



Byron Shire Council



Agenda

Ordinary (Planning) Meeting

Thursday, 16 April 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 19 March 2020
7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS
8. MAYORAL MINUTE
9. NOTICES OF MOTION

Nil
10. PETITIONS
11. SUBMISSIONS AND GRANTS
12. DELEGATES' REPORTS
13. STAFF REPORTS

Sustainable Environment and Economy

- | | | |
|------|--|-----|
| 13.1 | Design Options - Lot 12 Bayshore Drive, Byron Arts & Industry Estate | 5 |
| 13.2 | PLANNING - Report Exceptions to Development Standards 1 October 2019 to 31 March 2020 | 10 |
| 13.3 | PLANNING - 26.2017.6.1 Byron Bay Town Centre Planning Proposal - Review of Planning Controls and draft DCP 2014 Chapter E9 - Exhibition Outcomes - Submissions Report | 14 |
| 13.4 | PLANNING - 10.2019.650.1 - Dual Occupancy (detached) - 103 Kings Road Federal | 23 |
| 13.5 | PLANNING - Development Application 10.2019.566.1 Secondary Dwelling at 26 Coolamon Scenic Drive, Mullumbimby | 40 |
| 13.6 | PLANNING - Development Application - further report following resolution 20-015 10.2018.384.1 Alterations and Additions to existing Dwelling House, Alterations and Additions to existing structure to create Dual Occupancy (Detached) and Upgrade existing Wastewater System | 50 |
| 13.7 | PLANNING - 26.2018.2.1 Linnaeus Estate Planning Proposal - Submissions Report | .60 |

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.

BYRON SHIRE COUNCIL
ORDINARY (PLANNING) MEETING

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.1 **Design Options - Lot 12 Bayshore Drive, Byron Arts & Industry Estate**
Directorate: Sustainable Environment and Economy
Report Author: Rob Van Iersel, Major Projects Planner
File No: I2020/512

Summary:

Council considered Report 13.4 Agreement for lease - Council and TAFE NSW at the Ordinary Meeting of 26 March 2020.

https://byron.infocouncil.biz/Open/2020/03/OC_26032020_AGN_1155.PDF.

and resolved (**Res 20-140**) as follows:

That Council defer consideration of the attached agreement for lease (E2020/17631) between Council and TAFE NSW until the next available meeting of Council to enable the presentation and endorsement of the Design Blueprint for the possible uses on Lot 12 as initiated from the Enquiry by Design for the Arts and Industrial Estate in concert.

Council staff have been discussing a lease between Council and TAFE NSW over part of the Council operational land known as Lot 12 Bayshore Drive, Byron Bay, which would allow TAFE to construct a Connected Learning Centre (CLC) at the site.

Council has previously resolved to exhibit a draft Precinct Plan for the Arts and Industry Estate, which, in part, addresses the future potential of Lot 12, suggesting the opportunity to develop the land for a contemporary sustainability and innovations hub.

An architecture / urban design firm was engaged to prepare three concept design options for Lot 12, one based on the preliminary concept contained in the draft Precinct Plan; one designed around an anchor tenant (i.e. TAFE); and one as a 'fresh-look' at the property.

The draft concepts have been provided at Attachment 1, and indicate that there are a variety of potential land uses, and ways in which they could be delivered on the Lot 12 to achieve a vibrant active innovations hub that builds on the site's locality and context. It is clear and should be noted that it will be possible to 'mix' a variety of the other uses and development forms shown on any of the plans with the TAFE as anchor, depending on the exact outcome sought and the potential users.

A future report will examine these options in more depth, in the context of investigations of how development of the land might best be delivered. This report will be presented after the exhibition of the draft Precinct Plan.

The anchor tenant concept has been prepared allowing for the location and size of the land proposed to be leased by TAFE, and demonstrates that it is possible to achieve the outcomes anticipated by the draft Precinct Plan; i.e. a contemporary sustainability and innovation hub, with the TAFE CLC located as proposed. Such an education use is consistent with the draft Precinct Plan's objectives for the land.

