



Agenda

Ordinary (Planning) Meeting

Thursday, 20 February 2020

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

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

Mark Arnold
General Manager

CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

Disclosure and participation in meetings

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

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

Non-pecuniary Interests - Must be disclosed in meetings.

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

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

RECORDING OF VOTING ON PLANNING MATTERS

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

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

BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING

BUSINESS OF ORDINARY (PLANNING) MEETING

1. PUBLIC ACCESS
2. APOLOGIES
3. REQUESTS FOR LEAVE OF ABSENCE
4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY
5. TABLING OF PECUNIARY INTEREST RETURNS (CL 4.9 CODE OF CONDUCT FOR COUNCILLORS)
6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS
 - 6.1 Ordinary (Planning) Meeting held on 31 December 2019
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BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING

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14. QUESTIONS WITH NOTICE

Nil

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

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

NOTICES OF MOTION

Notice of Rescission Motion No. 9.1

Final Business and Industrial Lands Strategy for adoption

5 **File No:**

I2019/2134

We move that Council rescind Resolution No. 19-674 from its Ordinary meeting held on 12 December 2019 which reads as follows:

1. *That Council note the Business and Industrial Lands Strategy has been updated to reflect the outcomes of consultation, as applicable on Area 5 Gulgan North described as part of Lot 2 DP 1159910, 66 The Saddle Road, Brunswick Heads which has been included as a possible industrial and business park area.*
2. *That Council adopt the Business and Industrial Lands Strategy as contained in Attachment 4 (E2019/85987) and together with the Background Report contained in Attachments 3, 5 and 6 (E2019/86202, E2019/83593 and E2019/86203) send to the NSW Department of Planning, Industry & Environment for final endorsement.*
3. *That Council note that the colour contrasts used on some figures in the Business and Industrial Lands Strategy will be reviewed and if necessary, changed to enhance readability under the Web Content Accessibility Guidelines before sending to NSW Department of Planning, Industry & Environment for final endorsement.*

If successful we intend to move:

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1. *That council not adopt the current Business and Industrial Lands Strategy*
2. *That Council removes the Gulgan North Precinct 'A' & 'B' (part of Lot 2 DP 1159910, 66 The Saddle Road, Brunswick Heads)*

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3. *That Council is provided with detailed responses to NSW Government agency advice explaining why the Strategy diverges from this advice*

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4. *That the Strategy be redrafted to include the following:*
 - *an overarching servicing and delivery framework for industrial and business land to fulfil the requirements of Resolution 15 19-281*
 - *the inclusion of more background from regional and state documents that explain how assessed future land requirements meet the guidelines in these documents*
 - *an explanation of the options presented for growth and delivery and presented as Scenario 1, 2 and 3, with infrastructure and other impact analysis for each scenario*
 - *detailed justification and clarification of any proposed exceedance of growth scenarios*

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5. *That the Strategy be brought back to Council for approval before going on public exhibition.*

Attachments:

1 Special Disclosure of Pecuniary Interest Annexure, E2012/2815 

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**Signed: Cr Catherine Coorey
Cr Jan Hackett
Cr Basil Cameron**

10 **Comments from Director of Sustainable Environment and Economy:**

Under the *Environmental Planning and Assessment Act 1979* Part 3 Division 3.1 Section 3.3 Regional Plans set the framework, vision and direction for strategic planning and land use planning.

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A regional priority for Byron Shire under the North Coast Regional Plan 2036 (NCRP) is to identify employment investigation areas. To deliver, Council is required to:

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- develop a local growth management strategy that identifies commercial or industrial urban growth areas
- prepare land release criteria to assess appropriate locations for commercial and industrial uses.

The Business and Industrial Lands Strategy (BILS) complies with:

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- clearly identified areas for investigation for business or industrial growth
- stating of further investigations to be undertaken to support any future rezoning within these areas to confirm the suitability of land for business and/or industrial uses.

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The further investigations for each area were identified in collaboration with NSW Government agencies and through a state policy consistency check of the North Coast Regional Plan 2036 (NCRP), State Environmental Planning Policies, and section 9.1 Ministerial Directions 2019. This information was contained in the BILS Background Report that accompanied the report to Council Ordinary meeting 12 December 2019.

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The 'investigation areas' are a gross land area. The growth scenario land area projections are different in that they reflect a net developed area demand. The allocated investigation area in the BILS generally equates with meeting a growth Scenario 3 requirement of 16.5 to 24.7 ha of developed land. It was considered prudent to look at the Shire's capacity to provide for the Scenario 3, due to current strong business and employment growth (524 new businesses established in the Shire between 2015 – 2018), as well as population (in the overall Northern Rivers region). As comparison, the low growth Scenario 1 drew on a period when business growth was lower 2011 -2105 when only 27 new businesses were recorded.

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An assumption of land area attrition as part of the rezoning process and post the zoning of the land acknowledges that the majority of investigation areas may be affected in part by constraints and that the future development of some parts of investigation sites may not be supported. An analysis of existing zoned land supports this assumption. Whilst the Shire has 24.4ha of currently zoned industrial land only around 11.9 ha (i.e. 50%) currently has capacity to accommodate some of projected demand.

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The BILS use of 'investigation areas' is consistent with state government requirements for a Local Growth Management Strategy. Importantly when considering this motion, it needs to be noted that

a parcel's inclusion in Business and Industrial Lands Strategy does not automatically mean it will be zoned for business or industry and any subsequent rezoning application will require a detailed assessment and public notification. This stepped assessment approach has the benefit of placing the cost of more detailed investigations with the land developer rather than being carried by the community upfront and providing a safety net for changes in land management information and techniques that may come in to play between the adoption of the BILS and a proponent seeking to rezone the land.

Financial/Resource/Legal Implications:

The redrafting and re-exhibition of the BILS as proposed by the motion will have financial and resource allocation implications.

Is the proposal consistent with any Delivery Program tasks?

The proposal would immediately stop the finalisation of the Business and Industrial Lands Strategy, with an estimated new finalisation date of late 2020. It will also direct staff away from other work programs that they need to progress in line with the current and forward year DP/OP.

Community Objective 4: We manage growth and change responsibly	4.5 Work to improve community resilience in our changing environment	4.5.1 Develop and implement strategies for our community's needs	4.5.1.1 Finalise the Business and Industrial Land Strategy
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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.1 PLANNING - Development Application 10.2019.275.1 Boundary Adjustment 45 Monet Drive Montecollum

5 **Directorate:** Sustainable Environment and Economy
Report Author: Patricia Docherty, Planner
File No: I2019/2024

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Proposal:

DA No:	10.2019.275.1		
Proposal description:	Boundary Adjustment		
Property description:	LOT: 1 DP: 1231141, LOT: 9 DP: 259415		
	45 Monet Drive MONTECOLLUM; 105 Monet Drive MONTECOLLUM		
Parcel No/s:	268840, 163740		
Applicant:	Balanced Systems Planning Consultants		
Owner:	Mr A J King		
Zoning:	RU2 Rural Landscape / PART DM Deferred Matter (1A Hatched General Rural Zone		
Date received:	23 May 2019		
Integrated / Designated Development:	<input checked="" type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input type="checkbox"/> Not applicable
Concurrence required	RFS 100B; DPIE Secretary's variation to a development standard.		
Public notification or exhibition:	– Level 0 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications – Exhibition period: Not Applicable – Submissions received: Nil		
Variation request	<input checked="" type="checkbox"/> Clause 4.6	<input checked="" type="checkbox"/> SEPP 1	<input type="checkbox"/> Not applicable
Delegation to determine	Council		
Issues:	SEPP 1 Variation		

Summary:

15 This development application seeks consent for a boundary adjustment between two lots at 45-105 Monet Drive, Montecollum, known as the Crystal Castle. The subject properties have an area of 7.66 ha (Lot 1 DP 1231141 – Crystal Castle Lot) and 20.02 ha (Lot 9 DP 259415). The reconfigured lots will increase the size of the property that contains the Crystal Castle as follows:

- 20 • Proposed Lot A - 10 ha (Crystal Castle Lot) and
 • Proposed Lot B - 17.88 ha

25 The development incorporates a SEPP 1 Variation to the 40 ha minimum lot size requirements and the Secretary (Department of Planning, Industry and Environment) has granted concurrence to vary the development standard under Clause 11 of Byron LEP 1988 in this instance.

30 The purpose of the proposal to adjust the shared boundary between the two rural allotments is to expand the current ecological enhancement program on site, by incorporating the additional land into the current rainforest regeneration area.

No additional dwelling entitlements will be created. There are no expected adverse environmental impacts to the site or surrounding properties as a result of the proposed boundary adjustment, which is seen as a logical alignment of the boundaries to the land.

- 5 The application is recommended for approval subject to conditions of consent.

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.

15

RECOMMENDATION:

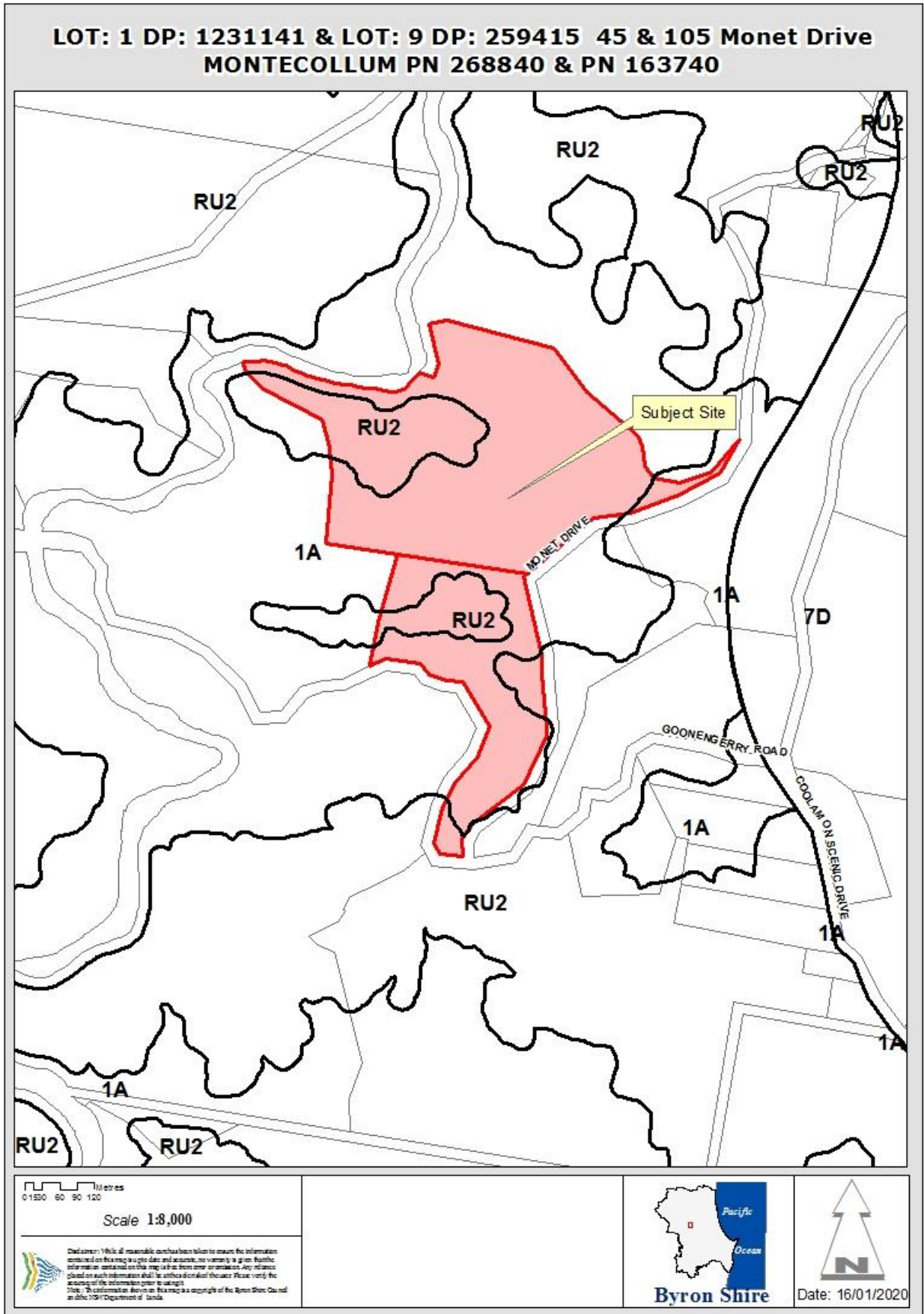
That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.275.1 for Boundary Adjustment, be granted consent subject to the conditions of approval in Attachment 4 (E2020/3957).

Attachments:

- 20 1 Plans prepared by Balanced Systems dated 20/8/19, E2020/3848 
- 2 Department of Planning - Secretary's concurrence, E2020/3827 
- 3 Rural Fire Service - General Terms of Approval, E2020/3824 
- 4 Recommended Conditions - Attachment 4 - 10.2019.275.1 Monet Drive Montecollum, E2020/3957 

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REPORT



Assessment:

1. INTRODUCTION

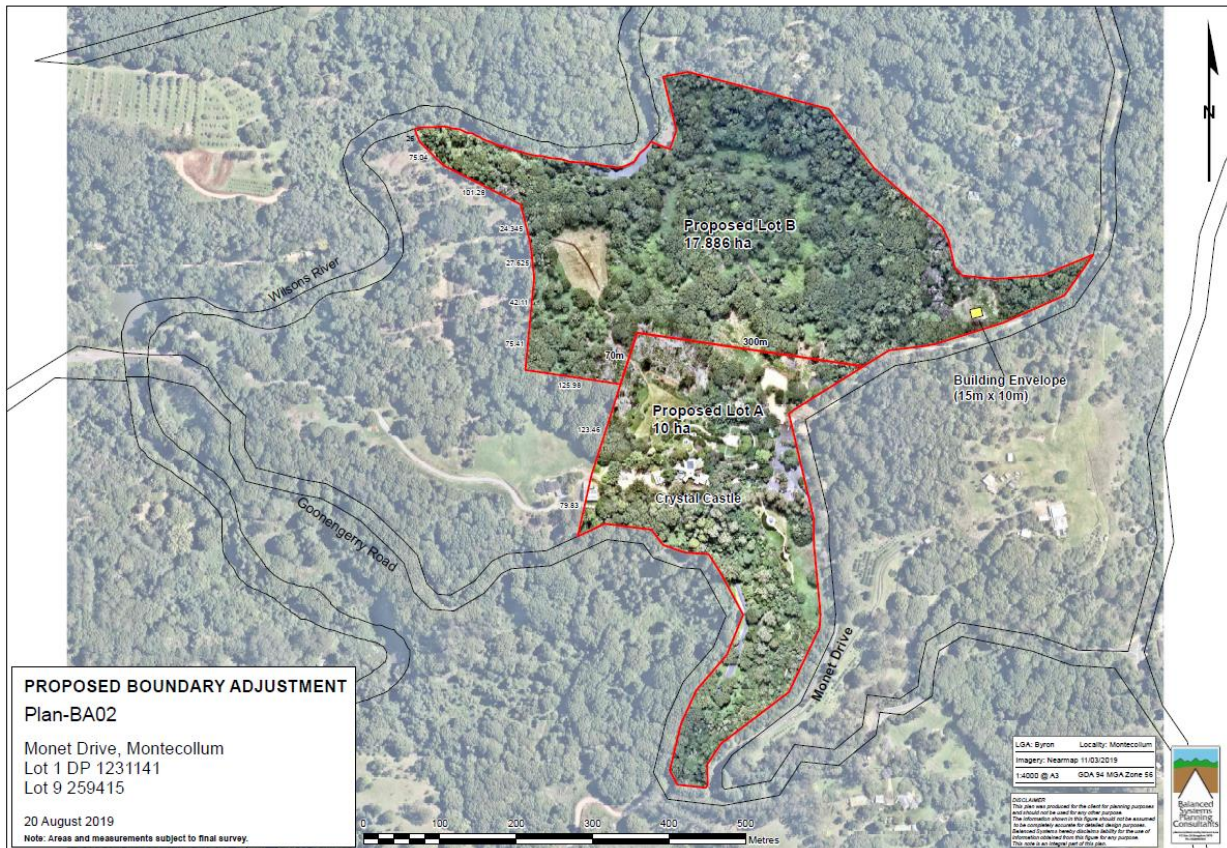
5 1.1. History/Background

A search of Council records provides the following development approval history for the site:

- BA 6.1987.2600.1 Conversion, Finalised 31/01/1987
- BA 6.1995.2173.1 Addition/Alteration to Shop - Roof over tea rooms, Approved 02/05/1995
- 10 DA 5.1995.285.1 Change of Use - Tourist Facility, Approved 03/11/1995
- DA 5.1997.413.1 Tree removal (5 trees), Approved 17/12/1997
- DA 10.1998.472.1 Camping ground (4 sites), 6 cabins (rural tourist facility), Approved 17/05/1999
- DA 10.2004.247.1 Farm Shed, Approved 28/06/2004
- DA 10.2006.517.1 Rural Dwelling, Approved 01/11/2006
- 15 S96 10.2006.517.2 - Minor mods to dwelling inc. new entrance porch, Approved 19/09/2007
- CDC 16.2008.44.1 New Carport & Small Screened Area, Approved 09/07/2008
- DA 10.2011.411.1 Special purpose subdivision - established rural tourist facility, Approved 12/04/2012
- DA 10.2011.3.1 Construction of a "Stupa Monument", Approved 4/02/2011
- 20 DA 10.2014.278.1 Alts/Add to a Rural Tourist Facility, for toilet facilities Approved 02/07/2014
- S96 10.2014.278.2 Delete condition 6 regarding disabled access, Approved 18/07/2014
- S96 10.2011.411.2 Delete condition no. 5 in relation to electricity supply. Approved 22/07/2014
- S96 10.2011.411.3 Modify Bushfire Safety Authority Requirements, Approved 10/11/2015

25 1.2. Description of the proposed development

This application seeks approval for a boundary adjustment between Lot 1 DP 1231141 (7.866 ha) and Lot 9 DP 259415 (20.02 ha) to create proposed Lot A (10 ha) and Lot B (17.886 ha) (refer to illustration below).



30 *Proposed Boundary Adjustment*

The proposed boundary adjustment is located entirely within the 1(a) Hatched General Rural Zone and the nominated building envelope on proposed Lot B is on land zoned RU2 Rural Landscape in an existing cleared area with access to Monet Drive.



5 Access to Proposed Lot A is via the existing access.



Access to Proposed Lot B

1.3. Description of the site

10 The combined site area is approximately 27.886 ha. The site is formally known as:

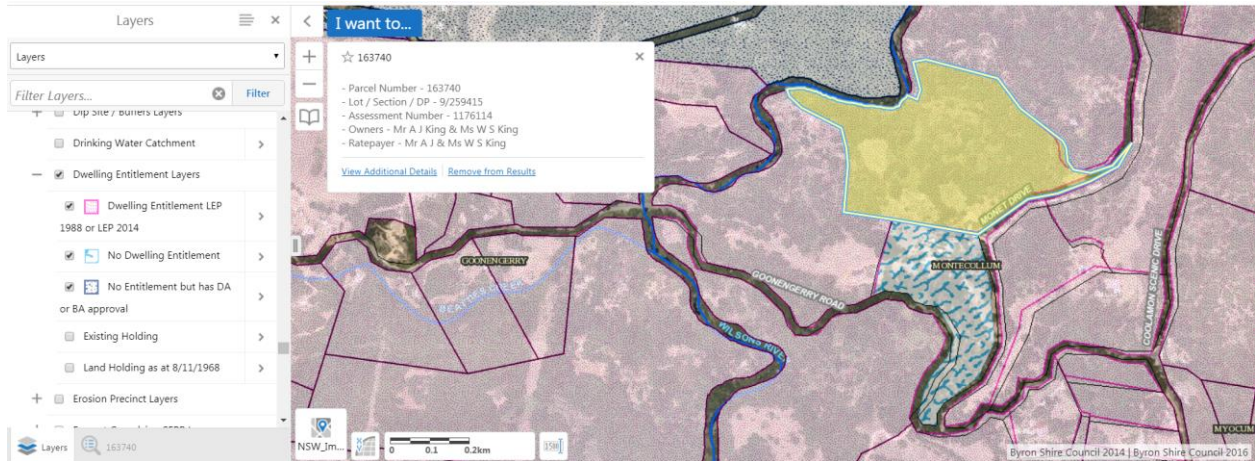
Lot 1 DP 1231141 - 45 Monet Drive Montecollum, 2482; and
 Lot 9 DP 259415 - 105 Monet Drive, Montecollum, 2482.

15 Existing Lot 1, which is the lot to the south on the locality plan is 7.866 ha and contains the ‘Crystal Castle’ rural tourist facility and associated uses including a café, gift shop and managers residence.

20 Existing Lot 9 is 20.02 ha and has an existing dwelling entitlement that will not be changed by the proposed boundary adjustment. There are no buildings or structures on Lot 9 DP 259415 other than a car park with access from Monet Drive.

25 It is noted that a separate residence is located on an adjoining parcel to the west of existing Lot 1, legally described as Lot 2 DP 1231141 at 461 Goonengerry Road and that this does not form part of this proposal.

This proposal does not create a new dwelling entitlement.



Dwelling entitlement mapping extract from Geocortex

2. SUMMARY OF REFERRALS

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Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
S94 / Contributions Officer	No contributions are payable. No increase in the demand for public facilities.
Rural Fire Service (100B)	No objections subject to conditions.
Department of Planning & Environment	No objections. Concurrence granted.

3. SECTION 4.14 – BUSH FIRE PRONE LAND

10 Under section S100B of the Rural Fires Act 1997, the NSW Rural Fire Service must provide General Terms of Approval, under Division 4.8 of the Environmental Planning and assessment Act 1979, and a Bushfire Safety Authority for land subdivision on bushfire prone land that the development complies with the document Planning for Bush Fire Protection 2006. The site is bush fire prone land. The development application was referred to the NSW Rural Fire Service, which provided a Bushfire Safety Authority subject to conditions reflected in the Recommendation of this Report.

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

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

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 1—Development Standards	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The applicant’s written request to vary the development standard Clause 11 – Subdivision in rural areas for agriculture etc. of the Byron LEP 1998, for land use zone 1AH (General Rural Zone) has been considered. The written request provides justification that in the circumstances of this particular development application, that compliance with the development standard is unreasonable and unnecessary. The written request provided grounds of the objection in summary, as follows:		

	Satisfactory	Unsatisfactory
<ul style="list-style-type: none"> • 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. • the application will result in the positive environmental planning outcomes as demonstrated within the report. • the application does not raise any matter of significance for state or regional planning. • 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. • 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. <p>SEPP 1 Variation – Department of Planning, Industry and Environment Secretary’s Concurrence was granted on 13 September 2019 <i>“in this instance for the following reasons:</i></p> <ul style="list-style-type: none"> • <i>the proposal will not result in additional lots or opportunities for additional dwellings and will provide increased opportunities for the improved environmental management of the land;</i> • <i>The areas of the existing lots are already significantly less than the 40 hectare minimum lot size development standard; and</i> • <i>There is no public benefit in maintaining the development standard in this instance.”</i> 		
State Environmental Planning Policy No 44—Koala Habitat Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration:</p> <p>SEPP 44 is a relevant consideration as both Lots are greater than 1 ha in area (Cl.6). Both Lots contain mapped potential koala habitat (Cl.7). The property contains some Koala sightings as shown on the NSW Bionet Species Sightings dataset.</p> <p>The site contains some scattered Eucalyptus species that were historically planted as a windbreak and are comprised predominately of Flooded Gum. There are some mature Brushbox trees on the site as well. There are also some large Eucalyptus to the north-west of the vacant dwelling envelope. Most of the native vegetation comprises Camphor Laurel with some native rainforest species.</p> <p>The site has NSW Bionet Sightings recorded for the Koala, to the north-east of the proposed vacant dwelling envelope. All large Eucalyptus trees on the site will be retained and protected. The mapped vegetation is not considered to be core koala habitat. The proposal does not require clearing of any koala food trees and will result in improved vegetation management by consolidating the land for bush regeneration purposes. A Plan of Management for koalas is not required based on this assessment.</p>		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: The applicant’s SEPP 55 report assessed the site of the proposed building envelope for proposed Lot B. The preliminary site investigation concludes that: <i>there is negligible risk of contamination at the site of the proposal (the proposed building site for new Lot B) and no further detailed investigation or soil testing is warranted. In accordance with the Byron Shire Council Contaminated Sites Guidelines, NSW EPA Guidelines and SEPP55 provisions, the site is suitable for the proposed dwelling envelope”</i></p> <p>It is considered that the proposed building envelope is suitable for residential use.</p>		
State Environmental Planning Policy (Primary Production and Rural Development) 2019	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Satisfactory	Unsatisfactory
<p>Consideration: The proposed boundary adjustment as assessed is not inconsistent with the aims of the SEPP as follows:</p> <p><i>(a) to facilitate the orderly economic use and development of lands for primary production,</i></p> <p><i>(b) to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,</i></p> <p><i>(c) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,</i></p> <p><i>(d) to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,</i></p> <p><i>(e) to encourage sustainable agriculture, including sustainable aquaculture,</i></p> <p><i>(f) to require consideration of the effects of all proposed development in the State on oyster aquaculture,</i></p> <p><i>(g) to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environment risks associated with site and operational factors.</i></p>	

4.2A BYRON Local Environmental Plan 2014 (LEP 2014)

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

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

Zone Objectives (Zone RU2)	Consideration
• To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.	The proposed boundary adjustment will not adversely impact the natural resource base.
• To maintain the rural landscape character of the land.	The proposed boundary adjustment provides an increased opportunity to enhance the rural landscape character of the land.
• To provide for a range of compatible land uses, including extensive agriculture.	The proposed boundary adjustment will not restrict the land uses potential within the lots or on adjoining lots.
• 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.	Existing approved activities for the Crystal Castle already provide tourist facilities which are demonstrated to be compatible with the rural landscape values and character of the locality.
• To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.	The proposed subdivision will result in a realignment of lot boundaries, which will provide greater potential for ongoing environmental management and bush regeneration outcomes. This is consistent with and will protect the scenic quality of the locality. The proposed building envelope with close proximity to the road will limit the impact of further development or associated clearing on significant scenic landscapes.

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

5 The subject site contains parts of Zone RU2 – Rural Landscape zoned land, and therefore this clause applies. The clause permits rural boundary adjustment, where the resulting lots are below the minimum subdivision lot size. Both of the existing lots subject to the proposal are already well below the minimum lot size.

10 The boundary adjustment does not result in any additional lots or opportunities for dwellings. The proposal does not result in the fragmentation of the land and provides for enhanced accessibility and management of the land. The proposal also considers land use conflicts.

Clause 5.16 Subdivision of, or dwellings on, land in certain rural, residential or environment protection zones

15 The objective of this clause is to minimise potential land use conflict between existing and proposed development on land in the rural, residential or environment protection zones concerned (particularly between residential land uses and other rural land uses).

20 The following matters have been taken into account and the proposal meets the objectives of this clause:

- the proposal is not incompatible with the existing uses and approved uses of land in the vicinity of the development,
- the proposal does not change any use and is not 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,
- the applicant has considered the proposed boundary alignment and building envelope to avoid or minimise any incompatibility.

Clause 6.5 Drinking water catchments

30 The subject properties are located within the Wilsons Creek drinking water catchment; the proposal will have no impact on the drinking water catchment. A wastewater capability assessment has been assessed by Council’s Environmental Health Officer and is considered to demonstrate that a dwelling site contains suitable area for the treatment of wastewater.

Clause 6.6 Essential Services

35 Both Lots have essential services or the ability to make such services available when required (clause 6.6). The proposed Rural Boundary Adjustment will have no additional servicing requirements.

