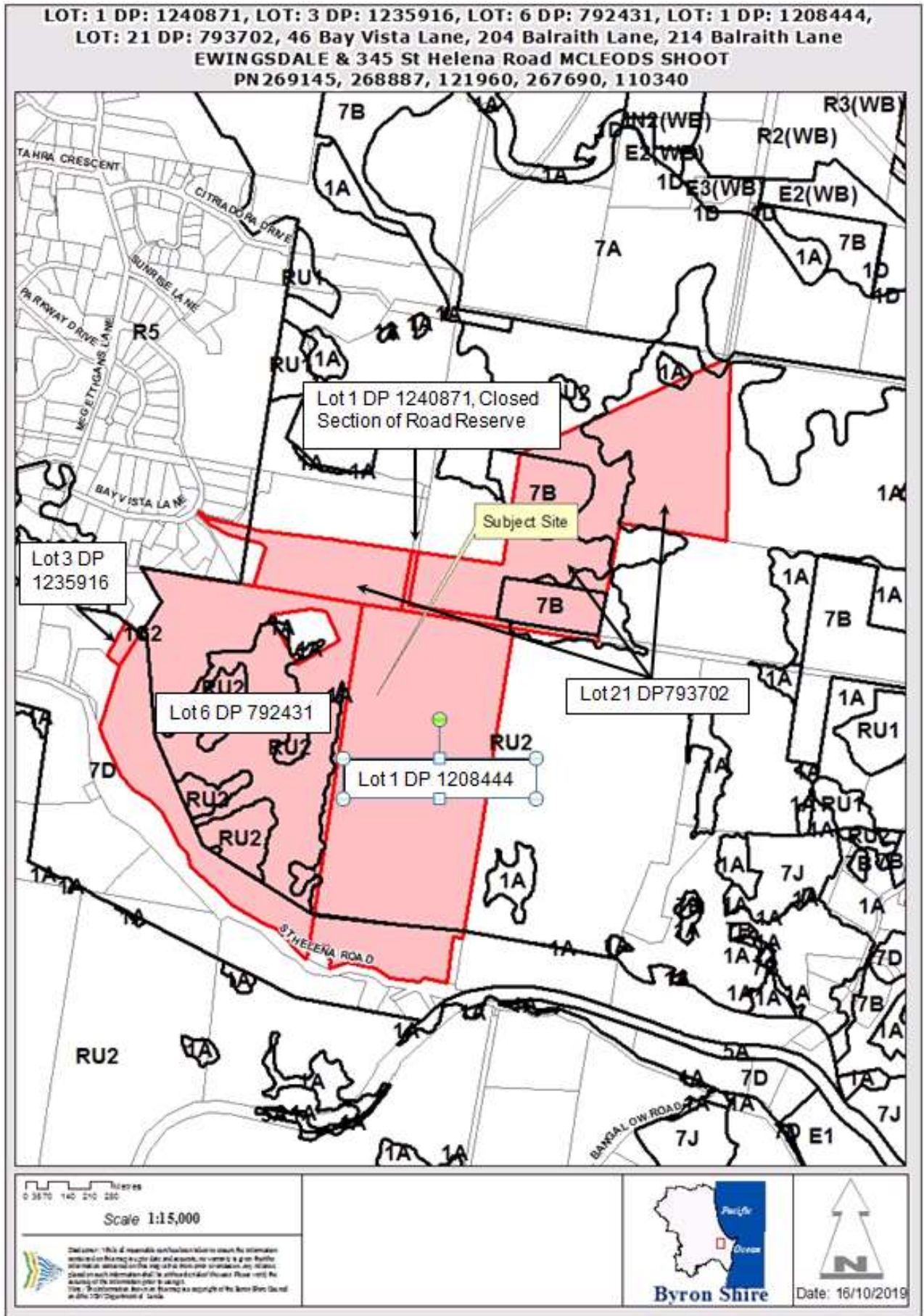
**That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.345.1 for subdivision of five (5) lots into four (4) lots, be granted consent subject to the conditions of approval in Attachment 2 (E2019/76646).**

**Attachments:**

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- 1 10.2019.345.1 - Proposed Plans, E2019/76643 
- 2 10.2019.345.1 - Recommended conditions of consent, E2019/76646 

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**REPORT**

**1. INTRODUCTION**

**5 1.1. History/Background**

The following provides a summarised outline of the approval background for the lots that comprise the subject property.

**10 204 Balraith Lane, Ewingsdale (Lot 3 DP 1235916)**

Formatted Account	Precis	Determination	Determination Date
010.2017.00000641.001	Alterations and Additions to Existing Dwelling House	Approved	13/02/2018
010.2015.00000663.003	S96 Modify Conditions Relating To Water & Sewer	Approved	14/09/2016
016.2008.00000017.001	Alteration/Additions to existing Dwelling	Approved	02/06/2008

**214 Balraith Lane, Ewingsdale (Lot 6 DP792431)**

Formatted Account	Precis	Determination	Determination Date
010.2008.00000583.003	Delete boundary adjustment from proposal and replace with Section 88E	Approved	15/09/2015
010.2008.00000583.002	S96 to amend conditions of consent and modify layout of the approved	Approved	11/09/2009
010.2008.00000583.001	Rural boundary adjustment to increase the land area of school,	Approved	14/05/2009
010.2007.00000160.001	Recreational facility	Approved	11/05/2007
010.2006.00000437.001	Landscaping, retaining walls, structures and ponds	Approved	27/09/2006
016.2006.00000040.001	New Carport	Approved	09/05/2006
010.2005.00000749.001	Double garage and gym, games room, carport and shed	Approved	03/04/2006
016.2005.00000067.001	New Swimming Pool	Approved	22/02/2006
016.2005.00000094.001	Alteration and/or Additions to existing Dwelling	Approved	30/09/2005
016.2003.00000185.001	New Shed	Approved	29/01/2004

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**345 St Helena Road, McLeods Shoot (Lot 1 DP1208444)**

Formatted Account	Precis	Determination	Determination Date
010.2016.00000154.001	Tree Removal: Twenty (20) Trees	Approved	06/04/2016

**46 Bay Vista Lane, Ewingsdale (Lot 21 DP793702)**

Formatted Account	Precis	Determination	Determination Date
010.2017.00000258.001	Temporary Use of land for Wedding Venue	Approved	21/09/2017
010.2012.00000433.001	Rural Tourist Facility (Two Holiday cabins)	Refused	12/11/2012
010.2009.00000049.001	Rural tourist facility comprising unauthorised structure to be used as	Withdrawn	10/03/2009
010.2008.00000590.001	Alterations and Additions to Farm shed	Approved	05/02/2009
010.2008.00000554.001	Use of Unauthorised structure as a holiday cabin	Refused	23/12/2008
010.2007.00000715.001	Rural Farm Shed	Approved	04/03/2008
010.2000.00000200.001	Subdivision - 2 Lots	Refused Delegated	02/11/2000
010.1999.00000654.001	Subdivision (2) lots	Refused Delegated	22/11/1999
006.1995.00002034.001	Swimming Pool	Approved Delegation	09/02/1995
006.1993.00002286.001	Dwelling	Approved Delegation	30/07/1993

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**1.2. Description of the proposed development**

25 This application seeks approval for the re - subdivision of Five (5) Lots into Four (4) Lots. The proposed Lots will have the following areas:

- Lot A = 67.44 hectares
- Lot B = 1 hectare
- Lot C = 62.64 hectares
- Lot D = 52.63 hectares

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All proposed lots comply with the respective minimum lot area requirements, except for proposed Lot B which has an area of 1 hectare but is subject to a minimum lot area requirement of 40 hectares. It is noted that Lot B provides for an increase to the area of existing Lot 3 DP 1235916 from 7390m<sup>2</sup> to 10,000m<sup>2</sup>.

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**1.3. Description of the site**

Land is legally described as  
 Property address is  
 Land is zoned:  
 Land area is:  
 Property is constrained by:

LOT: 1 DP: 1240871, LOT: 3 DP: 1235916, LOT: 6 DP: 792431, LOT: 1 DP: 1208444, LOT: 21 DP: 793702  
 46 Bay Vista Lane EWINGSDALE, 204 Balraith Lane EWINGSDALE, 214 Balraith Lane EWINGSDALE, 345 St Helena Road MCLEODS SHOOT  
 R5 Large Lot Residential  
 RU2 Rural Landscape  
 1(a) (General Rural Zone)  
 1(c2) (Small Holdings (c2) Zone)  
 7(b) (Coastal Habitat Zone)  
 7(d) (Scenic / Escarpment Zone)  
 Approximately 183.71 hectares

- Flood Liable Land – Council’s Development Engineer raises no objection to the proposal on the basis of this constraint.
- Bush fire prone land
- Acid Sulfate Soils: Class 2 and Class 3 – however the proposal is not significantly affected by, and will not have a significant impact in relation to, acid sulfate soils and no further consideration of this constraint is necessary.
- High Environmental Value Vegetation – Council’s Ecological Planner raises no objection to the proposal on the basis of this constraint.
- Cattle dip buffer – the proposal will not be significantly impacted in relation to this constraint.

Description of each allotment

**46 Bay Vista Lane EWINGSDALE (LOT: 1 DP: 1240871, LOT: 21 DP: 793702)**  
 Lot 1 is a 1.639 hectare L-shaped closed road reserve allotment. Lot 21 is a 54.74 hectare allotment in 2 parts separated by Lot 1. These lots comprise the northern part of the site.

**204 Balraith Lane EWINGSDALE (LOT: 3 DP: 1235916)**  
 Lot 3 is a small 7390m<sup>2</sup> allotment at the extreme western side of the site.

**214 Balraith Lane EWINGSDALE (LOT: 6 DP: 792431)**  
 Lot 6 is a 67.7 hectare allotment in the central southern part of the site. Lot 6 surrounds the Cape Byron Rudolph Steiner School which is on Lot 7 DP 792431 towards the north eastern corner of Lot 6.

**345 St Helena Road MCLEODS SHOOT (LOT: 1 DP: 1208444)**  
 This is a 59.89 hectare allotment in the south eastern part of the site.

The section of closed road does not have a dwelling entitlements.

**2. SUMMARY OF REFERRALS**

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<b>Referral</b>	<b>Issue</b>
Development Engineer	No objections subject to conditions.
Ecologist	No objections, no conditions in terms of the boundary adjustments proposed.
Rural Fire Service (100B)	No objections subject to conditions. .
Department of Planning, Infrastructure & Environment	No objections. See Comments below in relation to SEPP 1 concurrence.

**SEPP 1 Concurrence**

The letter from the **Department of Planning, Industry and Environment** dated 23/8/2019 advised as follows:

5

Following consideration of the application, concurrence has been granted to vary the 40 hectare minimum lot size development standard for land in the 1(a) General Rural and 7(d) Environmental Protection Scenic/Escarpment zones of Byron LEP 1988 to enable the proposed subdivision and consolidation of the above land and the adjustment of the boundaries between Lot 3 DP 1235916, 204 Balraith Lane, Ewingsdale and Lot 6 DP 792431, 214 Balraith Lane, Ewingsdale to create proposed Lot B of 1 hectare.

Concurrence was granted in this instance for the following reasons:

1. the proposal will not result in additional lots or opportunities for additional dwellings;
2. the area of the existing Lot 3 is already significantly less than the 40 hectare minimum lot size development standard; and
3. there is no public benefit in maintaining the development standard in this instance.

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

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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.

15

**3.1 State Environmental Planning Instruments**

	<b>Satisfactory</b>	<b>Unsatisfactory</b>
State Environmental Planning Policy No 1—Development Standards	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The DA is supported by a SEPP 1 objection which is discussed in detail below in relation to clause 11 of Byron Local Environmental Plan 1988.		
State Environmental Planning Policy No 44—Koala Habitat Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposal is satisfactory having regard to the provisions of SEPP 55, noting that no koala habitat is proposed to be removed.		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposal is satisfactory having regard to the provisions of SEPP 55, noting that no buildings or land uses are proposed which might be affected by potential contamination.		
<a href="#">State Environmental Planning Policy (Coastal Management) 2018</a>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposal is satisfactory having regard to the provisions of the Coastal Management SEPP. The site contains areas of Coastal Wetlands 100m Buffer, however the proposal will not have a significant impact on any mapped Coastal Wetlands.		
State Environmental Planning Policy (Infrastructure) 2007	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposal is satisfactory having regard to the provisions of the Infrastructure		

	Satisfactory	Unsatisfactory
SEPP.		

**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 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 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 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 In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:
- (a) The proposed development is defined in the Act as Subdivision of Land;
  - (b) The land is within the R5 Large Lot Residential and RU2 Rural Landscape according to the Land Zoning Map;
  - (c) The proposed development is permitted with consent in accordance with clause 2.6 of LEP 2014; and
  - (d) The proposal is satisfactory having regard for the Zone Objectives.

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

20 The re-subdivision of the property as proposed is consistent with the provisions of the clause as the development:

- does not create any additional lots or dwelling entitlements,
- does not fragment or alienate resources or lands with natural or ecological values
- 25 • does not create any actual or potential land use conflicts. With the smaller parcel being enlarged this will assist with providing some element of a buffer to the neighbouring property to the east; and
- does not affect the rural character, environmental heritage and scenic quality of the land.

30 The development raises no other issues under the Byron LEP 2014.

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

35 LEP 1988 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development. 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
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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 checked="" 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
Part 5	<input type="checkbox"/> 65  <input type="checkbox"/> 66  <input type="checkbox"/> 67  <input type="checkbox"/> 68  <input type="checkbox"/> 69  <input type="checkbox"/> 70  <input type="checkbox"/> 71  <input type="checkbox"/> 72  <input type="checkbox"/> 73  <input type="checkbox"/> 74  <input type="checkbox"/> 75  <input type="checkbox"/> 76  <input type="checkbox"/> 77  <input type="checkbox"/> 78  <input type="checkbox"/> 79  <input type="checkbox"/> 80  <input type="checkbox"/> 81  <input type="checkbox"/> 82  <input type="checkbox"/> 83  <input type="checkbox"/> 84  <input type="checkbox"/> 85  <input type="checkbox"/> 86  <input type="checkbox"/> 87  <input type="checkbox"/> 88  <input type="checkbox"/> 89  <input type="checkbox"/> 90  <input type="checkbox"/> 91  <input type="checkbox"/> 92  <input type="checkbox"/> 93  <input type="checkbox"/> 94  <input type="checkbox"/> 95  <input type="checkbox"/> 96  <input type="checkbox"/> 97  <input type="checkbox"/> 98  <input type="checkbox"/> 99  <input type="checkbox"/> 100  <input type="checkbox"/> 101

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

- (a) The proposed development is defined in the Act and Subdivision of Land;
- (b) The land is within 1(a) (General Rural Zone), 1(c2) (Small Holdings (c2) Zone), 7(b) (Coastal Habitat Zone) and 7(d) (Scenic / Escarpment Zone) according to the map under LEP 1988;
- (c) The proposed development is permitted with consent in accordance with clause 10 of LEP 1988; and
- (d) The proposed development is consistent with the relevant objectives of the applicable Zone.

**Clause 11 – Subdivision in Rural Areas**

Subclause 11(1) of LEP 1988 states (relevantly in relation to the under-sized proposed Lot B) that:

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

<i>Column 1 Zone</i>	<i>Column 2 Minimum Area ha</i>
...	...
<i>Environmental Protection 7 (d) Scenic/Escarpment Zone</i>	<i>40</i>
...	...

The proposed buildings area of proposed Lot B is 1 hectare. This represents a numerical variation of 97.5% to the development standard.

