Report No. 6.1  

PLANNING - 10.2018.483.1 Rural Tourist Accommodation Eight (8) cabins and pool

Directorate: Sustainable Environment and Economy

Report Author: Ben Grant, Planner

Proposal:

DA No: 10.2018.483.1
Proposal description: Rural Tourist Accommodation: Eight (8) Cabins, Swimming Pool and Associated Works

Property description: LOT: 4 DP: 621548
58 Montecollum Road WILSONS CREEK

Parcel No/s: 53590

Applicant: Frank Stewart Architect

Owner: Mr S B Yishay & Ms L B Levi

Zoning: RU2 Rural Landscape / PART DM Deferred Matter

Date received: 21 September 2018

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

Concurrence required No

Public notification or exhibition:
- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 11/10/18 to 24/10/18
- Submissions received: 18 submissions from 16 persons opposed.

Planning Review Committee: 14 February 2018

Variation request ☐ Clause 4.6 ☐ SEPP 1 ☒ Not applicable

Delegation to determination: Council

Issues:
- Bushfire prone land.
- Clustering of rural tourism facilities.
- Vehicular access – Montecollum Road will require upgrading.
- Visual and rural amenity impacts.

Summary:

Proposed Development
This development application seeks approval for eight tourist cabins and a swimming pool on a rural site at 58 Montecollum Road, Wilsons Creek. Six cabins and the swimming pool are proposed just below a ridgeline near the northern boundary and a further two cabins are proposed centrally on the site, east of the existing dwelling house. A new driveway access will be constructed about 500m further east of the existing property entrance to service cabins one to six.

The site
The site is located about 5km south-west of Mullumbimby in the Koonyum Range. The site has an area of about 31 hectares and is partially cleared, with environmentally significant vegetation on the eastern ridgeline. The southern boundary is formed by Wilsons Creek. Land uses in the
surrounding area are a mixture of small horticultural activities, 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.

The site is zoned partly RU2 Rural Landscape under LEP 2014 and partly 1(a) (General Rural Zone) under LEP 1988. The proposed development is located wholly within the RU2 zone and is permissible with consent.

Key Issues

The main issues arising from the assessment of this application are:

- Bush fire risk.
- DCP 2014, Part D3.3.4 – clustering of tourism development within 80m.
- Visual impact.
- Vehicular access and road upgrades.
- Impacts on the amenity of nearby residences.
- Proximity to overhead powerlines.

The site is identified as bush fire prone land and the development requires a Bush Fire Safety Authority (BFSA) under Section 100B of the Rural Fires Act 1997. The application is integrated development. The Rural Fire Service have assessed the proposal as acceptable and issued general terms of approval. A range of bushfire protection measures for access, water supply and emergency access will need to be incorporated into the development in accordance with the BFSA.

The location and siting of the proposed facility results in a variation to the prescriptive measures of DCP 2014, Chapter 3, Part D3.3.4, which requires cabins to be arranged in a cluster pattern of 80m around the existing dwelling. In this particular case, the cabins are clustered around the dwelling over a distance of about 150m. For reasons explained further in the body of this report, the design is able to satisfy the objectives and performance criteria of the control and has sufficient merit to warrant support. In particular, the cabins are able to be easily managed by the resident/s of the property without the need for a caretaker and the siting and design of the development will not have an unreasonable impact on the environmental values of the land or result in land use conflicts that are unable to be managed through conditions of consent.

The proposal does have some potential to impact on the rural amenity of the locality, mostly as a result of increased noise, light from traffic movements, with neighbouring dwellings at 70 and 80 Montecollum Road the most likely to be affected. These impacts are, on balance, considered to be acceptable on the basis that such externalities can be reasonably managed through conditions of consent. The recommendations of this report include conditions requiring Montecollum Road to be upgraded and limitations placed on the use and operation of the facility.

In relation to visual impact, the proposal is considered to be acceptable given that the development cannot be clearly viewed from public locations and is unlikely to visually disrupt the skyline. Views to the site from surrounding properties will be at a considerable distance and screened by existing vegetation. The use of recessive earth-toned colours can be used in conjunction with landscaping to soften the appearance of the development.

Council's Ecologist raised no objection to the proposal from an ecological perspective, but recommended that a Biodiversity Conservation Management Plan be prepared and adopted as a condition of consent. This will include the planting of 7,200 trees providing a positive environmental outcome. No adverse impacts on flora or fauna are anticipated as a result of the proposal subject to the required environmental enhancement works.