40 The Proposal raises no other issues under Byron LEP 2014.

4.2B Byron Local Environmental Plan 1988 (LEP 1988)

45 The remainder of both lots are zoned 1(a) under Byron LEP 1988 and is therefore an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development. In accordance with LEP 1988 clauses 5, 8 and 9:

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

BYRON SHIRE COUNCIL

Zone Objective	Consideration
(a) to encourage and permit a range of uses creating a pattern of settlement, at a scale and character that maintains or enhances the natural, economic, cultural, social and scenic amenity of the rural environment of the Shire of Byron,	The proposed subdivision does not propose a change of use.
(b) to encourage and permit a pattern of settlement which does not adversely affect the quality of life of residents and visitors and maintains the rural character,	The proposed subdivision does not result in additional dwelling entitlements.
(c) to ensure development only occurs on land which is suitable for and economically capable of that development and so as not to create conflicting uses,	The proposed subdivision and location of the proposed building envelope is not likely to result in a land use conflict.
(d) to allow the use of land within the zone for agricultural purposes and for a range of other appropriate purposes whilst avoiding conflict between other uses and intensive agriculture,	The proposed subdivision will result in a realignment of lot boundaries, which will provide greater potential for ongoing environmental management and bush regeneration outcomes. This is consistent with the scenic rural values of the land and will not conflict with other uses in the surrounding area.
(e) to identify lands (shown hatched on the map) which in the opinion of the council possess a limited capability for more intensive uses or development,	Not applicable.
(f) to restrict the establishment of inappropriate traffic generating uses along main road frontages other than in road side service areas,	Not applicable.
(g) to ensure sound management of land which has an extractive or mining industry potential and to ensure that development does not adversely affect the potential of any existing or future extractive industry,	Not applicable.
(h) to enable the provision of rural tourist accommodation and facilities only where such facilities are compatible with the form and density of the nature of the locality, and	The existing approved activities for the Crystal Castle already provide tourist facilities which are demonstrated to be compatible with the nature of the locality.
(i) to permit the development of limited light industries which do not pose any adverse environmental impact, (e.g. software manufacture and film processing), and	Not applicable.
(j) to ensure that the development and use of land shown cross-hatched on the map adjacent to areas of significant vegetation and wildlife habitat do not result in any degradation of that significant vegetation and wildlife habitat, and that any development conserves and protects and enhances the value of the fauna and flora.	The intention of the boundary alignment is to enhance and regenerate the value of fauna and flora and their habitats.
What clause does the development not comply with and what is the nature of the non-compliance?	Further consideration, including whether the development application is recommended for approval or refusal accordingly.
Clause 11 Subdivision in rural areas for	As noted above, the application included a

agriculture etc.

Both the proposed lots are less than the minimum lot size of 40 ha prescribed for Zone 1(a) land.

SEPP 1 Objection request. The Secretary of the Department of Planning & Environment has provided concurrence for the variation to the development standard for the reasons detailed below.

Clause 11 Subdivision in rural areas for agriculture etc.

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

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

Is the requirement a development standard?

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

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

The development application is accompanied by an objection in writing. It is an objection that compliance with the development standard is unwarranted in the circumstances of the case and specifies the grounds provided in Section 4.1 of this report above.

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.*
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.*
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.*
5. *The zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and compliance with the standard in that case would also be unreasonable or unnecessary.*

For the proposal, compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

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

- 5
- *the proposal will not result in additional lots or opportunities for additional dwellings and will provide increased opportunities for the improved environmental management of the land;*
 - *The areas of the existing lots are already significantly less than the 40 hectare minimum lot size development standard; and*
 - *There is no public benefit in maintaining the development standard in this instance.*
- 10

The SEPP 1 objection is well founded, concurrence of the Secretary has been granted and it is recommended it be supported.

38 Development within Zone No 1 (a) shown hatched on the map

15 The proposal has considered environmental hazards, including flooding, landslip, bushfire, soil erosion and other environmental impacts.

52 Tree preservation

20 The proposal does not require the removal of any native vegetation; the vacant dwelling envelope was selected because of the high presence of environmental weeds, mostly Camphor Laurel and other weeds, and did not require any removal of native trees.

The proposal raises no other issues under Byron LEP 1988.

25 **4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority**

30 The site does not form part of any Planning Proposal to amend Byron LEP 2014 or any other proposed Instrument that has been the subject of public consultation and has notified to the consent authority.

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

B6 - Buffers and Minimising Land Use Conflict

35 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. The dwelling envelope is located to reduce any potential impacts from the existing Crystal Castle, which includes substantial vegetation in between.

D6 - Subdivision

40 The proposed boundary adjustment has considered the site in terms of landform, topography, soils, vegetation, drainage, watercourses and aspect.

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.
D6.3.1 Lot Size, Shape and Configuration The proposed lots are less than the minimum area specified in Byron LEP 2014 on the lot size map contrary to Prescriptive Measure 1.	Yes The proposed lots will: <ul style="list-style-type: none"> • Not prevent the orderly and economic use and development of the land. • Retain the use of the lots for the approved rural purposes. 	Yes The proposed boundary adjustment is consistent with the buffer recommended by Chapter B6. The new dwelling envelope is located to reduce any potential impacts from the existing Crystal Castle.

	<ul style="list-style-type: none"> Ensure adequate access is retained that will not create a hatchet shaped lot or extensive works associated with vehicle access. 	This application does not propose new dwelling entitlements.
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The proposed development raises no other issues under Byron DCP 2014.

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

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Part B4 Subdivision

What Section and prescriptive measure does the development not meet?	Does the proposed development meet the Element Objectives of this Section? Address.	Does the proposed development meet the Performance Criteria of this Section? Address.
<p>B4.1 Element – Lot Size and Shape The lots will both remain less than 40 ha (the minimum area specified in Byron LEP 1988 for zone 1(a) land – clause 11).</p>	<p>Yes. The proposed lots are largely consistent with defined planning objectives but for the minimum area requirement (see comments above). Adequate access to the lots is maintained.</p>	<p>Yes. The proposed boundary adjustment and dwelling envelope has considered: Protection from noise, dust, odours, spraying, etc, considering wind direction and topography in relation to nearby agricultural uses. Ridgelines, vegetation and distance can provide effective buffers Avoidance of interference with own and neighbouring access for fire protection, flood or stock movement.</p>

The proposal raises no other issues under the DCP 2010.

10

4.5 Environmental Planning & Assessment Regulation 2000 Considerations

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

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

15

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

Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.

Council Policies that are applicable to the proposed development have been considered during assessment.

4.7 The suitability of the site for the development

5 The site is a serviced, unconstrained property and is suitable for the proposed development subject to recommended conditions of consent.

4.8 Submissions made in accordance with this Act or the regulations

10 The development application was not publicly notified. There were **no** submissions made on the development application.

4.9 Public interest

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

5. DEVELOPER CONTRIBUTIONS

20 There is no nexus to levy developer contributions in this instance as no additional lots are being created.

5.1 Water & Sewer Levies

No Section 64 levies will be required.

5.2 Section 7.11 Contributions

25 No Section 7.11 Contributions will be required.

6. CONCLUSION

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

Report No. 13.2 **PLANNING - 26.2019.8.1 Planning Proposal Parrot Tree Place
Bangalow to rezone 690m² of RU1 to R2 low density residential**
Directorate: Sustainable Environment and Economy
Report Author: Sam Tarrant, Planning Support Officer
5 **File No:** I2019/1850

10 **Summary:**

Council has received a request to prepare a planning proposal to amend Byron Local Environmental Plan (BLEP) 2014. The proposal seeks to rezone part of 54 Parrot Tree Place, Bangalow (Lot 33 DP 1223152) from RU1 Primary Production to R2 Low Density Residential.

15 The proposed rezoning applies to approximately 690m² of land directly adjacent to residential land.

20 The rezoning is sought to correct an anomaly where the R2 zone boundary was created in accordance with the 400 metre buffer to the sewer treatment plant located to the south west of the site. A recent survey has indicated that the original 400 metre buffer line was incorrect and can be moved several meters south west, creating an additional 690m² of residential zoning on the lot.

The planning proposal also includes amendments to the minimum lot size and floor space ratio of the subject site to match the appropriate residential zoning.

25 The subject site is unconstrained and adjacent to a recent subdivision allowing for easy access to infrastructure and services. It is estimated that an additional 2 lots will be created as a result of this amendment.

30 As the site is outside of the urban growth boundary and is mapped as regionally significant farmland, the rezoning has been assessed against the criteria in the North Coast Regional Plan, found in the planning proposal.

35 A biodiversity assessment and contaminated land assessment applying to the site are provided within the planning proposal and present no issues with the rezoning.

Due to the minor scale of the rezoning and the proximity to existing residential land, 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.

40 **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.

RECOMMENDATION:

1. **That Council request the NSW Department of Planning, Industry and Environment (DPIE) to issue a Gateway determination for the planning proposal, as included at Attachment 1 (E2020/6094).**
2. **That Council obtain any further studies from the applicant if required by the Gateway determination.**

3. That Council undertake public exhibition of the planning proposal and consult with government agencies in accordance with the Gateway determination.
4. That Council receive a report outlining the exhibition outcomes.

Attachments:

- 1 26.2019.8.1 Parrot Tree Place Planning Proposal V1, E2020/6094 
- 5 2 Template - Form of Special Disclosure of Pecuniary Interest, E2012/2815 

REPORT

Subject site

- 5 The planning proposal applies to part Lot 33 DP 1223152, 54 Parrot Tree Place, Bangalow. The current and proposed zoning is shown below.





The rezoning seeks to accurately reflect the 400m buffer zone from the Bangalow sewerage treatment plant. This enables approximately 690m² of additional low density residential development that abuts an existing residential subdivision.

5 There is currently no development on this lot, the additional residential zoning and 300m² minimum lot size will enable additional housing on the lot.

Proposed amendments

10 The proposed amendments in this planning proposal are as follows

- 1 Rezone the subject area to R2 Low Density Residential to accurately reflect the 400m STP buffer.
- 15 2 Amend the minimum lot size of the subject area from 40 hectares to 300m² in line with existing minimum lot size for the residential component of the lot.
- 20 3 Extend the floor space ratio map requiring a maximum FSR of 0.5:1 in line with the existing FSR for the residential component of the lot.

Supporting studies

Two studies for the subject site are attached to the planning proposal including a biodiversity assessment and contaminated land assessment. Both studies conclude the site is suitable for residential purposes.

A flood study was undertaken for the area for the recent Parrot Tree Place subdivision and shows that the subject site is not flood prone. Additionally the site is not mapped as bushfire prone or as having acid sulfate soils on Council's mapping.

Key issues

The subject site is located outside of the urban growth boundary. The planning proposal addresses the criteria set out in the North Coast Regional Plan for minor alterations to the urban growth boundary. As the proposal is small scale and is to correct a mapping anomaly the variation is considered appropriate.

The subject site, as well as all of Parrot Tree Place is mapped as regionally significant farmland. The planning proposal addresses the criteria set out in the North Coast Regional Plan for land that may be suitable for uses other than farmland. As the subject site is of a small scale, adjacent to residential land and has not been used for agricultural purposes for an extended period of time the variation is considered to be appropriate.

Conclusion

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.

Options

Council has two options

- 1 Forward the planning proposal as attached or with amendments to the Department of Planning, Industry and Environment for a Gateway determination.
- 2 Not continue with the planning proposal and notify the applicant giving reason for the decision.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

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

Legal/Statutory/Policy Considerations

This planning proposal will amend the Byron Local Environmental Plan 2014

5 *Financial Considerations*

10 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.

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

15 *Consultation and Engagement*

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.

Report No. 13.3 **PLANNING - Development Application - further report following resolution 19-279 10.2018.384.1 Alterations and Additions to existing Dwelling House, Alterations and Additions to existing structure to create Dual Occupancy (detached) and Upgrade Wastewater System at 183 Coopers West Lane Main Arm**

Directorate: Sustainable Environment and Economy

Report Author: Ivan Holland, Planner

File No: I2019/1124

Summary:

Council resolved at the Planning Meeting held 20 June as follows:

19-279 Resolved that determination of Development Application 10.2018.384.1 be deferred until such time as further detail can be provided in a future report to Council on:

- the alignment of the Right of Way through Lot 3 DP 558858 and
- whether any further road widening is required on this section of the right of way to satisfy the requirements of the Rural Fire Service.
- The fire assessment be further considered.

This report addresses the matters contained in the resolution.

Following the June 20 Council Planning Meeting, the applicant provided further information to address the matters raised in the resolution including

- A survey plan of the access road and right of carriageway (ROC) from Coopers Lane West to the subject property;
- Written approval from the owners of Lot 7 DP 591828 and Lot 1 DP 445771 for the modification of the ROC through their property and legal advice on available options for rectifying the misalignment of the right of carriageway in Lot 3 DP 558858; and
- A revised Bush Fire Assessment Report.

The alignment of the Right of Way through Lot 3 DP 558858

The survey plan provided by the applicant indicates that the access road is largely consistent with the legal ROC through Lot 3 DP558858. Deviations between the actual access road and the legal ROC can be corrected either by physically realigning the road to be within the legal ROC, or altering the legal ROC to match the actual road alignment. A condition has been recommended to require this exercise to be conducted.

The access road also passes through two other properties (Lot 1 DP 445771 and Lot 7 DP 591828) before reaching the subject property. The access road and legal ROC in these two properties are also misaligned however, the owners of these two properties have provided written approval for the ROC to be realigned to be consistent with the actual access road and upgrades (i.e., widening and passing bays) required by the Rural Fire Service (RFS).

Whether any further road widening is required on this section of the right of way to satisfy the requirements of the Rural Fire Service

The applicant provided a revised Bush Fire Assessment Report which was referred back to the RFS for further assessment. RFS issued an updated approval and conditions for the development on 3 December 2019 which in relation to external property access requires the following:

5. The right of way is to be realigned over the existing property access road within the subject property, Lot 1 DP 445771 and Lot 7 DP 591828 and is to include the proposed/existing passing bays (on the aforementioned properties) as identified on the

survey plan prepared by Heath & McPhail Surveying Pty Ltd, Drawing No. HM18147-2, Issue B dated 14th October 2019. The road widening opportunity within the existing easement in the vicinity of chainage 120 as identified on the survey plan is not to extend beyond the communications cable located 3-4m above ground level.

5

The fire assessment be further considered

Council Planning staff, the applicant's bush fire consultant and RFS staff carried out a site inspection prior to the RFS finalising their assessment, approval and conditions for the development. The asset protection zones specified in the updated approval from RFS are the same or a lesser distance than those required in the original RFS approval, validating the applicant's bush fire expert's previous findings, including in relation to slope analysis.

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Based on the additional information provided by the applicant, the updated RFS approval and updated recommended conditions, it is considered that all outstanding issues including matters raised in the Council resolution have been adequately addressed. Consequently, it is recommended that Development Application 10.2018.384.1 for Alterations and Additions to existing Dwelling House (central east of the site), use of an existing structure (house) as a Dual Occupancy (detached) including alteration and additions to this structure, and upgrading of the existing Wastewater System be approved subject to the amended recommended conditions of consent E2020/5837.

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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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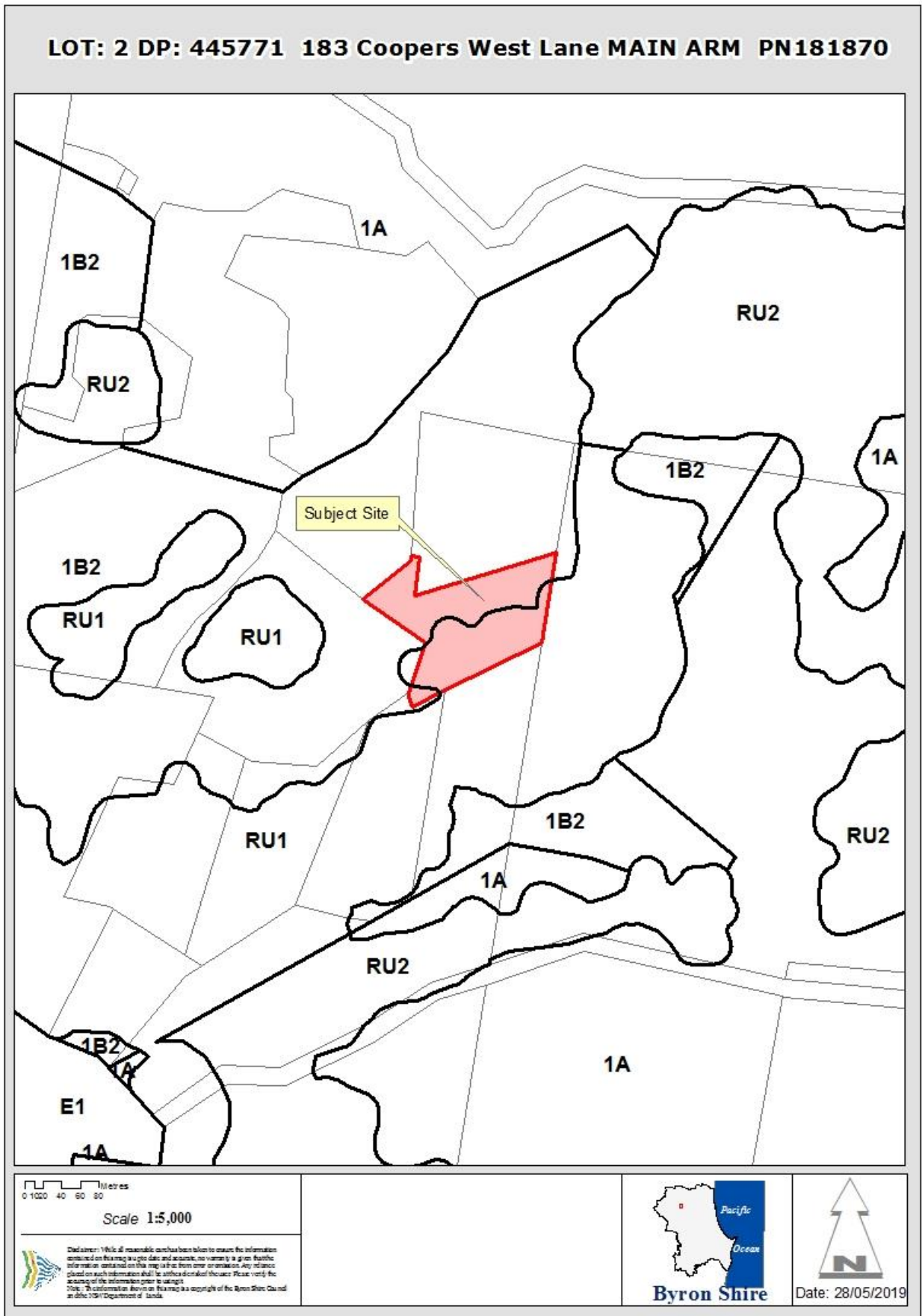
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RECOMMENDATION:

That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No.10.2018.384.1 for Alterations and Additions to existing Dwelling House Use, Alterations and Additions to existing structure to create Dual Occupancy (detached) and Upgrade Wastewater System, be approved subject to the recommended conditions in Attachment 12 (E2020/5837).

Attachments:

- 1 Proposed Plans, E2020/5808 
- 35 2 Submissions received, E2019/38225 
- 3 Letter from Peter Thornton Re: Tree Retention in Asset Protection Zone, E2019/54501 
- 4 Applicant's summary of further information, E2020/5729 
- 5 Survey of access road, E2020/5751 
- 6 Written approval from owner of Lot 7 DP 591828 for modification of easement, E2020/7597 
- 40 7 Written approval from owner of Lot 1 DP 445771 for modification of easement, E2020/5721 
- 8 Applicant's legal advice regarding amendment of easements, E2020/11984 
- 9 Additional information to support Bush Fire Assessment, E2020/5832 
- 10 Amended Bush Fire Assessment Report, E2020/5697 
- 11 Rural Fire Service Response - Amended referral recommended conditions, E2020/3631 
- 45 12 Recommended conditions, E2020/5837 



REPORT

Council considered Report No. 6.10 PLANNING – 10.2018.384.1 Use of existing structure as a Dwelling House and Alterations and Additions to create Dual Occupancy (detached), Alterations and Additions to existing Dwelling House at the Planning Meeting of 20 June 2019 and resolved as follows:

19-279 *Resolved that determination of Development Application 10.2018.384.1 be deferred until such time as further detail can be provided in a future report to Council on:*

- *the alignment of the Right of Way through Lot 3 DP 558858 and*
- *whether any further road widening is required on this section of the right of way to satisfy the requirements of the Rural Fire Service.*
- *The fire assessment be further considered.*

Following the June 20 Council Planning Meeting, the applicant provided further information to address the matters raised in the resolution being:

- A summary of the response to the matters raised in the Council resolution (Doc# E2020/5729);
- A survey plan of the access road and right of carriageway (ROC) from Coopers Lane West to the subject property (Doc# E2020/5751);
- Written approval from the owner of Lot 7 DP 591828 for the modification of the ROC through their property (Doc# E2019/54503);
- Written approval from the owner of Lot 1 DP 445771 for the modification of the ROC through their property (Doc# E2020/5721);
- Legal advice on available options for rectifying the misalignment of the right of carriageway (Doc# E2020/5719);
- A revised Bush Fire Assessment Report (Bushfire Certifiers, 14 October 2019) (Doc# E2020/5697); and
- An updated assessment and approval from the Rural Fire Service (RFS) for the development based on a joint site inspection, the survey plan of the access road and the revised Bush Fire Assessment Report (Doc# E2020/3631).

This report presents to Council a response to the matters raised in the resolution. These matters are discussed below:

Resolution 1 – The alignment of the Right of Way through Lot 3 DP 558858

The applicant provided a survey plan of the access road and right of carriageway (ROC) from Coopers Lane West to the subject property. The survey plan indicates that the access road is largely consistent with the ROC through Lot 3 DP558858. Within Lot 3 DP558858, the survey plan shows some partial deviations between the actual access road and the legal ROC within the first 500m from the Coopers Lane West junction. From approximately chainage (CH) 500 to chainage 630 (where the access road leaves Lot 3 DP 558858) the access road is adjacent to, but largely outside, the legal ROC. The applicant states in their summary that they have made attempts to obtain written approval from the owners of Lot 3 DP558858 to alter the ROC to match the actual access road without success. However, the applicant has provided legal advice that outlines a number of options available to the applicant for rectifying the misalignment of the ROC.

The actual access road is near to, but largely outside, the legal right of way within Lot 1 DP445771 and for the most part runs through Lot 7 DP 591828. The owners of these two properties (Lot 1 DP 445771 and Lot 7 DP 591828) have provided written approval for the ROC to be realigned to be consistent with the actual access road and upgrades (i.e., widening and passing bays) required by the Rural Fire Service (RFS).

5 The minor deviations between the actual access road and the legal ROC within Lot 3 DP558858, Lot 1 DP445771 and Lot 7 DP 591828 can be corrected either by physically realigning the road to be within the legal ROC, or altering the legal ROC to match the actual road alignment. In addition to the applicant's property, the access road/ROC provides vehicular access from Coopers Lane West to a number of properties further uphill.

10 A condition has been recommended that requires physical realignment of the access road to be within the legal ROC, or altering the legal ROC to match the actual access road alignment, including any widening required by the RFS approval (or a combination of these approaches) prior to the issue of a construction certificate for the development. In this regard, the following conditions have been recommended:

Property Access

The application for a Construction Certificate is to include sufficient evidence to demonstrate that the dwellings have suitable vehicular access, particularly that the property access road through the subject property, Lot 3 DP 558858, Lot 1 DP 445771 and Lot 7 DP 591828, including any changes required by the Rural Fire Service (DA-2018-03006-CL55-1, 3 December 2019), is wholly contained within a legal right of carriageway.

Such evidence should include:

- a) an updated survey of the access road that shows the actual access road and the updated right of carriageway, and
- b) amended property titles that show the right of carriageway has been updated or the equivalent.

NOTE: Rectifying and upgrading the property access may require a combination of:

- a) Amending the right of carriageway to overlay the actual property access road, including widening/passing bays required by the Rural Fire Service; and
- b) Reconstructing/altering the property access road to align with the legal right of carriageway.

Property Access - Design details

The application for a Construction Certificate is to include design plans and details of any upgrades/amendments to the property access required to comply with the conditions recommended by the NSW Rural Fire Service in the letter dated 3 December 2019, Reference: DA-2018-03006-CL55-1 and condition 12 of this consent.

Such plans and specifications must be approved as part of the Construction Certificate.

15 **Resolution 2 – whether any further road widening is required on this section of the right of way to satisfy the requirements of the Rural Fire Service**

20 The applicant provided a revised Bush Fire Assessment Report which was referred back to the RFS for further assessment. RFS issued an updated approval and conditions for the development on 3 December 2019 which in relation to external property access requires the following:

- 25 *5. The right of way is to be realigned over the existing property access road within the subject property, Lot 1 DP 445771 and Lot 7 DP 591828 and is to include the proposed/existing passing bays (on the aforementioned properties) as identified on the survey plan prepared by Heath & McPhail Surveying Pty Ltd, Drawing No. HM18147-2, Issue B dated 14th October 2019. The road widening opportunity within the existing easement in the vicinity of chainage 120 as identified on the survey plan is not to extend beyond the communications cable located 3-4m above ground level.*

In relation to Lot 3 DP558858, the survey plan identifies a “road widening opportunity” from near chainage 100 to near chainage 160 that can be accommodated within the current easement. The RFS condition (detailed above) requires that road widening is not extend beyond the communications cable.

5

Resolution 3 – The fire assessment be further considered

The applicant provided supplementary advice from the applicant’s bush fire expert (Peter Thornton), dated 17 July 2019, to support the previous findings of the bush fire assessment (E2019/54749). The supplementary advice states that:

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- A thorough site inspection was conducted as part of the bush fire assessment;
- The gully to the north/north west of the proposed dual occupancy was taken into account in the assessment of effective slope;
- The assessment was consistent with NSW Rural Fire Service methodology;
- Peter Thornton has the necessary qualification and experience to carry out the bush fire assessment owing to 18 years experience in bushfire consulting, A Masters in Fire Safety engineering and being an Accredited Level 3 Bushfire Practitioner;
- The bush fire assessment complies with Planning for Bush Fire Protection 2006; and
- The bush fire assessment was accepted by the Rural Fire Service.

15

20

The supplementary advice from the applicant’s bush fire expert validates the findings of the original bush fire assessment submitted with the development application, including relating to slope analysis.

25

As noted above, the applicant provided a revised Bush Fire Assessment Report which was referred back to the RFS for further assessment. Council Planning staff, the applicant’s bush fire consultant and RFS staff carried out a site inspection prior to the RFS finalising their amended assessment, approval and conditions for the development. RFS issued an updated approval and conditions for the development on 3 December 2019 in which the asset protection zones are the same or a lesser distance than those required in the original RFS approval, demonstrating that the applicant’s bush fire expert’s previous findings were conservative. The updated conditions provided by the RFS have been incorporated into the updated recommended conditions of approval.

30

Conclusion

35

The additional information provided by the applicant has suitably addressed the reasons for deferral in the Council resolution. The proposed development is in accordance with the relevant planning controls that apply to the site, is capable of meeting conditions recommended by the RFS, has adequate access (or the ability to achieve adequate access) and is unlikely to result in significant adverse impacts on the natural or built environment.

40

It is recommended that DA 10.2018.384.1 be approved subject to the recommended conditions, be approved subject to the conditions in Attachment 12 to this report.

Report No. 13.4 **Integrated Pest Management Strategy**
Directorate: Sustainable Environment and Economy
Report Author: Karen Love, Research Officer – Climate Change
File No: I2019/2136

5

Summary:

10 In 2014, Council resolved (Res 13-621) to develop an Integrated Pest Management (IPM) Policy and Strategy for Council owned and managed land. The IPM Policy was adopted by Council in August 2018 (Res 18-565).

15 The IPM Strategy (Strategy) was presented to Council on [19 September 2019](#) however resolution 19-455 was rescinded on 17 October 2019 by [Res 19-519](#).

Six items within Res 19-519 were addressed and presented to Council [12 December 2019](#) for review and adopted ([Res 19-633](#)).

20 This report presents the final item (7) from **Res 19-519** that *“on completion of items 1-6 above, present the revised draft to the next available Planning Meeting of Council”*.

RECOMMENDATION:

That Council adopt the Integrated Pest Management Strategy 2019-2029 at Attachment 1 (E2020/6168).

25 **Attachments:**

1 Byron Integrated Pest Management Strategy 2019-2029, E2020/6168 

30

REPORT

The Integrated Pest Management Strategy 2019 – 2029 is presented at attachment 1, for adoption.

5 STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

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

Legal/Statutory/Policy Considerations

10

Related Legislation:

As per [19 September 2019 report](#)

Related Council Policies:

15

As per [19 September 2019 report](#)

Related Plans/Standards and Registers:

As per [19 September 2019 report](#)

20 *Financial Considerations*

Development of the IPMS is funded in the 2019/20 budget.

Consultation and Engagement

25

Council’s Manager Works consulted with a representative of the Goonengerry Landcare group for information relating to partnership development, and advocacy of Landcare groups wanting to work in conjunction with Council on rural roadsides.

Report No. 13.5 **PLANNING - S8.2 Review - Alterations & Additions to Tourist Cabin, Alcorn Street, Suffolk Park**
Directorate: Sustainable Environment and Economy
Report Author: Rob Van Iersel, Major Projects Planner
File No: I2019/2141

Summary:

This report provides a review of determination for development application 10.2019.276.1, which proposed additions to an existing tourist cabin located at the northern end of Alcorn Street, Suffolk Park. The application was refused under delegated authority on 20 September 2019.