Accordingly, the development application does not meet the minimum area requirement and the DA is supported by an objection pursuant to SEPP 1. The Land Environment Court judgment in *Wehbe v Pittwater Council* [2007] identified requirements needed in order to uphold a SEPP 1 objection, and these are addressed in the circumstances of this particular case as follows:

***Is the requirement a development standard?***

The minimum area requirement is a development standard as defined by section 1.4 of the Environmental Planning and Assessment 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 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”?***



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

5 “The grounds of the objection are as follows:

- compliance with the development standard is considered unreasonable, unnecessary and not practical in the circumstances of the case.
- the proposal achieves the objectives of the zone and other special provisions.
- 10 • the application will result in the positive environmental planning outcomes as demonstrated within the report.
- the application will result in beneficial outcomes for land management, in particular for bushfire management for the existing dwelling.
- the application does not raise any matter of significance for state or regional planning.
- 15 • no public benefit is likely to result from maintaining the arbitrary development standard in the circumstances of the particular case.
- the objection is sought, not to depart from sound planning, but to provide a reasoned solution to the circumstances of the situation.
- the merits of the proposal as demonstrated within this report.
- 20 • allows for the efficient use of land, allows for improved management of the land and provides for reduced potential for land use conflicts.
- The existing allotments are already well below the minimum size numerical standard.
- The proposal does not result in any new allotments, or any new dwelling entitlements on either of the allotments”.

25 ***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.*
- 35 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.*
- 40 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.*
- 45 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.*

In the subject case, 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 27 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) Lot 3 DP 1235916 is already significantly under-sized compared to the development standard, and the proposal actually increases the size of the equivalent proposed allotment.
- b) The proposed increase in area of existing Lot 3 to proposed Lot B from 7390m<sup>2</sup> to 1 hectare (ie. 10,000m<sup>2</sup>) achieves the objectives of the 7(d) zone because it will not:
  - 5 (i) damage or deteriorate the scenic qualities of the Shire which enhance the visual amenity, and there is no need to control the choice and colour of building materials, position and bulk of buildings, access roads and landscaping as there are no such visually prominent features proposed;
  - 10 (ii) have a significant visually disruptive effect on the scenic quality and visual amenity of the Shire;
  - (iii) have a detrimental effect on the scenic quality and visual amenity of the Shire;
  - (iv) cause soil erosion from escarpment areas or have an impact in geologically hazardous zones; or
  - 15 (v) prevent the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem.
- c) The application indicates that the proposal achieves the reason for increasing the size of the allotment, to provide for bush fire management for the existing dwelling.
- d) There are no matters of significance in relation to State, Regional and Local planning.
- e) No public benefit would result from requiring compliance with the development standard in 20 the circumstances of the particular case.
- f) Requiring compliance with the development would most likely result in Lot 3 not being increased in size, but remaining at it's current size.
- g) The Applicant's advice is acknowledged that the objection is made, not to depart from sound 25 planning, but to provide a reasoned solution to the circumstances of the situation.
- h) The proposal allows for the efficient use of the available land, allows for improved management of the land and provides for reduced potential for land use conflicts.
- i) The proposal does not result in any new allotments, or any new dwelling entitlements on either of the allotments.

30 The SEPP 1 objection is well founded notwithstanding non-compliance with the development standard and it is recommended that the SEPP 1 objection be upheld.

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

35 No Draft Planning Instruments affect the proposal.

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

40 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 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

45 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

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.

5

D6 - Subdivision

The proposed subdivision, being a relatively minor adjustment of the boundary between rural lots with no changes to dwellings, access, wastewater disposal, water supply, stormwater management or vegetation.

10

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

**Part B4 Subdivision**

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.

15

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><b>B4.1 Element – Lot Size and Shape</b> Proposed Lot B 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 for the small parcel. 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).  A SEPP 1 Objection has been lodged with the application for the small parcel with concurrence granted by the Dept of Planning to vary the lot size requirements.</p>

20

The proposal raises no other issues under the DCP 2010.

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

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

25

**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>
<b>92</b>	No	N/A	N/A
<b>93</b>	No	N/A	N/A

<b>94</b>	No	N/A	N/A
<b>94A</b>	No	N/A	N/A

**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**

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

5

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

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

10

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

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

15

**4.10 Public interest**

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

20

**5. DEVELOPER CONTRIBUTIONS**

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

25

**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

30

**7. CONCLUSION**

The DA proposes Subdivision of Five (5) Lots into Four (4) Lots raises no planning issues or generates any adverse impacts on the built or natural environment. The application is supported by a well founded SEPP 1 objection to the development standard in relation to the small parcel known as Lot B. The development is unlikely to create a dangerous precedent or compromise the public interest and is recommended for approval subject to the conditions of consent.

**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.*

5

**Statement of Reasons**

The proposed development complies with the provisions of Byron Local Environmental Plan 1988.
The proposed development complies with the provisions of Byron Local Environmental Plan 2014.
The proposed development complies with relevant State Environmental Planning Policies.
The proposed development complies with relevant provisions of Development Control Plan 2014.
The proposed development complies with relevant provisions of Development Control Plan 2010.
The proposed development complies with Environmental Planning & Assessment Regulation 2000 considerations.
The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The development application was notified in accordance with Development Control Plan 2010 and Development Control Plan 2014.
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.
The DA was notified/advertised in accordance with Development Control Plan 2014. No submissions were received.
The DA was advertised in accordance with Development Control Plan 2014. The submissions received were considered on merit and addressed during assessment of the application.
To view the considerations, please contact Council to view a copy of the assessment report relating to this DA.

Report No. 13.10      **PLANNING - S8.2 Review - Rural Tourist Accommodation 6 Cabins and Swimming Pool, Montecollum Road, Wilsons Creek**

Directorate:            Sustainable Environment and Economy

Report Author:        Rob Van Iersel, Major Projects Planner

5      File No:                I2019/1715

10      **Summary:**

This report provides a review of determination of development application DA 10.2018.483.1, for rural tourist accommodation at Montecollum Road Wilsons Creek, which was refused at Council's Planning Meeting of 15 August 2019 (**Res 19-368**).

15      The reasons for refusal were:

1. *The proposed development is not supported having regard to the relevant matters for consideration under clause 6.8 of Byron Local Environmental Plan 2014. The number of cabins, their location and access arrangements result in an increase in the intensity of development on the site and is considered to be inappropriate given the rural character of the property and the location generally.*
2. *The proposed development is considered to be inconsistent with the objectives of the RU2 Rural Landscape Zone in Byron Local Environmental Plan 2014 and is not supported for the same reasons as those listed in Reason 1 above.*
3. *The proposed development is considered to be inconsistent with controls in Development Control Plan 2014 including but not limited to: cabin aspect, cabin orientation, number of driveways to the property, cabin clustering arrangements, and potential road safety impacts as a result of the development.*
4. *The significant contravention of Development Control Plan 2014 is without justification and is likely to set an undesirable precedent for rural cabin development generally.*
5. *The site is not considered to be suitable for the development proposed given the same reasons listed in Reasons 1 - 4 above, and is not in the public interest.*

35      The applicant has lodged a request to review this refusal, pursuant to Section 8.3 of the *Environmental Planning & Assessment Act 1979*. Section 8.3(3) provides that an applicant, in requesting such a review, may amend the proposal to address the reasons for refusal.

In this case, the proposal has been amended to:

- reduce the number of cabins from eight (8) to six (6);
- reduce the capacity of the pool from 120kL to 80kL; and
- remove the east pool terrace, with the associated earthworks and landscaping.

45      S8.3(3) states *that the consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development*. In this case, the amendments made to the proposed development are such that it remains substantially the same development as that considered at the previous Council meeting.

50      This report contains a complete review of the information submitted, and a review of the previous assessments undertaken. On the basis of that review, it is recommended that Council change the decision of 15 August 2019 and that Development Application 10.2018483.1 be approved subject to the attached conditions.

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.






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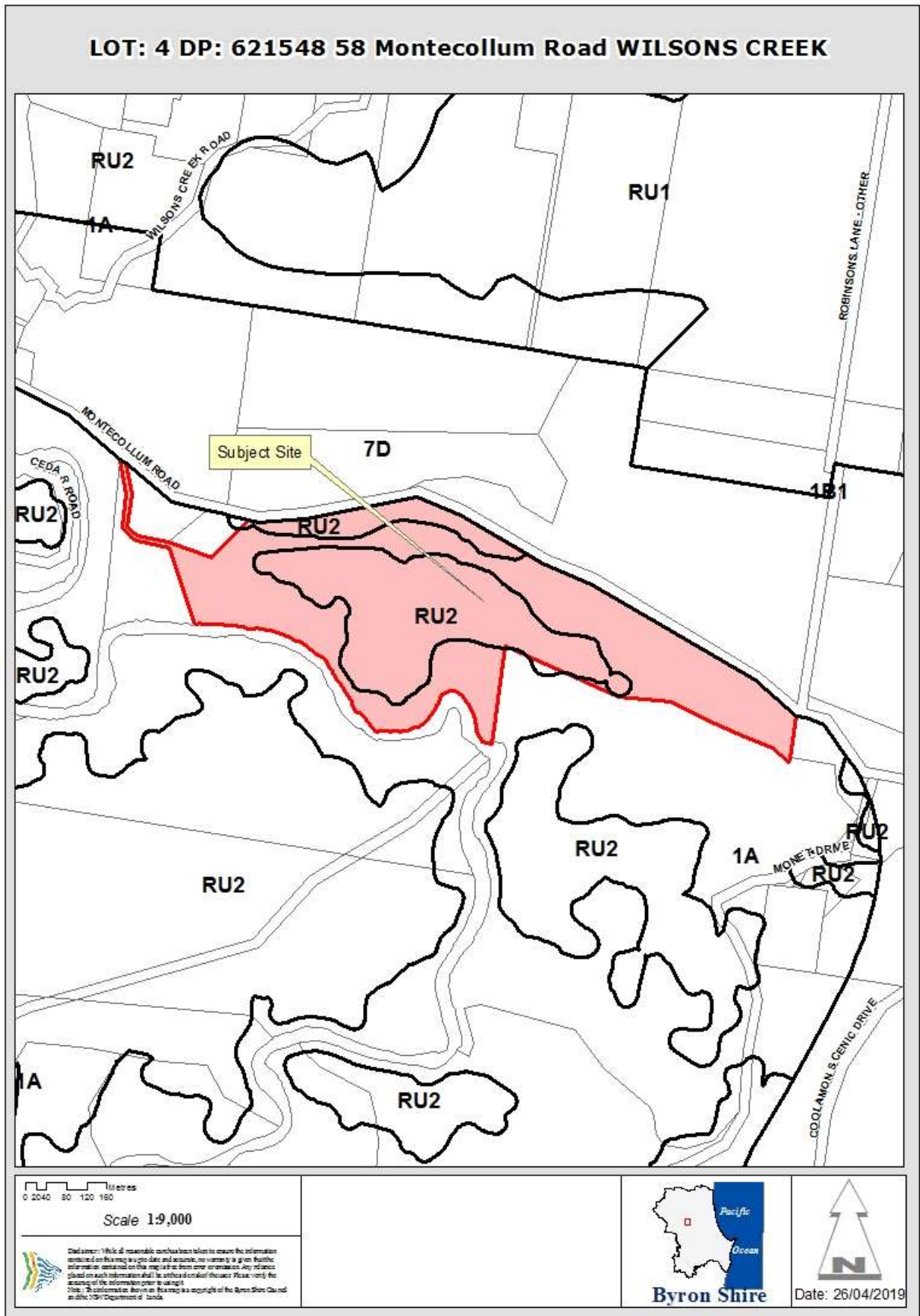
**RECOMMENDATION:**

**That, pursuant to Section 4.16 of the *Environmental Planning & Assessment Act 1979*, development application 10.2018.483.1 for rural tourist accommodation six (6) cabins and swimming pool, be granted consent subject to the conditions listed in Attachment 4 (E2019/79269).**

5

**Attachments:**

- 1 Report 16/05/2019 Planning PLANNING - 10.2018.483.1 Rural Tourist Accommodation Eight (8) cabins and pool, E2019/82623 
- 10 2 Report 15/08/2019 Council (Planning) PLANNING - Update on Resolution 19-209 Development Application 10.2018.483.1 Rural Tourist Accommodation Eight (8) Cabins and Swimming Pool at 58 Montecollum Road Wilsons Creek, E2019/82584 
- 3 Review Application 10.2018.483.1 - Amended Plans, E2019/79107 
- 4 Conditions of consent - 10.2018.483.1, E2019/79269 
- 15 5 Submissions received - 10.2018.483.1, E2019/81106 





## REPORT

**Assessment:**5 **1. INTRODUCTION****1.1. Background**

10 Development Application 10.2018.483.1 was reported to Council's Planning Meeting of 16 May 2019, with a recommendation that it be approved subject to conditions (Assessment report attached as Attachment 1). At that meeting, Council resolved (**19-2019**):

*That determination of application 10.2018.483.1 be deferred for the following reasons:*

1. *To review the road upgrade consent condition to consider ensuring the most regularly damaged segments are upgraded;*
- 15 2. *The submission by Tweed Byron Aboriginal Land Council be given due diligence and assessed;*
3. *A redesign be submitted of common entertaining area to minimise potential for gatherings and events and for noise attenuation; and*
- 20 4. *That staff review the number of cabins on the site and clustering arrangements of the cabins.*

Subsequent to the May meeting, the applicant modified the proposal from eight (8) cabins to seven (7) and reduced the size of the deck around the proposed pool.

25 Responses to the matters contained in this resolution were reported to Council's Planning Meeting of 15 August 2019 (Report attached as Attachment 2), again with a recommendation that the application be approved subject to conditions.

At that meeting, Council resolved (**Res 19-368**):

30 *That, pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, development application 10.2018.483.1 for Rural Tourist Accommodation Seven (7) Cabins and Swimming Pool, be refused for the following reasons:*

- 35 1. *The proposed development is not supported having regard to the relevant matters for consideration under clause 6.8 of Byron Local Environmental Plan 2014. The number of cabins, their location and access arrangements result in an increase in the intensity of development on the site and is considered to be inappropriate given the rural character of the property and the location generally.*
- 40 2. *The proposed development is considered to be inconsistent with the objectives of the RU2 Rural Landscape Zone in Byron Local Environmental Plan 2014 and is not supported for the same reasons as those listed in Reason 1 above.*
3. *The proposed development is considered to be inconsistent with controls in Development Control Plan 2014 including but not limited to: cabin aspect, cabin orientation, number of driveways to the property, cabin clustering arrangements, and potential road safety impacts as a result of the development.*
- 45 4. *The significant contravention of Development Control Plan 2014 is without justification and is likely to set an undesirable precedent for rural cabin development generally.*
5. *The site is not considered to be suitable for the development proposed given the same reasons listed in Reasons 1 - 4 above, and is not in the public interest.*

**1.2. The Site**

Land is legally described as LOT: 4 DP: 621548  
Property address is 58 Montecollum Road WILSONS CREEK  
Land is zoned: RU2 Rural Landscape / PART DM Deferred Matter (Zoned 1(a) General Rural under Byron LEP 1988)  
Land area is: 30.97 hectares  
Property is constrained by: Bushfire Prone Land,  
Drinking Water Catchment  
High Environmental Value Vegetation  
Key Fish Habitat (Wilson's Creek along southern property boundary; distant from proposed development site)

5 The site is located about 5km south-west of Mullumbimby, and is situated on an elevated site in the Koonyum Range. The site is partially cleared, with environmentally significant vegetation on the eastern ridgeline. The southern boundary is formed by Wilsons Creek.

10 Land uses in the surrounding area are a mixture of rural living, rural landsharing communities and a few rural tourist facilities. Two dwelling houses are located centrally on the site, with a number of sheds located nearby.



**Figure 1:** Aerial image of the site.



**Figure 2:** Location of proposed cabins 3-6 and swimming pool.



5 **Figure 3:** Location of proposed cabins 7-8.

## **2. REVIEW APPLICATION**

### **2.1. Revised submission**

10

The application for review was submitted with an updated plan set (Attachment 3) and a report addressing the reasons for refusal.

To support this submission, the proposal has been amended to:

- reduce the number of cabins from eight (8) to six (6);
- reduce the capacity of the pool from 120kL to 80kL; and
- remove the east pool terrace, with the associated earthworks and landscaping.