Conclusion
The proposed development is considered to comply with the relevant planning controls and is compatible with the constraints of the site. There are no significant issues that are unable to be managed through conditions of consent. As such the application is recommended for approval.

NOTE TO COUNCILLORS:

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

RECOMMENDATION:

That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, development application 10.2018.483.1 for rural tourist accommodation: eight (8) cabins, swimming pool and associated works be granted consent subject to conditions in Attachment 1 #E2019/29050.

Attachments:

1. Recommended conditions of consent, E2019/29050
2. Proposed plans, E2019/29060
3. Submissions, E2019/31203
Assessment

1. INTRODUCTION

1.1. History/Background

The site contains two dwelling houses and several sheds. Previous determinations for the property are shown below:

- Building Permit No. 253/77 – Dwelling, approved 5 October 1977.
- Development Application No. 81/403 – Dwelling, approved 27 May, 1981.
- Building Permit No. 81/438 – Dwelling, approved 26 July, 1981.

The 1977 Building Permit relates to the western most dwelling, which appears to have been lawfully constructed and occupied in accordance with this approval. Unfortunately, there are no building plans with the 1981 approval to confirm if it relates any existing buildings on the site. It is therefore unclear if this approval was ever lawfully commenced.

Detached dual occupancies were not permitted in the non-urban (a) zone under the former Interim Development Order No. 1 which was in force when DA 81/403 was issued. This is further clarified by Condition 3 of the consent, which states that the development consent is valid only in the instance of there being "no other dwelling already existing on the subject property".

Based on the available information, it is considered highly likely that the second dwelling on the property is unlawful and should be decommissioned in the event that Council decides to grant consent to the current application. Suitable conditions have been included in the recommendations of this report.

1.2. Description of the proposed development

This Development Application seeks approval for:

- Eight tourist cabins. Six cabins will be located just below a ridge that runs parallel with the properties northern boundary. A further two cabins will be located centrally on the site, approximately 100m east of the existing dwelling. The cabins are simple rectangular buildings featuring lightweight external materials, covered decks, skillion roofing and suspended flooring. Each cabin will have a single bedroom, bathroom, living area, kitchen, and covered verandah.

- Construction of an in-ground concrete swimming pool with dimensions of 5m by 16m and a total capacity of 120kL. The pool is intended to be used by guests of the proposed facility.

- A pool house and associated paved terrace and timber deck. The pool house will contain a toilet and BBQ facilities to be used as part of the proposed facility.

- Associated landscaping works and the construction of internal access roads and car parking in accordance with Council and RFS standards.

An application under section 68 of the Local Government Act 1993 to install on-site sewage management system (OSMS) has been made concurrently with the development application.

1.3. Property Description

Land is legally described as LOT: 4 DP: 621548
Property address is 58 Montecollum Road WILSONS CREEK
The site is located about 5km south-west of Mullumbimby, and is situated on an elevated site in the Koonyum Range. The site has an area of about 31 hectares and is partially cleared, with environmentally significant vegetation on the eastern ridgeline. The southern boundary is formed by Wilsons Creek. Land uses in the surrounding area are a mixture of small horticultural activities, 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.

The site is zoned partly RU2 Rural Landscape under LEP 2014 and partly 1(a) (General Rural Zone) under LEP 1988.

Figure 1: Aerial image of the site.
Figure 2: Location of proposed cabins 1-6 and swimming pool.

Figure 3: Location of proposed cabins 7-8.
Figure 4: Existing dwelling house.

2. SUMMARY OF REFERRALS

<table>
<thead>
<tr>
<th>Referral</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental Health Officer</td>
<td>No objections subject to conditions.</td>
</tr>
<tr>
<td>Development Engineer</td>
<td>No objections subject to conditions.</td>
</tr>
<tr>
<td>Building Surveyor</td>
<td>No objections subject to conditions.</td>
</tr>
<tr>
<td>Ecologist</td>
<td>No objections subject to conditions.</td>
</tr>
<tr>
<td>Rural Fire Service (100B/4.14/4.14)</td>
<td>No objections subject to conditions contained within the Bush Fire Safety Authority.</td>
</tr>
<tr>
<td>Essential Energy (Cl. 45 ISEPP)</td>
<td>Objection due to proximity to powerlines. This infrastructure will need to be relocated. See discussion below.</td>
</tr>
</tbody>
</table>

Issues:

10 Proximity to powerlines
Proposed cabins 1-3 are located close to an 11kV over head powerline that runs along the northern ridgeline. Essential Energy commented that any liveable structure must be located at least 10m from the centreline of the powerlines. To achieve this, the applicant is proposing to relocate the powerlines further north, increasing the separation distance to at least 10m. Essential Energy raised no objection to this but noted that all works will be at the owner’s expense. A condition is recommended for the powerlines to be suitably realigned in accordance with the requirements of Essential Energy prior to the commencement of any building works.

3. ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

3.1 Section 4.56 Integrated development

The proposed development is classified as a Special Fire Protection Purpose and requires a Bush Fire Safety Authority (BSFA) from the NSW Rural Fire Service (RFS) under S100B of the Rural
Fires Act 1997 and is integrated development under S4.56 of the Environmental Planning and Assessment Act 1979.

General Terms of Approval have been issued by the Rural Fire Service and are included in the recommendations of this report.

3.2 Section 4.15 – Evaluation

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.

3.3 State Environmental Planning Instruments

<table>
<thead>
<tr>
<th>State Environmental Planning Instrument</th>
<th>Satisfactory</th>
<th>Unsatisfactory</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Environmental Planning Policy No 44—Koala Habitat Protection</td>
<td>☒</td>
<td>☐</td>
</tr>
<tr>
<td>The site is not considered as core Koala habitat but it is noted that the north-eastern ridge is mapped as containing preferred Koala feed tree species. To improve environmental outcomes for the site, a Biodiversity Conservation Management Plan is recommended as a condition of consent along with a condition restricting the keeping of cats or dogs by guests to improve environmental outcomes on the property.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State Environmental Planning Policy No 55—Remediation of Land</td>
<td>☒</td>
<td>☐</td>
</tr>
<tr>
<td>A preliminary soil contamination assessment was provided with the application. Samples were analysed for heavy metals, organochlorines and organophosphorous, which were considered to be the most likely chemicals used on the property. The sampling results were compared to adjusted Health Investigation Limits (HIL) from NEPM 1999 (2013) and concentrations of all tested contaminants were below the relevant HILs. Council’s Environmental Health Officer concluded that based on the known history of the site, the land is considered to be suitable for the proposed use and does not require remediation.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</td>
<td>☒</td>
<td>☐</td>
</tr>
<tr>
<td>A multi-dwelling BASIX certificate has been provided and all commitments for energy, water and thermal comfort have been shown on the DA plans. The proposal is classified as BASIX optional development.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State Environmental Planning Policy (Infrastructure) 2007</td>
<td>☒</td>
<td>☐</td>
</tr>
<tr>
<td>Pursuant to clause 45(1) in the Infrastructure SEPP, the application was referred to Essential Energy for comment due to the proximity of the proposed cabins and swimming pool to overhead powerlines. Essential Energy raised safety concerns and commented that the proposal must be able to achieve a separation distance of at least 10m from the powerlines. The applicant is proposing to realign the powerlines to comply with this requirement. Refer to Section 2 of this report.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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:

| Part 1 | ☒1.1| ☒1.1AA| ☒1.2| ☒1.3| ☒1.4| ☒Dictionary| ☒1.7| ☒1.8| ☒1.8A| ☒1.9| ☒1.9A |
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 Swimming Pool, Tourist and Visitor Accommodation.
(b) The land is partly within the RU2 Rural Landscape zone under LEP 2014 and partly within the 1(a)–(General Rural Zone) under LEP 1988 according to the Land Zoning Map. The proposed development is entirely within the RU2 zone.
(c) The proposed development is permitted with consent; and
(d) Regard is had for the Zone Objectives as follows:

<table>
<thead>
<tr>
<th>Zone Objective: RU2 Rural Landscape zone</th>
<th>Consideration</th>
</tr>
</thead>
<tbody>
<tr>
<td>To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.</td>
<td>The proposed development is a small scale tourist facility that is generally compatible with the rural character of the locality. Cabins are clustered around the existing dwelling house within a distance of about 150m and the site will be subject a biodiversity conservation management plan including the planting of 7200 trees in accordance with the Byron Rural Settlement Strategy 1998.</td>
</tr>
<tr>
<td>To maintain the rural landscape character of the land.</td>
<td></td>
</tr>
<tr>
<td>To provide for a range of compatible land uses, including extensive agriculture.</td>
<td></td>
</tr>
<tr>
<td>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.</td>
<td>Cabins one to six will not be clearly visible from surrounding public places or roads and view from surrounding properties will be partially screened by existing vegetation. A condition is recommended for landscaping and recessive earth-toned colours to minimise the impact on the scenic qualities of the locality.</td>
</tr>
<tr>
<td>To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.</td>
<td></td>
</tr>
</tbody>
</table>

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

15 Deposited Plan 621548 is included in schedule 7 of Byron LEP 1988 and the property is recognised as having a dwelling entitlement.