The existing cabin is one of 12 located at the extreme northern end of Alcorn Street. The tourist development was originally approved in 1986 and involved 30 cabins. A 1997 consent approved a subdivision of the land and removal of 18 cabins, to be replaced by a Community Title subdivision for residential development of the southern part of the site, leaving the 12 existing cabins on the northern portion. Dwellings have subsequently been constructed on the residential lots.

The remaining cabins, while individually owned within a strata plan, are operated collectively as Tallow Beach Houses. The portion of the property within which they are located is zoned 7(f1) Coastal Lands.

Tourist cabins are prohibited in this zone. However, because the existing cabins were lawfully approved before the land was zoned 7(f1), they enjoy existing use rights.

The applicant proposed a substantial increase in size for an existing two-bedroom cabin, primarily by way of an upper level extension. The existing cabin has a floor area of 127m², and this was proposed to increase to 242m². No additional bedrooms were, however, proposed; the upgraded cabin would still contain two-bedrooms.

A swimming pool, pool house and associated facilities were also proposed.

The application plans, as lodged, are contained as Attachment 1.

The application was refused primarily because it was considered that the extent of the alterations and additions were too significant to be considered under existing use rights. The area in which the swimming pool and facilities were proposed is mapped as littoral rainforest, and it was considered that those components would result in unacceptable environmental impacts.

In requesting a review of the refusal, the applicant has deleted the pool and associated facilities, slightly reduced the overall floor space (by around 10m²), and redesigned the roof to lower overall height and reduce bulk. The amended plans subject of this review application are contains as Attachment 2.

Deletion of the pool means that all works are confined to the footprint of the existing building, reducing direct impacts on any areas mapped as littoral rainforest. The redesign of the roof structure will adequately address potential for visual impacts, given the location of the cabin, which cannot be directly seen from any adjacent public areas.

The legislation governing existing uses specifically allows for the enlargement or extension of a building. There are no specified limits or restrictions that control the extent of such alteration. The Land & Environment Court have published a *Planning Principle* for how this should be considered, which relates to an assessment of the relationship between the proposed building and development that is permissible on adjoining land.

5 In this case, the existing cabin directly adjoins residential development at the northern end of Alcorn Street, which consists of large two-storey dwellings. In that context, the bulk and scale of the proposed development is not excessive, and it is recommended that the refusal be overturned and the amended development application approved.

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.

15

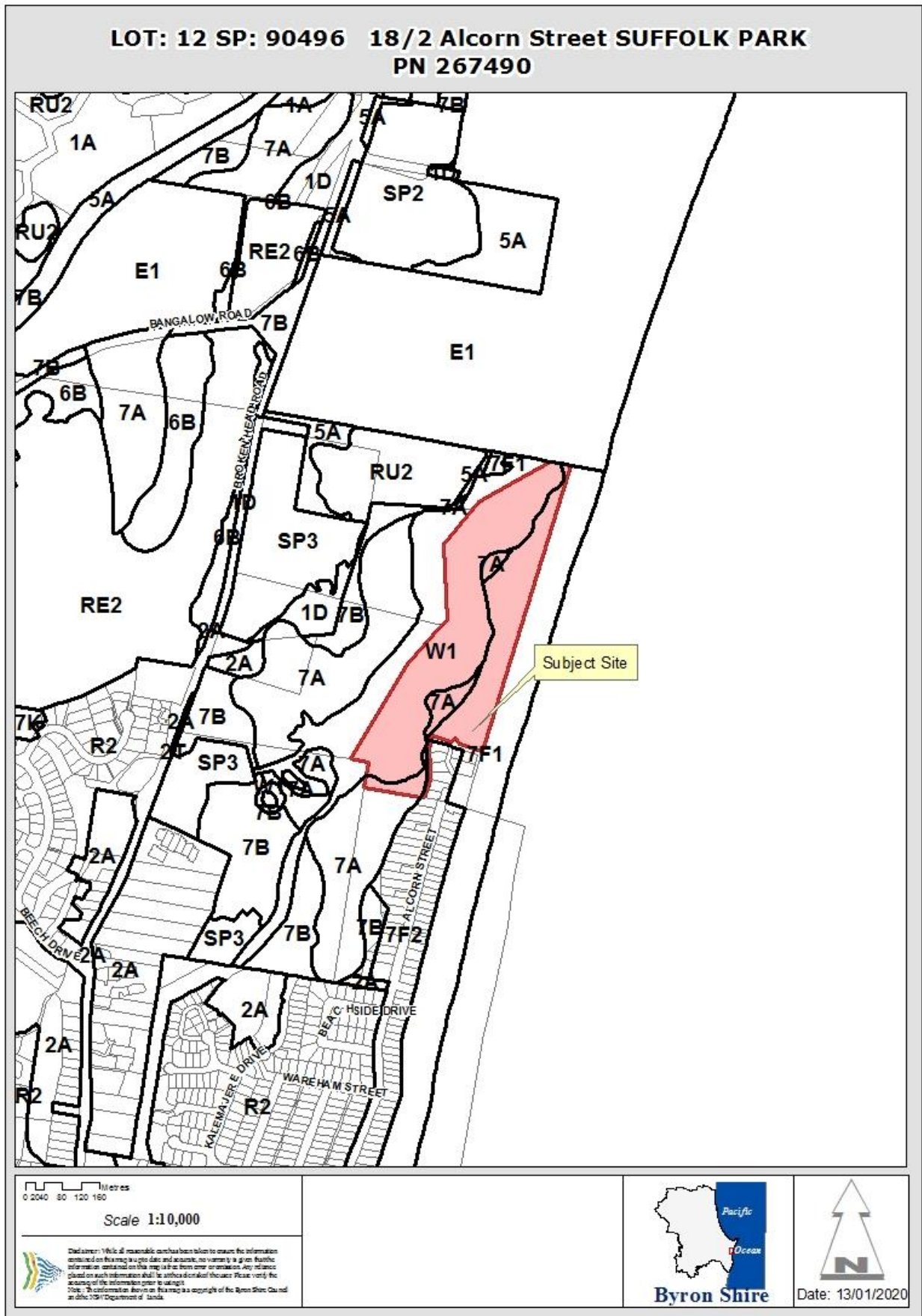
RECOMMENDATION:

That, pursuant to Section 4.16 of the *Environmental Planning & Assessment Act 1979*, development application 10.2019.276.1 for alterations and additions to tourist cabin. Alcorn Street, Suffolk Park, be granted consent subject to the conditions listed in Attachment 4 (E2020/4651).

Attachments:

- 1 10.2019.276.1 Original Application Plans, E2019/37667 
- 20 2 10.2019.276.1 Amended Plans for review Application, E2020/4445 
- 3 10.2019.176.1 Submission to review application, E2020/4658 
- 4 10.2019.276.1 Recommended Conditions of Consent, E2020/4651 

25



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

The existing cabin is part of the tourist facility known as 'Tallow Beach Houses', located at the north end of Alcorn Street, Suffolk Park. It contains 11 holiday cabins and a manager's residence.

10 Development consent was originally issued in 1986 over the former Lot 12 DP 625342, for 30 cabins, amenities block and associated facilities (DA 85/457). The approved development was constructed and operated until the mid-1990s.

15 In 1997, development approval was given to subdivide the property, under Community Title, to remove 18 cabins from the southern part of the property, to be replaced by 8 dwelling lots and a community parcel. The remaining 12 tourist cabins were reconfigured into the current arrangement.

20 In 2011, Council approved DA 10.2010.541.1, for alteration/additions to the existing tourist facility and its strata subdivision (12 lots). In that application, the cabin that is subject to this review application was identified as the "Yoga Pavilion" with a floor area of 131.6m², a deck area of 131.6m² and a total roof area of 204m².

25 In 2012, Council approved DA 10.2012.2.1 to change the use of this yoga pavilion to create a two-bedroom cabin, which is how it has remained since that time.

30 Development Application 10.2019.276.1, which is subject of this review request, was submitted on 23 May 2019. It proposed alterations and additions to the existing two-bedroom cabin and the construction of a swimming pool, pool house and associated facilities. The development plans, as lodged, are contained in Attachment 1.

35 The plans showed a substantial enlargement of the existing cabin, providing an open plan living area for most of the existing floor space, with a second floor addition to contain two larger bedrooms, each with en-suite.

The application was refused under delegated authority on 20 September 2019. The reasons for refusal are addressed below.

40 1.2. Description of the site

Land is legally described as: LOT: 12 SP: 90496

Property address is: 18/2 Alcorn Street SUFFOLK PARK

Land is zoned: The property containing 'Tallow Beach Houses' is 'deferred matter' under BLEP 2014.

Lot 12 is zoned 7(f1) Coastal Land under BLEP 1988.

Land area is: 1,212m²

Property is constrained by: Bushfire prone land (category 1 and buffer);
Acid Sulfate Soils (Class 3);
High Environmental Value vegetation (littoral rainforest); and
Coastal Erosion Precinct 3.

Tallow Beach Houses is located at the northern end of Alcorn Street, Suffolk Park and is accessed through a private road (part of the overall community title) that also services eight residential dwellings. The access road is gated at the Alcorn Street frontage.

- 5 The area comprising the tourist facility is relatively flat, with sandy soils and scattered native trees.

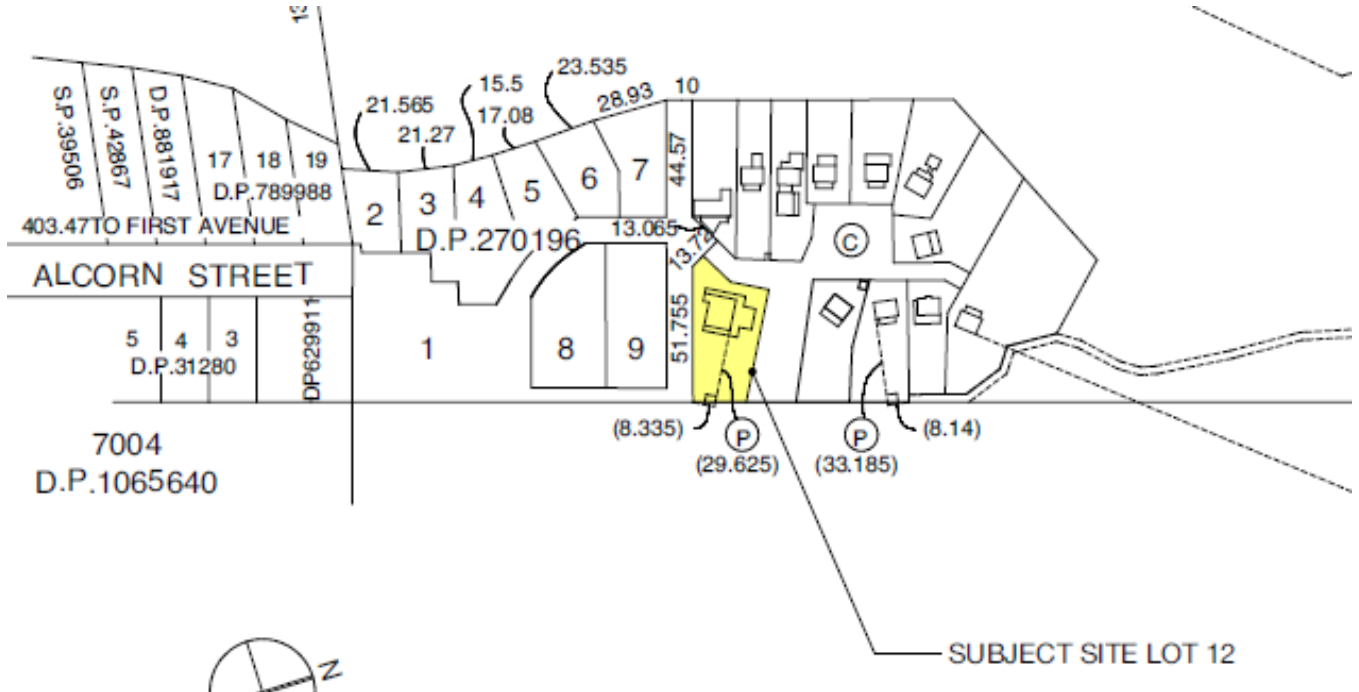


Figure 1 – The property & location

- 10 The existing cabin that is subject of this application is located at the south-eastern end of the Tallow Beach Houses property, to the beachside of the internal access. It is a single storey structure containing two bedrooms, bathroom, living and kitchen surrounded by a covered deck.
- 15 The existing cabin is screened by vegetation (see photos below), although the majority of Lot 12 is cleared grass.
- 20 The eastern boundary of the property is fenced, with a solid brushwood and timber fence of around 1.8m high.
- 25 A public pedestrian/ cycle path is located on the beachside of the fences (see photo below).



Existing Cabin



5 Pedestrian/ cycle path immediate adjacent to site

2. REVIEW APPLICATION

2.1. Revised submission

5 The application for review was submitted with an updated plan set (Attachment 2) and a report addressing the reasons for refusal.

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

- 10
- remove the swimming pool, pool house and associated facilities from the application;
 - reduce the size of the upper floor bedroom areas, reducing the proposed floor space from 242m² to 232m² as currently proposed (the existing cabin has a floor space of 127m²); and
 - redesign the roof to lower the overall height and reduce its size.

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

15 The application for review was publicly exhibited from 2 -15 January 2020. There was one submission received, from owners of one of the residential community title lots adjoining the southern part of the property. (Attachment 3)

20 The objection to the development is based on an assumption that the extensions proposed to the cabin will increase its capacity, increasing traffic on the internal private road that passes their house. Other concerns are raised associated with increased capacity, including impacts on sewer capacity and high environmental value vegetation.

25 The submission expresses concern that approval could set a precedent that could lead to further substantial increase in the capacity of the existing tourist facility.

30 It is considered that these concerns are unfounded as the proposed extensions, while resulting in a larger cabin, do not increase the number of bedrooms. Therefore, the extensions do not increase the capacity of the cabin, in terms of the number of guests it can cater for. At most, the extensions may result in a higher occupancy rate over a year if the cabin is a more attractive place to stay.

35 However, occupancy rates are more dependant on a wide range of external factors and it is considered that improving the amenity of the facility will have only a minor effect in this regard.

As such, approval does not establish a precedent for increasing the population capacity of the facility.

2.3. Review of Determination

40 **Reason for refusal No. 1 - The proposed new swimming pool and associated deck are designated development under clause 10 of the State Environmental Planning Policy (Coastal Management) 2018, as they are located in an area mapped as littoral rainforest, but was not lodged with an environmental impact statement contrary to Section 4.12(8) of the Environmental Planning and Assessment Act 1979.**

50 The swimming pool and associated facilities are no longer part of the proposal. The existing cabin and its immediate curtilage is not within the mapped littoral rainforest area.

This reason for refusal therefore is no longer relevant.

Reason for refusal No. 2 - The application does not adequately demonstrate that sufficient measures have been, or will be, taken to protect, and where possible enhance, the

biophysical, hydrological and ecological integrity of the littoral rainforest, contrary to Clause 10(4) of the State Environmental Planning Policy (Coastal Management) 2018.

5 The applicant has demonstrated that no tree clearing is required in order to construct the additions and extensions. The swimming pool and associated facilities are no longer part of the proposal.

10 Bushfire protection conditions were imposed on the 2012 development for the strata title of the tourist facility, including a requirement that the area between the existing cabin and the eastern property boundary is to be maintained as an Inner Protection Asset Protection Zone.

15 The applicant has provided a report by a qualified bushfire consultant demonstrating that this APZ is in place and that the proposed alterations and extensions do not generate a need to remove vegetation for the APZ.

As such, the proposal has no direct impact on the mapped littoral rainforest and this reason for refusal, therefore, is no longer relevant.

Reason for refusal No. 3 - The proposed alterations and additions to the existing holiday cabin and new swimming pool may cause an adverse impact on “the visual amenity and scenic qualities of the coast” as the modified building will be more noticeable from the nearby public walking path and possibly the beach, contrary to Clause 14 of the State Environmental Planning Policy (Coastal Management) 2018.

25 The photos below were provided by the applicant to show how much of the extended cabin would be viewed from the public path.



Existing view



Modelled view of proposed addition

5 The views shown were confirmed on site inspection. It is also noted that residential dwellings located immediately to the south are much more visible from the public path (see below).



Dwelling to the south – viewed from public path

10 It is considered that the visual impacts associated with the extensions, particularly given the reduced scale of the roof, will be very minor.

This reason for refusal, therefore, is no longer relevant.

Reason for refusal No. 4 - The proposed alterations and additions to the existing holiday cabin and new swimming pool are prohibited in Zone No 7 (f1) and are beyond the scope of allowable changes to existing uses, contrary to Clause 9 of the Byron Local Environmental Plan 1988, Section 4.67 of the Environmental Planning and Assessment Act 1979 and sections 41, 42 and 43 of the Environmental Planning and Assessment Regulation 2000.

5

Because the tourist facility was lawfully approved prior to the 7(f1) zoning, under which tourist facilities are a prohibited use, the existing cabin enjoys existing use rights.

10

Clause 41 of the *Environmental Planning and Assessment Regulation 2000* provides that a building subject to an existing use may be enlarged or extended, subject to development consent. The regulation does not set any limit to such enlargement or extension.

15

The NSW Land & Environment Court have considered this question in a number of cases, and established a *Planning Principle* useful in determining existing use rights development, involving four (4) questions, addressed below:

20

How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

Council does not have any controls restricting the size of holiday cabins in the urban context (a maximum floor space applies in rural zones).

25

The bulk and scale of the proposal needs to be compared to the scale of residential development permissible on land to the south, which is zoned 7(f2) Urban Coastal Lands.

The photo below shows the size of the nearest residential dwelling, located within the community titled part of the wider property.



30

Adjoining residential dwelling

All of the dwellings within this community titled part of the land are of a size and scale equal to or larger than the proposed cabin. Dwellings of that scale are common along Alcorn Street in Suffolk Park.

5 *What is the relevance of the building in which the existing use takes place?*

This question relates to proposals for a change of existing use, and is therefore not directly relevant in this case.

10 *What are the impacts on adjoining land?*

Impacts on adjoining private and/ or public land are minimal. The height extension will not result in any overshadowing or overlooking of other cabins in the facility or dwellings adjoining to the south. As indicated above, the extended cabin will only be visible in glimpses from the adjoining public path.

15

What is the internal amenity?

The proposed additions significantly improve the amenity of the cabin as a holiday house.

20

Based on the Court's Planning Principles, and the absence of any restriction or development standard on the size of cabins in this urban environment, it is considered that the proposed development is consistent with the existing use rights applying and, therefore, this reason for refusal is no longer relevant.

25

Reason for refusal No. 5 - The proposed alterations and additions to the existing holiday cabin and new swimming pool may have a detrimental effect on the scenic quality of the locality and may be adversely affected by coastal processes, contrary to the objectives of Zone No 7 (f1) in Clause 9 of the Byron Local Environmental Plan 1988.

30

The scenic amenity is addressed above. In relation to coastal processes, the original approval for tourist cabins included a condition specifying that consent would cease and structures would need to be removed if the erosion escarpment comes within 50m of the buildings. There is also an existing covenant on the title of the land to this effect.

35

The applicant has confirmed that they accept reinforcement of this conditions, and indicate that the buildings would be demolished and removed if the consent condition is triggered.

This is consistent with the requirements of Part J of DCP 2010, and therefore this reason for refusal is no longer valid.

40

Reason for refusal No. 6 - The proposed alterations and additions to the existing holiday cabin and new swimming pool is an overdevelopment of the site and may adversely affect the scenic or environmental quality of the locality and may be adversely affected by coastal processes, contrary to Clause 33 of the Byron Local Environmental Plan 1988.

45

Clause 33 requires that Council consider the potential impacts of coastal processes before granting consent to development on land zoned 7(f1).

As outlined above, this is an existing approved cabin with a condition requiring its removal in the event that the erosion escarpment comes within 50m.

50

This condition will be reinforced on consent for the alterations and additions and therefore approval of the development is not inconsistent with clause 33.

55

Therefore, this condition is no longer relevant.

5 **Reason for refusal No. 7 - The proposed alterations and additions to the existing holiday cabin and new swimming pool do not adequately integrate with the “existing built and natural environment” contrary to Element C3.1 Visual Impact of the Byron Shire Development Control Plan 2010.**

This is addressed above. It is considered that the redesign of the roof structure is a positive amendment in this regard and that the cabin as proposed will integrate with its environment.

10 This reason is no longer relevant.

15 **Reason for refusal No. 8 - The proposed alterations and additions to the existing holiday cabin and new swimming pool are unlikely to “enhances its surroundings” or make “a positive contribution to the Shire, in visual, social and environmental terms” contrary to Element C8.1 Tourism Development in Byron Shire of the Byron Shire Development Control Plan 2010.**

20 The proposed alterations and additions will result in a building that is consistent in scale and design with the dwellings to the south and elsewhere in this part of Suffolk Park.

This condition is no longer relevant.

25 **Reason for refusal No. 9 - The proposed alterations and additions to the existing holiday cabin and new swimming pool are not “designed to be relocate or demolished, or to cease operation, should the erosion escarpment come within 50 metres” contrary to Element J2.3 Precinct 3 - between the 50 Year and 100 Year Erosion Lines of the Byron Shire Development Control Plan 2010.**

30 As outlined above, the proponent accepts that the building would need to be demolished and removed if the current consent condition is triggered.

This is reinforced by a covenant on the title of the land. The condition is therefore no longer relevant.

35 **Reason for refusal No. 10 - The proposed alterations and additions to the existing holiday cabin and new swimming pool may result in environmental impacts on the natural environment particularly adverse affects on the scenic or environmental quality of the locality, contrary to section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.**

40 Deletion of the swimming pool and associated facilities from the application means that potential impacts are restricted the site of the existing cabin. The applicants advise that no vegetation removal will be required during construction.

45 There are unlikely, therefore, to be direct impacts on the natural environment. The scenic environment is addressed above.

This reason for refusal is no longer relevant.

50 **Reason for refusal No. 11 - The site is located within an a restricted zone (PART 7(f1) Coastal Land) and Coastal Erosion Precinct 3 and is not suitable for the proposed alterations and additions to the existing holiday cabin and new swimming pool, contrary to section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.**

The suitability of the site, in this case, relates primarily to coastal processes. This is addressed above, and it is considered that this reason for refusal is no longer relevant.

5 **Reason for refusal No. 12 - The site for the proposed development is located within mapped littoral rainforest and/or littoral rainforest buffer under the State Environmental Planning Policy (Coastal Management) 2018 and is not suitable for the proposed alterations and additions to the existing holiday cabin and new swimming pool, contrary to section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.**

10 Deletion of the swimming pool and associated facilities from the application means that potential impacts are restricted the site of the existing cabin. The applicants advise that no vegetation removal will be required during construction.

15 There are unlikely, therefore, to be direct impacts on the littoral rainforest vegetation. This reason for refusal is no longer relevant.

20 **Reason for refusal No. 13 - The proposed alterations and additions to the existing holiday cabin and new swimming pool are contrary to relevant zones objectives, contrary to other relevant planning provisions and are beyond the scope of allowable changes to existing use rights and consequently the proposed development is not considered to be in the public interest, contrary to section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.**

25 This is a re-iteration of reasons above. This reason for refusal is no longer relevant.

Reason for refusal No. 14 - The proposed development is not likely to achieve a “better environment” or “enhance community well-being”, contrary to the aim and objectives of the Byron Local Environmental Plan 1988, Clauses 2 and 2A.

30 The alterations and extension will result in an improved building form that is more consistent with existing development in this part of Alcorn Street Suffolk Park. Deletion of the swimming pool and associated facilities removes the direct environmental impacts.

35 This reason for refusal is no longer relevant.

Reason for refusal No. 15 - The proposed development is not likely to achieve a “better environment”, contrary to the objects of the Environmental Planning and Assessment Act 1979, Section 1.3.

40 This is a re-iteration of reasons above. This reason for refusal is no longer relevant.

2.4. Legal Implications

45 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

3. PLANNING ASSESSMENT CONCLUSION

5 The request to formally review the application DA10.2019.276.1 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).

10 Based on the assessment undertaken, it is recommended that, pursuant to Section 4.16 of the *Environmental Planning & Assessment Act 1979*, Development Application No. 10.2019.267.1, for alterations and additions to an existing tourist cabin, be granted consent subject to the attached conditions (Attachment 4).

Report No. 13.6 **Tiny House Development Proposal**
Directorate: Sustainable Environment and Economy
Report Author: Shannon Burt, Director Sustainable Environment and Economy
 Vanessa Adams, Director Corporate and Community Services
5 **File No:** I2019/2143

Summary:

10 The concept of using a tiny house as a low cost housing solution has been the subject of recent interest and discussion.

15 In this regard, tiny houses can help address acute and unexpected housing shortages, including housing for aged or dependant persons, affordable housing, housing in bushfire prone areas for emergency relief, or transition housing for the homeless.

20 Their potential use however is currently impeded in New South Wales by a lack of a coherent regulatory and policy framework and variable community support.

The purpose of this report is to seek Council support for an amendment to the Byron Local Environmental Plan 2014 to facilitate tiny house development on Council owned and or managed land for the provision of supported housing for people experiencing (or at risk of) homelessness.

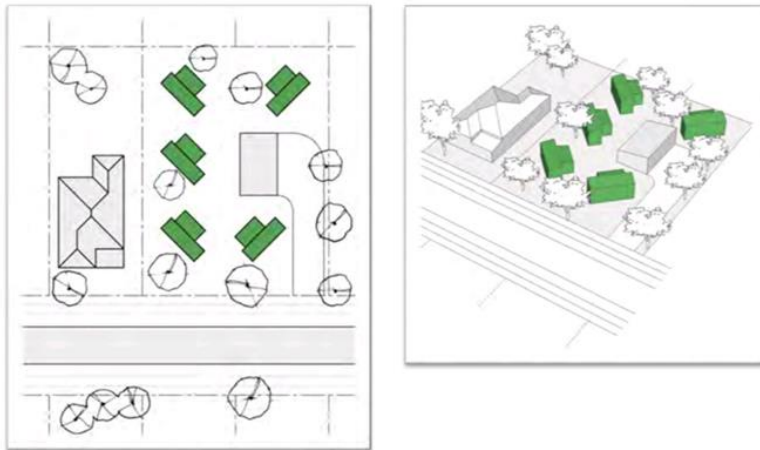
25 This matter was raised with the Minister for Planning and Public Spaces last year when he met with the Mayor and senior staff from Council. A planning proposal was invited subject to it being consistent with relevant state and regional strategic planning documents, including Byron Shire Local Strategic Planning Statement now under preparation.

RECOMMENDATION:**That Council support:**

1. **The preparation of an amendment to the Byron Local Environmental Plan 2014 to facilitate Tiny House Development on Council owned and or managed land for the provision of supported housing for people experiencing (or at risk of) homelessness.**
2. **The Planning proposal being drafted on the basis of the definitions and draft local provision outlined in the report.**
3. **The Planning proposal once prepared by staff is submitted to the Department of Planning for a gateway determination to enable public exhibition.**
4. **Staff writing to the Planning and Local Government departments to request formation of a working group with Byron Council and others (including industry) to further examine the tiny house spectrum and recommend changes to the planning and local government legislation to enable this type of development more flexibly and permanently.**

REPORT**Supported Housing Proposal**

- 5 Homelessness is a growing concern for our Shire. From 2011 to 2016, the homelessness rate increased by 245.83%^[1]. In addition, Council coordinates periodic street counts of people sleeping rough in Byron Shire. From August 2018 to August 2019, we found an increase of 18% in three identified hotpots.
- 10 People experiencing homelessness are part of our community. And our community has a rate of homelessness twice the national average and within that the percentage of homeless people sleeping rough is 6 times the national average.
- 15 Homelessness covers a broad spectrum of situations. The ABS definition recognises three levels of homelessness:
- 20 Primary homelessness (rough sleeping): includes people without conventional accommodation. They may be living on the streets, sleeping in cars, in deserted buildings, in improvised or substandard dwellings, under bridges, or in parks.
- 25 Secondary homelessness: includes people moving frequently between various forms of temporary shelter including staying with friends and relatives, couch surfing, in emergency accommodation, youth refuges, hostels and boarding houses on a short term basis (12 weeks or less).
- 30 Tertiary homelessness: includes people living in boarding houses (or similar) on a medium to long term basis (13 weeks or longer). Residents may not have separate bedrooms and living rooms, they do not have a kitchen and bathroom facilities of their own, their accommodation is not self-contained, and they do not have security of tenure provided by a lease.
- 35 People who sleep rough are among the most vulnerable and disadvantaged. Their resilience and strength are put to the test daily and the experience has lasting impacts on their health and wellbeing. People experiencing long-term rough sleeping have an average life expectancy of 47 years. This is far below the national average life expectancy of 77 years or more.
- 35 *[1] Census 2011 indicated 28.8 homeless persons per 10 000. By Census 2016 the number went up to 99.6 according to data provided by ABS. Homelessness*
- 40 This is not the trend we want to see and Council is working on a number of responses to address this including a supported housing solution in the form of a tiny house development. The legislation presently impedes this due to the lack of a legal term and category for a tiny house in the planning legislation.
- 45 Therefore, it is considered easiest to amend the Local Environmental Plan to include a local provision that would introduce new terms 'tiny house' and 'tiny house development' and a local provision for this type of development to occur including eligible land, persons, and a time frame for use. This would remove the current Local Environmental Plan definition impediment to this type of development. Other approvals under the Environmental Planning and Assessment Act and Local Government Act would otherwise remain where appropriate.
- 50 The concept in its simplest form is to provide a temporary and relocatable housing solution under the terms of a lease for a moveable dwelling/s (MD) on Council owned and or managed land. Rent would be paid by the tiny house occupier to Council. Council could also chose to waive any rent payable depending on the circumstances. The MD is able to be removed and or relocated to another site when required. The land is able to be the subject of a new application and or returned
- 55 to its original state once the MD/s is no longer required. A diagram below illustrates what this could look like.