5 Otherwise, the proposed development remains as previously supported.

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

10 The application for review was publicly exhibited from 26 September to 9 October 2019. There were 52 submissions; 30 in support of the proposal and 21 objecting to the development.

Supporting submissions contained similar comments and themes, primarily expressing the following views:

15 *I consider the development a low impact small scale development that will contribute the local community and local business by bringing tourism to the Byron Shire hinterland.*

*I think this development will create more income to local tradesman, restaurants, cafes, council rates and more.*

20 *The proposed development is in accordance with the relevant planning controls that apply to the site and is unlikely to result in significant adverse impacts on the natural or built environment.*

Other supporting submissions noted the importance of a small-scale hinterland retreat as an alternate tourism experience, taking pressure from coastal towns and villages.

25 The table below summarises the issues raised in objection to the proposal

<b>Issue</b>	<b>Comment</b>
The development is not consistent with the zone objectives, and is not small scale	See discussions below in relation to zone objectives. It is concluded that the development, as proposed, is not inconsistent with the zone objectives.  The assessment below also addresses the scale of the proposal and concludes that, in accordance with the definition included in Clause 6.8 of BLEP, the development, as proposed, is considered to be small scale.
Inconsistent with rural character of the area	The consistency with rural character, and the potential for scenic impact, is discussed further in the body of this report.  The proposed cabin development will not be visible from any directly adjoining land (public or private) and will be viewed from the distant hills as small timber structures within existing cleared areas.  None of the proposed structures will protrude above a ridgeline, with parts of the site above and below the cabins vegetated. The additional tree planting required to accompany the development will further assist in this regard.
Traffic increase and associated safety & amenity issues – any road upgrade/ sealing should extend further past adjoining dwellings	Traffic issues have been subject to considerable assessment.  See further discussion in Section 2.3 of this report.


<b>Issue</b>	<b>Comment</b>
	<p>The increase in daily traffic volumes associated with this development is estimated to be minimal. While there is no published data regarding traffic generation associated with rural tourist cabins, it is considered that the rate applicable to motel units – 3.0 trips per day (RTA Traffic Generating Development) – is a reasonable standard to apply in the circumstances.</p> <p>Based on this, 6 cabins would generate an average of 18 vehicle trips per day.</p> <p>Conditions are recommended requiring road upgrade works to address safety and traffic efficiency issues on Montecollum Road. These upgrades will also reduce dust generation in the vicinity of the two adjoining dwellings at 70 and 80 Montecollum Road.</p> <p>Overall, Council’s Development Engineer has concluded that traffic and access issues can be adequately addressed.</p>
<p>Concerns around noise impacts, given proposed use and topography of the valley – need for a Conflict Risk Assessment (as per DCP B6.2.2)</p>	<p>Primary concern relates to patron noise associated with use of the pool and deck.</p> <p>The nature of the site’s topography is such that the pool area is ‘shielded’ to neighbours to the north by the hill behind, providing a solid ‘barrier’ that would restrict the ability of noise to carry to the north.</p> <p>The pool site is exposed to the south, across the adjacent valley. There is potential for loud noise to carry across this valley.</p> <p>The nature of the use, however, being low-key rural tourism, is unlikely to generate intrusive/offensive noise. The proponent has confirmed that there is no intention to pursue rural events and the site is not suitable for such events in any case (see further discussion below).</p> <p>Conditions of approval are recommended to limit noise.</p>
<p>Small scale – concern that management requirements are underestimated, suggesting that land owners will not be able to operate the venture as suggested</p>	<p>Management of 6 cabins will require the land owners’ time for bookings and patron communications, regular cleaning of the cabins, and general maintenance of the cabins and the property.</p> <p>Even at high occupancy rates, the cleaning of 6 cabins in between bookings could be undertaken by two people in the time between check out and check in.</p> <p>Other management requirements would be less intense and there is no reason to assume that the land owners could not adequately manage the property on an ongoing basis.</p>

<b>Issue</b>	<b>Comment</b>
Location is not suitable for tourism use – inconsistent with Rural Land Use Strategy 2018 because of slope.	<p>Section 3.1 of the recently adopted Rural Land Use Strategy states:</p> <p><i>“Future rural development will not be supported on sites, or areas within a site.....having slopes greater than 25%...”</i></p> <p>This policy has not, at this stage, been translated into a specific development control within the DCP.</p> <p>Two of the cabins (5 &amp; 6) are on slopes of around 27%. In the circumstances, this is not considered to be fatal to the application.</p>
Inclusion of a sofa bed in each cabin suggests each should be considered as a two-bedroom cabin	<p>Chapter D3.3.4 of DCP 2014 allows for the consideration of a maximum of 12 bedrooms. The proposal would be consistent with this even if each were considered as two bedrooms.</p> <p>The inclusion of a sofa bed does not, in itself, mean that each cabin should be considered as two-bedroom. It may allow small families to include children, but the design of the cabins in not conducive to any more intense occupation.</p>
Concern that the site will provide for events	<p>The proponent has stated that he is not interested in establishing the facility as an events site.</p> <p>To do such would require an additional, and separate, approval process.</p> <p>Councillors will be aware of the work currently underway in relation to defining appropriate sites for wedding venues in the rural area and implementing controls to manage events.</p> <p>While a detailed assessment has not been undertaken in relation to those draft provisions, it would be unlikely that the site could be considered suitable for a wedding venue, as the access road would likely not be suitable for buses.</p>
Environmental impacts associated with tourist use of swimming hole on Wilsons Creek, accessible from the property	Given the scale of the development and likely occupancy rates, adverse environmental impacts on the creek are not envisaged.
Amenity impacts – noise & dust	See commentary above and in Section 2.3 of this report. Potential impacts can be managed and appropriate conditions of consent are recommended.

**2.3. Review of Determination**

5 **Reason for refusal No. 1 - The proposed development is not supported having regard to the relevant matters for consideration under clause 6.8 of Byron Local Environmental Plan 2014. The number of cabins, their location and access arrangements result in an increase in the intensity of development on the site and is considered to be inappropriate given the rural character of the property and the location generally**

The provisions of clause 6.8 are addressed below:

Provision	Comment
<p>(1) <i>The objective of this clause is to ensure that tourism development in rural and natural areas is small scale and does not adversely impact on the agricultural production, scenic or environmental values of the land.</i></p>	<p>Commentary regarding 'small scale' is outlined below.</p> <p>There is currently no agricultural production occurring on the land, the majority of which is vegetated.</p> <p>The proposed cabins will occupy only a small component of the currently cleared parts of the land and the development, therefore, is not of a physical size that would impact on the ability to undertake agricultural production on the remaining cleared land.</p> <p>Similarly, given that no clearing is required, and that significant planting will be undertaken under a Biodiversity Conservation Management Plan (condition recommended in original assessment), the proposed development will not adversely impact the environmental values of the land.</p> <p>The site does have scenic values in the local area, with the photo below showing part of the southerly outlook from the upper level cabin sites, across the lower valley.</p>
	<p>The landscape in the foreground of the development site is dominated by the forested canopy. The ridges in the distance are vegetated with sporadic clearings containing</p>

<b>Provision</b>	<b>Comment</b>
	<p> dwellings and associated structures.</p> <p>The proposed cabin development will not be visible from any directly adjoining land (public or private) and will be viewed from the distant hills as small timber structures within existing cleared areas.</p> <p>None of the proposed structures will protrude above a ridgeline, with parts of the site above and below the cabins vegetated. The additional tree planting required to accompany the development will further assist in this regard.</p> <p>Overall, it is considered that the cabins as proposed will not have a significant impact on the scenic value of this area.</p>
<p>(2) <i>This clause applies to land in the following zones</i></p> <p>(a) <i>Zone RU1 Primary Production,</i></p> <p>(b) <i>Zone RU2 Rural Landscape.</i></p>	<p>The cabins are wholly within the RU2 zoned part of the site.</p>
<p>(3) <i>Development consent must not be granted to tourism development on land to which this clause applies unless the consent authority is satisfied that</i></p> <p>(a) <i>there is, or will be, adequate vehicular access to and from a road, other than a classified road, taking into account the scale of the development proposed, and</i></p> <p>(b) <i>the development is small scale and low impact, and</i></p> <p>(c) <i>the development is complementary to the rural or environmental attributes of the land and its surrounds, and</i></p>	<p>It is considered there will be adequate vehicular access to and from the site from Montecollum Road – See discussion below.</p> <p>Conditions to apply in relation to road upgrade and sealing.</p> <p>Small scale is defined for this purposes of this clause as: <i>a scale that is small enough to be generally managed and operated by the principal owner living on the property</i></p> <p>The application for review is supported by a submission outlining the management arrangements likely to be required, indicating that management of bookings, cleaning of cabins between occupants, and general maintenance of the cabins is likely to require less than half a day on average.</p> <p>The applicant maintains that the enterprise can be easily managed by the land owners, who reside on the land, and there is no valid reason to conclude otherwise.</p> <p>The local area has a steep vegetated character, with few dwellings sparsely located. It is not an agricultural area. Other than rural dwellings, there is a tourist development – Eqeleni Byron Hinterland retreat – located immediately to the north of the subject property.</p> <p>Scenic impacts of the proposal are discussed above. The</p>



<b>Provision</b>	<b>Comment</b>
<p>(d) <i>the development will not have a significant adverse impact on agricultural production, amenity or significant features of the natural environment.</i></p>	<p>cabins are all located within existing cleared areas and no vegetation removal is required. The requirement to plant 5,400 trees, in accordance with a Biodiversity Conservation Management Plan, will improve the environmental attributes of the property.</p> <p>The site has very little agricultural potential, given existing vegetation cover and slope.</p> <p>As discussed above, the development will not result in significant impacts on the scenic or environmental features of the land.</p> <p>The potential for amenity impacts is associated with noise and traffic.</p> <p>Traffic impacts would be associated with increased traffic volumes on what is currently a very quiet 'country lane', and the generation of dust from unsealed sections of the road.</p> <p>Amenity impacts would be most pronounced at the two adjoining properties at 70 and 80 Montecollum Road, given that access to four of the six cabins will come from the new driveway access off this road, to the east of these properties.</p> <p>As discussed above, traffic volumes associated with the completed development are assessed as being low impact. Additional traffic numbers will be a function of the ongoing occupancy rates for the development, and are estimated to be well within the roads capacity.</p> <p>The road upgrade recommendations of Council's Development Engineer, in addition to addressing safety and efficiency issues, will reduce dust potential through the requirement to seal the section of road in the vicinity of the adjoining dwellings.</p> <p>It is acknowledged that construction traffic has the potential to cause temporary amenity issues for these two dwellings, given the increase number of movements and need for trucks to deliver material etc.</p> <p>This impact will be temporary, and can be appropriately managed.</p>
<p>(4) <i>Development consent must not be granted to development for the purpose of tourism development on land to which this clause applies unless</i></p> <p>(a) <i>a lawfully erected dwelling house or dual occupancy (attached) is situated on the land, or</i></p> <p>(b) <i>a dwelling house may be erected on the land under this Plan.</i></p>	<p>There is a lawfully erected dwelling on the property.</p> <p>See commentary in original assessment report (Attachment 1), indicating that, in addition to the lawfully erected dwelling, there is a second dwelling on the property, which does not appear to have been approved.</p> <p>A condition was recommended requiring decommissioning of this second dwelling prior to the issue of an occupation certificate for the cabin development.</p>
<p>(5) <i>Development consent must not be granted to development under subclause (4) if the</i></p>	<p>No caretaker's dwelling is proposed. See comment above regarding the existing unauthorised second dwelling</p>

<b>Provision</b>	<b>Comment</b>
<p><i>development</i></p> <p>(a) <i>includes an ancillary caretaker's or manager's residence, or</i></p> <p>(b) <i>is for the purpose of more than 1 bed and breakfast accommodation.</i></p>	

**Reason for refusal No.2 - The proposed development is considered to be inconsistent with the objectives of the RU2 Rural Landscape Zone in Byron Local Environmental Plan 2014 and is not supported for the same reasons as those listed in Reason 1 above**

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The objectives of the RU2 Rural Landscape Zone are addressed below:

<b>Objective</b>	<b>Comment</b>
<i>To encourage sustainable primary industry production by maintaining and enhancing the natural resource base</i>	The property is not farmed. The proposed cabins do not significantly alter the farming potential of the land as the overall footprint is small in relation to the cleared parts of the land.
<i>To maintain the rural landscape character of the land.</i>	See commentary above. It is considered that the proposed development will not significantly impact on the rural landscape character of the locality.
<i>To provide for a range of compatible land uses, including extensive agriculture.</i>	Not directly relevant.
<i>To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality.</i>	The proposed development is small scale and will be subject to a Biodiversity Conservation Management Plan providing for the planting of 5,400 trees across the property (900 per cabin), in accordance with the Byron Rural Settlement Strategy 1998.
<i>To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.</i>	See discussion above. The proposed development will not result in significant impacts on the scenic amenity.

**Reason for refusal No. 3 - The proposed development is considered to be inconsistent with controls in Development Control Plan 2014 including but not limited to: cabin aspect, cabin orientation, number of driveways to the property, cabin clustering arrangements, and potential road safety impacts as a result of the development.**

10

These matters were considered in the original assessment report (Attachment 1), and further in the subsequent report to Council (Attachment 2).

15

In relation to Location and Siting (Chapter D3.3.4), the original report noted:

*The proposed development does not strictly accord with Prescriptive Measure 2(h), which requires tourist developments to be configured in a 'cluster' pattern and located, on average, no further than 80 metres apart on a north facing slope. The cabins for this particular development are clustered around the dwelling, but over a distance of approximately 150m on a south facing slope. The site layout for this development is mostly the result of site constraints, including steep topography and*

20

*zoning restrictions, as well as a desire to achieve optimal amenity for guests by taking advantage of views and breezes.*

*Despite the non-conformance with the numeric control, the proposal is considered to meet the underlying objectives and performance criteria of this part for the following reasons:*

- 5 • *The cabins are located within short walking distance to the existing dwelling and are capable of being managed by the resident/s of the property. A separate caretaker is not necessary.*
- 10 • *No significant impact on the ecological or environmental values of the land is likely to occur. A Biodiversity Conservation Management Plan is recommended as a condition of consent, which, if enacted, will likely result in improved environmental outcomes for the site.*
- 15 • *The proposed cabins are of a domestic scale and comply with the design and setback requirements specified in Chapter D2 Residential Accommodation and Ancillary Development in Rural Zones (D2.2.2) and the character and visual impact requirements (D2.2.3).*
- *Land use conflicts with adjoining properties, primarily by way of noise, traffic and light pollution, are able to be reasonably managed through the imposition of conditions of consent.*

Aspect/ Orientation:

Prescriptive measure 2(h)(ii) requires:

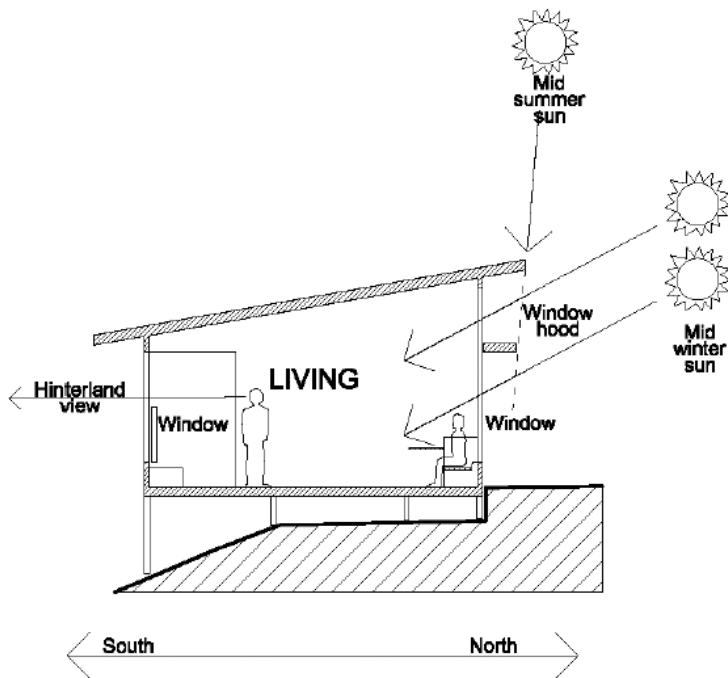
20 *all rural tourist accommodation is to be located on land having either a North, Northwest,/Northeast or Easterly aspect to maximise solar energy collection and minimise energy use;*