Clause 4.3 Height of buildings

20 A maximum building height of 9m applies to the subject site. The cabins and pool house have a maximum height of 6m and comply with this development standard.

Clause 6.2 Earthworks

25 The proposed cabins have suspended flooring to minimise the amount of earthworks required to site the buildings. The majority of the cut and fill associated with these structures will not exceed 1m in depth. Deeper excavation to a depth of approximately 1.5m is required to create the swimming pool which is benched into the slope to create an infinity edge design.
To mitigate the potential for sediments and particulate matter entering Wilsons Creek during construction, a condition is recommended requiring a detailed erosion and sediment control plan to be submitted for approval with the construction certificate application. Sediment and erosion controls are to be implemented and maintained at all times until the site has been stabilised and revegetated.

**Clause 6.5 Drinking water catchments**

The site adjoins Wilsons Creek which feeds into a drinking water catchment. The development will have a minimum separation of 300m from the Creek and the discharge from the swimming pool and cabins will eventually be treated through the on-site waste water treatment system. Council’s Environmental Health Officer considers this to be a safe distance to avoid pollutants entering the drinking water storage.

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

Clause 6.8 seeks to ensure that tourism development in rural areas is small scale and does not adversely impact on the agricultural production, scenic or environmental values of the land. The following provisions are applicable:

1. Development consent must not be granted to tourism development on land to which this clause applies unless the consent authority is satisfied that:
   (a) there is, or will be, adequate vehicular access to and from a road, other than a classified road, taking into account the scale of the development proposed, and
   (b) the development is small scale and low impact, and
   (c) the development is complementary to the rural or environmental attributes of the land and its surrounds, and
   (d) the development will not have a significant adverse impact on agricultural production, amenity or significant features of the natural environment.

2. Development consent must not be granted to development for the purpose of tourism development on land to which this clause applies unless:
   (a) a lawfully erected dwelling house or dual occupancy (attached) is situated on the land, or
   (b) a dwelling house may be erected on the land under this Plan.

3. Development consent must not be granted to development under subclause (4) if the development:
   (a) includes an ancillary caretaker’s or manager’s residence, or
   (b) is for the purpose of more than 1 bed and breakfast accommodation.

In relation to rural tourism, small scale means a scale that is small enough to be generally managed and operated by the principal owner living on the property. The proposal is considered to accord with this definition because the cabins are generally near to the existing dwelling house and are capable of being managed by the resident/s of the dwelling.

The proposed development otherwise meets the requirements of this clause, although Montecollum Road will require upgrading to enable suitable vehicular access to the site. Conditions for the use of earth toned colours and the use of landscaping are also recommended to reduce the visual impact of the development on the scenic qualities of the area.

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

The proposed development and associated works are located wholly in the RU2 zone under LEP 2014. LEP 1988 is not an applicable matter for consideration in this assessment.
4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority

There are no proposed instruments that are of relevance to the subject application.

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

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

| Part A | ☒ Preliminary |
| Part B Chapters: | ☒ B2 | ☒ B3 | ☒ B4 | ☒ B6 | ☒ B8 | ☒ B9 | ☒ B13 | ☒ B14 |
| Part C Chapters: | ☒ C3 | ☒ C4 |
| Part D Chapters | ☒ D2 | ☒ D3 |

These checked Parts/Chapters have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act. The following comments are provided on relevant DCP provisions:

D3.3.4 Location and Siting

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 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:

- 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.

- 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.

- 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.

Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access
A Traffic Impact Statement was submitted with the application. Montecollum Road currently services two allotments east of the subject site, which generate 18 vehicles movements per day (vpd) and 1.7 peak hour trips (pht). The new development will result in an increase to 36 vpd and 4.1 pht along this section of the road; Council's Development Engineer has assessed the increase in vehicle movements as low impact.

Despite the increase, there are two existing dwellings at 70 and 80 Montecollum Road, about 500m west of the new site entrance, that will be affected more than other properties in the area owning to the proximity of these houses to the road frontage. In particular one of the buildings which appears to be used as a cabin sits adjacent to the road reserve. To improve vehicular access and mitigate amenity impacts on neighbouring properties, Montecollum Road will require upgrading including widening, and sealed surfaces at all access points, longitudinal grades 10° or greater and 10m before and after the dwelling house at 80 Montecollum Road.