Source: A Place for Tiny Homes <http://www.tinyhousecompany.com.au/tiny-house-planning-resource>

5 Council should note that a governance model and management plan will need to be developed to provide for project development, property management and lodger support guidance once the planning proposal is finalised. It is likely that Council will need to partner with an appropriate housing and service provider for any development; and an expression of interest will be called in this regard.

10 In addition, a commitment is needed from the Planning and Local Government departments to form a working group with Byron Council and others (including industry) to further examine the tiny house spectrum and recommend changes to the planning and local government legislation to enable this type of development more flexibly and permanently will also be sought.

15 It is understood that this matter is not unique to Byron Shire and any successful pilot may assist other councils in addressing their own local housing challenges by informing changes to the standard LEP instrument to enable this type of development to occur more broadly.

20 There are various examples of tiny house development already in and around Australia.

Launch Housing Melbourne, Victoria

25 Led by Launch Housing, the Harris Transportable Housing Project is a first-of-its-kind initiative in Victoria to increase housing for those experiencing or at risk of homelessness using vacant government-owned land.

<https://www.launchhousing.org.au/harris-transportable-housing-project/>



First transportable housing unit is craned onto site in Melbourne's inner west.



Tiny homes get some finishing touches, with landscaping and fences completed before the first tenants move in.

Tiny Homes Foundation Racecourse Road Gosford, NSW

- 5 The Tiny Homes Foundation has already built four miniature houses to help combat homelessness in Gosford.

<http://www.tinyhomesfoundation.org.au/projects>



10 PHOTO: The Tiny Homes Foundation have already built four miniature houses to help combat homelessness in Gosford. (ABC Central Coast: Meghna Ball)



PHOTO: The 14.4sq metre homes include a kitchenette, bathroom, bed nook and living area that opens onto a veranda. (ABC Central Coast: Meghna Ball)

- 15 NBRS Architecture partnered with Tiny Homes Foundation to design and develop 4 single-occupancy self-contained affordable houses in a group for people experiencing homelessness.

These were approved as self-contained boarding accommodation for four lodgers (i.e. maximum of one lodger per 'tiny home').

<http://nbsarchitecture.com/portfolio/tiny-homes/>

5

Transition Village Wallan, Victoria

Transition Village Wallan is a project to build a village of Tiny Houses, utilising sustainable living and design practices, for people experiencing (or at risk of) homelessness in and around Wallan.

10

<https://transitionvillagewallan.com.au/>

Current legislation in NSW

15 As it stands 'tiny houses' can fall into a number of categories - a moveable dwelling – relocatable home – flat pack home - a granny flat / secondary dwelling.

As a consequence this creates a grey zone for tiny house approvals, particularly in NSW.

20 'Fixed tiny houses' (FTH) can be defined and accommodated through the planning system as a secondary dwelling / granny flat. A FTH can remain on site and be used on a permanent basis by its occupants. A FTH however can be costly and time consuming to have approved and then built. FTH are permitted in certain zones and circumstances.

25 A 'tiny house on wheels' (THOW) is regarded as a 'moveable dwelling' (MD) and is generally treated the same as a caravan. The Local Government legislation restricts the number of MD, stay time and type of occupant in each on land other than a caravan park or manufactured home estate.

30 Further a 'moveable dwelling' (MD) is excluded from the definition of 'building' which means a MD cannot be considered as a 'dwelling house' and or part of 'multi dwelling housing'. These are land use terms in the Local Environmental Plan dictionary which form the basis of the land use tables. Where development consent is possible for a 'dwelling house or multi dwelling housing' on land other than a caravan park or manufactured home estate, a MD as a design approach is unable to be considered.

35 A portable tiny home (PTH) no wheels, is regarded as a 'relocatable home' and as a consequence has additional requirements for location and installation when on land other than a caravan park or manufactured home estate. This is despite the fact that most contemporary tiny homes that are transported in do not have 'compliance plates' as per the MHE definition.

40 Tiny House Development Controls

45 The Australian Tiny House Association has developed a definition of tiny houses in Australia to provide a level of consistency in language being used to describe a tiny house. This definition is based on feedback from the ATHA General Committee and international definitions and understandings.

Tiny houses are moveable dwellings up to 50m²* that are suitable for residential use. Tiny houses can be largely grouped into 2 categories: on wheels or on skids.

50 ***(*for one dwelling, excluding if they are connected)***

It is proposed to use this definition for the purposes of the planning proposal.

The following would form the basis of a local provision in the LEP:

55

Tiny House Development

(1) The objectives of this clause are as follows—

- 5 a) To enable development for the purposes of tiny house development for the provision of supported housing for people experiencing (or at risk of) homelessness.
- 10 b) To ensure that tiny house development is appropriately located.
- 15 c) To minimise the impact of tiny house development on the locality in which it is situated.

(2) Despite any other provision of this Plan, development consent may be granted for development of a tiny house and or tiny house development on Council owned and or managed land for the provision of supported housing for people experiencing (or at risk of) homelessness.

(3) In determining an application under subclause (2) Council must have regard to:

- 20 a) locating the tiny house and or tiny house development as close as possible to existing residential facilities and social support services;
- 25 b) the availability and capacity of infrastructure to the site;
- 25 c) the purpose and provisions of the applicable zone and any applicable controls; and
- 25 d) the potential for land use conflict with other use or development on adjoining properties and any measures available to manage or mitigate such conflict.

(4) In this clause:

30 “Tiny house” is a moveable dwelling up to 50m² GFA that is suitable for residential use, and may be on wheels or on skids.

35 “Tiny house development” is 2 or more tiny houses on one parcel of land.

“Supportive housing” is temporary accommodation to bridge the gap from homelessness to permanent housing and is located as close as possible to existing residential facilities and social support services.

40 “Temporary accommodation” is a residential use or development for a period of not more than 48 months from the date on which an occupation certificate is issued under the Act.

45 The exact legal drafting of the LEP amendment will need to be discussed with the Policy branch of the Department of Planning and Parliamentary Counsel.

Key issues

Housing Affordability and Availability

50 Media has reported that, based on research by a leading property market research firm, that Byron Bay is now Australia’s most expensive city, with a median house price of \$987,500 as at December 2018.

The high housing prices are also reflected in local rental costs, with recent studies showing the average rent in Byron Bay was \$590 per week, which is 48% of the average household income for renters.

5 More recently the Anglicare’s Rental Affordability Snapshot found that there is no accommodation at all available for single people or those on government benefits in Byron, or the neighbouring Ballina and Tweed Shires.

10 Council, in developing the shire-wide residential strategy, is looking to implement a range of measures that might address this over time.

Housing and accommodation in the Byron Shire is a significant challenge because of a range of factors including:

- 15 • A demand for, and high investment return on, tourist accommodation including the use of platforms such as Airbnb.
- The Byron Shire is a desirable place to live with the population forecast to grow by approximately 5,500 by 2036, requiring 3,150 additional dwellings.
- 20 • Compared to the Northern Rivers region the Byron Shire has a higher proportion of low income earners (earning less than \$500/week) and a lower proportion earning more than \$1,750 a week.
- There is limited stock of social housing (1.7% of housing stock, or 223 dwellings in the Shire is social housing). There is a 10-year waiting list for social housing in the one-three bedroom range.
- 25 • Compared to the Northern Rivers and NSW generally there are high median house prices, high median rents and high levels of household stress (17.2% rental stress, 8.5% mortgage stress).

30 To add another layer of complexity to the situation our economy is growing at a marginally faster rate than regional NSW and the Northern Rivers region and the workforce is relatively young with a majority under the age of 45.

35 This means that, because of the high property prices people can’t afford to buy their own home, and given the high cost of rent they can’t even save for a deposit.

Next steps

40 Staff to finalise a planning proposal for tiny House development on Council owned and managed land for the provision of supported housing for people experiencing (or at risk of) homelessness.

The planning proposal to be based on the definitions and draft local provision outlined in the report.

45 The planning proposal once prepared is submitted to the Department of Planning for a gateway determination to public enable exhibition.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 4: We manage growth and change responsibly	4.2	Support housing diversity in appropriate locations across the Shire	4.2.1	Establish planning mechanisms to support housing that meets the needs of our community	4.2.1.4	Investigate and implement planning controls to encourage an increase in the supply of affordable and inclusive housing stock (Action in Residential Strategy)
	4.2	Support housing diversity in appropriate locations across the Shire	4.2.1	Establish planning mechanisms to support housing that meets the needs of our community	4.2.1.5	Prepare a report on deliberative development models to facilitate the delivery of accessible housing

5

North Coast Region Plan 2036

Direction 25 Deliver more opportunities for affordable housing

10 5.1 Deliver more opportunities for affordable housing by incorporating policies and tools into local growth management strategies and local planning controls that will enable a greater variety of housing types and incentivise private investment in affordable housing.

Byron Shire Draft Local Strategic Planning Statement

15

A Liveable Shire

Local Priority 3: Support housing diversity and affordability with housing growth in the right locations.

20

Byron Shire Draft Residential Strategy

Policy 2: Improved housing choice, diversity and equity

25 DIRECTION 2.1: Enable opportunities for innovative new residential forms and models that give a sense of place, promote environmental stewardship and encourage social, economic and cultural diversity and equity.

30 DIRECTION 2.2: Facilitate and promote growth in the proportion of rental and tobuy housing aimed at the lower end of the market, including those with very low incomes.

Legal/Statutory/Policy Considerations

35 As discussed in the report.

Financial Considerations

Not applicable to this report.

5 *Consultation and Engagement*

As required by the gateway determination issued by the DPIE.

Report No. 13.7 **PLANNING - 26.2019.4.1 Outcome of Public Exhibition - Planning Proposal to Introduce Minimum Lot Size Standards (BLEP 2014) for Manor House and Multi Dwelling Housing (Terraces)**

Directorate: Sustainable Environment and Economy

5 **Report Author:** Steve Daniels, Project Officer - Planning Reforms

File No: I2020/14

10 **Summary:**

On 20 June 2019 Council considered a planning proposal to amend Clause 4.1E *Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat building* of the Byron Shire LEP 2014 which currently sets out minimum lot size standards for dual occupancies, multi dwelling housing and residential flat buildings within certain zones.

The Department of Planning, Industry & Environment issued a Gateway determination on 19 August 2019. The planning proposal (Attachment 1) was then placed on public exhibition for a period of 4 weeks from 23 October 2019 to 22 November 2019. One (1) public authority submission and five (5) public submissions were received during the exhibition period. Key issues raised are summarised in this report in Table 1, with staff comment provided. It is worth noting that the majority of submissions posed questions and sought changes that are outside the scope of this planning proposal. A discussion has been included in the report that seeks to clarify the scope of the planning proposal and where it fits within Council's broader strategic framework.

The planning proposal is necessitated by the introduction of the Low Rise Medium Density Housing Code (SEPP Exempt and Complying Development Codes) 2008 which is scheduled to come into effect across Byron Shire on 1 July 2020. To respect the desired future character of our urban towns and villages, and to maintain consistency with existing planning controls and zone objectives, the planning proposal seeks to introduce minimum lot size standards for manor houses and multi dwelling housing (terraces) in Byron LEP 2014, these are new medium density development typologies introduced under the new Code.

Council supports the NSW government's initiatives to deliver greater diversity and supply of medium density housing stock, but for Byron Shire this must be in the right locations to manage population change, housing affordability and pressure to secure future housing to meet our community needs and circumstances.

Our analysis to date indicates development of manor houses and multi dwelling housing (terraces) at the higher densities currently specified in the code will result in poor planning outcomes for our community in terms of infrastructure, character, safety and wellbeing. It will also fail to tackle our local idiosyncratic housing market.

This planning proposal is the initial step of a practical response to the Code. This planning proposal supports the strategic planning policy in the draft Byron Shire Residential Strategy and will set an appropriate density policy framework. Having established this, staff will move to the next steps of:





- Investigating infrastructure capacity and delivery; and
- Reviewing and updating Development Control Plan character provisions (as per **Res 17-597**).

55

RECOMMENDATION:

That Council forward the planning proposal in Attachment 1 (E2020/7569) to the Department of Planning, Industry & Environment requesting that the Department finalise the plan by 30 June 2020.

Attachments:

- 5
- 1 26.2019.4.1 Planning Proposal for Manor House and Mutli Dwelling (terraces) Minimum Lot Size controls (v2 Public Exhibition), E2020/7569 
 - 2 Submission to DPIE review of the Low Rise Medium Density Housing Code, E2020/7572 
 - 3 26.2019.4.1 - LRMDC Minimum Lot Size_Combined Submissions for attachment to Council report, E2020/7520 
 - 4 Template - Form of Special Disclosure of Pecuniary Interest, E2012/2815 
- 10

REPORT***Background***

5 On 6 April 2018 amendments were made to the NSW planning framework to facilitate the development of low rise medium density housing through the introduction of a new Low Rise Medium Density Housing Code (SEPP Exempt and Complying Development Codes) 2008. The amendments came into effect on 6 July 2018. However, the commencement of the Code has been deferred to land in the Byron Shire LGA until 1 July 2020.

10 The new Low Rise Medium Density Housing Code (LRMD Code) will allow one and two storey dual occupancies, manor houses and multi-dwelling housing (terraces) to be carried out under a fast-track complying development approval process if the development meets the requirements of the Code and the supporting design guideline.

15 Manor houses and multi-dwelling housing (terraces) are new development typologies defined in the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 as:

- 20 • **Manor house** – being a maximum two-storey residential flat building which contains 3 or 4 dwellings. At least one dwelling must be located above another, and dwellings are attached by a common wall or floor.
- **Multi dwelling housing (terraces)** – being three or more attached dwellings on one lot of land, facing and generally aligned along one or more public roads.

25 Council supports the NSW Government's initiatives to deliver greater diversity and supply of medium density housing stock, but for Byron Shire this must be in the right locations to manage population change, housing affordability and pressure to secure future housing to meet our community needs and circumstances.

30 Our analysis to date indicates development of Manor House and Terraces at the higher densities currently specified in the code will result in poor planning outcomes for our community in terms of infrastructure, character, safety and wellbeing. It will also fail to tackle our local idiosyncratic housing market.

35 This planning proposal is the initial step of a practical response to the Code. It will set an appropriate density policy framework. Having established this, staff will move to the next steps of:

- Investigating infrastructure capacity and delivery; and
- 40 • Reviewing and updating Development Control Plan character provisions (as per **Res 17-597**).

This planning proposal supports the strategic planning policy in the draft Byron Shire Residential Strategy.

Planning Proposal

45 On 20 June 2019 Council considered a planning proposal to amend Clause 4.1E *Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat building* of the Byron Shire LEP 2014 which currently sets out minimum lot size standards for dual occupancies, multi dwelling housing and residential flat buildings within certain zones.

50

55 Following consideration of the 20 June 2019 Council report, **17-597** resolved (in part) that Council:

1. Agree to initiate a planning proposal to amend clause 4.1E of Byron LEP 2014, by inserting minimum lot size standards for ‘manor houses’ and ‘multi dwelling housing (terraces)’ as contained in E2019/41816 (Attachment 1).
2. Forward the planning proposal to the NSW Department of Planning and Environment for a Gateway determination.

Proposed amendment to Byron LEP 2014

To respect the desired future character of our urban towns and villages, and to maintain consistency with existing planning controls and zone objectives, the planning proposal seeks to introduce minimum lot size standards for manor houses and multi dwelling housing (terraces) in Byron LEP 2014 as follows:

Table 1: Proposed Minimum Lot Size Controls

Manor house	Zone R2 Low Density Residential,	1,000 square metres
Manor house	Zone R3 Medium Density Residential	800 square metres
Multi dwelling housing (terraces)	Zone R2 Low Density Residential	1000 square metres
Multi dwelling housing (terraces)	Zone R3 Medium Density Residential	800 square metres

Scope of the Planning Proposal

This planning proposal is the initial step of a practical response to the Code. The key objective of the planning proposal is to set an appropriate density policy framework by applying consistent minimum lot size standards to similar development types. Therefore, for consistency in Byron LEP 2014, manor houses and multi dwelling housing (terraces) should reflect:

- The existing 800 square metre minimum lot size for residential flat buildings and multi dwelling housing in *Zone R3 Medium Density Residential*.
- The existing 1000 square metre minimum lot size for multi dwelling housing in *Zone R2 Low Density Residential*.

Submissions received during public exhibition (see Table 2) suggest that the public expects this planning proposal to go further by specifying when, where and how the LRMD Code will come into effect across the Shire, noting relevant considerations such as infrastructure capacity. Such changes however are beyond the scope of a planning proposal. A planning proposal can only amend an LEP; it is not a mechanism for amending State level planning policies, i.e. the LRMD Code. Matters pertaining to the requirements and application of the LRMD Code are determined by the State Government, not Council.

However, the LRMD Code does make reference to a Council’s LEP when specifying the minimum lot sizes at which certain types of development can be assessed as complying development. It should be noted that at present, the LRMD Code excludes reference to a Council’s LEP in the case of manor houses. Council planning staff raised this with the DPIE and highlighted that the exclusion would undermine residential zone objectives. In this regard, Council was invited by the NSW Minister for Planning & Public Spaces to lodge a planning proposal to ensure that both manor house and multi dwelling housing (terrace) development is consistent with Council’s existing minimum lot size controls, and does not undermine the density objectives of Council’s residential zones.

Council planning staff agree that there are well founded concerns as to when, where and how the LRMD Code will apply to Byron Shire, and it is generally considered that the Code does not currently give adequate consideration to the local planning context. Council raised these concerns with the Department of Planning, Industry & Environment (DPIE) in a letter dated 5 July 2019 (Attachment 2) which provided input into the DPIE review of the Code. Of particular note, the letter

recommended that the Code's application be limited to specific precincts that meet location, infrastructure and hazard based criteria. The letter also suggested a requirement for local character and context considerations (design verification statement) to be completed by a qualified urban designer or architect.

5

In addition, Action 2 of the Byron Shire Draft Residential Strategy highlights the need for infrastructure capacity to be investigated to identify any areas unable to support significant infill development, and explore mechanisms to manage any infill until such times as they can be serviced with adequate and cost effective physical and social infrastructure.

10

An Independent Review Report: Low Rise medium Density Housing Code has since been released by the DPIE that addresses some of these concerns in its recommendations, however the DPIE has not provided any indication that corresponding changes will be made to the LRMD Code. If adopted, Action 2 in the Draft Residential Strategy will provide Council with further grounds to continue lobbying the DPIE to make the necessary changes as to when, where and how the LRMD Code is applied in Byron Shire.

15

In the event that the LRMD Code comes into effect across Byron Shire on 1 July 2020, it is critical that LEP minimum lot size provisions introduced via the planning proposal are already in effect. If not, then the minimum lot size standards specified under the LRMD Code will apply, these being 600m² for manor houses and 400m² for multi dwelling housing (terraces) – well below the Byron LEP 2014 minimum lot size standards for similar development types.

20

Gateway Determination

25

A Gateway determination was issued by the DPIE on 19 August 2019, requiring that Council:

30

- Amend the planning proposal to include a plain English explanation of provisions to help better inform the community on the intent of the proposal.
- Publicly exhibit the planning proposal for a period of 28 days.
- Consult with the Rural Fire Service (RFS) and allow 21 days for comment.

Consultation Undertaken

35

In accordance with the Gateway determination, the planning proposal was placed on public exhibition for a period of 4 weeks from 23 October 2019 to 22 November 2019.

Rural Fire Service (RFS) Submission

40

In response to the planning proposal minimum lot size provisions, the RFS raised no concerns or issues in relation to bushfire.

Public Submissions

45

Five (5) public submissions were received during the exhibition period. Key issues raised are summarised below in Table 2, with staff comment provided.

50

Key Issues Raised

Table 2: Public Submissions - Key Issues and Staff Response

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.7

Item #	Issues Raised	Council Staff Response
1.	<p>The move by Council to have the Low Rise Medium Density Code be consistent with the present LEP Clause 4.1E for Minimum Lot Sizes in R2 Zone 1000Sqm and in R3 Zone 800sqm is supported.</p> <p>The Code has minimum lot sizes for Terraces 400m² and Manor Houses 600m².</p>	<p>Noted.</p>
2.	<p>It is supported that Floor Area Ratios be consistent with the provisions in the LEP 2014.</p>	<p>This Planning Proposal only seeks to introduce Minimum Lot Size standards for manor houses and multi dwelling housing (terraces).</p> <p>Gross Floor Area for complying development is regulated under the LRMD Code with no option to refer to LEP standards (unlike Minimum Lot Size).</p> <p>Existing LEP 2014 Floor Space Ratio controls will apply to manor houses and multi dwelling housing (terraces) when assessed by Council under a DA pathway.</p>
3.	<p>The Low Rise Medium Density Housing Code should be introduced with a gradual roll-out to take into account the capacity of present infrastructure to cope with the increase in usage: In particular; sewage capacity, drinking water, roads, long term car-parking in the CBD and recreation facilities.</p>	<p>Noted.</p> <p>The scope of this planning proposal is limited to the introduction of LEP minimum lot size standards for manor houses and multi dwelling housing (terraces). Council is unable to influence the requirements, application and rollout of the LRMD Code via a planning proposal because the Code is a State level planning policy. A planning proposal can only amend a Council's LEP.</p> <p>For further detail please refer to the above discussion under heading "<u>Scope of the Planning Proposal</u>".</p> <p>Council planning staff agree that the rollout of the code should align with the capacity to meet infrastructure and servicing requirements.</p> <p>Representations have been made to the DPIE in this regard (see Attachment 2), and Action 2 of the Byron Shire Draft Residential Strategy reflects this desired approach. Action 2 (if adopted) requires that Council:</p>

BYRON SHIRE COUNCIL

Item #	Issues Raised	Council Staff Response
		<p><i>Examine our current infrastructure capacity, charges and engineering standards to determine... any areas unable to support significant infill development, and explore mechanisms to manage any infill until such times as they can be serviced with adequate and cost effective physical and social infrastructure.</i></p> <p>Action 2 will be measured by:</p> <p><i>Investigations undertaken and reported to Council including implications to the Section 94 Plan.</i></p> <p>And....</p> <p><i>State Government support for deferring from Low Rise Medium Density Code until servicing is adequate.</i></p>
4.	<p>I oppose the planning proposal to allow intensified development (manor houses and terraces) in existing residential areas.</p> <p>I believe the proposed changes will impact on the existing character of Byron Shire localities and will also create additional pressure on infrastructure and that there is no certainty that it can be accommodated.</p>	<p>This planning proposal is not the instrument that allows development of manor houses and multi dwelling housing (terraces) in existing residential areas. It is the State governments LRMD Code that enables this.</p> <p>Rather, the planning proposal seeks to restrict development allowed under the LRMD Code by increasing the minimum lot size requirement for manor houses and multi dwelling housing (terraces). This amendment is made possible because of provisions in the Code that refer to a Council's LEP when setting Minimum Lot Size standards for certain development.</p> <p>For further detail please refer to the above discussion under heading "<u>Scope of the Planning Proposal</u>".</p>
5.	<p>Council is requested by the NSW Planning Department to investigate Special Local Character Areas in the Shire they wish to be exempt from the SEPP Code. These areas are in addition to the Heritage Conservation Areas which are already exempt.</p>	<p>Council has not formally been requested by DPIE to determine special local character areas for exemption.</p> <p>This is a proposed recommendation in the <i>Independent Review Report: Low Rise medium Density Housing Code</i> released by the DPIE. It recommends that areas of special character be excluded from the code, however the DPIE has not confirmed if they will act on the recommendations of the review.</p>

Item #	Issues Raised	Council Staff Response
		<p>Council has prepared character narratives as part of the Byron Shire Draft Residential Strategy, and if adopted, would inform a planning proposal to designate Special Local Character Areas if required. Council will continue to work with the DPIE in this regard. This planning proposal only seeks to introduce Minimum Lot Size standards for manor houses and multi dwelling housing (terraces). The designation of Special Local Character Areas is outside the scope of this planning proposal.</p>
<p>6.</p>	<p>There is concern about how the LRMD Code will apply to Heritage Conservation Areas.</p> <p>It is noted that manor house and multi dwelling housing (terraces) can be approved via the normal Council DA approval process in Heritage Conservation Areas. It is requested that the LEP and DCP for Heritage Areas be updated to state that this type of development is not appropriate in Heritage Conservation Areas of single dwelling houses.</p>	<p>This planning proposal only seeks to introduce Minimum Lot Size standards for manor houses and multi dwelling housing (terraces). Heritage considerations are outside the scope of this planning proposal.</p> <p>It should be noted that Heritage Conservation Areas are excluded from the LRMD Code.</p> <p>However, if the DPIE introduces Manor Houses and multi dwelling housing (terraces) into the standard instrument as being permitted with consent in the R2 and R3 zones, then it would be correct to state that the development of manor houses and terraces will require a DA if proposed within a Heritage Conservation Area.</p> <p>Any such DA would be subject to the usual heritage considerations under BLEP 2014 clause 5.10 <i>Heritage Conservation</i>. Character and context considerations will also need to be considered. These considerations are an integral component of the Byron Shire Draft Residential Strategy.</p> <p>Multi dwelling housing, dual occupancies, secondary dwellings and other more intensive forms of development are already permissible within the Shire’s Heritage Conservation Areas and contribute to the fabric of the built environment, not just “single dwelling houses”.</p>
<p>7.</p>	<p>There is concern that complying development approved under the LRMD Code will negate</p>	<p>This planning proposal only seeks to introduce Minimum Lot Size standards for manor houses and multi dwelling housing</p>

Item #	Issues Raised	Council Staff Response
	<p>neighbour notification.</p> <p>Development notification protocols for complying development under the LRMD Code should consider relevant aspects of the BSC Community Participation Plan.</p>	<p>(terraces).</p> <p>For further detail please refer to the above discussion under heading "<u>Scope of the Planning Proposal</u>".</p> <p>In the planning system, Council does not make all the planning decisions that may affect the community. In the case of complying development (i.e. development assessed against the LRMD Code), Councils cannot regulate Development notification protocols. Notification protocols for complying development are specified by the State government. As it stands, residents may not be notified or consulted about the development.</p>
8.	<p>Council should defer adopting the LRMD Planning Proposal changes and provide more detailed information to the community about the potential impacts by way of information sheets and or articles for publication in local media.</p> <p>Council should write a full article for both local newspapers outlining the details and changes the SEPP will mean for all the residential areas of the Shire. These changes are very significant and yet very few residents know what is coming.</p>	<p>Council has undertaken significant community consultation as part of the Byron Shire Draft Residential Strategy community engagement program, in particular the 'Shaping Our Neighbourhoods' exhibition.</p> <p>The 'Shaping our Neighbourhoods' exhibition explored the possible implications of the code and sought community feedback in this regard.</p> <p>Since this exhibition, the DPIE has undertaken a further review of the Code, the outcome of which is yet to be determined. Therefore Council is not in a position to provide an update beyond that which was provided in the 'Shaping our Neighbourhoods' exhibition.</p>
9.	<p>The potential introduction of the LRMD Code emphasises the need for BSC to produce published versions of planning strategies. For Bangalow, it also reinforces the urgency of updating DCP 2014 Sect E2.3 and doing a structure plan for the Station St Triangle. Completing these tasks will provide clear and concise guidelines to developers.</p>	<p>DCP 2014 Chapter E2.3 relates to development within a conservation area.</p> <p>Conservation areas are exempt from the LRMD Code.</p> <p>Council is working towards adoption of the Draft Residential Strategy.</p>
10.	<p>Council should wait for the adoption of the Local Character Statements for urban areas as per</p>	<p>See response to Item 5.</p>

Item #	Issues Raised	Council Staff Response
	the Byron Shire Residential Strategy and then determine if there are 'Special Areas' that need to be mapped for exclusion from the application of the LRMD Code.	
11.	It is not clear if council is adopting the Design Guide or whether an amendment to the DCP will be undertaken, it could be that additional controls may further refine design guidelines to ensure that impacts on adjoining properties are reduced (PS 18-007 – LRMD Design Guide for Development Applications)	<p>This planning proposal is an initial step in response to the Code and seeks to establish a consistent density framework for low rise medium density development in the Shire.</p> <p>Council has committed to reviewing and updating the Development Control Plan character provisions as they relate to Low Rise Medium density housing (as per Res 17-597).</p> <p>Design considerations cannot be considered in a meaningful way unless the density of development (i.e. minimum lot size) is known.</p>
12.	The proposal may have an adverse effect of reducing the supply of single housing stock that provides much needed housing for families. It's clear that the code allows higher densities than what is allowed under existing planning controls.	<p>Council supports the NSW government's initiatives to deliver greater diversity and supply of medium density housing stock, but for Byron Shire this must be in the right locations to manage population change, housing affordability and pressure to secure future housing to meet our community needs and circumstances.</p> <p>This planning proposal will counter the higher densities allowed under the code by introducing relevant minimum lot size LEP provisions. The proposal will ensure that Council's existing density framework is maintained.</p>
13.	<p>Building certifiers should not be given total approval rights for these developments. These developments will bring major changes to an area and should go through the accepted Council Development Application process.</p> <p>Certifiers will be required to consider the Local Character of an Area before determining an approval. However, there is no avenue to review their interpretation by either Council, the Community or the Courts.</p>	<p>The LRMD Code is a State level planning policy. The role of certifiers in the complying development approvals process is determined by the State, not Council.</p> <p>For further detail please refer to the above discussion under heading "<u>Scope of the Planning Proposal</u>".</p>

Options

Option 1 (Recommended)

5

Forward the Planning Proposal in Attachment 1 to the Department of Planning, Industry & Environment requesting finalisation by 30 June 2020.