25 The whole of the property has a southerly aspect, which means that compliance with this measure is not possible.

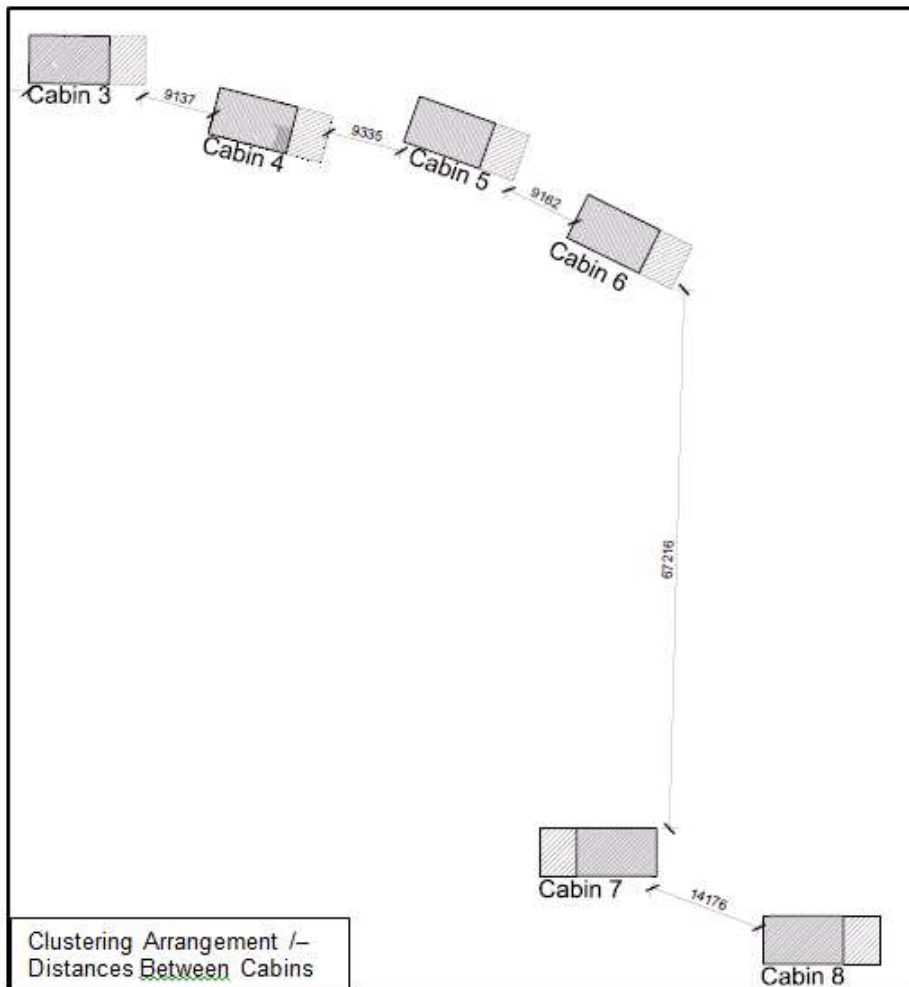
The intent of the measure is to “maximise solar energy collection and minimise energy use” for the cabins.

30 The cabins have been designed to maximise solar collection (see section below). The application is supported by a Multi-Dwelling BASIX Certificate which contains a range of commitments that will ensure thermal comfort and minimal energy use.

35 In these circumstances, it is considered that the variation to the requirement for northerly aspect is acceptable, given that the intent of the standard is met.



Typical Cabin Section



5 Distances Between Cabins

Number of driveways:

The DCP does not include a limit to the number of driveways. The Northern Rivers Local Government "Handbook for Driveway Access to Property" specifies:

*One driveway is generally permitted for each property adjoining a public road*

- 5 *A second driveway may be approved by the Council officer subject to consideration of site specific factors including development type, road hierarchy, street parking considerations and other Council policies.*

- 10 Council's Development Engineer has not raised any issue with the proposed second driveway access, subject to conditions relating to road upgrades and access design.

Cabin clustering:

- 15 Issues around clustering were addressed in detail in the report to Council of 15 August 2019 (Attachment 2) The clustering provisions established by Prescriptive Measure D3.3.4 2(h)(iii) of the DCP 2014 Chapter D3 Tourist Accommodation state:

*"rural tourist accommodation is to be arranged in a 'cluster' pattern and located on average no further than 80 metres apart with adequate vegetation screening between for privacy and amenity purposes"*

- 20 In this regard the northern cabins are sited less than 10 metres apart, cabin 7 is then sited 67 metres from Cabin 6 and Cabin 8 is 15 metres from Cabin 7. It is considered the cabins satisfy the clustering arrangements within the DCP, with no cabin more than 80 metres apart.

- 25 Road safety impacts:

Council's Development Engineer assessed the traffic impact report submitted with the application and concluded that traffic impacts would be minimal in terms of safety and efficiency, subject to recommended road upgrades in Montecollum Road.

- 30 Montecollum Road is classified as a Local Access Rural Road with an approximate capacity of 150 vehicles per day (Austroads). The first 450m of Montecollum Road east of Cedar Road is the main section of road that carries the majority of traffic east of Cedar Road. The road currently services 7 rural properties generating 63 vehicles per day (9 trips/ dwelling/ day) and 5.95 vehicles per peak hour. The development was previously assessed at generating a projected total traffic volume of 36 vehicles per day and 4.1 peak hour trips utilising Montecollum Rd. However the reduction in cabins to 6 will further reduce traffic being generated. The assessment noted that the total post-development volume of traffic on Montecollum Road (i.e. traffic from existing properties accessing this road together with traffic generated by the proposed development) would be in the order of 99 vehicles per day. It is considered that the development (as amended) will be well within the current capacity of the road at 150 vehicles per day.

- 45 The main safety concern on the road in its current state relates to the ability for vehicles to pass within the current width, particularly at bends. This can be improved by way of the road upgrades as recommended. Sealing of steeper sections and in the vicinity of neighbouring dwellings is also recommended, primarily to address amenity impacts such as dust, however sealing of the entire length of road, from the intersection with Cedar Road, is not warranted based on traffic generation associated with this development. Appropriate conditions of consent are recommended in relation to road upgrades.

- 50 **Reason for refusal No. 4 - The significant contravention of Development Control Plan 2014 is without justification and is likely to set an undesirable precedent for rural cabin development generally.**

Given the assessment above, and the reduction in cabin numbers to 6 it is concluded that the proposed development does not significantly contravene the provisions of DCP 2014. As such, it cannot be considered to be establishing an undesirable precedent.

5 **Reason for refusal No. 5 - The site is not considered to be suitable for the development proposed given the same reasons listed in Reasons 1 - 4 above, and is not in the public interest.**

10 As above, the assessment of this (and previous) reports concludes that the site is suitable for the development proposed, and therefore does not offend the public interest.

**2.4 Legal Implications**

15 Should the application be refused the applicant has a right of appeal under the Environmental Planning and Assessment Act 1979.

**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 **3 PLANNING ASSESSMENT CONCLUSION**

The request to formally review the application DA10.2018.483.1 has been undertaken in accordance with Division 8.2 (Reviews) under the EPA Act 1979, also having regard to relevant provisions of Section 4.15 (Evaluation).

25 Based on the assessment undertaken, it is recommended that, pursuant to Section 4.16 of the *Environmental Planning & Assessment Act 1979*, Development Application No. 10.2018.483.1, for rural tourist accommodation, 6 cabins, swimming pool and associated works, be granted consent subject to the attached conditions.

Report No. 13.11      **PLANNING - Development Application 10.2019.375.1 Alterations and additions to existing commercial development, including extension to outdoor dining area, Porter Street, Byron Bay**  
Directorate:            Sustainable Environment and Economy  
5 Report Author:        Rob Van Iersel, Major Projects Planner  
File No:                 I2019/1752

10 **Summary:**

At the Planning Meeting of 17 October 2019, Council resolved to defer determination of DA 10.2019.375.1 to enable further staff consideration of the proposal (**Res 19-453**).

15 Following that resolution, staff have met with the developers of Habitat to clarify the nature and extent of the outdoor dining proposal, particularly in regard to the use of this outdoor area and the relationship to liquor licensing.

20 Updated plans have been submitted to clarify the developers intent that 'the quadrangle' (i.e. the central courtyard within the eastern commercial precinct of Habitat) be available for general community use rather than being reserved for the exclusive use of the Barrio restaurant, and that the area proposed to be subject to a liquor license is restricted to a part of that area, located closest to the restaurant.

25 Based on this updated information, Development Application 10.2019.375.1 can now be determined. The staff assessment report which was included on the agenda of the Planning Meeting of 17 October is attached (Attachment 1).

30 That report recommends that consent be granted subject to conditions. Updated café area plans are now attached as Attachment 2, which reflect the clarification described above. Updated conditions of consent are also now included as Attachment 3 to this report.

NOTE TO COUNCILLORS:

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





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**RECOMMENDATION:**

**That, pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application 10.2019.375.1 for alterations and additions to existing commercial development, including expanded outdoor dining area, 1 Porter Street Byron Bay (Habitat), be granted consent subject to conditions in Attachment 3 (#E2019/79222).**

**Attachments:**

- 45 1 Previous Staff Assessment Report, E2019/82598   
2 Updated cafe area drawings - following report deferral, E2019/79173   
3 Updated Conditions of consent, E2019/79222   
4 10.2019.357.1 - Late submission of objection, E2019/82835 

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**REPORT**

A detailed description of the proposed development is contained in the previous staff assessment report. In summary, the application proposes:

- 5 1. Clarification of the extent of the outdoor dining area within the eastern commercial precinct at Habitat, covering the central outdoor quadrangle, to be available for use of the general public, Habitat workers and visitors for dining purposes, with the area adjacent to Barrio, located generally north/ north-east of the raised planter, being subject to an application to extend the liquor licensing associated with Barrio.
- 10 •
- 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.
- 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 •
- 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 [*Note. More definite opening hours are recommended in the Staff report – Attachment 1*]; and
- 
- 5. Codification of delivery times to 6:30am to 5pm daily.
- 

**Assessment:**

25 A detailed assessment of the development application, and public submissions made thereto, is contained in the staff report at Attachment 1. The only updates to that report relate to:

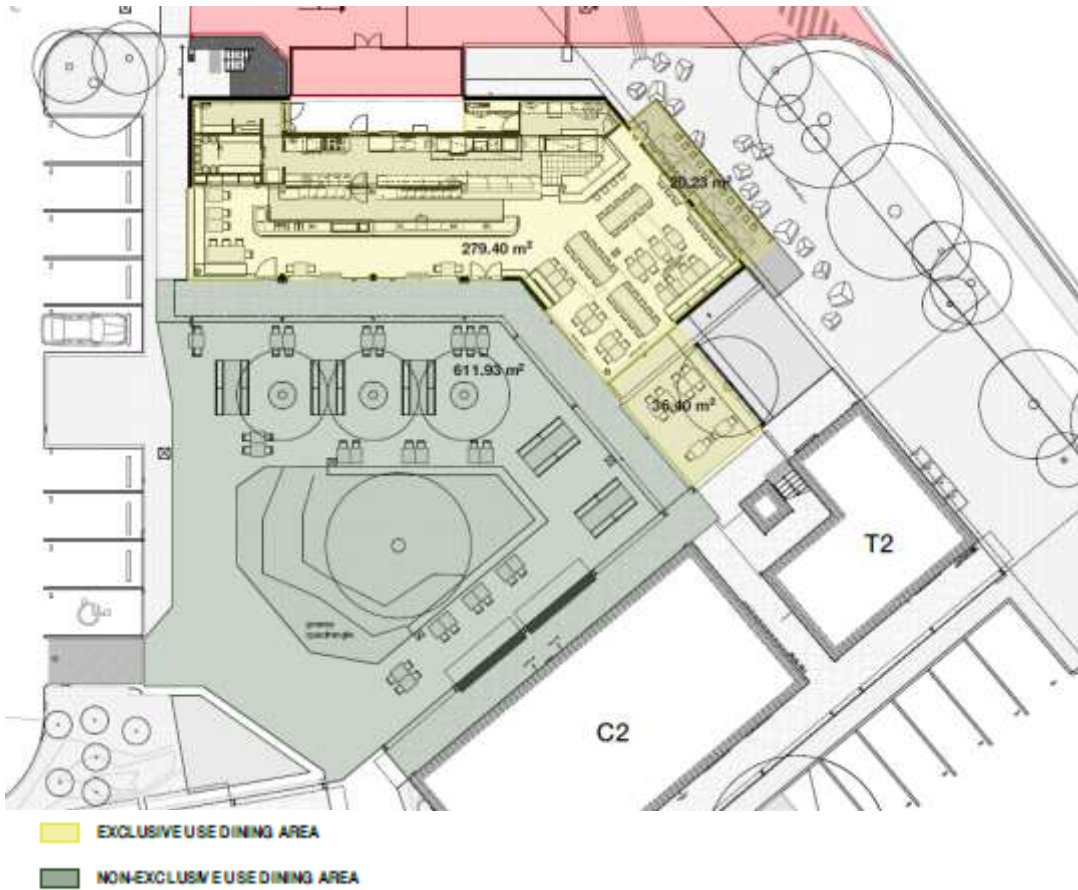
The outdoor dining area:

30 The proponent has now clarified the intent of this outdoor dining area (see below), highlighting the space that will be “exclusive use dining” – i.e. operated and managed by Barrio for their patrons; and the space that is proposed to be “non-exclusive dining area”. The non-exclusive area will be available to the general public and not limited to food obtained from Barrio.

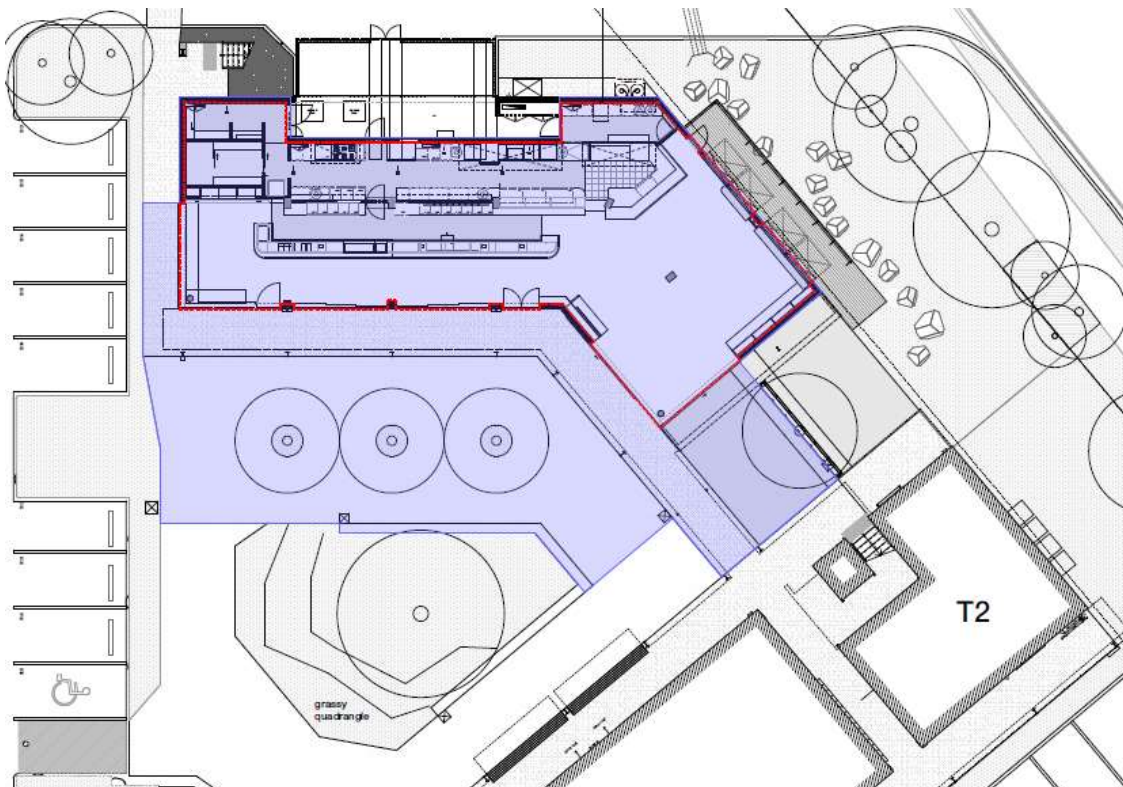
35 An artist’s impression of the extent of this area is shown within the updated Plan Set (Attachment 2).