Chapter B6 Buffers and Minimising Land Use Conflict

The proposed facility is considered to have a reasonable separation from surrounding properties, however, there is some potential for land use conflict with respect to noise from patrons at the swimming pool amenities, especially during the night time period. It is concluded that conditions should be imposed to ensure activities are restricted to certain hours and that the site is not used for events and functions.

Chapter B8 Waste Minimisation and Management

Waste generated by the development is able to be collected by Council pickup from Montecollum Road. A Site Waste Minimisation and Management Plan is to be submitted for approval to the Principal Certifying Authority that includes details for waste management and cleaning in accordance with Part B8.4.3.

Chapter B13 Access and Mobility

Tourist cabins are classified as class (1b) buildings under the BCA and therefore must comply with the relevant provisions including at least one cabin with ambulant facilities, compliant paths of travel and disabled parking.

Cabin 7 has been designed with disabled facilities. However, due to its location at the bottom of the site, it will be difficult for guests with limited movement to access the swimming pool area. To improve accessibility, a condition is recommended for at least one of the cabins at the top of the site to have disabled access.

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

A Visual Impact Assessment (VIA) was provided including photos of the site and sections of the cabins and pool in relation to the ridgeline. The VIA concludes that the visual impact will not be significant because the development cannot be clearly viewed from public locations and will not visually disrupt the skyline. Earth toned colours and landscaping are proposed as a means of softening the appearance of the development when viewed from surrounding sites.

As can be seen in figure 5 below, views from the south will be partially screened by a stand of tall trees which will obscure cabins one, two and three. Other elements will be visible from surrounding properties, however, the overall impact is not considered to be significant given the distances involved and the domestic scale of the architecture.
Figure 5: A stand of trees located below proposed cabins one, two and three.

Chapter D3 Tourist Accommodation

D3.2.3 Character and Design in Rural Zones

Overall, the proposed development is considered to be compatible with the surrounding landscape and development in the locality given the site is largely obscured from the public domain and there will be no clear views of the cabins from any nearby roads, lookouts or public places. A further reduction in the visual impact can be achieved through the use of recessive earth toned colours and landscaping.

D3.3.4 Rural Tourist Accommodation and Farm Stay Accommodation

The proposed development has demonstrated compliance with the objectives and prescriptive measures of Part D3.3.4, except in relation to the numeric control in prescriptive measures D3.2.1 (9)(iii) and (iv), which requires development to be clustered no further than 80m apart on a north facing slope. A departure from these elements is addressed elsewhere in this report. Compliance with the remaining prescriptive measures is demonstrated in Table 1 below.

Table 1: DCP 2014, Part D3.2.1 – Assessment against the Prescriptive Measures.

<table>
<thead>
<tr>
<th>D3.2.1 Location and Siting</th>
<th>Compliance</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Must accommodate no more than 12 bedrooms collectively and a maximum of 2 persons per room in</td>
<td>Yes</td>
<td>Site has an area of about 28 hectares and is able to accommodate a maximum of 12 bedrooms in</td>
</tr>
</tbody>
</table>
## accordance with table D3.1:

<table>
<thead>
<tr>
<th>Land size</th>
<th>Max No. Bedrooms</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–3 ha</td>
<td>3</td>
</tr>
<tr>
<td>1 additional bedroom for every 1.5 has to a maximum of 12 bedroom</td>
<td></td>
</tr>
<tr>
<td>20 ha or greater</td>
<td>12</td>
</tr>
</tbody>
</table>

The site has an area of approximately 29 hectares and is allowed up to a maximum of 12 bedrooms.

2. Rural tourist accommodation is to be designed with the following features:
   a) Each cabin must not exceed 60m\(^2\) with maximum of 2 bedrooms. Cabins must open up onto recreation areas with access to winter sun and summer shade and, where possible, take advantage of views of the rural landscape.