Option 2

10

Remove support for the Planning Proposal, thus enabling manor houses and multi dwelling housing (terraces) to be developed as complying development on lot sizes specified under the LRMD Code. Note that this option would fail to establish minimum lot size standards for this type of development in Byron LEP 2014.

15

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

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

20

Legal/Statutory/Policy Considerations

This planning proposal intends to amend the Byron LEP 2014. Relevant legal and statutory considerations have been addressed above.

25

Financial Considerations

As this is a Council initiated planning proposal, the costs will be borne by Council if it chooses to proceed further.

30

Consultation and Engagement

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

Report No. 13.8 **PLANNING - 26.2018.5.1 Outcome of Public Exhibition - Planning Proposal to Rezone Land at 4 Picadilly Hill Road, Coopers Shoot**
Directorate: Sustainable Environment and Economy
Report Author: Steve Daniels, Project Officer - Planning Reforms
5 File No: I2020/15

10 **Summary:**

On 21 March 2019 Council considered a planning proposal (Attachment 1) to amend Byron Shire LEP 2014 by rezoning approximately 5.53 hectares of land at 4 Picadilly Hill Road, Coopers Shoot to R5 Large Lot Residential which will permit a four-lot subdivision.

15 Three existing dwellings will be located on three of the lots to be created and the fourth lot will have a dwelling permitted subject to consent. The balance of the land will remain zoned RU2 Rural Landscape and will also have a dwelling permitted subject to consent. The site has a history of approvals for multiple occupancy and community title development. The planning proposal is consistent with the *Byron Rural Land Use Strategy 2017* and the *North Coast Regional Plan 2036*.





20 The Department of Planning, Industry & Environment issued a Gateway determination on 6 August 2019 and the planning proposal (Attachment 1) was placed on public exhibition for a period of 4 weeks from 20 November to 20 December 2019.

25 One (1) public submission was received and one (1) public authority submission was received. Key issues raised are summarised in the report in Table 1, with staff comment provided.

RECOMMENDATION:

That Council forward the planning proposal in Attachment 1 (E2020/7587) to the Department of Planning, Industry & Environment requesting finalisation.

30 **Attachments:**

- 1 26.2018.5.1 Planning Proposal (V3 Public Exhibition version) - BLEP 2014 – Lot 3 DP 592005 and Lot 1 DP 1124504, 4 Picadilly Hill Road, Coopers Shoot, E2020/7587 
- 2 26.2018.5.1 Gateway determination - PP_2019_BYRON_003_00 - Picadilly Road, Coopers Shoot.pdf, E2019/64767 
- 3 26.2018.5.1 Combined Submissions for attachment to Council report, E2020/4123 
- 4 Template - Form of Special Disclosure of Pecuniary Interest -, E2012/2815 

REPORT

Background

5 On 21 March 2019 Council considered a planning proposal to amend Byron Shire LEP 2014 by rezoning approximately 5.53 hectares of land at 4 Picadilly Hill Road, Coopers Shoot to R5 Large Lot Residential which will permit a four-lot subdivision.

10 The *Byron Shire Rural Land Use Strategy 2017* (BSRLS) identifies the subject land as a “priority site for future rural lifestyle living opportunities”. The subject land is identified for “Expansion of adjoining R5 zone over subject land for a maximum of 5 lots (as per current community title subdivision approval)”. This strategy was endorsed by the NSW Department of Planning and Environment (DPE) in July 2018.

15 Following consideration of the 20 June 2019 Council report, **19-095** Resolved that Council:

- 20 1. *Request that the NSW Department of Planning and Environment issue a Gateway determination for the planning proposal as contained in Attachment 1 (E2019/14770), conditional on the applicant preparing a site specific study on land contamination from past use consistent with SEPP 55. This study must be produced (to Council’s satisfaction) prior to public exhibition of the planning proposal.*
- 25 2. *Agree that staff can proceed to obtain further studies from the applicant (if required by the Gateway determination), then undertake the public exhibition of the planning proposal and government agency consultation based on the Gateway determination.*

Planning Proposal

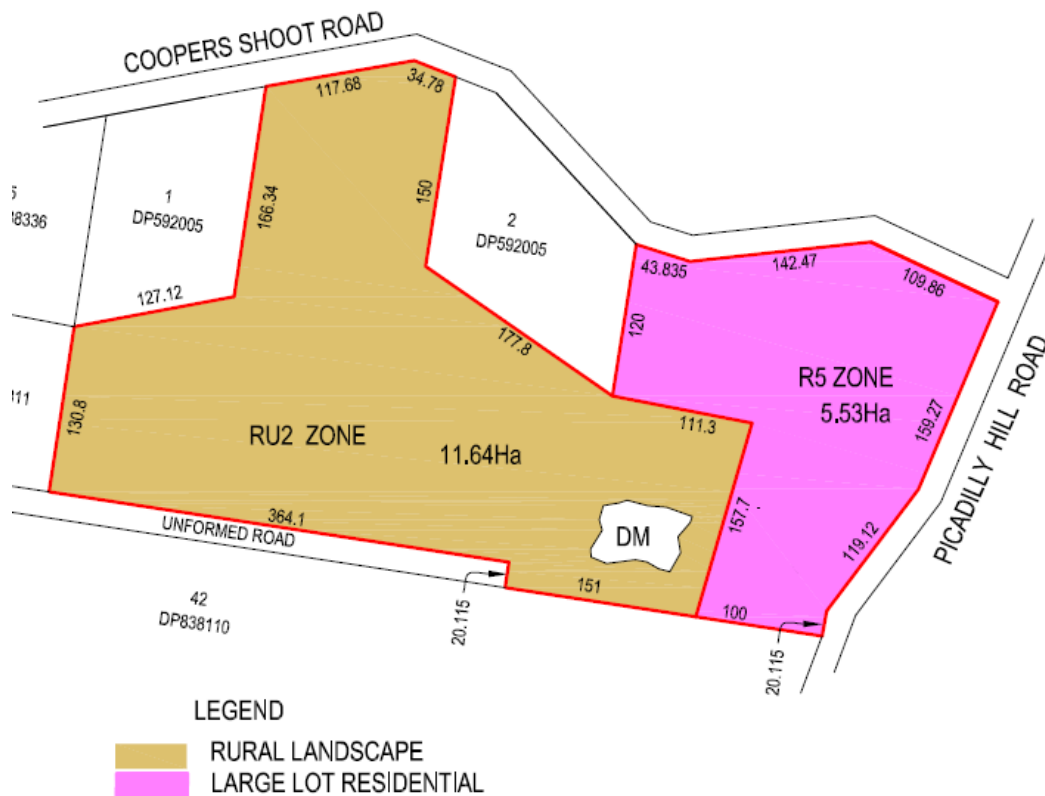
30 The planning proposal (Attachment 1) seeks to amend the existing zone for part of the subject land (Part Lot 3 DP 592005 and part Lot 1 DP 1124504) under Byron LEP 2014 to:

- permit a five-lot large lot residential subdivision on the subject site; and
- leave the existing Deferred Matter over the environmentally sensitive land (in the absence of an “environmental zone”).

35 The planning proposal will rezone approximately 5.53 hectares of the existing RU2 Rural Landscape zone to R5 Large Lot Residential. The balance of the subject land will remain in its current RU2 Rural Landscape zone and partly as a Deferred Matter under Byron LEP 1988 (See Figure 1 below).

40

Figure 1: Proposed land use zones under Byron LEP 2014 – RU2 Rural Landscape, R5 Large Lot Residential and Deferred Matter



5 The planning proposal will also make consequential changes to maps regarding Minimum Lot Size (MLS) to match the proposed R5 Large Lot Residential zone. A variable MLS is proposed to reflect existing development and past approvals on the subject land (Figure 8). Part of the R5 zone will have a 1.5-hectare MLS permitting two lots, and part will have a 0.8-hectare MLS permitting two lots. The remaining RU2 zoned land will have a 10-hectare MLS, which will enable it to be subdivided from the R5 land and have a dwelling erected on it. It is not intended to introduce an FSR to the site (it currently does not apply to the site), and the current Height of Building (9 metres) will be retained.

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

What Land Does it Apply to?

Part Lot 3 DP 592005 and part Lot 1 DP 1124504. Land at the corner of Coopers Shoot Road and Picadilly Hill Road, Coopers Shoot.

What Additional Development will be Permitted?

A rural subdivision creating a total of five lots (each with a dwelling permitted or existing) that reflects past approvals.

Gateway Determination

25 A Gateway determination (Attachment 2) was issued by the DPIE on 6 August 2019. The Gateway determination required:

- minor amendments to the planning proposal (these were completed to the satisfaction of the Department)
- Public exhibition for a period of 28 days

- Consultation with public authorities (see details below)

Consultation Undertaken

Consultation with Public Authorities

5

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

- Department of Planning, Industry & Environment (Environment, Energy and Science)
- NSW Rural Fire Service
- Rous County Council
- Jali Local Aboriginal Land Council
- Arakwal Corporation

10
15 One (1) submission was received from the Biodiversity and Conservation Division (BCD) of the Department of Planning, Industry & Environment (Environment, Energy and Science). Issues raised and staff comments are provided below in Table 1.

Public Exhibition

20 In accordance with the Gateway determination, the planning proposal was placed on public exhibition for a period of 4 weeks from 20 November to 20 December 2019.

One (1) public submission was received during the exhibition period. Issues raised and staff comments are provided below in Table 2.

25

Key Issues Raised

Table 1: Key Issues Raised by Public Authorities

Public Authority	Issues Raised	Council Staff Response
Biodiversity Conservation Division of the DPIE	The planning proposal should be informed by: a) Consultation with the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) regarding any areas of important Aboriginal cultural heritage in the planning area. b) A current search of the Aboriginal Heritage Information Management System (AHIMS)	The proponent consulted with the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) prior to the Study and was referred to the Tweed Byron Land Council due to resourcing limitations. Council also referred the planning proposal to the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) in accordance with the Gateway determination but did not receive comment. An AHIMS search was conducted on 22 January 2020 which found that there are no Aboriginal sites recorded, or Aboriginal places declared, in or near the subject land (to a buffer of 1000 metres).
	The areas of rainforest vegetation in the planning area should be zoned E2 Environmental	An agreement has already been reached with the proponent to apply an environmental zone (E2) on land

BYRON SHIRE COUNCIL

Public Authority	Issues Raised	Council Staff Response
	<p>Conservation as part of the planning proposal. This could be delayed given the Byron Shire Council's advice that it is proceeding with a separate planning proposal for its broader E-zones, but only if the Council enters into a planning agreement with the landowner to commit to zoning these areas E2 as part of that Broader zoning program.</p>	<p>where vegetation planting and enhancements has occurred. This includes the areas of rainforest vegetation referred to in the BCD – DPIE submission.</p> <p>The application of E-Zones to the site is being undertaken via Council's E-Zone Review and is a separate process to this planning proposal.</p>
	<p>A Planning Agreement should be prepared as part of the planning proposal committing to the preparation and implementation of a Vegetation Management Plan (VMP) over existing native vegetation in the planning area at the time of subdivision of the planning area, to secure the ongoing management of biodiversity values in the planning area.</p>	<p>Extensive planting of native vegetation has been undertaken as part of the environmental enhancement program tied to previous development consents. The assessment report prepared by Blackwood Ecological Services (exhibited with the planning proposal) notes that works completed on the site more than satisfy the statutory requirement.</p> <p>There is no statutory requirement for a Vegetation Management Plan (VMP) to be put implemented for subdivision generally (i.e. rural subdivision and large lot residential subdivision).</p> <p>Council policies and guidelines (including DCP provisions) do not require a VMP unless the subdivision is for the purpose of community title. Incidentally, DCP 2014 Part D6.3.5 <i>Rural Community Title Subdivision</i> notes that:</p> <p><i>Where vegetation management works have been completed previously as part of a development application, credit will be given against those works. Details are to be submitted with the development application demonstrating that the aims and objectives of the previously completed vegetation management works have been achieved.</i></p> <p>However, Byron DCP 2014 Chapter D6 Subdivision does require that any subdivision impacting on native</p>

Public Authority	Issues Raised	Council Staff Response
		<p>vegetation may require a VMP to be prepared.</p> <p>For these reasons, the requirement to prepare a VMP is best considered at the DA stage for subdivision.</p>

Table 2: Key Issues Raised During Public Exhibition

Item #	Issues Raised	Council Staff Response
1.	<p>The 2014 Byron LEP altered the rules for R5 to ensure a more suitable minimum of 2.5 Ha lots. With this rezoning to R5 all Community Titles should be negated and any future application for Torrens Title should be treated under the current DA rules and standards. These smaller lot sizes are also setting a precedent for future applications.</p>	<p>The variation to the R5 minimum lot size is necessary to align with the current community title subdivision approval.</p> <p>This variation for the site is made possible via the <i>Byron Shire Rural Land Use Strategy 2017</i> which allows for:</p> <p><i>Expansion of adjoining R5 zone over subject land for a maximum of 5 lots (as per current community title subdivision approval)</i></p> <p>The planning proposal will amend Byron LEP 2014 to include a Schedule 1 Additional Permitted Use clause for the site enabling a subdivision that reflects past approvals.</p> <p>The above provisions allowing a variation to the minimum lot size for this site are quite specific and have been previously endorsed by Council and the DPIE. Therefore, there should be no concerns with regard to setting a precedent for future applications in the R5 zone generally.</p>
2.	<p>As part of a 3-lot subdivision at 384 Coopers Shoot Road, we are currently widening the road to a ridiculously high standard, including hotmix, which is not seen on any other rural road in this area. We trust that Picadilly Hill Road is also upgraded upon application for a subdivision if this re-zoning is allowed by Council.</p>	<p>Specific works associated with any potential road upgrade requirement will be considered at the DA stage for subdivision.</p>

Options

Option 1 (Recommended)

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

Option 2

- 10 Remove support for the Planning Proposal.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

15

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

Legal/Statutory/Policy Considerations

- 20 This planning proposal intends to amend the Byron LEP 2014. Relevant legal and statutory considerations have been addressed above.

Financial Considerations

- 25 As this is an applicant funded planning proposal, all associated costs will be borne by the applicant.

Consultation and Engagement

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

Report No. 13.9 **PLANNING - Development Application 10.2019.161.1 - Multi Dwelling Housing - 15 Units, No 23 Lismore Road Bangalow**
Directorate: Sustainable Environment and Economy
Report Author: Rob Van Iersel, Major Projects Planner
 Ralph James, Legal Counsel
File No: I2020/20

5

10 **Proposal:**

DA No: 10.2019.161.1
Proposal description: Multi Dwelling Housing Comprising Fifteen (15) Dwellings
Property description: LOT: A DP: 376877
 23 Lismore Road BANGALOW
Parcel No/s: 45640
Applicant: Lismore Venture Pty Ltd
Owner: Windmill Property Investments 3 Pty Ltd & P & M Lismore Pty Ltd & others
Zoning: R2 Low Density Residential
Date received: 5 April 2019
Integrated / Designated Development: Integrated Designated Not applicable
Concurrence required No
Public notification or exhibition: Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
 Initial Exhibition period: 18/4/19 to 8/5/19
 – Submissions received: 115 – 97 oppose; 18 support.
 Amended plans re-notified: 02/01/2020 – 23/01/2020
 – Submissions received: 7 – all objecting
Planning Review Committee: 9 May 2019

Delegation to determination: Council / Land and Environment Court

- Issues:**
- Land & Environment Court appeal – deemed refusal
 Conciliation Conference: 31/01/2020
 - Plans amended to reduce unit numbers (17 to 15) and address DCP non-compliance
 - Consistency with character of the locality, which is a Heritage Conservation Area;
 - Access works – requirement for works in Lismore Road

Summary:

15 This development application was received in April 2019, proposing a multi dwelling housing proposal comprising 17 dwellings in three (3) separate buildings. The application was made under the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009, and sought to implement the ‘concessions’ on car parking’ provided under that SEPP.

20 The site is located on Lismore Road on the southern edge of Bangalow within a Heritage Conservation Area characterised primarily by single storey dwellings. Public exhibition of the

application attracted 97 objections, concerned mainly that the proposed multi dwelling housing would be significantly inconsistent with the character of the area.

5 The applicants lodged an appeal in the NSW Land & Environment Court in May 2019, against Council's "deemed refusal" of the application.

10 Assessment of the proposal identified that, while it was consistent with the provisions of SEPP (Affordable Rental Housing) 2009, there were a number of conflicts with the Byron LEP and DCP, primarily exceedance of maximum building height (for a small section of roof) and encroachment into the Building Height Plane.

Without prejudice discussions were held with the applicants to identify these and other concerns with the application.

15 As a result, amended plans were submitted reducing the number of individual units from 17 to 15, achieved by dividing what was originally a 32m long building along the rear boundary into two (2) separate buildings. The amendments also remedied the height exceedance and encroachment into the building height plane.

20 Council's Heritage Adviser reviewed the original proposal and concluded that the built form, design and materials were generally consistent with the heritage character of the locality, other than the single long building at the rear. Her suggestion that this building be broken into two was taken up in the amended plans.

25 As amended, the proposal now involves four (4) separate buildings, each two storey in height, providing a total of:

- 5 one-bedroom studios;
- 4 one-bedroom units;
- 4 two-bedroom units; and
- 30 • 2 three-bedroom units.

The footprint of each of the four (4) buildings is in scale with the dwellings in this locality.

35 It is considered that the amended proposal, which now substantially complies with relevant regulatory requirements, is appropriate for the site and consistent with the character of the locality. The amended proposal provides a better balance between increased housing diversity, which is lacking in Bangalow, and maintaining the character of the Village.

40 As part of the Land & Environment Court Proceedings, a S34 Conciliation Conference was held on 31 January 2020, facilitated by a Commissioner of the Court.

45 Three community objectors spoke at the site view, before discussions were held between the parties. Council was represented by an external solicitor (Marsdens), Council's Major Projects Planner and Development Engineer.

Agreement was reached at the Conference, including agreement on the wording of consent conditions (Attachment 8).

50 It is recommended that Council authorise the General Manager to finalise agreement, which will include filing a Notice of Agreement with the Court, who will then issue Consent Orders approving the development subject to the agreed conditions.








NOTE TO COUNCILLORS:

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

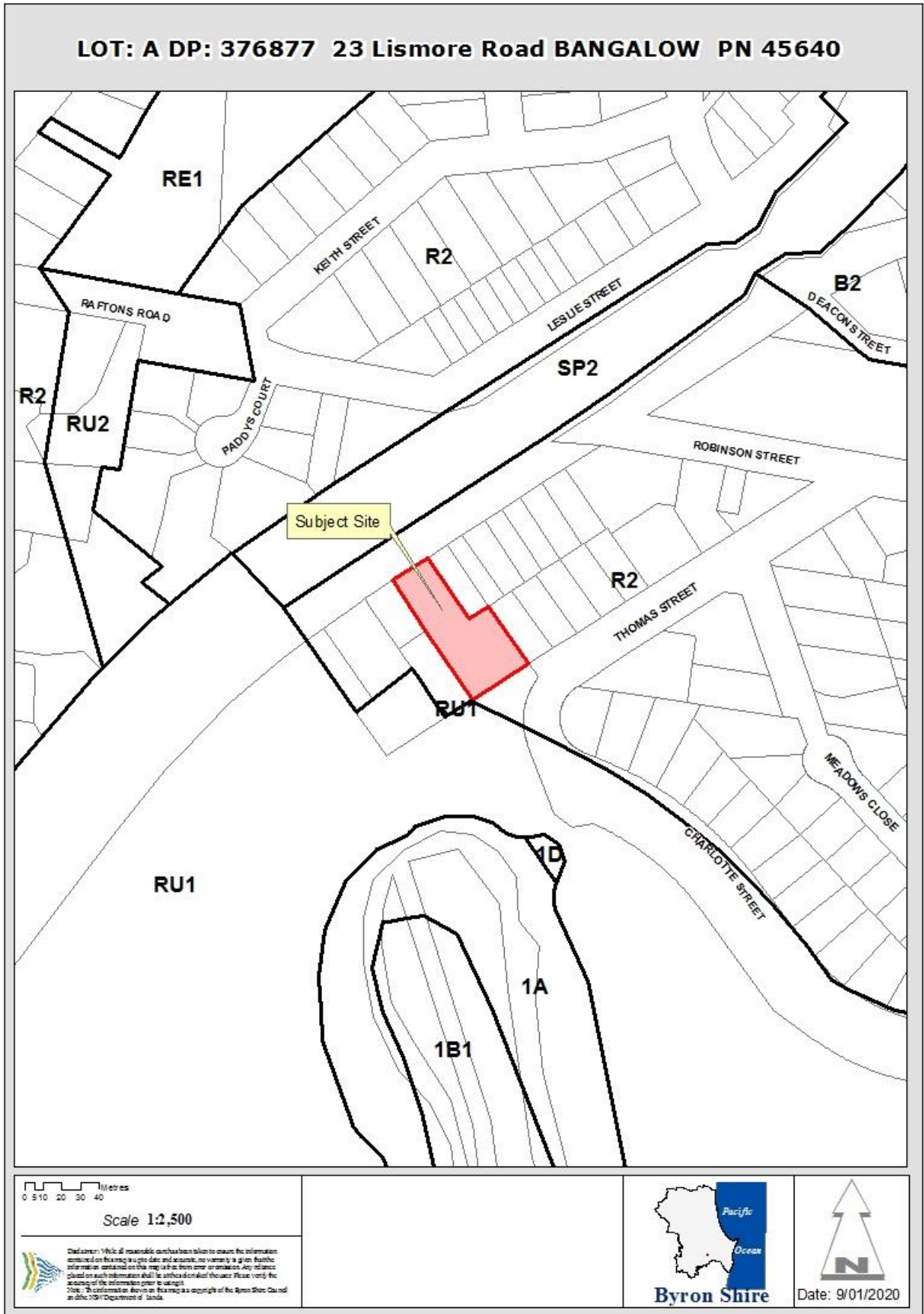
RECOMMENDATION:

That Council authorise the General Manager to enter into a section 34 Conciliation Agreement approving development application 10.2019.161.1 subject to the conditions of consent agreed to in Attachment 8 (E2020/7293).

Attachments:

- 10
- 1 Original Plans, E2019/26175 
 - 2 submissions received to original exhibition 18.4.19 to 8.5.19, E2020/6448 
 - 3 Statement of Facts and Contentions filed 09/07/19, E2019/49621 
 - 4 Amended Plan Set, E2019/90811 
 - 15 5 Confidential - Letter from Marsdens Law Group - Regarding Lismore Venture Pty Ltd - Land and Environment Court Case No. 2019/153305 - 23 Lismore Road BANGALOW, S2020/467
 - 6 Heritage Assessment, E2019/34007 
 - 7 submissions received to amended proposal 9.1.20 to 22.1.20, E2020/6450 
 - 20 8 Conditions of Consent agreed at S34 Conciliation Conference, E2020/7293 

REPORT



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

Prior to the mid-1990s, the property, which was owned by Telstra, contained telecommunication plant, garages for Telstra vehicles, including a below-ground fuel tank and bowser, and staff toilet facilities.

Some time in 1995, the telecommunications facilities were replaced by a portable 8m x 4m exchange building, containing telecommunications equipment that no longer needed to be manned. The remaining site buildings were subsequently removed over the next few years, including removal of the underground fuel tank in 1998.

More recently, the property was sold in around 2017, following completion of further contamination assessment.

Council confirmed, by letter dated 9 January 2019, that site remediation works had been satisfactorily undertaken, as documented in *Statement of Completion of Remedial Action Plan Proposed Residential Land Use Lot A DP 376877, 23 Lismore Road, Bangalow Job No. 51/2018_validation*, prepared by Tim Fitzroy & Associates, dated November 2018.

On 5 April 2019, Development Application No.10.2018.161.1 was lodged with Council seeking consent for development described as “*multi dwelling housing containing seventeen dwellings*”. The plans as originally lodged are contained as Attachment 1.

On 9 April 2019, Council issued correspondence to the applicant acknowledging the lodgement of the development application. On 9 April 2019, the development application was also referred to NSW Roads and Maritime Services.

The development application was publicly notified to adjoining and nearby owners between 18 April 2019 and 8 May 2019. Council received 116 submissions, comprising of 97 submissions objecting to the proposed development and 19 in support of the proposed development. One (1) of the submissions of objection was in the form of a petition containing 24 signatures, with another containing 15 signatures. The submissions to the original public exhibition of the application are contained in Attachment 2.

The development application has not been determined by Council.

1.2. Land & Environment Court Proceedings

On 16 May 2019, the applicant lodged a Class 1 application in of the NSW Land and Environment Court in respect to Council’s ‘deemed refusal’ of the application.

In response to the appeal, Council prepared a Statement of Facts and Contentions outlining the key issues associated with the proposal (see Attachment 3). The main issues raised included:

- inconsistent with the character of the locality;
- inadequate solar access to internal and external living areas, particularly relating to terrace units and studios;
- exceedance of the 9m maximum building height;
- encroachment into the building height plane and associated issues of overlooking and overshadowing; and
- no provision for adaptable housing.

Following their review of the Council's Contentions, a 'without prejudice' meeting was requested by the applicants to discuss their response to the issues raised.

- 5 At this voluntary meeting, held on 6 December 2019, the applicants provided an amended set of plans (discussed below). The amended plan set is contained as Attachment 4.

A compulsory Conciliation Conference was held 31 January 2020, facilitated by a Commissioner of the Court.

10

Three community objectors spoke at the site view, before discussions were held between the parties. Council was represented by external solicitors (Marsdens), Council's Major Projects Planner and Development Engineer.

- 15 Prior to the Conciliation Conference, Council's external solicitors (Marsdens) were briefed with the full DA file. They attended, with Council staff, the voluntary meeting on 6 December 2019. They have reviewed the amended set of plans.

20 Council's external solicitors have provided an advice as to Council's prospects of success in the Land and Environment Court, having regard to the amended plans and documents provided on behalf of the Applicant. That advice is Confidential Attachment 5. Council's attention is drawn to paragraphs 2, 3 and 4 on page 4 of the advice.

- 25 As to costs, the estimated professional legal costs of defending the appeal is \$24,000-\$28,000 excluding GST, assuming that the matter is not settled at a conciliation conference and the ultimate hearing in the matter only takes 2 days. If the hearing takes longer the legal costs will be higher.

Based on the amended plans, agreement was reached during the Conciliation Conference, including agreement on the wording of consent conditions (Attachment 8).

30

It is recommended that Council authorise the General Manager to finalise agreement, which will filing a Notice of Agreement with the Court, who will then issue Consent Orders approving the development subject to the agreed conditions.

35 **1.3. Description of the proposed development**

Application as submitted

40 The development application was lodged with Council on 5 April 2019. As originally submitted, the application sought approval for multi dwelling housing comprising seventeen (17) dwellings, consisting of:

- eight (8) two bedroom dwellings (terraces);
- four (4) one bedroom dwellings (row houses); and
- five (5) one bedroom studios.