40 An additional condition of consent is recommended to specify that this quadrangle area must be available at all times for workers and visitors to Habitat to use and that a sign to this effect is to erected in a prominent location.





5 The Plan Set also shows the part of this quadrangle that is proposed to be added to the existing Barrio liquor license:



Delivery Times:

As outlined in the previous report, restriction on delivery times has not been established by any previous conditions of consent. However, as part of the discussions associated with noise abatement, the proponent agreed in practice to restrict commercial deliveries to between 8am to 5pm.

The application proposes to 'codify' delivery times to 6:30am to 5:00pm daily.

Submissions to the application raise concern with noise impacts associated with this early delivery time.

The alterations to traffic direction in Penny Lane will, to some extent, assist in reducing noise from deliveries, as vehicles will enter the site from Wallum Street/ Porter Street, exiting via Penny Lane (with a boom gate and signage to prevent the opposite flow).

It is considered, however, that 7:00am is appropriate for the first deliveries, rather than 6:30am, and that garbage services continue to be restricted to 8:00am at the earliest.

This has been discussed with the applicant, who is happy to accept a condition in this regard.

Late Submission:

A submission was received on 31 October from a resident living within Habitat, containing concerns about noise from Barrio. The submission included a video showing the resident holding a noise meter on his first floor external balcony, which is oriented toward the outdoor dining area.

The noise readings range from around 49dB to 59dB. The video was recorded at 7:19pm on a Tuesday.

To provide context, the World Health Organisation indicates that a level of 55 dB or more immediately outside a residence with an open bedroom window is likely to cause sleep disturbance (Guidelines for Community Noise, WHO, 1999; reported in *Noise Impact Assessment Barrio Bar and Restaurant, Habitat Commercial Precinct, No 1 Porter Street, Byron Bay, NSW* Ref: 26/2019, prepared by Tim Fitzroy & Associates dated 4 July 2019).

The acoustic report submitted in support of this application established relevant noise criteria based on the measured background levels + 5dB.

The background, however, was measured external to Habitat, in the vicinity of existing residences on the eastern side of Bayshore Drive. For that purpose (i.e. to provide a threshold level limiting 'intrusive noise' at those external residences) a noise level of 45dB was adopted in the assessment report.

The report does not provide a background noise level that is relevant internally within Habitat.

While it is not expected that such a level would be significantly different to the external background level, it is reasonable to consider that existing development within Habitat, comprising a mix of commercial, retail and café uses, is inherently different in character to the wholly residential areas external and to the east.

The recommended conditions of approval include a requirement for doors and windows on both the eastern and western elevations as well as the southern door of Barrio to be closed from 6pm. A condition is also recommended requiring an update to the existing Noise Management Plan, to

implement practices within Barrio and in the outdoor dining area to minimise the generation of noise.

5 The updated Plan will also contain a requirement for ongoing noise monitoring, management of noise complaints and six-monthly reporting to Council regarding compliance. Council's enforcement policy will allow Council to take compliance action if required.

Further conditions are recommended:

- 10 • limiting operating hours for the external dining area to between 7am and 10pm;
- prohibiting live/amplified music within the outdoor dining area; and
- prohibiting the outdoor dining area from being used for functions.

15 Overall, it is considered that these conditions are sufficient to manage noise from the extended outdoor dining area.

**Conclusion:**

20 The previous staff report concluded that 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 clarifications discussed above affirm this conclusion, and the application is recommended for approval, subject to updated conditions of consent, listed in Attachment 3.

**Report No. 13.12**      **Memorandum of Understanding between Byron Shire Council and North Coast Community Housing**

**Directorate:**            Sustainable Environment and Economy

**Report Author:**        Shannon Burt, Director Sustainable Environment and Economy

5      **File No:**                I2019/1760

**Summary:**

10      The purpose of this report is to seek Council endorsement of a Memorandum of Understanding with North Coast Community Housing to facilitate both parties working together on affordable housing issues affecting the Byron Shire its community.


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**RECOMMENDATION:**

**That Council endorse the Memorandum of Understanding and approve of its signing by the Mayor along with North Coast Community Housing to facilitate work with Council on affordable housing issues affecting the Byron Shire (S2019/7504).**

**Attachments:**

20      1      Memorandum of Understanding - BSC and North Coast Community Housing, S2019/7504 

**REPORT**

Meeting the housing needs of the community is a key challenge for council as exemplified by the many housing affordability initiatives being undertaken in response.

5 <https://www.byron.nsw.gov.au/Community/Supporting-communities/Housing-Affordability-Initiatives#section-7>

10 North Coast Community Housing has approached Council about entering into a Memorandum of Understanding (MOU) to facilitate the parties working together on addressing the housing issues affecting the Byron Shire and its community.

15 North Coast Community Housing (NCCH) is a not-for-profit company managing social and affordable housing development for people in housing need on very low and low and moderate incomes in the far north coast of New South Wales. The company was formed in 1984 and then amalgamated with Clarence Valley Community Tenancy Schemes in 1997 as part of the NSW Community Housing Growth Strategy. The Company is not-for-profit and limited by guarantee. <https://www.ncch.org.au/about-us/>

20 The MOU is to be a non binding agreement with the following scope proposed:

- Council and NCCH commit to maintain a positive and cooperative working relationship with a goal of assisting residents of Byron Shire through the provision of social and affordable housing
- 25 • Council and NCCH commit to where practicable working collaboratively to deliver program and events to support the needs of very low and low income households in social and affordable housing
- Council and NCCH recognise the importance of delivering appropriate affordable housing and will work together to support the delivery of quality affordable housing in a timely and efficient manner
- 30 • Both parties will act in accordance and in the spirit of the MOU.

Council has a history of entering into MOUs with various state agencies and organisations.

35 The benefits of an MOU (to both parties) can include:

- Greater levels of trust, respect and understanding between the parties.
- Enhanced planning processes for community development and the delivery of dynamic programs, activities and services involving the broader community.
- 40 • Increased knowledge, information and resource sharing between the parties.
- Achievement of mutually desired outcomes

A full copy of the MOU proposed is attached.

45 **STRATEGIC CONSIDERATIONS**

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

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 4: We manage growth and change responsibly</b>		4.2	Support housing diversity in appropriate locations across the Shire	4.2.1		Establish planning mechanisms to support housing that meets the needs of our community

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

- 5 The Supporting Partnerships Policy was adopted by Council in 2017 with the purpose of facilitating open and transparent partnerships to deliver services to the community.

The policy establishes a framework to assess if a partnership approach is the best project delivery mechanism to achieve economic, social, environmental and cultural/governance outcomes.

10

Under the terms of the Policy, a MOU is an acceptable form of agreement between parties.

***Financial Considerations***

- 15 Not applicable.

***Consultation and Engagement***

Not applicable.

# BYRON SHIRE COUNCIL

**Report No. 13.13**      **PLANNING - Development Application 10.2019.196.1 Use of Existing Buildings as a Detached Dual Occupancy and Demolition / Removal of Five (5) buildings at 541 Friday Hut Road Possum Creek**

**Directorate:** Sustainable Environment and Economy  
**Report Author:** Dylan Johnstone, Planner  
Chris Larkin, Manager Sustainable Development  
**File No:** I2019/1807

**Proposal:**

**Proposal description:** Use of Existing Buildings as a Detached Dual Occupancy and Demolition / removal of five (5) buildings at 541 Friday Hut Road Possum Creek

**Property description:** LOT: 3 DP: 252483  
541 Friday Hut Road POSSUM CREEK

**Parcel No/s:** 26280

**Applicant:** Ardill Payne & Partners

**Owner:** Mr S L Bassett & Ms V Polasek

**Zoning:** RU2 Rural Landscape / PART DM Deferred Matter – Byron LEP 2014

**Date received:** 18 April 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: 6/5/19 to 26/5/19
- Submissions received: One (1)

**Planning Review Committee:** Not applicable

**Concurrent approvals (S68/138):** Not applicable

**Variation request**  Clause 4.6       SEPP 1       Not applicable  
(Clause 4.2D of BLEP 2014)

**Delegation to determine** Council

**Issues:**

- The proposed detached dual occupancy buildings are located more than 100 metres apart, which does not comply with Clause 4.2D of BLEP 2014. A Clause 4.6 variation request was submitted with the application
- Building Information Certificate required for existing works
- Bushfire Prone Land

**Summary:**

15 This development application seeks consent to use two buildings as dwelling houses in the form of a detached dual occupancy.

One of these buildings was previously approved and constructed as a 'Pottery Shed' but has since been altered for residential use without consent. The other building is described as a 'Barn' by the

applicant and it also has been converted to a residential use with further works partly undertaken already without approval and other works yet to be completed.

5 This development application also includes the demolition / removal of five other structures on the land including two other 'dwellings'.

10 A previous Development Application for this property was refused by Council on the 15 December 2017, with an appeal dismissed by the Land and Environment Court 19 March 2019 in relation to the refusal of DA.2017.602.1, *Ardill Payne & Partners v Byron Shire Council* [2019] NSWLEC 1125. This development application is in response to the above appeal dismissal.

15 The proposed development complies with all of the relevant provisions of Byron LEP 2014 and Byron DCP 2014 except for the separation distance between dwellings to be considered as a dual occupancy. In this regard the dwellings are situated some 113 metres apart with Council's development control requiring a 100 metre separation distance. The applicant has submitted a Clause 4.6 variation to the development standard which is discussed in the report. There are reasons in terms of site slope as why the clause 4.6 application should be supported. It is also noted with the removal / demolition of a number of other buildings from the land this will bring the development into a compliant arrangement consistent with the character of other hinterland development in the Shire.

20 It is recommended that a Deferred Commencement Consent be granted subject to conditions.

25 NOTE TO COUNCILLORS:




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

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**RECOMMENDATION:**

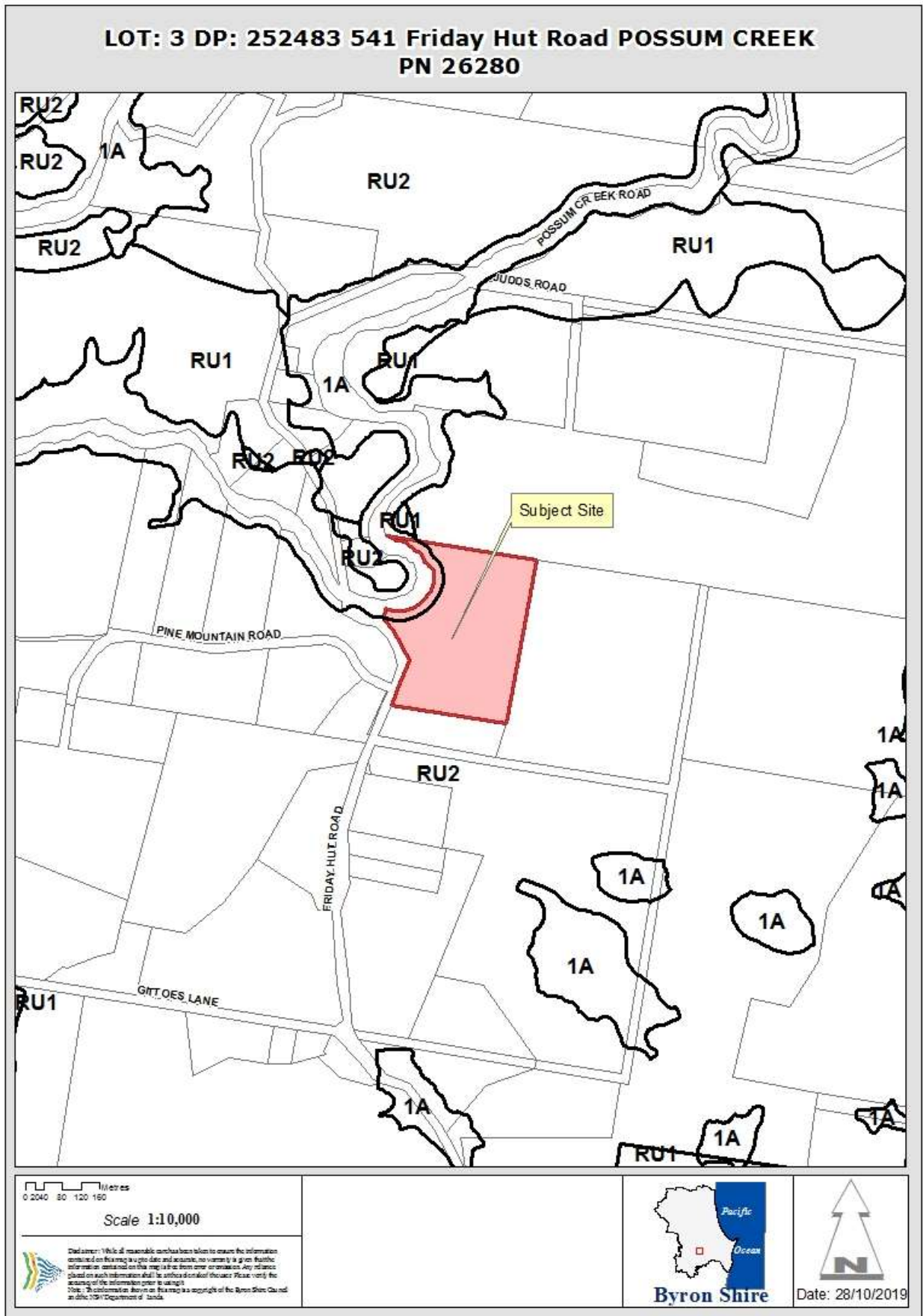
**That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, development application 10.2019.196.1 Use of existing buildings as a Detached Dual Occupancy and Demolition / Removal of five (5) building, be granted Deferred Commencement Consent (deferral period 12 months) subject to conditions (Attachment 2 E2019/79037).**

**Attachments:**

- 35
- 1 10.2019.196.1 - Proposed Plans, E2019/80345 
  - 2 10.2019.196.1 - Proposed conditions of consent, E2019/79037 
  - 3 10.2019.196.1 - Submission received, E2019/79047 

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**Assessment:****1. INTRODUCTION****5 1.1. History/Background**

The following past Building Applications have been submitted over the subject site:

**BA 209/79** Building Application for a workshop and studio, lodged 8 June 1979.

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

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

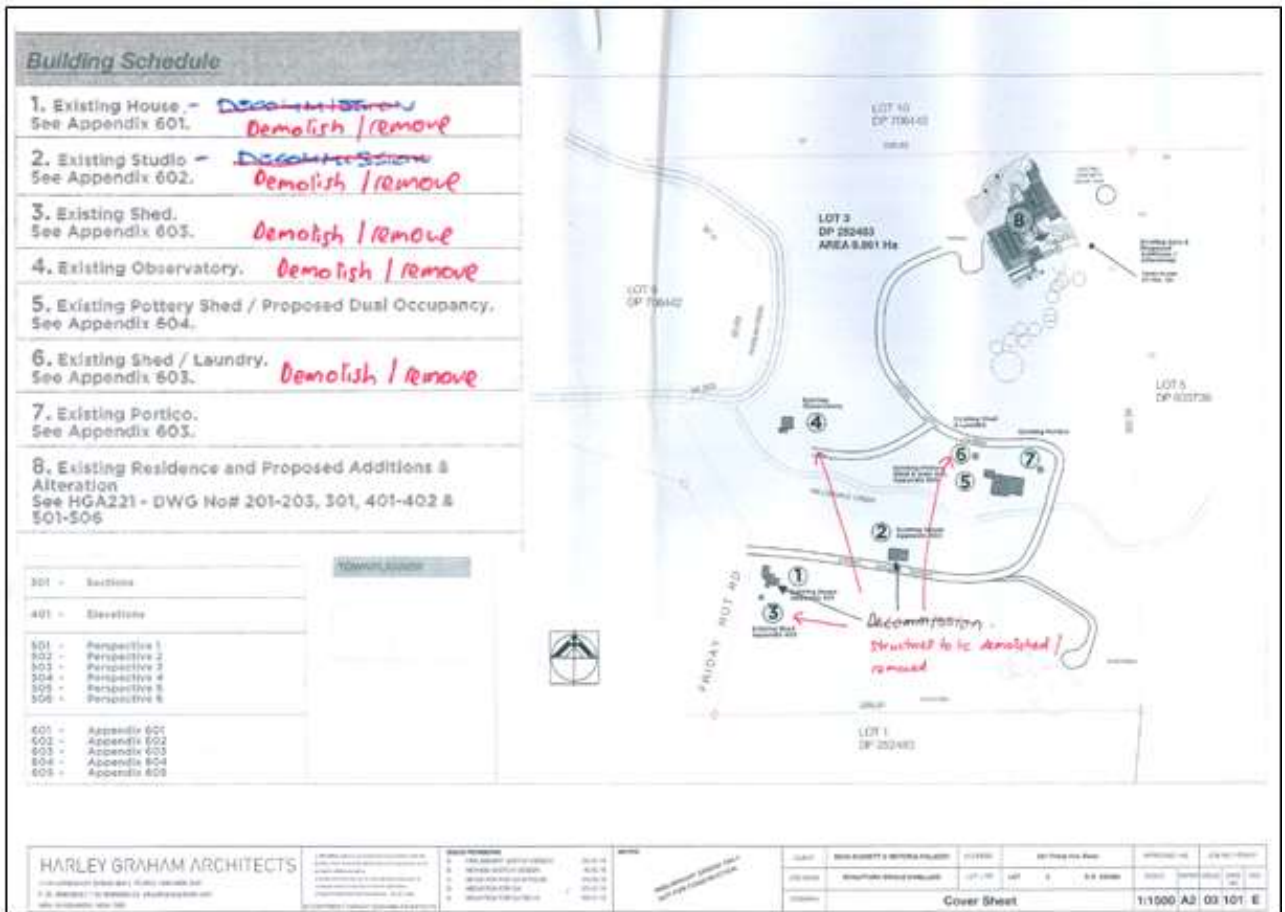
**BA 588/87** Building Application in-ground swimming pool, determined 10 November 1987.

15 More recently, **DA.2017.602.1** which sought approval for *conversion of existing shed (including alterations and additions) to create dwelling house, in-ground swimming pool, change of use of shed to dual occupancy, change of use of studio to holiday cabin, change of use of house to holiday cabin and construction of four (4) new holiday cabins* at the subject site was refused by Council on 15 December 2017. In essence, the purpose of that application was to regularise the habitable uses that were occurring in buildings not approved for that purpose and to construct the four additional holiday cabins.

20 The application was refused for the following reasons:

- 25 1. Section 76A of the *Environmental Planning and Assessment Act 1979* provides that specified development may not be carried out except with development consent, and that a person must not carry out development on land (to which that provision applies) unless such consent has been obtained and is in force. The submitted Development Application seeks retrospective development consent for conversions which have already been carried out and development consent is unable to be granted.
- 30 2. Pursuant to Section 79C (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the application fails to demonstrate that the subject land is suitable for the proposed development having regard to potential land contamination and Clause 7 of State Environmental Planning Policy No.55 (Remediation of Land), including that a preliminary investigation of the subject land has not been submitted in accordance with the contaminated land planning guidelines.
- 35 3. Pursuant to Section 79C (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the application fails to demonstrate that the proposed development is satisfactory having regard to the objectives of the RU2 Rural Landscape Zone of Byron Local Environmental Plan 2014.
- 40 4. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed dual occupancy (detached) dwellings are located more than 100 metres apart contrary to 4.2D(2) of Byron Local Environment Plan 2014.
- 45 5. Pursuant to Section 79C (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the application fails to demonstrate compliance with Clause 6.8 of Byron Local Environmental Plan 2014. Internal floor plans and elevation plans of the proposed and existing development have not been provided.
- 50 6. Pursuant to Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the application fails to demonstrate compliance with Byron Development Control Plan 2014 Sections D2.2.1, D2.2.3, D2.3.3, D3.3.4, D2.5 and D2.5.2.

- 7. Pursuant to section 79C (1)(b) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been submitted to demonstrate that the proposed development is of a scale and nature to be compatible with the rural landscape and character of the area.
- 5 8. Pursuant to section 79C(1)(c) of the *Environmental Planning and Assessment Act 1979*, the application fails to demonstrate that the subject site is suitable for the proposed development having regard to potential site contamination, character, visual impact, noise and disturbance for neighbouring residents.
- 10 9. Pursuant to section 79C (1)(e) of the *Environmental Planning and Assessment Act 1979*, the application fails to demonstrate that the built form and environmental impacts of the proposed development are consistent with the public interest.
- 15 10. The submitted Development Application has not been accompanied by an appropriate BASIX Certificate for all BASIX affected development to fulfil the requirements of Clause 50 and Schedule 1 (Clause 2A) of the *Environmental Planning and Assessment Regulations 2000*.



20 **Figure 1: Site Layout Plan and Building Schedule**

Subsequently, on 19 March 2019, a Class 1 appeal in relation to the refusal of DA.2017.602.1, *Ardill Payne & Partners v Byron Shire Council* [2019] NSWLEC 1125 was dismissed by the Court.

25 At the time of the hearing, the following buildings were occupied for residential purposes or capable of habitation (refer to Figure 1 image):

- 1. Existing House
- 2. Existing House

- 4. Observatory
- 5. Pottery Studio
- 8. Barn

5 The finding of this Judgment was that Buildings 2, 4, 5, and 8 did not have approval for residential purposes.

**1.2. Description of the proposed development**

10 This application seeks approval for use of the Pottery Shed (Building 5) as a dwelling house, noting that these works have already been completed, and use of the Barn (Building 8) and other additions already completed also as a dwelling house to make a detached dual occupancy.

This application also seeks the demolition or removal of five other structures on the property.

15 The five structures (as indicated on the submitted site plan) proposed to be demolished / removed are:

- Building 1 – existing dwelling
- Building 2 – existing dwelling
- Building 3 – existing shed
- 20 Building 4 – existing observatory
- Building 6 – existing shed/laundry

25 Consent is sought to use buildings 5 and 8 as a detached dual occupancy. Building 5 comprises is two storey structure consisting of three bedrooms, modest kitchen and living area, bathroom, ensuite and laundry. A spa is also associated with this dwelling. This building was previously approved as a Pottery Studio however at some time in the past it has been converted to a dwelling house without approval.

30 Building 8 which is a more recent addition to the lands and is the larger of the two dwellings situated over two levels. It consists of 5 bedrooms, two distinct living areas, a large sunroom, media room, gym, kitchen and dining areas and car parking for three vehicles undercover. External to the dwelling a “reflections pool” is proposed adjoining a pergola structure and a swimming pool. Structurally a significant portion of this dwelling has already been constructed; however a Stop Work Order has been issued on the land owner, whilst the various planning irregularities are being resolved. The dwelling when completed will have a floor area of 852 m<sup>2</sup> with 211 m<sup>2</sup> comprising a  
35 sculptured hallway linking the upper level part of the dwelling with the lower level.

The applicant originally proposed to only decommission Buildings 1 and 2, however following further discussion with the applicant it is now proposed to remove or demolish buildings 1, 2, 3, 4 and 6. For further details see Figure 1 above.

**1.3. Description of the site**

Land is legally described as	LOT: 3 DP: 252483
Property address is	541 Friday Hut Road POSSUM CREEK
Land is zoned:	RU2 Rural Landscape / PART DM Deferred Matter
Land area is:	8.861 ha
Property is constrained by:	Bushfire prone land High Environmental Value; and Cattle Dip Buffer

45 The subject land is described as Lot 3 DP 252483 and is commonly known as No. 541 Friday Hut Road, Possum Creek. The subject land is irregular in shape with frontages to Friday Hut Road and Possum Creek and has an area of 8.861ha. Friday Hut Road is a constructed rural road with a bitumen seal and grass/gravel shoulders.

The level of the site includes mild and moderate slopes with small areas of relatively level land. Parts of the site are covered by native vegetation which is mapped as bushfire hazard. There are a number of free standing buildings on the site.

5 Existing on the subject land are a number of buildings, structures and improvements, the location of which are shown on the contour and detail survey and Figure 1 above, including:

- Building 1 - double storey timber and tin roof dwelling house (Gate House)
- 10 • Building 2 - single storey colorbond and tin roof shed with loft (Studio)
- Building 3 - shed
- Building 4 - double storey timber and tin roof building (Observatory)
- Building 5 - split level, two storey timber and metal roof studio (Pottery Studio)
- Building 6 - Shed / laundry
- 15 • Building 7 - Portico
- Building 8 - single storey colorbond and tin roof shed (Barn)
- Building 8 - single storey sandstone and timber and tile roof dwelling house (Cottage)

20 Buildings 1, 2, 5 and 8 were at the time of the last site inspection appeared to be capable of being used for residential purposes and Building 4 (Observatory) although empty was also capable of being used for residential purposes.

Access to the site is via a driveway to Friday Hut Road. The site is partly cleared and partly covered in bush. Willowvale Creek dissects the subject land, generally in an east-west direction.

25 The site is about 13km west of Byron Bay, situated within rural environments that is characterised by a mix of cleared grazing land, stands of bushland, small horticultural farms and rural dwellings on rural lots varying in size.

**2. SUMMARY OF REFERRALS**

<b>Referral</b>	<b>Issue</b>
Environmental Health Officer	No objections. Should the application be approved, conditions apply in relation to driveway and access issues.
Development Engineer	No objections. Should the application be approved, conditions apply in relation to driveway and access issues.
Building	No objections. Should the application be approved, deferred commencement condition to apply in relation to obtaining a Building Information Certificate within 6 months of the date of consent being issued. Also a condition requiring inspection of all structures prior to issue of an Occupation Certificate is recommended.
Rural Fire Service (100B/4.14/4.14)	No objections. Should the application be approved, conditions apply.
NSW Department of Industry (Crown Lands & Water Division)	No objections provided the proponent does not: <ul style="list-style-type: none"> <li>• encroach upon the Crown land,</li> </ul>

Referral	Issue
	<ul style="list-style-type: none"> <li>remove any vegetation from the Crown land,</li> <li>stockpile materials, equipment or machinery on the Crown land,</li> <li>use the Crown land for access purposes,</li> <li>direct stormwater discharges to the Crown land, or</li> <li>use the Crown land as Asset Protection Zone.</li> </ul>

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

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

**3.1 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 not mapped as containing Koala habitat by Council's Eview system. Less than 15% of the vegetation on the site is considered to be potential koala habitat. It is considered a KPOM is not required for the site.		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
State Environmental Planning Policy (Primary Production and Rural Development) 2019	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

10 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 as it applies to the subject land and the proposed development.

Clause	Requirement	Comment
Clause 2.3 Zone objectives and land use table	RU2 – Rural Landscape / Part DM Deferred Matter.  <b>Zone Objectives:</b> <ul style="list-style-type: none"> <li>To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.</li> <li>To maintain the rural landscape character of the land.</li> <li>To provide for a range of compatible land uses,</li> </ul>	A dual occupancy (and ancillary swimming pool) is permissible in the RU2 zone.  <b>A condition of consent is recommended to require use of this building as a single dwelling and that the bar area should not be fitted with any cooking facilities.</b>

	<p><i>including extensive agriculture.</i></p> <ul style="list-style-type: none"> <li><i>To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality.</i></li> <li><i>To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.</i></li> </ul>	<p>In terms of the objectives:</p> <p>It is recognised that the site is not currently used for rural purposes and does not appear to have been used for this purpose for many years. The site does not adjoin sites used for rural purposes and the subject application will unlikely alter the productivity potential for the land.</p> <p>The proposal is consistent with the rural character of surrounding lands which contain dwellings and dual occupancies on small rural holdings.</p> <p>There is no concern raised with respect to land use compatibility. The proposed dual occupancy use, being residential occupation would not be incompatible with existing uses at the site or on surrounding land.</p> <p>This objective is not applicable as tourism accommodation is not proposed under the subject application.</p> <p>It is considered that the proposal including either the removal or demolition of 5 buildings on the land is consistent with existing development in the locality and therefore will not have a significant impact on the scenic quality of the site and surrounding lands.</p>
<p>4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings</p>	<p>The minimum lot size for:</p> <ul style="list-style-type: none"> <li>Dual Occupancy (attached) – 4,000m<sup>2</sup></li> </ul>	<p>Yes</p> <p>Site area is 8.861ha</p>
<p>4.2A Erection of dwelling houses and dual occupancies on land in</p>	<p>(3) Development consent must not be granted for the erection of a dwelling house or a dual occupancy on land to which this clause applies unless the land:</p> <ul style="list-style-type: none"> <li>a. is a lot that is at least the minimum lot size shown on the <a href="#">Lot Size Map</a> in relation to that</li> </ul>	<p>The subject property is contained within Schedule 7 (1976) of LEP 1988 and as such the site is confirmed to have a dwelling entitlement</p>

<p>certain rural zones</p>	<p>land, or</p> <ul style="list-style-type: none"> <li>b. is a lot created under this Plan (other than under clause 4.2 (3)), or</li> <li>c. is a lot created before this Plan commenced and on which the erection of a dwelling house or a dual occupancy was permissible immediately before that commencement, or</li> <li>d. is a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house or a dual occupancy would have been permissible if the plan of subdivision had been registered before that commencement, or</li> <li>e. would have been a lot referred to in paragraph (a), (b), (c) or (d) had it not been affected by:             <ul style="list-style-type: none"> <li>i. a minor realignment of its boundaries that did not create an additional lot, or</li> <li>ii. a subdivision creating or widening a public road or public reserve or for another public purpose, or</li> <li>iii. a consolidation with an adjoining public road or public reserve or for another public purpose.</li> </ul> </li> </ul>	<p>consistent with sub clause 3(c).</p>
<p>Clause 4.2D Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2</p>	<p>(1) <i>The objectives of this clause are as follows:</i></p> <ul style="list-style-type: none"> <li>(a) <i>to provide alternative accommodation for rural families and workers,</i></li> <li>(b) <i>to ensure that development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land,</i></li> <li>(c) <i>to set out consent considerations for development of dual occupancies (detached) and secondary dwellings to address matters such as access, siting, land suitability and potential impacts.</i></li> </ul> <p>(2) <i>Development consent must not be granted to development for the purpose of a dual occupancy (detached) or secondary dwelling on land in Zone RU1 Primary Production or Zone RU2 Rural Landscape unless the consent authority is satisfied that:</i></p> <ul style="list-style-type: none"> <li>(a) <i>the development will not impair the use of the land for agriculture or rural industries, and</i></li> <li>(b) <i>each dwelling will use the same vehicular access to and from a public road, and</i></li> <li>(c) <i>any dwellings will be situated within 100 metres of each other, and</i></li> <li>(d) <i>the land is physically suitable for the development, and</i></li> <li>(e) <i>the land is capable of accommodating the on-site disposal and management of sewage for the development, and</i></li> <li>(f) <i>the development will not have an adverse impact on the scenic amenity or character of the rural environment.</i></li> </ul>	<p>The proposed dual occupancy dwellings are greater than 100m in distance from each other, approximately 113m apart as such, the proposal does not comply with Section 4.2D(2)(c).</p> <p>A request for variation to this development standard has been made by the applicant in accordance with Clause 4.6 of the LEP and is discussed below.</p> <p>It is recognised that the site will not impair the agricultural potential of the land.</p> <p>The development will be serviced by a single existing access to Friday Hut Road.</p> <p>The application has demonstrated that the land is physically suitable for the development and that the land is capable of suitably accommodating wastewater generated by the proposal</p>