<table>
<thead>
<tr>
<th>Feature</th>
<th>Yes/Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Each cabin has a GFA of 60m(^2) in accordance with this clause (excluding decks).</td>
<td></td>
</tr>
<tr>
<td>b) All weather car parking must be provided. Gravel or porous surface treatments are encouraged except on steep slopes.</td>
<td>Yes* Condition</td>
</tr>
<tr>
<td>c) Must provide external pedestrian access between buildings and facilities associated with the development.</td>
<td>Yes</td>
</tr>
<tr>
<td>d) Must minimise noise and vibration on adjoining dwellings.</td>
<td>Yes* Condition</td>
</tr>
<tr>
<td>e) Must be accompanied by a landscaping plan. The plan is to incorporate screen plantings for privacy between cabins.</td>
<td>Yes</td>
</tr>
<tr>
<td>f) Must benefit from existing roads and infrastructure.</td>
<td>Yes</td>
</tr>
<tr>
<td>g) One of the bedrooms must have disabled access.</td>
<td>Yes</td>
</tr>
<tr>
<td>h) The siting of rural tourist accommodation must be such that:</td>
<td>Yes</td>
</tr>
<tr>
<td>i) Adequate separation distances to neighbouring properties must be maintained to minimise land use conflict.</td>
<td></td>
</tr>
</tbody>
</table>

Agenda 16 May 2019
## ii) All rural tourist accommodation must be located on land with a north, north-west, north-east, or easterly aspect to maximise solar energy collection.

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Decision</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>All rural tourist accommodation must be located on land with a north, north-west, north-east, or easterly aspect to maximise solar energy collection.</td>
<td>No</td>
<td>The proposed development will be located on a south facing slope, although there will be adequate opportunities for solar energy collection. See assessment against performance criteria above.</td>
</tr>
</tbody>
</table>

## iii) Rural tourist accommodation must be sited in a cluster pattern located on average no further than 80m apart with adequate vegetation screening for privacy and amenity purposes.

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Decision</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural tourist accommodation must be sited in a cluster pattern located on average no further than 80m apart with adequate vegetation screening for privacy and amenity purposes.</td>
<td>No</td>
<td>The cabins are spread across the site is two areas, over a distance of approximately 150m. See assessment against performance criteria above.</td>
</tr>
</tbody>
</table>

## iv) Must be located so that it does not adversely affect the conduct and productivity of agricultural operations on the site.

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Decision</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>Must be located so that it does not adversely affect the conduct and productivity of agricultural operations on the site.</td>
<td>Yes</td>
<td>The sites agricultural capacity is unlikely to be significantly reduced by the proposed development.</td>
</tr>
</tbody>
</table>

## v) Night time lighting for outdoor recreational facilities is prohibited.

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Decision</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>Night time lighting for outdoor recreational facilities is prohibited.</td>
<td>Yes*</td>
<td>A condition is recommended which limits the use of lighting after 7pm.</td>
</tr>
</tbody>
</table>

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

The proposed development is located wholly within the RU2 zone. DCP 2010 is not a relevant matter for consideration in this assessment.

### 4.5 Any Planning Agreement or Draft Planning Agreement?

There are no planning agreements or draft planning agreements.

### 4.6 Environmental Planning & Assessment Regulation 2000 Considerations

#### Clause 92 Additional matters that consent authority must consider

The property contains a dwelling that will need to be decommissioned prior to the occupation of the new cabins. A condition is recommended requiring any the works to be carried out in accordance with AS2601–The demolition of structures.

### 4.7 Any Coastal Zone Management Plan

Not applicable.

### 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

<table>
<thead>
<tr>
<th>Impact on:</th>
<th>Likely significant impact/s?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Natural environment</td>
<td>Flora and Fauna</td>
</tr>
<tr>
<td></td>
<td>The site is to be rehabilitated in accordance with a Biodiversity Conservation Management Plan along with 7200 additional trees to be planted. No adverse impacts on flora and fauna are anticipated as a result of the proposal subject to the required environmental enhancement works.</td>
</tr>
<tr>
<td>Built environment</td>
<td>Visual impact</td>
</tr>
<tr>
<td></td>
<td>The proposed cabins will sit slightly below the ridgeline. Some of the roofed elements will extend above the ridgeline, but will sit below a</td>
</tr>
</tbody>
</table>
backdrop of vegetation that runs along the northern boundary. The use of recessive, earth tone colours and landscaping is recommended to minimise the visual impact of the proposal.

**Hazards**
The site is constrained by bushfire prone land and overhead powerlines. These constraints have been adequately addressed through the realignment of powerlines and a range of bushfire conditions.

**Amenity**
Impacts from traffic, dust and noise will be manageable subject to conditions of consent requiring Montecollum Road to be upgraded and the use of the pool area limited from 7am to 7pm.

**Use and operation of the facility**
Conditions are recommended to prevent the facility from being operated as a function centre or wedding venue.