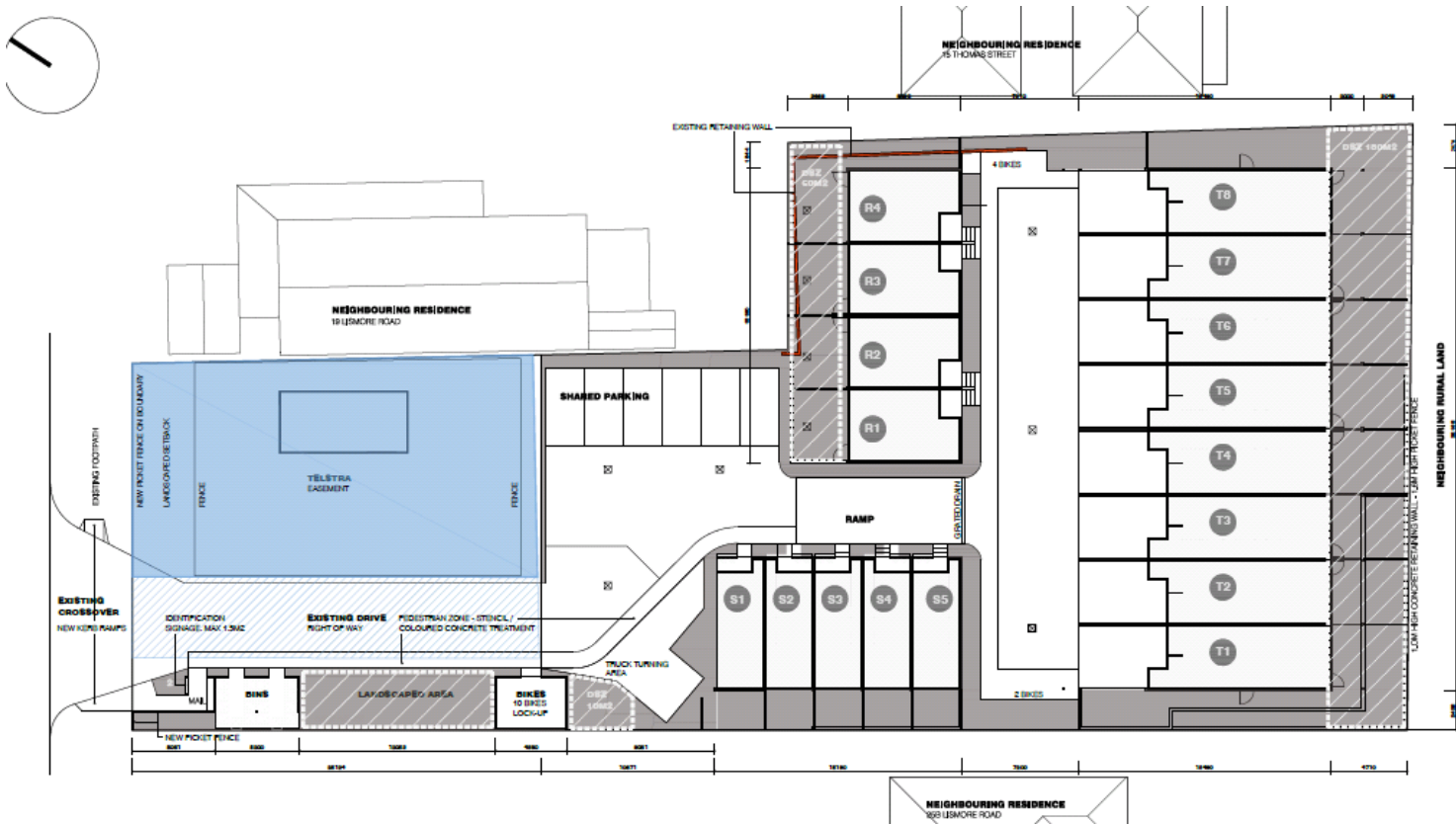
- 45 The application was lodged under the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH).

50 The five studio apartments were proposed in a single building, located toward the mid-point of the south-western property boundary (S1-S5 on the plan above). Each studio contained a lounge, kitchen and bathroom at ground level, with a mezzanine bedroom above. Laundries were not shown on the plans.

Each had an external covered porch on the north-eastern side, facing the internal driveway area, and a small external private open space and clothes drying area on the south-western side.

Each studio had a floor space of 32m².

- 5 The one bedroom dwellings (row houses) were located in a separate building (R1-R4 on plan above). Each contained an open-plan lounge/ kitchen/ dining space at ground level, with a small external front porch, internal storeroom and a laundry accessed from the rear yard. A single bedroom, dressing room and bathroom were located on the upper level.



10 **Figure 1 – Proposed Site Plan – as lodged**

Each row house had an area of 52m², with an external private garden area on the northern side.

- 15 The terrace houses were within a separate building set along the rear boundary, containing T1-T8 on the plan above. Each terrace house contained a covered car parking space, a study/ storeroom, bedroom, bathroom and laundry at ground level, with a bedroom, lounge/ kitchen/ dining area and bathroom on the upper floor, with a covered deck facing the rear property boundary.

20 Each terrace unit had a floor space of 93m².

Fourteen (14) parking spaces were provided, one for each of the eight terrace houses and six shared spaces. Bike parking was also provided. All access was proposed via a driveway off Lismore Road. (Plans in Attachment 1).

25 **Amended Proposal**

As amended, the development now proposes 15 dwellings; with the number of two-bedroom terrace units reduced from 8 to 6, and proposed as two stand-alone buildings, each containing three units.

- 30 Overall therefore, the application now proposes:

- two (2) three bedroom units (Terraces T1 & T6);
- four (4) two bedroom units (Terraces T2 – T5);
- four (4) one bedroom dwellings (row houses); and
- five (5) one bedroom studios.

5

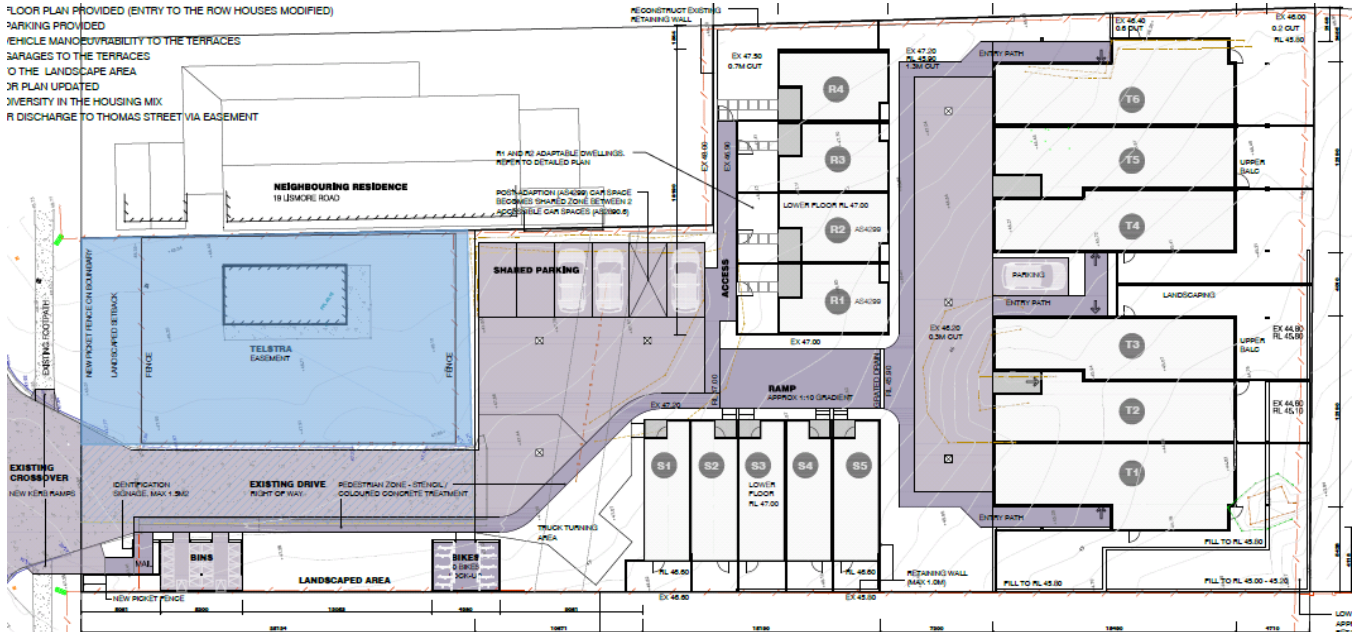


Figure 2 – Proposed Site Plan – as amended

10 The five studio apartments have been redesigned to have the bedroom at ground level, with the kitchen and bathroom, with the lounge room as the mezzanine level. A 6m² north-east facing covered deck is included in this upper level (facing into the property). The gross floor area of the studios has been increased to 35m², in accordance with the requirements of clause 14 of SEPP ARH.

15 3 of the 4 studios have a 7m² outdoor open space at the rear, with S1 having 9m².

The row houses are mostly unchanged, other than R1 & R2 are now designed to be adaptable dwellings in accordance with AS4299 – i.e. they are able to be adapted in the future (if required) to be accessible for people with disability.

20 Each row house has an area of 52m², with an external private garden area on the northern side.

25 The number of terrace units has been reduced to 6, located within two separate buildings set along the rear boundary. The units on the boundary ends (i.e. T1 & T6) have 2 bedrooms and a bathroom at ground level, with a third bedroom plus kitchen/ lounge on the upper floor. The remaining terrace units have a bedroom and bathroom at ground level and a second bedroom kitchen and lounge above.

30 Each terrace house contains a covered car parking space, and a covered deck on the upper level, facing the rear property boundary.

Each terrace unit has a floor space of 93m².

35 The following units are nominated as ‘affordable’ for the purposes of SEPP (Affordable Rental Housing) 2009):

- Studio 5;

- Row House 1;
- Row House 2; and
- Row House 3.

5 Twelve (12) parking spaces are provided, one for each of the six terrace units and six shared spaces. One of the spaces would be removed to become a shared zone between 2 accessible parking spaces if the row houses are adapted.

10 Bike parking is also provided. All access remains via the existing driveway off Lismore Road. (Amended Plans in Attachment 4).

1.4. Description of the site

Land is legally described as: LOT: A DP: 376877
 Property address is: 23 Lismore Road BANGALOW
 Land is zoned: R2 Low Density Residential
 Land area is: 2,341.6m²
 Property is constrained by: Drinking Water Catchment
 Heritage Conservation Area
 Sewer Main through middle of site
 Potential impact zone – Flying Fox Camp

15 The site is vacant block of land, with an existing portable, unmanned Telstra exchange building located toward the Lismore Road frontage, contained within a wire fence. There is a Right of Carriageway over an existing concrete driveway off Lismore Road, which ensures Telstra’s ongoing access to that exchange.



Plate 1 – Existing Telstra portable exchange



Plate 2 – Existing concrete driveway

20 The property slopes away from the Lismore Rd frontage towards the southern rear boundary, which adjoins a relatively narrow section of rural land with frontage to Charlotte Street. A number of retaining walls, approx. 1m high, are located on the northern and eastern boundaries.



Plate 3 – Property from end of driveway looking south



5 ***Plate 4 – Retaining walls within property***

The site has vehicular access from Lismore Road by way of an existing driveway crossing.



Plate 5 – Property access from Lismore Road



5 Plate 6 – Property viewed from Charlotte Street at rear

2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	Support subject to recommended conditions of approval.
Development Engineer	Support subject to recommended conditions of approval, including requirement for upgrade works within the Lismore Road reserve. The applicant’s traffic consultant disputes that these upgrades are required. However, at the S34 Conciliation Conference, the applicants accepted Council’s requirement for these works.
S64 / Systems Planning Officer	Support subject to recommended conditions of approval.

Referral	Issue
S7.11 Contributions Officer	<p>In accordance with Council policy, the development generates a requirement for Contributions for the “non-affordable” component of the development (i.e. 11 of the 15 units).</p> <p>Contributions for the 4 affordable units are not required until such time as they cease to be managed by a social housing provider as affordable units, in accordance with SEPP (Affordable Rental Housing).</p> <p>Appropriate conditions of consent are recommended, and the applicant raised no objection to these conditions at the S34 Conciliation Conference.</p>
Heritage Consultant	<p>Council’s Heritage Advisor provided a detailed assessment of the original development proposal (i.e. 17 dwellings). Comments of note included:</p> <ul style="list-style-type: none"> • The studio and row house buildings are smaller in footprint than the traditional dwellings in the surrounding landscape; • Given their location within the site, the visual impact of these two-storey buildings is likely to have little or no impact upon the town entry; • The proposed two-storey terrace building is larger in bulk than most buildings in the surrounding Conservation Area (Note: proposal subsequently amended to delete two terrace units, and divide the building into two separate buildings); • Two-storey terraced buildings are a noted element of the historical commercial main street precinct, but are not representative of the surrounding residential areas; • Two-storey development is not out of character in the Charlotte Street residential area opposite the site; • The design, roof forms, material palette and landscaping aspects are considered to have been thoughtfully addressed with regard to the site and setting of the Bangalow Heritage Conservation Area; and • Division of the proposed terrace building into smaller elements, or incorporation of a single-storey element at each end is suggested to make it more harmonious with the built character of the area (Note: amended design is consistent with this suggestion).
Roads & Maritime Services	<p>RMS advised that Lismore Road at Bangalow is a classified (State) road under the <i>Roads Act 1993</i>, with Council as the roads authority.</p> <p>They provided the following comments to assist Council’s assessment:</p> <ol style="list-style-type: none"> 1. Council should be satisfied that the impact of traffic entering and leaving the site has been adequately addressed, and that such ingress/egress can occur in a safe and efficient manner. Points for consideration include adequate street lighting at the entrance to the development; identification of any pedestrian points of conflict given the pedestrian pathway along the frontage of the development; possible restrictions on parking in front of the development to ensure that appropriate sight distances are available and that provision to manoeuvre

Referral	Issue
	<p>around a right turning vehicle can be safely achieved (if vehicles are parked directly opposite the development)..</p> <p>2. Any upgraded access to the site should be designed and constructed in accordance with Austroads Guidelines, Australian Standards and Roads and Maritime Supplements.</p> <p>In response to the amended proposal, and the updated Traffic Report provided in support, RMS further advised that AUSTRROADS Guide to Road design Part 4A should be used to assess the requirements for turning traffic.</p>

3. SECTION 4.14 – BUSH FIRE PRONE LAND

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

The site is not bush fire prone land.

10 EFFECT OF 10/50 RULE ON SIGNIFICANT VEGETATION

The clearing entitlement is unavailable as the property is within a Heritage Conservation Area.

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

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

20 4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 44 - Koala Habitat Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The site has an area less than 1ha. The development control provisions of this SEPP, therefore do not apply.		
State Environmental Planning Policy No 55 - Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: Remediation of the site has been undertaken, following preliminary investigations that identified a number of potential contaminants associated with previous site use as a Telstra Depot.</p> <p>Remediation was completed in 2018 and Council have confirmed satisfactory completion of the works, based on a detailed validation report.</p> <p>As such, the site is now considered suitable for the proposed use.</p>		
State Environmental Planning Policy (Affordable Rental Housing) 2009	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Consideration: The proposed development has been submitted under the provisions of Division 1 of this SEPP. See detailed assessment below.		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Certification provided.		

	Satisfactory	Unsatisfactory
State Environmental Planning Policy (Infrastructure) 2007	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: Lismore Road is a 'classified road' for the purposes of this SEPP.</p> <p>Clause 101 of the SEPP requires that a consent authority should not approve development on land with frontage to a classified road unless:</p> <ul style="list-style-type: none"> • access is provided from a road other than the classified road – in this case, the property does not have frontage to any other public road; • the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development – see commentary above from Council's Development Engineer and from RMS. <p>Conditions are recommended that will require the development to provide minor upgrading at the property access and within Lismore Road, which will ensure that vehicles entering and exiting the site will not adversely affect the safety and efficiency of traffic on that road.</p>		

State Environmental Planning Policy (Affordable Rental Housing) 2009

Policy requirement/summary	Comments	Complies
<p>8. Relationship with other environmental planning instruments</p> <p><i>If there is an inconsistency between this Policy and any other environmental planning instrument, whether made before or after the commencement of this Policy, this Policy prevails to the extent of the inconsistency.</i></p>	<p>The provisions of this SEPP prevail over any inconsistencies with Byron LEP 2014.</p>	<p>Noted</p>
<p>Part 2 New affordable rental housing</p> <p>Division 1 In-fill affordable housing</p> <p>10. Development to which Division applies</p> <p>(1) <i>This Division applies to development for the purposes of dual occupancies, multi dwelling housing or residential flat buildings if:</i></p> <p>(a) <i>the development concerned is permitted with consent under another environmental planning instrument, and</i></p> <p>(b) <i>the development is on land that does not contain a heritage item that is identified in an environmental planning instrument, or an interim heritage order or on the State Heritage Register under the Heritage Act 1977.</i></p> <p>(2) <i>Despite subclause (1), this Division does not apply to development on land in the Sydney region unless all or part of the development is within an</i></p>	<p>The site is zoned R2 Low Density Residential.</p> <p><i>Multi dwelling housing is permissible in the R2 zone.</i></p> <p>While the site is located within a Heritage Conservation Area, identified within Byron LEP 2014, it does not contain a listed heritage item.</p> <p>Not applicable.</p>	<p>Yes</p>

Policy requirement/summary	Comments	Complies
<p><i>accessible area.</i></p> <p>(3) <i>Despite subclause (1), this Division does not apply to development on land that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use, or within a land use zone that is equivalent to any of those zones.</i></p>	<p>The site is located approximately 250m (walking distance) from the nearest edge of the B2 Local Centre Zone (Bangalow Village Centre).</p>	<p align="center">Yes</p>
<p>13. Floor space ratios</p> <p>(1) <i>This clause applies to development to which this Division applies if the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20 per cent.</i></p> <p>(2) <i>The maximum floor space ratio for the development to which this clause applies is the existing maximum floor space ratio for any form of residential accommodation permitted on the land on which the development is to occur, plus:</i></p> <p>(a) <i>if the existing maximum floor space ratio is 2.5:1 or less:</i></p> <p>(i) <i>0.5:1 - if the percentage of the gross floor area of the development that is used for affordable housing is 50 per cent or higher, or</i></p> <p>(ii) <i>Y:1 - if the percentage of the gross floor area of the development that is used for affordable housing is less than 50 per cent,</i></p> <p><i>where:</i></p> <p>AH <i>is the percentage of the gross floor area of the development that is used for affordable housing.</i></p> <p>Y = $AH \div 100$</p>	<p>The application nominates 4 one-bedroom units as the affordable housing component.</p> <p>The combined floor space of these units is 191m².</p> <p>The total proposed floor space is quoted as 949m².</p> <p>Based on these areas, the application proposes to use 20.1% of the total floor space for affordable housing.</p> <p>The clause, therefore, applies.</p> <p>The existing FSR applicable in this location is 0.5:1.</p> <p>Based on the formula contained in the clause, the applicable FSR will be 0.5:1 plus 0.2 = 0.7:1.</p> <p>Based on the site survey plan provided, the site (Lot A DP 376877) has a total area of 2,341.6m².</p> <p>The proposed development has a FSR of 0.41:1.</p> <p>There is, however, an area of approx. 332m² fenced off toward the Lismore Road frontage of the site, with an easement for use of the existing telecommunications facility.</p> <p>This reduces the 'useable' site area to 2,009.6m².</p> <p>Relative to the reduced site area, the proposed development has a FSR of 0.47:1, which complies with the Byron LEP requirement.</p> <p>The proposed development, therefore, does not seek to take advantage of the FSR 'bonus' provided in this clause.</p>	<p align="center">Yes</p> <p align="center">Yes</p>
<p>14. Standards that cannot be used to refuse consent</p>		

Policy requirement/summary	Comments	Complies
<p>(1) Site and solar access requirements <i>A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:</i></p> <p><i>(a) (repealed)</i></p> <p>(b) site area <i>if the site area on which it is proposed to carry out the development is at least 450 square metres,</i></p> <p>(c) landscaped area <i>if:</i></p> <p><i>(i) in the case of a development application made by a social housing provider - at least 35 square metres of landscaped area per dwelling is provided, or</i></p> <p><i>(ii) in any other case - at least 30 per cent of the site area is to be landscaped,</i></p> <p>(d) deep soil zones <i>if, in relation to that part of the site area (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed:</i></p> <p><i>(i) there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15 per cent of the site area (the deep soil zone), and</i></p> <p><i>(ii) each area forming part of the deep soil zone has a minimum dimension of 3 metres, and</i></p> <p><i>(iii) if practicable, at least two-thirds of the deep soil zone is located at the rear of the site area,</i></p>	<p>The site has an area of 2,341.6m², reduced to 2,009.6m² if the Telstra easement land is excluded.</p> <p>Application not made by a social housing provider. Plans show a total of 604m² landscaped space; which is 30% of the site (with Telstra easement area excluded).</p> <p>A total of 340m² deep soil zone is provided, being 16.9% of the site area. It is provided in 2 areas, each having a minimum dimension of at least 3m. Dimensions and location apply with requirements.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
<p>(e) solar access <i>if living rooms and private open spaces for a minimum of 70 per cent of the dwellings of the development receive a minimum of 3 hours direct sunlight between</i></p>	<p>Studios:</p> <ul style="list-style-type: none"> • Living areas and upper level outdoor decks comply • Rear yards do not receive sun until after approx. 1.00pm 	<p>Not full compliance</p>

Policy requirement/summary	Comments	Complies
<p align="center"><i>9am and 3pm in mid-winter.</i></p>	<p>Row Houses:</p> <ul style="list-style-type: none"> • Rear private open spaces all receive 6hrs sun; • Living areas receive little or no direct sun within nominated period <p>Terrace Houses:</p> <ul style="list-style-type: none"> • Open spaces: <ul style="list-style-type: none"> - Part of rear yard for T3 &T6 – 2-3hrs; - Yards of remaining units – 1-1.5hrs only; • Living areas receive no direct sun within nominated period <p>While this does not fully comply with the SEPP provisions, particularly regarding solar access to living rooms, it is considered that the lack of solar access, by itself, is not sufficient to provide a reason to refuse the application.</p> <p>In the context of the north coast climate, all of the units will be 'liveable', with adequate internal amenity.</p>	
<p>(2) General A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:</p> <p>(a) parking if:</p> <p>(i) <i>in the case of a development application made by a social housing provider for development on land in an accessible area - at least 0.4 parking spaces are provided for each dwelling containing 1 bedroom, at least 0.5 parking spaces are provided for each dwelling containing 2 bedrooms and at least 1 parking space is provided for each dwelling containing 3 or more bedrooms, or</i></p> <p>(ii) <i>in any other case - at least 0.5 parking spaces are provided for each dwelling containing 1 bedroom, at least 1 parking space is</i></p>	<p>Application not made by a social housing provider.</p> <p>Application generates the following:</p> <p>9 x 1 bedroom = 4.5 spaces 4 x 2 bedroom = 4 spaces 2 x 3 bedroom = 3 spaces TOTAL = 11.5 say 12 spaces 12 spaces are provided</p>	<p align="center">Yes</p>

Policy requirement/summary	Comments	Complies
<p><i>provided for each dwelling containing 2 bedrooms and at least 1.5 parking spaces are provided for each dwelling containing 3 or more bedrooms,</i></p> <p>(b) dwelling size <i>if each dwelling has a gross floor area of at least:</i></p> <p>(i) <i>35 square metres in the case of a bedsitter or studio, or</i></p> <p>(ii) <i>50 square metres in the case of a dwelling having 1 bedroom, or</i></p> <p>(iii) <i>70 square metres in the case of a dwelling having 2 bedrooms, or</i></p> <p>(iv) <i>95 square metres in the case of a dwelling having 3 or more bedrooms.</i></p>	<p>The 5 studio dwellings each have 35m² floor area.</p> <p>The 4 x 1 bedroom row dwellings each have 52m² floor area.</p> <p>The 4 x 2 bedroom terrace units each have 93m² floor area.</p> <p>The 2 x 3 bedroom terrace units each have 100m² floor area</p>	<p align="center">Yes</p>
<p>(3) <i>A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).</i></p>	<p><i>Noted</i></p>	
<p>15. Design requirements</p> <p>(1) <i>A consent authority must not consent to development to which this Division applies unless it has taken into consideration the provisions of the Seniors Living Policy: Urban Design Guidelines for Infill Development published by the Department of Infrastructure, Planning and Natural Resources in March 2004, to the extent that those provisions are consistent with this Policy.</i></p>	<p><u>Part 1 – Responding to context</u></p> <p>Context of the locality is well documented in DCP 2014 and recently adopted Bangalow Village Plan.</p> <p>See discussion below – design of built form has responded well to local character in terms of form and materials.</p> <p>The scale/ density of proposed is inconsistent with that existing in the local area in terms of the number of units; i.e. 15 units where locality is predominantly single dwellings.</p> <p>However, the units are grouped into four (4) separate buildings, each with a footprint similar to the size of dwellings in the locality.</p> <p>Overall, it is considered that the proposal, as amended, adequately responds to the local context.</p> <p><u>Part 2 – Site Planning & Design</u></p>	<p align="center">Yes</p>

Policy requirement/summary	Comments	Complies
	<p>The amended design largely removes previous encroachments into the Building Height Plan. The only encroachments that remain are:</p> <ul style="list-style-type: none"> • northern elevation of T6, involving only the eave overhang of the upper floor. This does not raise any issues of overlooking or overshadowing in relation to the property adjoining to the north. • western elevation of studios, also comprising just the eave overhang, but at ground level as the building is single storey at this boundary. This does not raise any issues of overlooking or overshadowing of neighbouring property. • Southern elevation of terrace units. The encroachment includes part of the external upper level decks. The southern boundary adjoins a relatively narrow parcel of vacant rural land (zoned RU1 Primary Production), which has no potential for residential development. The encroachment, therefore, results in no practical impacts. Textured glass screening is proposed at the east and west ends of the decks to ensure no overlooking impacts on adjoining residences. <p><u>Part 4 – Impacts on neighbours</u></p> <p>The amended plans adequately remedy potential impacts identified in the original design (see BHP comments above).</p> <p>Shadow diagrams demonstrate that the proposal will not unduly shadow the private open space of the residential property to the south.</p> <p>The development will result in a two storey built form on the eastern boundary, adjoining a single storey heritage home on the adjoining block. In this part of the site, however, the development site is approx. 1.5m lower than the ground level of the adjoining property, with a retaining wall on the boundary. With a standard 1.8m timber fence on top of</p>	

Policy requirement/summary	Comments	Complies
	<p>the retaining wall, the eastern elevation of the row houses will present as single storey when viewed from the neighbour's property.</p> <p><u>Part 5 Internal site amenity</u></p> <p>The amended proposal provides adequate residential amenity for the units.</p>	
<p>16A Character of local area</p> <p><i>A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.</i></p>	<p>See comments above from Council's Heritage Advisor:</p> <ul style="list-style-type: none"> • <i>The design, roof forms, material palette and landscaping aspects are considered to have been thoughtfully addressed with regard to the site and setting of the Bangalow Heritage Conservation Area; and</i> • <i>Division of the proposed terrace building into smaller elements, or incorporation of a single-storey element at each end is suggested to make it more harmonious with the built character of the area</i> (Note: amended design is consistent with this suggestion). 	<p align="center">Yes</p>
<p>17. Must be used for affordable housing for 10 years</p> <p><i>(1) A consent authority must not consent to development to which this Division applies unless conditions are imposed by the consent authority to the effect that:</i></p> <p><i>(a) for 10 years from the date of the issue of the occupation certificate:</i></p> <p><i>(i) the dwellings proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing, and</i></p> <p><i>(ii) all accommodation that is used for affordable housing will be managed by a registered community housing provider, and</i></p> <p><i>(b) a restriction will be registered, before the date of</i></p>	<p>The application nominates Studio 5 and Row Houses 1, 2 & 3 as the affordable housing components.</p> <p>A condition is recommended to require that these dwellings are to be used for the purposes of affordable housing for a period of at least ten years from the date of issue of an occupation certificate.</p> <p>This affordable housing is also required to be managed by a registered community housing provider.</p> <p>An appropriate condition is recommended.</p> <p>An appropriate condition is recommended.</p>	<p align="center">Yes (Subject to conditions)</p>

Policy requirement/summary	Comments	Complies
<p><i>the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919, that will ensure that the requirements of paragraph (a) are met.</i></p> <p><i>(2) Subclause (1) does not apply to development on land owned by the Land and Housing Corporation or to a development application made by, or on behalf of, a public authority.</i></p>	<p>Noted</p>	
<p>18. Subdivision <i>Land on which development has been carried out under this Division may be subdivided with the consent of the consent authority.</i></p>	<p>The subject development application does not seek consent for subdivision at this time.</p>	<p>Noted</p>

Character & Design:

Existing character

5 The property is located within a residential precinct on the south-western edge of the Village of Bangalow. Lismore Road, the property’s frontage, is a regional connector road between Bangalow and Lismore, so the property is located in an area where passers-by are either arriving in or leaving Bangalow.