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4.3 Building Height	Maximum permitted building height – 9m	Yes – 7m
4.6 exceptions to Development Standards	Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.	Clause 4.6 submitted to vary Clause 4.2D(c).  Refer to assessment below.
5.16 Subdivision of, or dwellings on, land in certain rural, residential or environmental protection zones	<p>(3) A consent authority must take into account the matters specified in subclause (4) in determining whether to grant development consent to development on land to which this clause applies for either of the following purposes:</p> <ul style="list-style-type: none"> <li>a. subdivision of land proposed to be used for the purposes of a dwelling,</li> <li>b. erection of a dwelling.</li> </ul> <p>(4) The following matters are to be taken into account:</p> <ul style="list-style-type: none"> <li>a. the existing uses and approved uses of land in the vicinity of the development,</li> <li>b. whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,</li> <li>c. whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),</li> <li>d. any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c).</li> </ul>	<p>N/A</p> <p>Proposed alterations and additions to create dual occupancy (e.g. two dwellings).</p> <p>The objective of this clause is to <i>minimise potential land use conflict between existing and proposed development</i>. The proposed dual occupancy use would not be incompatible with existing uses at the site or surrounding land should the built form be found acceptable.</p>
6.5 Drinking Water Catchment	<p>(3) In deciding whether to grant a development application for development on land to which this clause applies, the consent authority must consider the following:</p> <ul style="list-style-type: none"> <li>a. whether or not the development is likely to have any adverse impact on the quality and quantity of water entering the drinking water storage, having regard to the following: <ul style="list-style-type: none"> <li>i. the distance between the development and any waterway that feeds into the drinking water storage,</li> <li>ii. the on-site use, storage and disposal of any chemicals on the land,</li> <li>iii. the treatment, storage and disposal of waste water and solid waste generated or used by the development,</li> </ul> </li> <li>b. any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</li> </ul> <p>(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:</p> <ul style="list-style-type: none"> <li>a. the development is designed, sited and will be managed to avoid any significant adverse impact on water quality and flows, or</li> <li>b. if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact,</li> </ul>	<p>The proposal has been reviewed by Council's Environmental Health Officer and no issues have been raised with respect to drinking water catchment matters. An On-site Wastewater Management was submitted with the application by Greg Alderson &amp; Associates dated 19<sup>th</sup> October 2017 which demonstrates that wastewater generated by the dual occupancy development can be adequately managed.</p> <p>It was noted however that the applicant has not applied to install/upgrade the subject wastewater management systems and therefore it is recommended that a condition be required to ensure that prior to the issue of a building certificate for the development an approval to install the system must be obtained from Council pursuant to Section 68 of the Local Government Act (1993).</p>

	or c. if that impact cannot be minimised—the development will be managed to mitigate that impact.	
6.6 Essential Services	Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required: <ul style="list-style-type: none"> <li>a. the supply of water,</li> <li>b. the supply of electricity,</li> <li>c. the disposal and management of sewage,</li> <li>d. stormwater drainage or on-site conservation,</li> <li>e. suitable vehicular access.</li> </ul>	The subject site is serviced by electricity and telephone connections; however reticulated water or sewerage connections are not available. An on-site effluent disposal report has been submitted detailing that on-site effluent disposal is able to provide for the proposal.

**Clause 4.6: Variation to development standard – Clause 4.2D**

5 The proposal does not comply with Clause 4.2D - Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2 of BLEP 2014. Specifically, the proposal does not comply with the numerical requirement under subclause 2(c) that requires “*any dwellings will be within 100 metres of each other*”.

10 Pursuant to clause 4.6(3) of BLEP 2014 development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- 15
- (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 development standard.*

Further, pursuant to Clause 4.6(4) the consent authority must be satisfied that:

20 *Development consent must not be granted for development that contravenes a development standard unless:*

- (a) *The consent authority is satisfied that:*
- 25
- (i) *the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (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.*

30 In relation to the matters required to be demonstrated by 4.6(3), Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 reinforces his previous decision In *Wehbe v Pittwater Council* [2007] NSWLEC 827 where he identified five commonly invoked ways of establishing that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The most common is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

35 The applicant’s written justification for the departure from the standard is summarised below.

The proposal is in full compliance with all development standards contained within BLEP 2014 (apart from 4.2D) and in full compliance with all applicable design elements contained within DCP 2014. The proposal does not create any adverse impacts on surrounding properties or rural character which would suggest that there are sufficient environmental planning grounds to justify contravening the subject development standard.

- 5 • The proposed dual occupancy will provide alternative accommodation for rural families.
- The proposed variation is only 13.9m when measured from the closest points.
- 10 • The proposed development is of a scale and nature that is compatible with the rural character and environmental capabilities of the land.
- The proposal has no adverse impacts on agricultural potential of the subject or adjacent properties.
- Each dwelling has the same vehicular access to and from a public road.
- The land is physically suitable for the development.
- 15 • It has been demonstrated that the land is capable of accommodating the on-site disposal and management of sewerage.
- The development has no adverse impact on scenic amenity or character of the rural environment.
- 20 • Compliance with the standard is not going to achieve a better outcome in terms of primary production potential, rural character and environmental capabilities of the land.
- The proposed variation will not result in any unreasonable amenity impacts for any neighboring properties.
- The proposed variation is minor and will not be perceptible to the broader community in the local landscape or streetscape.
- 25 • The proposed building is in full compliance with the objectives of clause 4.2D of BLEP.
- The proposal complies with all other controls contained within LEP 2014 and DCP 2014.

Below is an assessment against the applicant's written justifications for the contravention of the development standard stepping through the requirements of Clause 4.6 of BLEP 2014.

30 **1. Has the applicant's written request adequately addressed that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))?**

As discussed above, Justice Preston provided the most commonly invoked way to establish that compliance with a development standard is unreasonable or unnecessary is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The applicant appears to rely on this test and states the following:

40 *...strict compliance with the standard having regard to the particular circumstances of the case is considered unreasonable and unnecessary due to the fact that:*

- *The proposed variation will not result in any unreasonable amenity impacts for any neighbouring properties.*
- *The buildings are consistent with the bulk, height, scale, external appearance and built form with other recently constructed buildings in the surrounding area.*
- 5     • *There will not be any resultant adverse impacts on the privacy or overshadowing of any adjoining property.*
- *The proposed variation is minor and will not be perceptible to the broader community in the local landscape or streetscape.*
- *The buildings are fully compliant with each other relevant provisions of the BLEP 2014.*
- 10    • *The proposed building is fully compliant with the objectives of Clause 4.2D of BLEP 2014.*

Regarding consistency with the objectives of the development standard, the applicant's response and an assessment comment is provided for each objective below:

- 15     (a) *to provide alternative accommodation for rural families and workers,*

The applicant's written justification states that this objective is satisfied by noting that:

- 20     *The proposal as submitted effectively achieves this objective by proposing the dual occupancy which is alternative accommodation for rural families.*

Assessment comment: The proposal meets this objective. It is not disputed that the provision of a dual occupancy would provide an alternate form of rural residential accommodation.

- 25     (b) *to ensure that development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land,*

The applicant's written justification demonstrates that this objective is satisfied by noting that:

- 30     *There is no primary production potential, rural character and environmental capabilities of the land due to its limited size and it has been demonstrated that the environmental capabilities of the land area not exceeded in terms of flora, fauna and OSSM. The rural character of the surrounding locality is dominated by large dwellings and large dual occupancies on lifestyle blocks which is exactly the same as what is proposed by this application.*

35     Assessment comment: The scale of the proposal is considered compatible with the rural character of the land and the scale of existing built development on surrounding lands. Further, the recommended conditions of this report requiring the demolition / removal of buildings 1, 2, 3, 4 and 6 will reduce the scale of existing development on the land. Although not proposed, potential would exist on the land for a small market garden, limited grazing or some other intensive agricultural use.

- 40     (c) *to set out consent considerations for development of dual occupancies (detached) and secondary dwellings to address matters such as access, siting, land suitability and potential impacts.*
- 45

The applicant's written justification demonstrates that this objective is satisfied by noting that:

*The location of the new building has effectively been constrained due to the topography of the land and a building which was within 100m of the existing building would have a greater impact on the surrounding area due to excavation.*

5 Assessment comment: Contour mapping indicates that the existing structures proposed to form a dual occupancy (detached) are located at approximately 80m and 50m AHD and at a distance of approximately 113m apart. The land between the dwellings has a downward slope of approximately 16% running from north to south. Given the topography of the site it is considered reasonable to conclude that locating the structures within 100m of each other would require further earthworks and have a greater environmental and visual impact.

10 The proposal does not raise concern for Council regarding land suitability. In terms of access, internal access does not comply with RFS requirements. The internal access must be upgraded to provide a minimum carriageway of 4.0m with some short sections 3.5m wide and maximum 30m long, passing bays at 200m spacing, passing bay carriageway to be 6.0m wide and 20m long and sealing to be provided for sections of road greater than 10 degree grade. As confirmed through Council's Engineering referral review, this can be addressed through recommended conditions of consent attached to this report.

15 Accordingly, the submitted Clause 4.6 variation request sufficiently addresses those matters required by subclause (3) (a) that compliance is unreasonable or unnecessary in the circumstances of the case.

20 **2. Has the applicant's written request adequately addressed that there are sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3(b))?**

25 Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 reinforces the previous decision in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 regarding how to determine whether 'the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard'.

30 The grounds relied on by the applicant in their written request must be "environmental planning grounds" by their nature. Chief Justice Preston at [23] notes the adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EPA Act.

35 The applicant's written request seeks to demonstrate that there are sufficient environmental planning grounds to justify contravening the Clause 4.2D as follows:

40 *It is considered that there are sufficient environmental planning grounds to justify contravening the development standard for the following additional reasons:*

- *The proposed dual occupancy will provide alternative accommodation for rural families.*
- *The proposed development is of a scale and nature that is compatible with the rural character and environmental capabilities of the land.*
- 45 • *The proposal has no adverse impacts on the agricultural potential of the subject or adjacent properties.*
- *Each dwelling has the same vehicular access to and from a public road.*
- *The land is physically suitable for the development.*

- *It has been established that the land is capable of accommodating the on-site disposal and management of sewerage.*
- *The development has no adverse impact on the scenic amenity or character of the rural environment.*

5 Assessment comment: In conclusion, the applicant's written request re-iterates the general  
 comments raised elsewhere in the clause 4.6 variation. On review the location of the larger  
 dwelling is on a relatively flat ground removing the need for substantial earthworks had it been  
 located closer to the other dwelling, whilst the proposal raises no site suitability or environmental  
 impact issues in terms of its location. On balance, the siting of the dwellings 113 metres apart is  
 10 considered acceptable in the circumstances.

**3. Will the proposed development 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 (Clause 4.6(4)(ii))?**

15 Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118  
 at [27] notes that the matter in cl 4.6(4)(a)(ii), with which the consent authority must be satisfied, is  
 not merely that the proposed development will be in the public interest but that it will be in the  
 public interest because it is consistent with the objectives of the development standard and the  
 objectives for development of the zone in which the development is proposed to be carried out. If  
 20 the proposed development is inconsistent with either the objectives of the development standard or  
 the objectives of the zone or both, the consent authority, cannot be satisfied that the development  
 will be in the public interest for the purposes of cl 4.6(4)(a)(ii).

25 It has been established above that the proposal is consistent with the objectives of the  
 development standard. In regards to consistency with the zoning objectives, the objectives of the  
 RU2 Rural Landscape Zone are stated as follows:

- *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*

The applicant's written justification states:

40 *...For reasons set out in paragraph 11 above, the consent authority would be satisfied that this  
 written request has adequately demonstrated that the proposed development is consistent  
 with the objectives for development within the zone in which the development is proposed to  
 be carried out.*

45 The objectives of the RU2 zone are stepped through individually below with assessment comments  
 only, given the absence of specific applicant comments within the Clause 4.6 written request.

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

Assessment comment: It is recognised that the site is not currently used for rural purposes and does not appear to have been used for this purpose for many years. The site does not adjoin sites used for rural purposes and the subject application will unlikely alter the productivity potential for the land. As discussed above the property would have some potential for market gardens, limited grazing or other intensive agricultural uses. Although not proposed, that potential remains with the land.

- *To maintain the rural landscape character of the land.*

Assessment comment: The proposal is consistent with the rural character of surrounding lands which contain dwellings and dual occupancies on small rural holdings.

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

Assessment comment: There is no concern raised with respect to land use compatibility. The proposed dual occupancy use, being for residential occupation would not be incompatible with existing uses at the site or on surrounding land. Conditions to apply to prevent the dwellings from being used for Short term rental accommodation (ie holiday letting)

- *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.*

Assessment comment: This objective is not applicable as tourism accommodation is not proposed under the subject application.

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

Assessment comment: It is considered that the proposal is consistent with existing development on surrounding lands and therefore will not have a significant impact on the scenic quality of the site and surrounding lands.

**4. Does Council have delegation to exercise the concurrence function of the Department of Planning and Environment for development that contravenes a development standard?**

Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [28] notes that the other precondition in cl 4.6(4) that must be satisfied before consent can be granted is whether the concurrence of the Secretary has been obtained (cl 4.6(4)(b)). In accordance with Clause 4.6 (5), in deciding whether to grant concurrence, the Secretary must consider:

- (a) *whether contravention of the development standard raises any matter of significance for state or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard*

Under clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6 (subject to the conditions in the table in the notice).

The proposed development and variation from the development standard does not raise any matters of significance for state or regional environmental planning.

As the proposed development is consistent with the objectives of the development standard and zone, for the reasons stated above, the variation request is supported and is considered not to contravene the public interest.

**Clause 4.6 Assessment Conclusion**

5 On the basis of the above assessment, it is considered that the requirements of Clause 4.6(4) have been satisfied and that contravention of the 100m maximum separation distance outlined in Clause 4.2D(2)(c) is considered reasonable in the circumstances.

10 **Byron LEP 1988**

The land is part zoned 1(a) rural under Byron LEP 1988. No elements of the development are located within the 1(a) rural zone and the proposal raises no specific issues under the 1988 LEP.

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

No relevant Draft Environmental Planning Instruments have been identified for this proposal.