<table>
<thead>
<tr>
<th>Social Environment</th>
<th>No. The proposal will not have a significant social impact on the locality.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic impact</td>
<td>No. The proposal will not have a significant economic impact on the locality.</td>
</tr>
</tbody>
</table>

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

The site is considered to be suitable for the development subject to conditions being imposed in relation to bushfire safety, road upgrades and realignment of powerlines.

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

The development application was publicly exhibited for a period of 14 days in accordance with DCP 2014. There were 19 submissions from 16 persons made objecting to the development application.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Lack of notification</strong></td>
<td>A review of records indicates that all 12 neighbouring properties were sent notification letters in accordance with DCP 2014.</td>
</tr>
<tr>
<td>Did not receive neighbour notification.</td>
<td></td>
</tr>
<tr>
<td>Neighbours not consulted or notified.</td>
<td></td>
</tr>
<tr>
<td>More time should have been given to notify the surrounding community.</td>
<td></td>
</tr>
<tr>
<td><strong>Amenity</strong></td>
<td>Montecollum Road will require upgrading with bitumen seal in certain sections. A condition is recommended for most of the lighting to be minimised and turned off after 10pm except where required for reasonable security.</td>
</tr>
<tr>
<td>Amenity will be adversely affected by traffic and noise.</td>
<td></td>
</tr>
<tr>
<td>Road noise and dust will impacts on existing residents will be severe.</td>
<td></td>
</tr>
<tr>
<td>Dust will significantly impact on neighbouring properties during dry spells. May affect people's health.</td>
<td></td>
</tr>
<tr>
<td>Extreme dust problems will impact on neighbouring homes</td>
<td></td>
</tr>
<tr>
<td>Lighting from the pool area will disturb the</td>
<td></td>
</tr>
</tbody>
</table>
Visual impact

- The proposed development is clearly visible from many households and the Crystal Castle. If the proposal is to proceed, only dark recessive colours should be used.
- Lighting could be used as part of the entertainment facilities around the pool and barbeque area.
- The cabins are to be built on top of the ridge and will impact on the natural beauty of the area.
- The new access to be created for the development past the original single entrance would require considerable earthworks and vegetation clearance on the ridgeline.
- The proposed development will be visible from surrounding properties and will scar the ridgeline and the landscape.
- A full visual impact assessment should be submitted.

A condition is recommended for the use of recessive, earth toned colours and landscaping to reduce the visual impact of the proposed development.

Sound impact

- As we live in a valley, the sound is an amphitheatre effect. Music, or any sound emanating from the tourist facility will be greatly enhanced.
- Noise generated by the facility will echo around the valley.
- Facility will generate excessive noise pollution.

Council’s Environmental Health Office has recommended noise levels must not exceed the background noise level plus 5dB (A) between the hours of 7:00am and 10:00 pm at the nearest affected residence. Given the small scale of the development and the separation from nearby residences, compliance with this condition is considered to be achievable.

Wastewater

- Waste water treatment system appears inadequate for the use.
- Waste water system appears to be designed for minimal occupancy and will likely be unable to cope effectively.

Council’s Environmental Health Officer has assessed the adequacy of the proposed wastewater system. The system is considered suitable for the intended use.

Environmental impacts

- The DA has not addressed surrounding populations of endangered flora and fauna.
- Increase human population in the area will increase danger to valuable flora and fauna.
- Clearing has been undertaken on the property. Further clearing is likely if the DA is approved.
- Concerned about local wildlife such as eastern cod, platypus, goanna, koalas etc.

Council’s Ecologist commented that the proposal will not have a significant environmental impact subject to appropriate conditions of consent. A biodiversity conservation management plan is recommended along with the planting of 7200 trees.
- Additional traffic will affect local wildlife.

**Stormwater management**

- No details are given in the DA for stormwater management.

  A condition is recommended that requires a properly engineered stormwater system to be designed that fully infiltrates the 20 year ARI runoff from all impervious areas for all storm durations without surcharge onto neighbouring properties.

**Garbage**

- No details of garbage collection or waste management have been provided.

  Council garbage collection is available off Montecollum Road.

**Privacy**

- My privacy will be severely compromised as the cabins face my home and outdoor living areas.
- Cabins will detract from peacefulness and privacy.
- Tourist and friends will wander all over private properties, with loss of privacy and causing friction.

  The facility is unlikely to result in a severe loss of privacy due to the separation distances between the cabins and surrounding dwellings. The nearest residence is approximately 200m from the cabins. Lines of sight from the facility will be directed to the south; the nearest dwelling in this direction has a separation of approximately 400m.