10 The residential block between Lismore Road and Thomas Street is small, containing only 16 lots. A heritage listed commercial building, which was a rural supplies store, anchors the block on the corner of Lismore Road and Robinson Street.

15 This residential block is part of a larger heritage conservation area that covers a large portion of the Bangalow Village. The immediate locality fronting Lismore Road contains traditionally styled timber and iron single storey detached dwellings, set close to the road frontage, on lots of around 500m². Most properties have generous rear yards.

All lots in the block contain a single dwelling.



Plate 7 – Properties in the vicinity fronting Lismore Road

- 5 A newer residential subdivision is located to the south-east, containing approx. 40 residential lots. This subdivision is outside of the Heritage Conservation Area and contains primarily single dwellings, some elevated given the slope and some two-storey elements (see Plate 8 below). A number of these dwellings are relocated ‘Queenslanders’ and many of the newer homes also reflect a heritage character.
- 10 Two heritage-style dwellings border the rear of the site, fronting Thomas Street (see Plate 9). It is understood these dwellings were not originally located on these properties, being relocated from elsewhere. Neither is listed as heritage items.



15 **Plate 8 – Properties within recent residential subdivision (Charlotte Street)**



Plate 9 – Adjacent properties fronting Thomas Street

The site

- 5 The property was previously used as a Telstra depot, and a single exchange building remains toward the Lismore Road frontage. The need to retain this building, and access to it, will result in the built form of the development proposal being located well back from the Lismore Road frontage.

10 *The development*

As outlined above, Council’s Heritage Advisor has assessed the application and is of the view that, “*The design, roof forms, material palette and landscaping aspects are considered to have been thoughtfully addressed with regard to the site and setting of the Bangalow Heritage Conservation Area*”.

- 15 She notes that the two-storey row house and studio buildings are set well back from the Lismore Road frontage and, as such, the visual impact of these two-storey buildings is likely to have little or no impact upon the town entry.

- 20 She noted, however, that the scale of the two-storey terrace unit building (as originally proposed) was not in keeping with the local character and suggested that it be broken into smaller building elements, or that single-storey elements be incorporated into each end.

- 25 This suggestion was accepted by the applicants, and the revised design comprises two separate terrace unit buildings, each containing three units. While both remain two-storey, their bulk and scale is now consistent with the size of buildings in the locality.

4.2 Byron Local Environmental Plan 2014 (LEP 2014)

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

Part 1	<input checked="" type="checkbox"/> 1.1 <input checked="" type="checkbox"/> 1.1AA <input checked="" type="checkbox"/> 1.2 <input checked="" type="checkbox"/> 1.3 <input checked="" type="checkbox"/> 1.4 <input checked="" type="checkbox"/> Dictionary <input checked="" type="checkbox"/> 1.5 <input checked="" type="checkbox"/> 1.6 <input checked="" type="checkbox"/> 1.7 <input checked="" type="checkbox"/> 1.8 <input type="checkbox"/> 1.8A <input checked="" type="checkbox"/> 1.9 <input type="checkbox"/> 1.9A
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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 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 checked="" 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 checked="" 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 *multi dwelling housing*;
- (b) The land is within the R2 Low Density Residential according to the Land Zoning Map;
- 5 (c) The proposed development is permissible with consent; and
- (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
<p><i>To provide for the housing needs of the community within a low density residential environment.</i></p> <p><i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i></p>	<p>The proposal will provide additional rental accommodation, with an affordable component, which is an identified housing need for Bangalow.</p>

Relevant LEP issues are addressed below:

10 *Floor Space Ratio*

The existing FSR applicable in this location is 0.5:1.

Based on the site survey plan provided, the property has a total area of 2,341.6m².

15 The proposed development has a total floor space of 949m² and therefore has a FSR of 0.40:1.

There is, however, an area of approx. 332m² fenced off toward the Lismore Road frontage of the site, with an easement for use of the existing telecommunications facility.

20 This reduces the ‘useable’ site area to 2,009.6m².

Relative to the reduced site area, the proposed development has a FSR of 0.47:1, which complies with the LEP standard. The application does not propose, therefore, use of the floor space ‘bonus’ available in clause 13 of SEPP ARH.

25

Heritage

The LEP requires that, before granting consent for development on land within a heritage conservation area, Council must consider the effect of the proposed development on the heritage significance of the item or area concerned.

30

As outlined above, Council’s Heritage Advisor has provided a report in this regard (see Attachment 6). The assessment concludes that the proposed row house and studio buildings are not considered likely to have an adverse impact upon the assessed significance of the Bangalow Heritage Conservation Area.

35

The assessment noted that the two-storey terrace building, in the form originally proposed, would have an impact on the aesthetic values of the Conservation Area as viewed from Charlotte/ Thomas Street, and suggested that the terrace building be broken into smaller components.

- 5 This suggestion was taken up by the applicants in the amended design now proposed.

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

- 10 None relevant.

4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

- 15 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 type="checkbox"/>
Part B Chapters:	<input type="checkbox"/> B2 <input type="checkbox"/> B3 <input type="checkbox"/> B4 <input type="checkbox"/> B5 <input 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 type="checkbox"/> C2 <input type="checkbox"/> C3 <input type="checkbox"/> C4
Part D Chapters	<input type="checkbox"/> D1 <input type="checkbox"/> D2 <input type="checkbox"/> D3 <input type="checkbox"/> D4 <input type="checkbox"/> D5 <input type="checkbox"/> D6 <input type="checkbox"/> D7 <input type="checkbox"/> D8
Part E Chapters	<input type="checkbox"/> E1 <input type="checkbox"/> E2 <input type="checkbox"/> E3 <input type="checkbox"/> E4 <input type="checkbox"/> E5 <input type="checkbox"/> E6 <input type="checkbox"/> E7

- 20 **Chapter D1 Residential Accommodation in Urban, Village and Special Purpose Zones**

DCP requirement/summary	Proposed/ Comments	Complies
<p>D1.2.1 Building Height Plane Prescriptive measures: BHP applies Exemption may be considered where: floor level needs to be elevated because of flood; it can be demonstrated that the development will not increase overshadowing or reduce the level of privacy on adjoining properties.</p>	<p>As originally lodged, the western end of Terrace Unit 1, including a portion of the upper level external deck, encroached into the Building Height Plane in relation to the western property boundary.</p> <p>This was raised in Council's Statement of Facts and Contentions relevant to the Class 1 appeal, as one of the primary issues of concern.</p>	No

DCP requirement/summary	Proposed/ Comments	Complies
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Original Proposal:

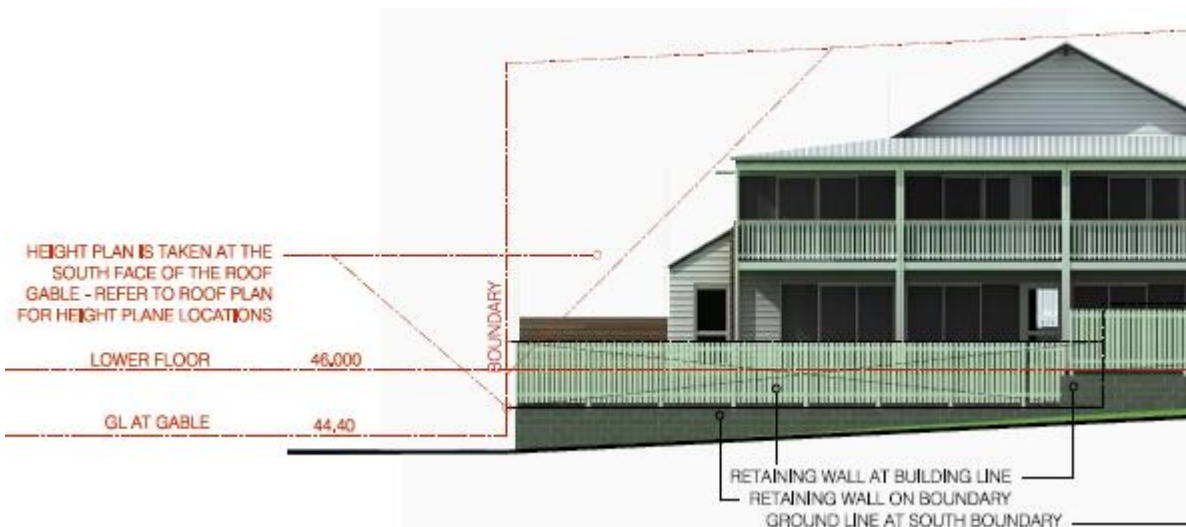


The property to the west contains a single-storey dwelling adjoining the common boundary, with that dwelling’s private open space (rear yard) overlooked by the proposed terrace building. The existing ground level in this corner of the subject site is at approx. 44.5m AHD. While levels have not been provided, the rear yard of the adjoining property appears to fall gently from this level.

The terrace building was proposed to be built on retained fill in this location, with the ground floor level set at 46.00m AHD; i.e. 1.5m above ground level. This resulted in the upper floor level (i.e. the level of the external deck) being at 48.6m AHD; approx. 4.1m above ground level. The western edge of the building was set at 2.4m from the common boundary.

Residents of Terrace Unit 1 would have a clear, direct view down onto the adjoining rear yard.

Amended Proposal:



As shown above, the amended design has removed all encroachment on this part of the building, such that it complies fully with the DCP requirement.

The only encroachments that remain on other building components are:

- northern elevation of T6, involving only the eave overhang of the upper floor. This does not raise any issues of overlooking or overshadowing in relation to the property adjoining to the

DCP requirement/summary	Proposed/ Comments	Complies
<p>north.</p> <ul style="list-style-type: none"> western elevation of studios, also comprising just the eave overhang, but at ground level as the building is single storey at this boundary. This does not raise any issues of overlooking or overshadowing of neighbouring property. southern elevation of terrace units. The encroachment includes part of the external upper level decks. The southern boundary adjoins a relatively narrow parcel of vacant rural land (zoned RU1 Primary Production), which has no potential for residential development. The encroachment, therefore, results in no practical impacts. Textured glass screening is proposed at the east and west ends of the decks to ensure no overlooking impacts on adjoining residences. 		
<p>D1.2.2 Setbacks from Boundaries Prescriptive measures: Street frontage – Classified Road: 9m Side & rear – 1.5m (plus BHP) Between buildings on site – 3m</p>	<p>Complies with front and side requirements and with building separation.</p>	<p align="center">Yes</p>
<p>D1.2.4 Character & Visual Impact No prescriptive measures. Performance measures: Site, building and landscaping design must address climate</p> <p>The street face of a building, together with any open space between it and the street, must contribute to the general attractiveness of the streetscape by means of good design, appropriate materials and effective landscaping</p> <p>Development should be designed to minimise loss of privacy</p> <p>There must be a reasonable degree of integration with the existing built and natural environment, balanced with the desirability of providing for variety in streetscapes</p> <p>Long, straight wall areas will be discouraged and must be broken up visually by a combination of building materials and/or changes in the wall plane</p>	<p>The application as amended provides adequate solar access to the majority of the individual units, improving this aspect from the original design. Complies with requirement under SEPP ARH.</p> <p>Acceptable response, particularly given that the proposed buildings need to be set well back into the property to account for the existing telecommunications structure at the street frontage.</p> <p>See issue above re: Building Height Plane - issues have been resolved in the amended proposal. Private open space areas provided for each unit.</p> <p>See discussion above regarding local character. Amended proposal now provides an acceptable balance between consistency with local character and increase in local housing diversity.</p> <p>As originally submitted, the rear elevation of the Terrace Unit building was 32m in length and only articulated visually through the upper deck partitions. The amended proposal has addressed with by dividing the building into two separate structures, achieved by the deletion of 2</p>	<p align="center">Yes</p> <p align="center">Yes</p> <p align="center">Yes</p> <p align="center">Yes</p>

BYRON SHIRE COUNCIL

DCP requirement/summary	Proposed/ Comments	Complies
	units.	
<p>The provision of verandahs, balconies, pergolas and other protective outdoor elements will be encouraged for visual, climatic and energy efficiency reasons</p>	Protected decks are included on the upper level of all units.	Yes
<p>Well-designed overhanging eaves should be provided where feasible to protect against heavy rainfall and summer sun, while allowing winter sun penetration</p>	Eaves are provided.	Yes
<p>All building materials must be compatible in character with their surrounding environment. Any metal roof must have a colourbond or equivalent finish and no roof may be highly reflective. White or light-coloured roofing may be approved where it is demonstrated that it is not likely to be visually intrusive. Details of building materials and surface colours must be submitted for assessment with a development application</p>	Acceptable – see commentary in Council’s Heritage Advisors’ report (Attachment 6).	Yes
D1.2.5 Fences	Complies with Prescriptive Measures	Yes
D1.2.6 Balconies	Consistent with Performance Measure	Yes
D1.2.7 Pedestrian and Cycle Access	Consistent with Performance Measures	Yes
<p>D1.6 Multi Dwelling Housing D1.6.1 Private Open Space Prescriptive Measures: Each dwelling must have access to an individual courtyard at ground level having a minimum area of 30m² and a minimum length and width each of 4 metres. The courtyard must be designed to facilitate access to winter sunshine and must be landscaped to Council’s satisfaction.</p>	<p><u>Studios</u>: Each unit has a ground level courtyard of 2m x 3m - 6m². Does not comply. Each studio also has an upper north-facing deck of 6m². <u>Row Houses</u>: Each unit has a ground level courtyard of 2.58m x 4.31m – 11.1m². Does not comply. <u>Terrace Units</u>: Each unit has a ground level courtyard of 4.6m x 4.0m – 18.4m. Does not comply. Most courtyards receive minimal winter sun.</p>	No*
<p>D1.6.3 Landscaping Refer to B9 Landscaping: B9.4.2 Common Landscaped Area Required: small units (i.e less than 55m²) - 50m² per unit medium units (i.e. 55-85m²) - 70m² per unit;</p>	<p>Required: 9 x small units – 450m²; 6 large units – 540m²</p> <p>Proposed: 217m²</p>	No*

DCP requirement/summary	Proposed/ Comments	Complies
large units (i.e. over 85m ²) - 90m ² per unit		
D1.6.4 On-Site Car Parking Refer to B4 Car Parking B4.2.12 Parking Schedules Required – 1 space per 1 or 2 bedroom unit; 2 spaces per 3 bedroom unit; 1 visitor space per 4 units; 1 covered space per dwelling	<u>Required:</u> 13 x 1 & 2 bed units: 13 spaces 2 x 3 bed units: 6 spaces Visitor: 4 spaces TOTAL: 23 spaces <u>Provided:</u> 13 spaces	No*
D1.6.5 Sound Proofing	Can be conditioned	Yes
D1.6.6 Clothes Drying Facilities Prescriptive measures: 7.5 metres of line per dwelling, located in suitably screened external drying areas	Can be conditioned	Yes
D1.6.7 Equity of Access and Mobility Refer to B13 Access and Mobility A minimum of 10% of units (rounded up) should be adaptable housing Access/ Continuous accessible path of travel within the site	15 dwellings proposed – 2 units required to be adaptable. Row House units 1 & 2 shown as adaptable Accessible car parking provided directly adjacent to adaptable units.	Yes Yes

* Standards within SEPP (Affordable Rental Housing) 2009 take precedence.

The only non-compliances that remain for the amended proposal are in relation to standards that are 'overwritten' by the provisions of SEPP ARH. As indicated above, the proposal is now compliant with all relevant SEPP ARH requirements.

5

4.5 Any Planning Agreement or Draft Planning Agreement?

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

10

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

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

4.7 Any COASTAL ZONE MANAGEMENT PLAN?

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

5

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

Impact on:	Likely significant impact/s?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality – see assessment/commentary above.
Social Environment	No. The proposal will not have a significant social impact on the locality. The provision of small rental units will add to the housing diversity available in Bangalow, addressing an identified housing need.
Economic impact	No. The proposal will not have a significant economic impact on the locality.

4.9 The suitability of the site for the development

10 The site is a serviced, relatively unconstrained property and is suitable for the proposed development. The primary consideration regarding suitability is the consistency of the proposed development with the local character, particularly given that the property is located within the Bangalow Heritage Conservation Area.

15 This issue is addressed in detail within this report, and it is concluded that, notwithstanding that the proposal is for multiple units in a locality characterised by single dwellings, the form, density and scale of the proposed development, as amended, is consistent with the local character.

20 It consists of four (4) individual buildings on a large property, each of a size similar to surrounding dwellings.

The buildings form and aesthetics reflect the general heritage themes of houses in the area.

25 Overall, the amended proposal provides an appropriate balance between providing additional housing diversity and reflecting the density, aesthetics and built form of the surrounding development.

4.10 Submissions made in accordance with this Act or the regulations

30 The development application was originally exhibited for public comment from 18/04/2019 to 08/05/2019.

There were 115 submissions made on the development application (Attachment 2):

- 18 For
- 35 - 97 Against

It is noted that the submissions of support were in the form of a signed 'form letter'. A number of the objections were also provided by way of a copies 'form letter'.

The amended proposal was re-notified to all who had made previous submissions, with an exhibition period from 2 January to 23 January 2020.

There were 7 submissions made in relation to the amended proposal; all objecting (Attachment 7).

5

The issues raised in all of the public submissions are addressed below (in no particular order):

<i>Issues</i>	<i>Comment</i>
Initial exhibition 18 April – 8 May 2018:	
Objections:	
Inadequate parking	<p>Clause 14(2) of State Environmental Planning Policy (Affordable Rental Housing) 2009 specifies that a consent authority must not refuse consent to development made under this SEPP is the car parking provided meets the minimum standards contained in the SEPP.</p> <p>As outlined in the report above, the SEPP requirements for this development are for the provision of 12 car parking spaces. The application proposes to provide 12 spaces.</p> <p>Experience in the local area would suggest that there is likely to be more than 12 cars associated with the development. Additional cars will need to park on the street within Lismore Road.</p> <p>While this is not ideal, there is physical space on either side of Lismore Road for cars to park.</p> <p>As highlighted above, the provisions of the SEPP specify that Council is not able to refuse the application solely on the basis of the number of car parking spaces.</p>
Additional traffic movements will impact on safety on this section of Lismore Road	<p>Council's Development Engineer and NSW RMS have reviewed the proposal and conditions are recommended requiring a minor widening of the northern side of Lismore Road, to provide a 'passing bay' that would allow motorists travelling toward Bangalow to pass a vehicle entering the site from that direction.</p> <p>The existing driveway will need to be upgraded, unless it can be demonstrated that it meets contemporary AUSTRROAD standards relevant to the circumstances.</p> <p>These measures will satisfy traffic safety/efficiency concerns.</p>
Inadequate solar access	<p>The amendment to the development has improved the solar access somewhat.</p> <p>The proposal does not fully comply with the SEPP requirement for solar access to at least 70% of living rooms; although at least 70% of private open spaces do comply.</p> <p>Overall, in the context of the north coast climate and the design of the units (particularly</p>

BYRON SHIRE COUNCIL

Issues	Comment
	providing for natural ventilation), it is suggested that a lack of solar access is not, by itself, a reason to refuse the application.
Not compatible with the character of the area – particularly given location within Heritage Conservation Area – “the development grossly offends the existing character of Bangalow”	See discussion above. The proposal as amended comprises four (4) individual buildings, each of which are of a scale that is consistent with dwellings in the locality. In combination with the design and materials, which reflect the heritage character in the area, the amended proposal provides an acceptable response to the site and its context.
Encroachment into Building Height Plane – overlooking/ privacy impacts; encroachment cannot be justified given character of the locality	See discussion above. The amendment has remedied the height plane encroachments that would have resulted in overlooking / privacy issues. The only encroachment remaining, apart from very minor encroachment of eaves, is in respect of the southern boundary, which adjoins rural land that has no potential for development.
Concessions available within SEPP (Affordable Rental Housing) 2009 should not apply in a Heritage Conservation Area	The SEPP does not contain any provisions relating to heritage conservation areas. In terms of the SEPP “concessions”, the subject application only relies on the provisions relating to car parking and landscaped area. It does not seek the additional floor space that is “available” under the SEPP.
The applicant is not entitled to SEPP ARH concessions that are restricted to listed community housing providers	The proposal does not rely on any concessions that are only applicable only to social housing providers.
The application does not comply with provisions of SEPP ARH and Byron LEP 2014, including Floor Space Ratio	See detailed assessment above – amended proposal now complies. FSR is calculated at 0.47:1. The maximum FSR for the locality is set at 0.5:1.
Width of some units is only 1.8m – too narrow for a double bed	The studio units are 3.0m in width, with the bedroom being 2.4m x 3.0m. The row houses have a width of 4.3m, with a bedroom 3.1m x 3.4. The terrace units have a minimum width of 4.0m.
Setbacks and building height will result in visual impacts for neighbours	The amended proposal complies with setback and height standards, and is therefore a reasonable response to the site. The development will result in a significant visual change for the immediate neighbours, who have looked out over vacant land for a long period. However, compliance with the relevant planning controls (see above) ensures that such impacts are reasonable in the circumstances.
Units will not be affordable – affordable	SEPP ARH specifies that the affordable housing

Issues	Comment
component only needs to be such for 10 years – not permanently affordable	<p>components must be used for affordable housing for a minimum of 10 years.</p> <p>This does not apply to all units; only to those nominated as 'affordable', which are four units in the amended plan.</p> <p>Council has no power to require these units to be affordable for a longer period, nor the power to require all units to be 'affordable'.</p>
Proposal is inconsistent with Bangalow Village Plan	<p>The Bangalow Village Plan – Vision and Initiatives; was adopted by Council in February 2019.</p> <p>The relevant principles in the plan include:</p> <ul style="list-style-type: none"> • <i>There is a harmonious unison between old and new structures that respects and integrates with what's already here.</i> • <i>A greater diversity of housing types are available to suit residents' needs at different stages of their life.</i> • <i>New housing in Bangalow is largely provided through infill development, limiting urban sprawl and maintaining the village's walkability.</i> <p>The proposal as amended provides an acceptable balance between respecting the character of the locality and providing a greater diversity of housing product on a property that is in walking distance to the Village centre.</p> <p>In that regard, the development is considered to be consistent with the Village Plan as adopted.</p>
Support:	
Development will deliver long term rental housing and generate housing diversity	Noted. As above, the proposal provided an acceptable balance between provision of additional housing and consistency with character of the area.
Does not contribute to urban sprawl	As above.
Site is well located in terms of access to shops and services	The site is located in easy walking distance to the Bangalow Village Centre.
Re-exhibition of amended plans January 2020:	
Amendments do not resolve inconsistency with character of the area nor lack of parking;	See commentary above, particularly comments from Council's Heritage Advisor.
Too many units on a small block of land	As detailed in the assessment above, the scale and density of the development is consistent with relevant statutory requirements in SEPP ARH and Byron LEP 2014.
Development will significantly alter the amenity for the neighbouring property to the north – outlook from dwelling on that property will be to walls as opposed to current open outlook.	The development will substantially alter the existing amenity, as the southerly view from the adjoining dwelling, located at a higher level than the subject site, currently looks over a vacant site onto rural land in the distance.

Issues	Comment
	<p>However, given the residential zoning of the land and the principal planning controls of height and setback, it is not reasonable to assume that this outlook would be 'protected'.</p> <p>The proposed development complies with the height, setback and building height plane requirements in respect of this adjoining boundary.</p> <p>The lower ground level of the development site further assist in reducing the apparent bulk of the two-storey building components when viewed from the adjoining property. A 1.8m fence is proposed on the boundary (at the applicants cost) and site landscaping will further assist in soften the impacts.</p>
Single-storey cottages would be more suitable for this site and locality.	<p>This is true. However, the planning controls applicable to the site and development do not restrict buildings to single storey.</p> <p>While single storey buildings may be more compatible with the character of the area, the assessment above, including the assessment of Council's Heritage Advisor, concludes that the two storey components are not inconsistent with the character.</p>

4.11 Public interest

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

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

10 Section 64 levies will be payable.

5.2 Section 7.11 Contributions

15 Section 7.11 Contributions will be payable.

In accordance with Council policy, the development generates a requirement for Contributions for the "non-affordable" component of the development (i.e. 11 of the 15 units).

20 Contributions for the 4 affordable units are not required until such time as they cease to be managed by a social housing provider as affordable units, in accordance with SEPP (Affordable Rental Housing).

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

25

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that	No

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.	
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7. CONCLUSION

- 5 The proposed development is submitted under the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009. It will provide for additional rental housing and a diversity of housing types, which are identified community needs in Bangalow.
- 10 The proposal complies with key development controls and standards and, as amended, is an adequate response to the character of the area.
- 15 The property is located within a Heritage Conservation Area and Council’s Heritage Advisor is satisfied that it has been designed to respect the key characteristics of that area.
- 20 The surrounding locality is dominated by single dwellings, the majority of which are single storey. The number of units, most being two-storey, is inconsistent. However, the units are broken into four (4) separate buildings, each of with a footprint that is consistent with dwellings in the locality.
- 25 The design, form and building materials are consistent with the character in this locality. Overall, the proposed development provides an acceptable balance between respecting local character and providing greater housing diversity / choice.

8. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED

Statement of Reasons

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

How community views were addressed

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

25

Report No. 13.10 **PLANNING - 26.2016.6.1 The Farm Planning Proposal, Ewingsdale Road Byron Bay**

Directorate: Sustainable Environment and Economy

Report Author: Rob Van Iersel, Major Projects Planner

5 **File No:** I2020/47

Summary:

10 There have been a number of Council reports addressing unauthorised land uses at The Farm, resulting in some of those uses ceasing and a Planning Proposal to amend Byron LEP 2014 to provide a mechanism to approve nominated uses, such as the bakery.

15 The Department of Planning issued Gateway approval to proceed with the Planning Proposal in July 2018. Given that traffic generation onto the Pacific Motorway roundabout is a key issue in relation to the Proposal, the Gateway required that Council liaise with Roads and Maritime Services (RMS).

20 As outlined in an update report to Council's meeting in December 2018, discussions with RMS and the proponent determined that a Voluntary Planning Agreement (VPA) would be an appropriate mechanism to address traffic congestion issues.

25 RMS's suggestion was that the VPA be entered into by Council, RMS and the land owners of The Farm, to provide for the dedication of a strip of land along the Ewingsdale Road frontage of the property, which would allow the future widening of Ewingsdale Road between the Motorway roundabout and McGettigans Lane.

30 The landowners indicated that dedication of the land would be acceptable, subject to being satisfied that the value of the land to be dedicated would be commensurate with the extent to which traffic generated by the unauthorised uses contribute to existing traffic problems.

35 A number of discussions have been held attempting to determine provisions for inclusion in the VPA that protect the interests of all parties.

40 Despite a 9-month extension to the Gateway approval, it is now clear that it will not be possible to finalise a draft VPA that is acceptable to all parties within the Gateway timeframe.

45 An alternate solution is now proposed, where the Planning Proposal is amended to include the rezoning of a strip of land along The Farm's Ewingsdale Road frontage, to SP2 Infrastructure (Classified Road).

50 This zoning 'reserves' the land for future acquisition under the Land Acquisition (Just Terms Compensation) process. This will allow the Planning Proposal to move forward while Council and RMS continue to plan and design road improvement works which will address existing traffic issues.

55 This will require a further amendment to the Gateway determination, and it is recommended that Council resolve to write to the Department seeking that amendment.

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:

1. **That Council forward the amended Planning Proposal (Attachment 1 E2020/6032) to NSW Department of Planning, Industry and Environment for an amended Gateway Determination, to provide an approval mechanism for the nominated unauthorised land uses at The Farm.**
2. **That, following Gateway Determination, the Planning Proposal be publicly exhibited for a period of 28 days and; following this time a further report be put to Council.**
3. **That Council concurrently exhibit the draft amendment to Chapter E5 of Byron DCP 2014 - Certain Locations in Byron Bay and Ewingsdale (Attachment 2 E2020/6033) and report on submissions received.**

Attachments:

5

- 1 Attachment 1 - Planning Proposal The Farm - Public Exhibition Version, E2020/6032 
- 2 Attachment 2 - Draft amendment to Chapter E5 of DCP 2014 - The Farm, E2020/6033 
- 3 Form of Special Disclosure of Pecuniary Interest, E2012/2815 

10

REPORT

5 At the Council meeting of December 2018, Council noted a report providing an update on the Planning Proposal for The Farm, relating to a proposed Voluntary Planning Agreement (VPA) as a way of addressing traffic issues associated with use of the site.