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

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

<b>Byron Shire Development Control Plan 2014 - Compliance Table</b>		
<b>Chapter D2 Residential Accommodation and Ancillary Development in Rural Zones</b>		
<b>Part</b>	<b>Requirement</b>	<b>Comment</b>
D2.2 General Provisions		
D2.2.3 Character and Visual Impact	<p><b>Objectives</b></p> <ol style="list-style-type: none"> <li>1. <i>To retain and enhance the unique character of Byron Shire and its distinctive landscapes, ecology, rural and natural areas.</i></li> <li>2. <i>To ensure that new development contributes to the character of its locality by respecting and complementing the natural and built environment.</i></li> </ol> <p><b>Performance Criteria</b>  <i>The following principles shall be applied to all development:</i></p> <ol style="list-style-type: none"> <li>a) <i>site, building and landscaping design must address the climate;</i></li> <li>b) <i>where a building is visible from a public road, it must contribute to the rural and scenic character of the locality by means of good design, appropriate materials and effective landscaping;</i></li> <li>c) <i>there must be a reasonable degree of integration with the existing built, rural and natural environment, balanced with the desirability of providing for variety in the landscape;</i></li> <li>d) <i>the provision of verandahs, balconies, pergolas and other protective outdoor elements will be encouraged for visual, climatic and energy efficiency reasons;</i></li> <li>e) <i>well-designed overhanging eaves should be</i></li> </ol>	<p>The proposal includes demolition / removal of buildings 1, 2, 3, 4 and 6 which will significantly reduce the overall scale of development on the site and ensure that the rural character of the locality will be maintained.</p>



	<p><i>provided where feasible to protect against heavy rainfall and summer sun, while allowing winter sun penetration;</i></p> <p>f) <i>no roof may have a highly reflective surface. Any metal roof must have a colorbond or equivalent finish in a colour approved by council. White or light-coloured roofing will not be approved where likely to be visually intrusive or would result in significant glare for neighbouring properties;</i></p> <p>g) <i>details of building materials and surface colours must be submitted for assessment with a development application. All building materials must be compatible in character with their surrounding environment;</i></p> <p>h) <i>consistent with the NSW Coastal Council's February 2003 publication 'Coastal Design Guidelines for NSW', namely the recommended design principles for buildings and development located in various categories of coastal and inland settlements, and for isolated coastal dwellings.</i></p>	
<p>D2.5.2 Character and Siting of Dwellings</p>	<p><b>Objectives</b></p> <ol style="list-style-type: none"> <li><i>To ensure that dual occupancy and secondary dwelling development is compatible in character with development in the locality, provides adequate private open space and addresses environmental, slope and drainage issues.</i></li> <li><i>To minimise the footprint of dual occupancy and secondary dwelling development through location of dwellings and the use of shared services and common areas.</i></li> </ol> <p><b>Performance Criteria</b></p> <ol style="list-style-type: none"> <li><i>In assessing any proposal for dual occupancy and secondary dwelling development, particular consideration will be given to the topography and slope of the site, design to minimise loss of privacy, bushfire and environmental constraints, the visual impact of the proposal and the likely impact on water flows and drainage.</i></li> <li><i>To encourage better visual quality and greater public acceptance, dual occupancy and secondary dwelling development must be designed to be responsive to its location. It could look like a single dwelling or be sited in a clustered arrangement with other farm buildings, garages, car ports or farm sheds.</i></li> <li><i>Separate private open space must be provided for each dwelling in accordance with Section D2.5.4, and must be designed to be easily accessible to the dwelling it serves.</i></li> <li><i>The applicant must demonstrate that the design of the development and the siting of the two dwellings will not generate additional adverse environmental impacts</i></li> </ol>	<p>It is considered that the proposal is consistent with existing development on surrounding lands and is therefore compatible with the existing rural character in the locality.</p> <p>The dual occupancy is proposed to be located approximately 113m apart which does not comply with the maximum 100m separation distance development standard of the DCP and LEP 2014. A request for variation to Clause 4.2D of LEP 2014 has been submitted and assessed pursuant to Clause 4.6 of the LEP. The merits of the requested variation have been discussed in Section 4.2A of this report.</p>

	<p><i>through excessive vegetation removal for bushfire protection or detract from the visual amenity of the locality.</i></p> <p><b>Prescriptive Measures</b></p> <ol style="list-style-type: none"> <li>Dual occupancy (detached) dwellings shall be located not more than 100 metres apart between the closest points. The dwellings must be serviced by a common vehicle access.</li> </ol>	
<p>D2.7.2 Farm Buildings, Sheds and other Structures</p>	<p><b>Objectives</b></p> <ol style="list-style-type: none"> <li>To specify criteria for establishment of <u>farm buildings</u>.</li> <li>To maintain the <u>character and amenity</u> of the Shire's Rural Zones.</li> <li>To minimise conflicts between developments in Rural Zones.</li> </ol> <p><b>Performance Criteria</b></p> <ol style="list-style-type: none"> <li>Farm buildings must observe the road and boundary setback requirements specified in Section D2.2.2 and the character and visual impact requirements specified in Section D2.2.3.</li> <li>Determination of siting, extent and nature of development must be consistent with the provisions of Chapter B6 Buffers and Minimising Land Use Conflict.</li> <li>Fencing, particularly adjoining E-zones, should aim to reduce negative impacts on native wildlife by complying with the Wildlife Friendly Fencing guidelines.</li> <li>Fencing in flood prone areas should aim to meet the guidelines set out in the "Riparian Fences Guides".</li> <li>Dwelling house to shed conversions should include at a minimum the removal of the kitchen cooking and washing facilitate use for agricultural needs which may include the addition of a roller door. This should include the removal of any non-structural internal partitions.</li> <li>Sheds should be open, have minimal dividing walls and plumbing and be suitable for machinery and vehicle storage. Plans of decommissioning should be included with Development Applications seeking to change the use of the building from a dwelling to a shed.</li> </ol> <p><b>Prescriptive Measures</b></p> <p>There are no Prescriptive Measures.</p>	<p>The proposed dual occupancy use would not be incompatible with existing uses at the site or surrounding land.</p> <p>Any consent granted will require Buildings 1, 2, 3, 4 and 6 to be demolished / removed from the site as opposed to decommissioning so that a dual occupancy and an existing portico will be the only structures remaining on the site.</p>

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

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

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

<b>Clause</b>	<b>This control is applicable to the proposal:</b>	<b>I have considered this control as it relates to the proposal:</b>	<b>If this control is applicable, does the proposal comply?</b>
<b>92 Additional Matters</b>	(b) in the case of a development application for the demolition of a building, the provisions of AS 2601,	Any consent granted will include conditions of consent to ensure compliance with AS2601.	Any consent granted will include conditions of consent to ensure compliance with AS2601.
<b>93 Fire safety and other considerations</b>	2) In determining the development application, the consent authority is to take into consideration whether the fire protection and structural capacity of the building will be appropriate to the building's proposed use.	The applicant has not submitted a report demonstrating the existing structures proposed to be used as dwelling houses are able to satisfy the fire safety requirements of the Building Code of Australia.  A Joint Structural Engineering Report was furnished during the Court Hearing such that necessary rectification works were identified.	It is recommended that fire safety matters be resolved by way of conditions of consent.
<b>94 consent authority may require buildings to be upgraded</b>	(2) In determining a development application to which this clause applies, a consent authority is to take into consideration whether it would be appropriate to require the existing building to be brought into total or partial conformity with the <i>Building Code of Australia</i> .	A Joint Structural Engineering Report was furnished during the Court Hearing such that necessary rectification works were identified.	It is recommended that fire safety matters be resolved by way of conditions of consent.

**4.7 Any Coastal Zone Management Plan?**

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

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

<b>Impact on:</b>	<b>Likely impact/s?</b>
<b>Natural environment</b>	The applicant has demonstrated the proposal will not have a significant adverse impact on the natural environment of the locality.
<b>Built environment</b>	The applicant has demonstrated the proposal will not have a significant adverse impact on the built environment of the locality.
<b>Social Environment</b>	The proposal is unlikely to have a significant social impact on the locality.
<b>Economic impact</b>	The proposal is unlikely to have a negative economic impact on the locality as it is not apparent the proposal would restrict the agricultural use of neighbouring rural properties.

5

**Biodiversity Conservation Act 2016**

10 Part of the property is mapped on the Biodiversity Values Map to the south of the dwelling known as Building 5. An asset protection for bushfire protection purposes will extend into this mapped area with the RFS requiring an APZ of 19 metres. Councils mapping for the site indicates that this section of the property is not High Environmental Value, and comprises a mixture of planted landscaping and planted rainforest.

15 Under Section 7.7 of the Act a Biodiversity Assessment report is not required where it is considered the development will not likely to impact on threatened species of flora and fauna. In this regard the matter has been previously considered by Council staff with the assessment of DA10.2017.602.1. Although this application was refused, Councils ecologists concluded that the asset protection zones following a site inspection are already in place or can be achieved without the need for native vegetation to be removed for the dwellings.

20

As such it is concluded that the proposal is unlikely to have a significant affect on threatened species and a Biodiversity Assessment Report is not required for this application.



	It is recommended that consent be granted for Buildings 5 and 8 as a dual occupancy (detached) while Buildings 1, 2, 3, 4 and 6 are recommended to be demolished / removed from the site. Therefore the use of all remaining structures on the site will be well defined.
Northern most buildings capable of being used as separate domiciles	Building 8 is proposed for residential use as a single dwelling house. With its large bar area and separate living areas the dwelling has the potential to be converted into separate residential domiciles. But this is not what is proposed and conditions of consent are recommended in that regard
Applicant has sought to rely on previous bushfire report and likely existing RFS consent	Applicant has submitted a Bushfire report for the DA which was referred to the RFS for comment. The RFS have recommended conditions of consent.
Bushfire APZ's extend into Riparian and Biodiversity mapped areas.	As discussed above, Building 5 requires an APZ of 19 metres extending to the south. Council is satisfied that the APZ will not have a significant effect on threatened species and a Biodiversity Assessment Report is not required.
Irregularities in Council processing of the previous application and appeal. The Bushfire report was not publicly available, the RFS comments were not made available until the hearing;	It is unclear what this issue is as the application was refused and the appeal dismissed. Discussion within the objection regarding the previous management by Council of the original DA and later NSW LEC Hearing are not relevant to this application.
Suggests favours granted to the Applicant by Council;	Council rejects the assertion of favours to the applicant.

**4.11 Public interest**

The proposal which now includes the removal/ demolition of various other structures from the property is unlikely to prejudice or compromise the public interest.

5

**5. DEVELOPER CONTRIBUTIONS**

Section 7.11 Developer Contributions are payable.

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

10

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

Provide Disclosure Statement register details here: Not applicable

**7. 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.*

5

**Statement of Reasons**

The proposed development will not have significant adverse impacts 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 Level 1 notification as per Development Control Plan 2014. All issues raised within submissions have been taken into consideration in determining this application.
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**8. CONCLUSION**

10 The proposed development is generally 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.

15 A positive outcome will also be achieved with the removal / demolition of a number of structures on the property bringing the development into general compliance with Council's controls (e.g. there will be only a detached dual occupancy on the land as opposed to a quasi MO / rural tourist facility).

20 It is recommended that the application be granted a Deferred Commencement Consent subject to conditions.

**Report No. 13.14**      **Byron Shire Local Heritage Grants Program 2019-20**  
**Directorate:**        Sustainable Environment and Economy  
**Report Author:**    Nancy Tarlao, Planner  
**File No:**             I2019/1813  
5    **Theme:**             Ecology  
                              Development and Approvals

**Summary:**

10    This report seeks Council endorsement of the funding allocation for the Byron Shire Local Heritage Grants Program 2019-20.

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**RECOMMENDATION:**

1.    **That Council endorse the staff recommended funding allocations of the Byron Shire Local Heritage Grants Program 2019-20 as provided below:**
- **2 applications (Attachments 2 & 4) will receive \$1,000 each on the proviso that the properties are heritage listed.**
  - **2 applications (Attachments 1 & 3) will receive \$2000 each.**
  - **2 applications (Attachments 5 & 6) will receive \$3000 each.**
- 15    2.    **That staff notify all of the grant applicants of Council's decision.**

**Attachments:**

- 1      Confidential - Project Application Local Heritage Places Fund 2019/20 - 6 Jubilee Avenue Mullumbimby, E2019/79266
- 20    2      Confidential - Project Application Local Heritage Places Fund 2019/20 - 233 The Saddle Road, E2019/79284
- 3      Confidential - Project Application Local Heritage Places Fund 2019/20 - Ewingsdale Hall, E2019/79291
- 25    4      Confidential - Project Application Local Heritage Places Fund 2019/20 - 218 Skinners Shoot Road Skinners Shoot, E2019/79297
- 5      Confidential - Project Application Local Heritage Places Fund 2019/20 - 69 Jonson Street Byron Bay - Byron Community Centre, E2019/79313
- 6      Confidential - Project Application Local Heritage Places Fund 2019/20 - 10 Marblewood Place Bangalow, E2019/79314
- 30    7      Byron Shire Local Heritage Grant Summary 2019-20, E2019/80806 



**Report**

5 The Local Heritage Places Grants program is jointly funded by Council and the NSW Heritage Division as part of its commitment to heritage management and tourism within Byron Shire. The purpose of the fund is to provide small grants to support owners of heritage items or draft heritage items in maintaining their heritage property.

10 There is an amount of \$12,000.00 in the 2019-20 fund made up of a grant from the Heritage Division of the NSW Office of Environment of up to \$5,500.00 and \$6,500.00 from the Council.

Up to \$3,000 is available for each project from the total funding pool. The main conditions are that property owners need to provide one dollar for every dollar contributed jointly by Council and the Heritage Division and that the work must be completed before or by March, 2020.

15 Six (6) applications were received this year. Each proposal was assessed by Council's Heritage Advisor and Heritage Planner against the required Heritage Division criteria. (Grant applications are confidential attachments 1 – 6).

20 <https://www.byron.nsw.gov.au/files/assets/public/hptrim/grants-and-subsidies-liaison-grants-and-funding-programs-heritage-grants-2018/e201851035-local-heritage-fund-guidelines-2019-2020.pdf>

**Funding available for**

Heritage items that are either

- Listed as a heritage item in the Local Environmental Plan, or
- Included in a conservation area in the Local Environmental Plan, or
- Supported by Council's heritage officer / planner as being of heritage significance.

**Priorities**

Projects that are:

- For heritage item/s in a well maintained heritage streetscape or landscape setting. For a heritage item/s with public access and visibility
- For urgent maintenance works to avert management risks (e.g. severe deterioration, demolition, or demolition by neglect)
- Part of a heritage group or precinct
- Fire, service and access upgrade for Building Code Australia compliance for ongoing or adaptive reuse of your heritage items/s
- Have not received previous council funding support in the last 5 years.

**Projects that will NOT be funded**

- New buildings
- Routine maintenance (e.g. lawn mowing, gutter cleaning or carpet cleaning)
- Projects where adequate funding is available from the applicant or other sources.
- New commemorative monuments or works Purchase of heritage buildings
- Relocation of buildings or work to relocate buildings
- Private headstones. unless there is no possibility of descendent support for the project
- Flood lighting of heritage buildings Purchase of equipment
- Movable railway heritage items

**Common selection criteria for all projects**

Funding is targeted to projects with

- Sustainable long term heritage benefit
- Public benefit and enjoyment
- Innovation and leadership
- Funding equity and cost effectiveness

The focus for the 2019-2020 Local Heritage Grants Program is conservation works that enhance individual places, buildings and historic streetscapes including buildings in conservation areas that will promote and foster community appreciation of the history of the Shire.

5 After consideration by the Council’s Heritage Adviser and Heritage Planner, a total of 6 projects that met the criteria have been recommended to Council for funding this year. The successful applications are attachments 1-6.

In summary:

- 10
- 2 applications (attachments 2 & 4), although not currently heritage listed or in a conservation area will receive \$1,000 each on the proviso that the properties are heritage listed.
  - 2 applications (attachments 1 & 3) will receive \$2000 each.
  - 2 applications (attachments 5 & 6) will receive \$3000 each.

15 The funding of these projects will support over \$82,000 worth of work to be carried out in this financial year on heritage property restoration.

**STRATEGIC CONSIDERATIONS**

20 **Community Strategic Plan and Operational Plan**

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community</b>	2.5	Encourage community appreciation of cultural vitality and diversity	2.5.2	Recognise and support the heritage of Byron Shire	2.5.2.2	Administer Council's Heritage Advisor and Heritage Projects Funds

**Financial Implications**

25 Council will deliver the Local Heritage Grants Program with the aid of a grant from the Heritage Division of the NSW Office of Environment and Heritage with Council providing at least \$6,500 to qualify for up to \$5,500 from the Heritage Division of the Office of Environment and Heritage.

30 **Statutory and Policy Compliance Implications**

The Local Heritage Grants program is a key action task in the Byron Shire Heritage Strategy 2016-2019.