**Planning controls**

- The proposal contravenes clause 6.8 of LEP 2014.

  The proposal is considered to be in accordance with the provisions of clause 6.8. The tourism use is of a small enough scale that it can be managed and operated by the principal owner living on the property. In addition, there will not be a significant adverse impact on the amenity or significant features of the landscape.

**Traffic and access**

- There will be serious and unsafe traffic volumes created on Montecollum Road which is a narrow and dusty road.
- 20,000 additional vehicle movements will occur on this unsealed road.
- Excessive traffic impacts for a poorly maintained rural road.
- The road has a history of deterioration from rainwater and traffic and required repairs by Council in mid 2018.
- The new access up the steep bank, along with increased traffic, will seriously affect nos. 70 and 80 Montecollum Road.
- Traffic will further degrade and erode Montecollum Road.
- Increased danger to school children who walk to bus stop on Cedar Road.
- A traffic impact statement has not been provided.
- Gravel roads break down already from Council's Development Engineer has assessed the increase in vehicle movements as being low impact. Road upgrades, including widening and sealing in certain section will be required.
overuse. Impact of additional traffic will further deteriorate roads.
- Intersection near Montecollum Road and Cedar Lane is already dangerous.
- The design of the access and additional tourist traffic will slow down ambulance access to the area.

### Bushfire
- Development will increase risk of bushfire.
- Bushfire report unacceptable as it relies on the use of a secondary dwelling and two other cabins which are not in the proposal.

A Bush Fire Safety Authority has been issued by the RFS. A second dwelling has not been included as a bush fire shelter.

### Compliance issues
- Council’s ability to regulate this development, which has all the elements of a function centre, is almost zero.
- The site has been subject of illegal clearing.

It is acknowledged that rural function centres and wedding venues are an ongoing issue in the Shire. Notwithstanding, this particular development is comprised of individual cabins, rather than a purpose built function centre. Other than the swimming pool and BBQ area, there are no central facilities or areas suitable for large gatherings.

### Status of two bedroom building
- It is unclear what the proposed use of the two bedroom building is, and whether it is intended to form part of the rural tourist accommodation.

The property has a potentially unauthorised dwelling that is shown on the plans, but is not included in this development application. A condition to clarify this is recommended.

### Scale of the development
- The development is not small scale.
- The proposed eight cabins and two bedroom existing building can accommodate up to 36 people.
- The proposal has the characteristics of a function centre.
- Site not capable of accommodating the proposed development.
- Eight cabins grossly excessive considering the location of the development site.
- Floor plans of cabins also include sofa beds, indicating additional guest capacity.
- This is more like a tourist park than a small scale low key farm stay.

DCP 2014 allows up to 12 bedrooms and 24 guests for sites greater than 20 hectares. Each cabin has one bedroom for a total of eight bedrooms and 16 guests.

### Errors and omissions in the application
- The statement of environmental effect includes various errors in relation to the floor area of the cabins, the distance from neighbouring dwellings, visual impact and condition of the road.
- The term farm stay is used several times,

There were a number of anomalies in the original application that have since been clarified. A traffic impact statement has been provided. The proposal is not considered farm stay accommodation.
however, the property is not used as a farm.
- No mention is made of garbage disposal. The facility will require provision of additional garbage bins, which will create an unpleasant visual impact and may attract animals and create a serious health hazard.
- There is no traffic impact statement with the DA.

### Future environmental zoning
- The site is proposed to be zoned E2 Environmental Conservation and being located so close to the ridgeline it would be considered scenic escarpment.

Stage 1 of Council’s Environmental Zone Implementation Program does not include the subject site. It is not clear if the site will eventually be transitioned into an environmental zone at the current time.

### Drinking water catchment
- The location is above and fronting the Wilsons Creek, a drinking water catchment. Earthworks will cause runoff of materials into the creek, into which the whole site drains.

Conditions are recommended for a sediment and erosion control plan to be prepared and implemented as part of the development. Given the separation distances from the Creek (>250m), the likelihood of sediments and particulate matter being transported into the drinking water catchment is low so long as appropriate controls are in place during construction.

### 4.11 Public interest

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

### 5. DEVELOPMENT CONTRIBUTIONS

Section 7.12 levies are applicable. Conditions to apply.

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

### 7. CONCLUSION

The proposal is considered to be consistent with the relevant environmental planning instruments and planning controls applicable to the site and is recommended of approval subject to conditions of consent.