10 The Planning Proposal addresses existing unauthorised land uses at the Farm (it does not approve additional uses). Council had previously resolved (**17-671**) to initiate this Planning Proposal and seek a Gateway Determination from the Department of Planning that would allow for its public exhibition.

The support for the Planning Proposal was to allow authorisation of the following uses at the site:

- the bakery;
- agricultural training/education facilities and activities;
- 15 • administration offices;
- small-scale information centre.

20 Previous compliance actions was undertaken to address the produce store, which was significantly reduced in scale to be consistent with the existing approval for 'roadside stall', and the homewares/gift shop, which was modified to operate in accordance with the approval for a plant nursery.

25 Prior to issuing a Gateway Determination for this Planning Proposal, the Department of Planning, Industry & Environment undertook preliminary consultation with a number of State Agencies. In response, NSW Roads and Maritime (RMS) recommended that a Voluntary Planning Agreement be negotiated as part of the Planning Proposal, to provide for a contribution "*to offsetting the development's contribution to the traffic and safety issues around access to the site*".

30 The Department advised that this request from RMS be addressed prior to exhibition of the Planning Proposal.

The unauthorised uses at The Farm generate traffic which contributes to existing congestion problems at the western end of Ewingsdale Road and its connection to the Pacific Motorway.

35 The intention of the VPA was to facilitate the dedication of a strip of land along the Ewingsdale Road frontage of The Farm, so that this section of Ewingsdale Road can be widened as part of a suite of road improvement works to be carried out by RMS and Council.

40 RMS advised that, in order to accept this VPA as the Farm's contribution to traffic solutions, they would need to be signatories to it. Their position has been that the VPA should provide for the land dedication with no provision for further compensation to the land owner.

45 The Farm advised that they would agree to such dedication provided that it could be demonstrated to their satisfaction that the value of the land to be dedicated is commensurate with the scale of their contribution to existing traffic volumes. They also sought to include provisions that provide for compensation should it be determined that the land value is greater than their contribution to the traffic problems.

To achieve this, Council, RMS and the land owner would need to agree on:

- 50 • traffic volumes generated by the nominated unauthorised uses at The Farm, quantified as a percentage of overall traffic volumes through the motorway interchange and on Ewingsdale Road in this location;
- the value of the land to be dedicated; and

- the construction cost of the agreed road improvement works.

Discussions with Council, RMS and The Farm have not reached an agreement on these numbers, and it is clear that it is not yet possible to reach such an agreement until such time as the suite of road upgrades are designed and costed. Latest discussions indicate that the time frame for that could potentially be quite protracted.

In order to move forward, therefore, an alternate approach is recommended, amending the Planning Proposal to change the zone of a 15m wide strip of land along The Farm's frontage of Ewingsdale Road from RU1 Primary Production to SP2 Infrastructure (Classified Road).

This will have the effect of reserving that land for potential future acquisition by RMS.

Clause 5.1 of Byron LEP 2014 specifies that RMS is the relevant authority to acquire land zoned SP2 Infrastructure (Classified Road), pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991*.

The proposed zone will also cover sufficient area to accommodate a future 'fourth leg' of the (upgraded) hospital roundabout, should that be required in the future.

In addition to adding this rezoning, the following minor amendments are also proposed to the version of the Proposal previously reported to Council. These are:

- **Artisan food and drink industry:** One of the unauthorised uses being addressed is the Bread Social bakery. On initiating the Planning Proposal there were discussions with the Proponents about the appropriate planning definition for that use, with the previous version of the Planning Proposal settling on "shop".

Since that time, the Department of Planning, Industry and Environment have established a new definition of *artisan food and drink premises*, which means:

a building or place the principal purpose of which is the making or manufacture of boutique, artisan or craft food or drink products only. It must also include at least one of the following:

- (a) *a retail area for the sale of the products,*
- (b) *a restaurant or cafe,*
- (c) *facilities for holding tastings, tours or workshops*

This new definition is a much better fit for the Bread Social bakery, but is currently prohibited in the RU1 zone. It has therefore been included in the updated Planning Proposal.

- **Draft DCP amendment:** Recent discussions with the Department of Planning, Industry and Environment indicate a preference to keep local provisions in the LEP as simple as possible, with more detailed controls supporting those provisions to be outlined in a Development Control Plan.

It is therefore proposed that a new section be added to Chapter E5 of the DCP – Certain Locations in Byron Bay and Ewingsdale; to outline the controls which will manage the land uses authorised in the Planning Proposal.

A copy of the recommended DCP section is contained at Attachment 2.

Key issues

Traffic has been the primary issue to delay this Planning Proposal, for the reasons outlined above.

Council and RMS are working toward solutions to the existing road congestion issues at the western end of Ewingsdale Road, and while a solution is not yet agreed, it is reasonable to assume that solution(s) will be implemented in the foreseeable future.

On that basis, it is considered that the Planning Proposal can proceed at this time, to establish a mechanism whereby The Farm can obtain development approval for the existing unauthorised uses (subject to a DA).

- 5 Given that widening of the western section of Ewingsdale Road is highly likely to form part of the road upgrade solution, it is appropriate that a 15m wide strip of land along the Ewingsdale Road frontage of The Farm be zoned SP2 Infrastructure (Classified Road), reserving that land for potential future acquisition by RMS.
- 10 The proposed zone will also cover sufficient area to accommodate a future 'fourth leg' of the (upgraded) hospital roundabout, should that be required in the future.

Options

- 15 The proposal outlined above allows the Planning Proposal to proceed toward a final resolution of the existing unauthorised uses at The Farm while traffic solutions for the locality are being developed.

20 The alternative would be to wait until solutions have been determined, designed and implemented before proceeding with this proposal.

25 While no firm timeframe is set, that process has the potential to take 3-5 years to complete. In the meantime, Council would need to take enforcement action (under the Enforcement Policy) to require The Farm to operate strictly in accordance with its existing approvals. It should be noted that there are however a number of conflicts in these approvals consent conditions which will complicate any enforcement action in the short term.

30 Council has been working with The Farm to address and reduce any non-compliances on site. The Farm has operated for at least a year now without significant complaint or issue raised.

Next steps

35 To move forward, Council staff will refer the amended Planning Proposal to the Department of Planning, Industry and Environment to seek an amended Gateway determination. Subject to receiving that, the Planning Proposal can then move to public exhibition.

Report No. 13.11 **Coastal Management Program (Stage One) Scoping Study for Cape Byron to South Golden Beach - status and update**

Directorate: Sustainable Environment and Economy

Report Author: Chloe Dowsett, Coastal and Biodiversity Coordinator

File No: I2020/70

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Summary:

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The (*draft*) *CMP Stage 1 Scoping Study for Cape Byron to South Golden Beach* was reported to Council at the 21 November 2019 meeting, where it was resolved (**Res 19-560**):

15

1. *That Council upload the draft CMP Stage 1 Scoping Study for Cape Byron to South Golden Beach for public comment to 10 January 2020.*

20

2. *That Council send the draft CMP Stage 1 Scoping Study for Cape Byron to South Golden Beach 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.*

25

3. *That staff report back to Council in February 2020 on the outcomes of public comment, key stakeholder and state agency review.*

The timeframe for public comment on the (*draft*) Scoping Study was extended on Council's website to 3 February 2020 to allow suitable time over the holiday period for the community and agencies to review the comprehensive report.

30

At the time of writing this report (28 January 2020), feedback from eight community members had been received, however no comments or support letters had been received by public agencies. It is anticipated that agency feedback and the Department of Planning, Industry and Environment detailed assessment of the draft report will be received by the end of February 2019.

35

Once received, staff will finalise the Scoping Study accordingly and report back to Council.

RECOMMENDATION:

40

1. **That Council note the update provided on the Coastal Management Program Stage 1 Scoping Study for Cape Byron to South Golden Beach.**

2. **That Council note that once the Department of Planning, Industry and Environment detailed assessment has been received a further report will be tabled at the next available Council meeting.**

REPORT

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*.

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

The first stage of the CMP process is nearing completion with the (*draft*) *CMP Stage 1 Scoping Study for Cape Byron to South Golden Beach* reported to Council at the 21 November 2019 meeting, where it was resolved (**Res 19-560**):

1. That Council upload the draft *CMP Stage 1 Scoping Study for Cape Byron to South Golden Beach* 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* 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.

This report provides an update for Councillors on the status of the resolution.

Item # 1: Public Comment on the (draft) Scoping Study

The timeframe for public comment on the (draft) Scoping Study was extended on Council's website to 3 February 2020 (period of eight weeks) to allow suitable time over the holiday period for the community and agencies to review the comprehensive report. At the time of writing this report (28 January 2020), eight community members had provided feedback in the form of email comments on the study. Of this feedback, two comprised lengthy submissions to Council of up to 80 pages. Staff are presently reviewing the comments and submissions in detail which is taking longer than anticipated.

Item #2: Agency review and comment on the (draft) Scoping Study

Agencies with a role or responsibility associated with recommended actions/studies/components in the *Forward Plan* have been requested to provide formal support and clarification of their role and/or responsibility. At the time of writing this report (28 January 2020), no comments or support letters had been received by public agencies.

The Department of Planning, Industry and Environment (*DPIE - former Office of Environment and Heritage*) is required to undertake a detailed assessment of the (draft) Scoping Study, however at the time of writing this report the detailed assessment had not been received.

Item #3: Report back to Council

It is anticipated that agency feedback and DPIE's detailed assessment will be received by the end of February 2019. Once received, staff will finalise Scoping Study accordingly and report back to Council.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 3: We protect and enhance our natural environment	3.3	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***

The *Coastal Management Act 2016* and associated Manual.

Financial Considerations

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Stage 1 Scoping Study for Cape Byron to South Golden Beach is funded in the FY 2019/20 budget.

Report No. 13.12 **PLANNING - 26.2020.1.1 - Planning Proposal for Short Term Rental Accommodation**

Directorate: Sustainable Environment and Economy

Report Author: Ben Grant, Planner

5 **File No:** I2020/111

10 **Summary:**

A report was tabled at the Ordinary Council meeting of 12 December 2019, presenting preliminary research on the volume and growth of 'online listings' for short term rental accommodation in Byron Shire.

15 This report was in response to a Ministerial Planning Direction issued 15 February 2019, to address the high concentration and unique impacts of short term rental accommodation in the Byron Shire. The Direction allows Council to reduce non-hosted short-term rental accommodation to a minimum of 90 days per calendar year, as long as there is a sound base of evidence to support the proposed changes.

20

Report link:

https://byron.infocouncil.biz/Open/2019/12/OC_12122019_AGN_1002.PDF

25 The report noted very high numbers of listings relative to other Local Government Areas in the region, and recommended new planning controls be introduced to improve the management of short term rental accommodation through an amendment to Byron Local Environmental Plan 2014.

30 The recommendations of the report were supported by the Council, with an additional request for staff to investigate and apply an appropriate planning mechanism to limit 10% of the total housing stock in use as non-hosted short term rental accommodation (STRA).

Council resolved **(19-676)** as follows:

- 35 1. *That Council request staff to prepare a planning proposal to amend Byron Local Environmental Plan 2014 in accordance with the draft planning controls in Attachment 1 (E2019/85833) except to replace point 4 with a new point 4 "investigate and apply an appropriate planning mechanism to limit 10% of the total housing stock in use as non-hosted STRA".*
- 40 2. *That Council request staff to undertake an online community engagement activity of the draft planning proposal controls during December and January to canvass community opinion on the controls.*
- 45 3. *That Council receive a report on the community engagement activity with a finalised planning proposal, for endorsement to submit to the Department of Industry and Environment for Gateway Determination in February 2020.*

50 As per item 2, an online community engagement activity of draft planning controls was undertaken during December and January to canvass community opinion. Feedback over the planning controls was generally mixed, with responses being roughly split between those who favoured a precinct model and those who felt a simpler 90 day cap should be applied equally in all areas.

55 After considering the community feedback and the results of further research, several changes have now been made to the proposed draft planning controls.

A proposed precinct model has not been progressed as it requires significant more data analysis to validate, and without this has the potential to create an unequal distribution of benefits and burdens across the community.

- 5 Instead, a more simplified approach is recommended that will seek to introduce a 90 day limit for non-hosted STRA in all areas as an initial planning control response, with further data analysis to continue on the potential for a precinct based model which could be implemented at a future time.



10 NOTE TO COUNCILLORS:

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

RECOMMENDATION:

1. **That Council forward the Planning Proposal (Attachment 1 #E2020/9498) to NSW Department of Planning for a Gateway determination.**
2. **That, following the issue of a Gateway determination, the Planning Proposal be publicly exhibited in accordance with the requirements of it and the Byron Shire Community Participation Plan.**
3. **That following public exhibition, a further report is put to Council on the results of the public exhibition and next steps for the finalisation of the Planning Proposal.**

Attachments:

- 20
- 1 26.2020.1.1 - STRA Planning Proposal - Pre-Gateway V1.1, E2020/9498 
 - 2 Combined Submissions List - Short Term Holiday Letting (STRA) - Redacted (20-02-2020).pdf, E2020/12192 

25

REPORT

Background

5 At the ordinary meeting of 12 December 2019, Council resolved **(19-676)** as follows:

1. *That Council request staff to prepare a planning proposal to amend Byron Local Environmental Plan 2014 in accordance with the draft planning controls in Attachment 1 (E2019/85833) except to replace point 4 with a new point 4 “investigate and apply an appropriate planning mechanism to limit 10% of the total housing stock in use as non-hosted STRA”.*
2. *That Council request staff to undertake an online community engagement activity of the draft planning proposal controls during December and January to canvass community opinion on the controls.*
3. *That Council receive a report on the community engagement activity with a finalised planning proposal, for endorsement to submit to the Department of Industry and Environment for Gateway Determination in February 2020.*

Community Engagement Activity

As per item 2, an online community engagement activity of draft planning controls was undertaken during December and January to canvass community opinion.

The engagement activity included a mini-survey asking people whether they supported the idea of STRA precincts with higher day limits in certain areas. A mapping exercise also gave the community the opportunity to pin locations where they thought locations for 365 day or 90 days STRA might be appropriate.

Mini-survey results

The mini-survey posed two questions:

- (1) *Should STRA be capped at 90 days per year across the Byron Shire?*
- (2) *Should there be precincts with higher day limits? (please specify locations)*

In response to question 1, opinions were evenly split. A small majority of respondents (52%) preferred a simplified approach with a 90 day cap applied equally throughout the Shire. Refer to table 1.

Table 1: Responses to survey question 1

Should STRA be capped at 90 days across the Byron Shire?	No. of Responses	%
Yes	396	52%
No	340	44%
Unsure / No response	30	4%
Total	766	100%

Responses to survey question 2 were also evenly split, with approximately 46% of respondents answering no or providing no response. 13% of respondents stated that higher day limits should be provided at Byron Bay, followed by Brunswick Heads with 7%. Refer to table 2.

Table 2: Responses to survey question 2

Should there be precincts with higher day limits? Please specify locations (Town, suburb or address)	No. of Responses	%
No (same limits everywhere)	290	27%
Yes (in favour of precincts)		
Byron Bay	141	13%
Suffolk Park	60	6%
Mullumbimby	32	3%
Brunswick Heads	78	7%
Bangalow	33	3%
Ocean Shores/New Brighton/South Golden	55	5%
Rural	61	6%
Areas Zoned Commercial or Tourism	54	5%
Other	70	6%
No response	199	19%
Total	1073	100%

Pin the Map

5

There were a total of 274 responses to 'pin the map', with a roughly even split between the number of suggested areas for 90 day precincts or 365 day precincts. A small majority of respondents suggested Byron Bay (57%) as an area for higher day limits while others suggested Brunswick Heads (70%). In other areas the majority of responses favoured a 90 day limit. It should be noted that sample sizes overall were not high, except for Byron Bay which had 157 responses. Refer to table 3.

10

Table 3: Summary of responses to 'pin the map' exercise.

Marker location	90 days	365 days	Total
Byron Bay	68	89	157
Suffolk Park	31	17	48
Brunswick Heads	8	19	27
Bangalow	6	2	8
Mullumbimby	2	1	3
Ocean Shores/New Brighton/South Golden	6	3	9
Rural	15	7	22
Total	136	138	274

15

Feedback by submission

The engagement activity also provided an opportunity for people to provide general comments and feedback to the draft planning controls. Council received e-mail and hardcopy submissions. Issues were categorised into five main themes relating to economy, amenity, housing, social impacts and other issues.

20

The most commonly cited issues were:

25

- Economic impacts – impacts on existing STRA operators, businesses and employment (246);
- Social impacts – change in community, loss of locals (228);
- Housing impacts - such as loss of housing, housing affordability and rental stress (200);
- Amenity impacts – noise, parking and rubbish (197);

- Other issues – such as impacts on the environment (106).

Overall, the majority of comments were focused on the adverse impacts of STRA. Similar levels of concern were expressed over residential amenity, availability of housing and loss of community.

5 On the other side of the debate, there were also a number of submissions received on the potential economic impacts of imposing a day limitation, with some suggesting it would reduce tourism and employment across the Shire.

10 Concerns were raised by some participants over the issue of multiple submissions and the potential for this to distort the survey and mapping results. While it is acknowledged that there may be some bias in the feedback due to multiple responses, all submissions have been reviewed by staff with this in mind, and the results as presented are generally considered to be a fair representation of current community views.

15 **New data**

Since the December Council meeting, further research has been carried out using new data obtained from consulting firm AirDNA. The new data covers the two most popular online booking platforms Airbnb and HomeAway and includes monthly listings going back to July 2016. This has
20 allowed more detailed research to be carried out, including analysis of growth trends over the last three and a half years.

The number of Byron Shire Airbnb and HomeAway listings at 1 November 2019 was estimated to be 4237 across both sites. When considered as proportion of total dwellings, total listings equate to
25 approximately 25% of dwellings in Byron Shire, and 62% of dwellings in Byron Bay. This figure is inclusive of shared rooms, private rooms and entire dwellings and covers frequent and infrequent users.

To gain an insight into the usage of properties, listings were filtered to identify the number of days
30 that a property was listed as 'reserved' (i.e. booked), as this provides an indication of a dwelling being actively used for STRA. In terms of reservations, slightly more than half of listings (55%) were reserved for less than 90 days per year. This compares to 27% of listings that were reserved from 91-181 days per year and 18% that were reserved for more than 181 days per year. This
35 illustrates that about half of listed properties were highly utilised holiday lets and would most likely be considered de facto tourist and visitor accommodation.

Between 1 July 2016 and 1 November 2019 the total number of Airbnb and HomeAway listings increased from 1586 to 4237. Listings growth appears to have accelerated rapidly in period from
40 2016 – 2018 and while the total volume of listings is still increasing, take up rates appear to be slowing overall. The majority of growth is being driven by new listings in Byron Bay.

Additional graphs and tables illustrating the data can be found in Attachment 1 Planning Proposal.

45 **Further research**

Council has also been assisted by researchers from Southern Cross University (SCU) who have undertaken two studies into the impacts of Airbnb in the Byron Shire.

50 The first study, finished in 2019, involved a series of in-depth interviews and a survey on the perceptions of Byron Shire residents on the impacts of Airbnb. Respondents acknowledged the economic benefits of increased tourism, but noted negative effects on the availability of housing, affordability, residential amenity and a perceived loss of neighbourhood and community.

Overall, housing availability was the main adverse impact identified by interviewees in the study,
55 with 82% agreeing the Airbnb had reduced the supply of and increased prices for long term rentals.

5 These views were also reflected in a 2018 study by Gurran et. al. for the Australian Coastal Council where interviewees in the Byron Shire described a process of ‘tourism displacement’ whereby local workers and prospective first home buyers have been priced out of the market by low rental availability and unaffordable prices.

10 The second SCU study, conducted in late 2019 and early 2020, looked at the perceived impact of Airbnb on the Shires approved accommodation providers such as hotels and motels. Preliminary results provided to Council show that most respondents pointed to the negative effects of Airbnb on their businesses along with the perception of an ‘unfair playing field’ that favoured the STRA market.

15 Preliminary analysis of the survey data shows that the majority of respondents (84%) reported a decrease in occupancy rates and in their net revenue (82%). As a consequence, around half the respondents considered changing their business operations, including selling (40%), upgrading or renovating (40%) or repositioning their business to target a different type of guest (48%). There was a high degree of agreement that the growth in STRA had led to changes in personal lives, including increased stress (74%) and decreased job satisfaction. Overwhelmingly, respondents felt that STRA needed better regulation and that the growth of the sector had led to an ‘unequal playing field for AAP’s’ and decreased commercial viability for approved businesses.

Changes to the draft planning controls

25 After considering further research and taking into account feedback from the community engagement, a proposed precinct model has not been progressed as it requires significant more data analysis to validate, and without this has the potential to create an unequal distribution of benefits and burdens across the community.

30 Instead, a more simplified approach is recommended that will seek to introduce a 90 day limit for non-hosted STRA in all areas as an initial planning control response, with further data analysis to continue on the potential for a precinct based model which could be implemented at a future time.

The draft controls have been changed as follows:

- 35 • Removal of the STRA map with different day limits. The Map will now only identify excluded lands where non-hosted STRA is not permitted.
- 40 • Removal of provisions establishing occupancy levels and day limits in the STRA map as a development standard. This is no longer required following the discontinuation of the precinct model.
- 45 • Amended proposed local provisions clause in Part 6 of LEP 2014 to include:
 - a prohibition on non-hosted STRA for dwellings located on the STRA exclusion map;
 - a prohibition on consent being granted for non-hosted STRA where it exceeds 90 days per year;
 - a requirement that occupancy levels for STRA be limited to 2 persons per bedroom up to a maximum of 12 persons, whichever is the lesser.

50 An explanation of the proposed planning controls can be found in the Planning Proposal in Attachment 1.

Basis for the changes

5 A simplified approach with a 90 day limit on non-hosted STRA in all areas is considered to be the most effective way of achieving the purpose and objectives of the Planning Proposal to minimise the impacts of STRA activity on permanent rental housing supply, residential amenity and local character and community; while still allowing for diversity in type and tenure of accommodation options in Byron Shire.

10 If a 90 day cap were to be introduced, it is estimated that about 45% of listings with active reservations would be required to reduce the number of days they are currently used for non-hosted STRA. This equates to 1591 dwellings.

15 By comparison, if a more permissive 180 day cap were introduced, approximately 18% of listings with active reservations would be required to reduce the number of days. This equates to 645 dwellings.

20 Considering the very high concentrations of STRA listings evident in the analysis and the impacts suggested in other research, a 90 day limit is considered to be the most effective approach for the immediate achievement of the purpose and objectives of the Planning Proposal.

20 **Alternative options**

25 Alternatively, Council could consider proceeding with a precinct model at this time, with further refinement to the STRA maps. The maps could be expanded in some areas where deemed appropriate, for example certain areas of Byron Bay or Brunswick Heads. This approach has the advantage of offering additional flexibility by designating areas where 'holiday letting' can occur albeit also allowing some acknowledgment of activity in tourist areas of the Shire. The disadvantage is that it has the potential to unevenly distribute the benefits and burdens of STRA and could be perceived as discriminatory and or preferential in its application. The detailed data analysis required to support this approach has also not been completed.

30 The preference of staff at this time is for Council to support a staged implementation that begins with a simplified 90 day limit in all areas of the Shire, while further investigation is undertaken into the potential for a future precinct model. This has the benefit of starting out cautiously, allowing more time to be invested into research, consultation and mapping to determine the most appropriate areas for future precincts with longer day limitations.

35 **SEPP option**

40 A third option is to not proceed with a planning proposal and instead accept regulation under the proposed *State Environmental Planning Policy (Short Term Rental Accommodation) 2019* (the SEPP), which is expected to come into force at some point in 2020.

45 Under the SEPP, non-hosted STRA will be permitted 365 days per calendar year in NSW with the exception of the Greater Sydney Region and certain nominated Local Government Areas, where it will be limited to 180 days per calendar year.

The advantage of the SEPP is that it offers a simpler regulatory system of exempt and complying development and would potentially place fewer burdens on Council's planning assessment and enforcement teams, particularly if non-hosted STRA was permitted 365 days per year.

50 The disadvantage of this approach is that it would not be as effective in addressing the impacts of STRA on rental housing availability, amenity, character and community (as sought by the community through their feedback).

55 **Mechanism to limit STRA to 10% of total housing stock**

As per item 1 of the Council resolution (**19-676**), staff investigated options for a planning mechanism to limit non-hosted STRA to 10% of the Shires total housing stock.

5 This is an innovative option that has the potential to limit the impact of STRA on housing supply, without the need for a precinct model or day restrictions.

Facilitating this approach through the planning system will require three things:

- 10 (1) A planning control that permits non-hosted STRA, but only with development consent. Under this model, there needs to be a mechanism in place whereby Council is required refuse consent for non-hosted STRA under certain circumstances. Allowing non-hosted STRA via exempt development is therefore not advisable under this model.
- 15 (2) A STRA register, to record the total number of dwellings that are lawfully providing non-hosted STRA. The register would need to be publicly available and would identify all non-hosted STRA in the Shire for which development consent has been granted.
- 20 (3) An accurate and reliable statistic of the total number of lawful dwellings in the Byron Shire, preferably reported monthly or quarterly. Ideally, this would be a statistic published by the ABS, or a similar reputable third party.

25 If these three things could be provided, a planning mechanism could conceivably be created that would enable Council to refuse development consent for non-hosted STRA if the total number of non-hosted STRA on the Council register was greater than 10% of the total number of reported dwellings.

30 The main issue preventing Council from implementing this control at the current time is the lack of a frequently reported statistic on the number of lawful dwellings. A registration system is also a necessary precursor.

As such, it is recommended that this option be further explored subsequent to the implementation of the planning controls, and establishment of a STRA registration system. Further advice will also be sought on the legality and drafting of such a planning control.

35 Registration system

Adequate monitoring and enforcement of the planning controls cannot occur without a register to provide information to Council about which properties are used for STRA and the number of days that properties are let.

40 In its simplest form, a registration system could mimic that which exists in Western Australia.

Registration of Short Term Accommodation - Western Australia

Description

You will require this registration if you intend to establish or operate short term accommodation. A place of short term accommodation cannot accommodate more than six people for a period greater than three months.

Holiday homes and bed & breakfasts are examples of short term accommodation.

Please consult the Contact Officer for more information.

Service type

Licence

A licence defines the need to obtain recognition / certification and registration to undertake a certain business activity.

Eligibility requirements

To be eligible for this registration, you must:

- apply in writing to the Council
- submit a floor plan of the short term accommodation
- state the number and location of sleeping rooms
- have on-site parking unless the accommodation will have less than four occupants at a time
- submit the name and contact details of the manager
- pay the prescribed fee.

Please consult the Contact Officer for more information regarding eligibility requirements.

Duration

As indicated on the registration.

Fees

Task	Type	Business Structure	Amount	Description
Apply	Application	All	\$150.00	Registration of holiday homes.
Apply	Application	All	\$35.00	Application to replace manager
Apply	Application	All	\$235.00	Registration Fee - Pro rata applies
Renew	Renewal	All	\$257.00	Renewal of holiday home registration.

<https://ablis.business.gov.au/service/wa/registration-of-short-term-accommodation/18595>

5 Staff are currently investigating the option of implementing a local STRA register through Council's fees and charges under section 608 Local Government Act 1993.

10 The services for which an approved fee may be charged include the following services provided under the Act (or any other Act or the regulations) by the council—

- supplying a service, product or commodity
- giving information
- providing a service in connection with the exercise of the council's regulatory functions-- including receiving an application for approval, granting an approval, making an inspection and issuing a certificate
- allowing admission to any building or enclosure.

20 A council may also charge an approved fee for inspecting premises that are reasonably required to be inspected in the exercise of the council's functions, whether or not the inspection is requested or agreed to by the owner or occupier of the premises.

25 Annual fees levied for STRA registration would fund the establishment of the register and its ongoing operation and maintenance by staff; as well as inspections of properties required to ensure compliance with the planning controls and conditions for STRA. Third party software solutions for registration and monitoring systems are also currently being investigated to assist in this regard.

30 A registration system to support the planning controls will be exhibited concurrently with the Planning Proposal.

Next steps

35 The next step is to refer the Planning Proposal to the Department of Planning for a Gateway determination. Subject to receiving that, the Planning Proposal can be formally publicly exhibited.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

5

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

Financial Considerations

10 The establishment of a STRA register will require funding to establish, operate and maintain. Further, analysis to determine a register design and how it can be incorporated into Council's IT systems is the subject of separate consideration by staff.

15 The implementation of any framework to manage and regulate STRA in Byron Shire is likely to have implications for the planning and enforcement teams of Council. Additional resources may be required.