There are a number of alternate transport options that will be possible, for both the TAFE CLC and for the further development of the site. These include, but are not limited to:

- implementing priority actions in Council's adopted Bike Plan and PAMP;

- provision of a dedicated bus stop outside the site;
- pedestrian pathways north and south, including a link to the nearby 'solar train' platform;
- potential to link to the west to existing car park areas at the Cavanbah Centre; and
- potential to incorporate car share/ bike share services into future development.

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This report asks Council to endorse the Design Blueprint for the possible uses on Lot 12 as initiated from the Enquiry by Design for the Arts and Industrial Estate and in concert agree to enter the agreement with TAFE NSW.

10 **NOTE TO COUNCILLORS:**

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



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RECOMMENDATION:

1. **That Council endorse design outcomes for Lot 12, as initiated from the Enquiry by Design for the Arts and Industrial Estate, based on the Anchor-Based Structure Plan, acknowledging that there may be a mix of uses from other Structure Plan options (Attachment 1 - E2020/24638) and that those options be appended to the agreement for lease (Attachment 2 - E2020/17631).**
2. **That Council authorise the General Manager to enter the attached agreement for lease between Council and TAFE NSW (Attachment 2 - E2020/17631).**
3. **That Council subject to the agreement for lease, authorise the General Manager to enter the attached lease between Council and TAFE NSW.**
4. **That Council note the lease includes a right for TAFE NSW to purchase the property in the event Council decides to sell.**
5. **That Council quarantine the rental revenue through establishing a new reserve titled 'Property Development Reserve – Lot 12 Bayshore Drive' to operate as described in the financial considerations section of this report.**

Attachments:

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- 1 Concept Design Options, E2020/24638 
- 2 Agreement for lease and lease - Council and TAFE NSW regarding Lot 12 Bayshore Drive - version for 26 March 2020 Council meeting, E2020/17631 

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REPORT

Council considered a staff report at the Council meeting of 26 March 2020 dealing with a proposed lease of land at Lot 12 Bayshore Drive, Byron Bay to TAFE NSW, to allow them to construct a Connected Learning Centre (CLC) on part of the land. The proposed lease would cover a portion of the land at the Bayshore Drive frontage, 5,260m² in area, located immediately south of the existing driveway access to the site.

At the meeting, Council resolved (**Res 20-140**):

That Council defer consideration of the attached agreement for lease (E2020/17631) between Council and TAFE NSW until the next available meeting of Council to enable the presentation and endorsement of the Design Blueprint for the possible uses on Lot 12 as initiated from the Enquiry by Design for the Arts and Industrial Estate in concert.

In 2019, Council worked with various stakeholders within the Arts and Industry Estate to prepare a draft Precinct Plan for the area. The draft was reported to Council meeting of September 2019 and adopted for public exhibition. Councillors also endorsed the preparation of structure plan options for Lot 12.

The draft Precinct Plan highlights the strategic value of Lot 12, recommending the development of a "Live, Work, Learn Exemplar", as a contemporary sustainability and innovations hub. The draft Plan further recommends that Council develop a "*preferred model for divestment or long term lease of Lot 12 which addresses these priorities*".

The approach from TAFE NSW for land in Byron Bay was initiated before the draft Plan could be publicly exhibited. In principle, it was considered that a CLC could be directly consistent with the Precinct Plan objectives and discussions negotiations were therefore undertaken regarding a potential lease.

At the same time, architecture/ urban design firm degenhartSHEDD have been engaged to prepare three options for consideration, one based on the preliminary concept contained in the draft Precinct Plan; one designed around an anchor tenant (TAFE); and one as a 'fresh-look' at the property, with the intention of progressing understanding of a "Live, Work, Learn Exemplar" and testing the extent to which a TAFE CLC could be a centre-piece for such development.

The concepts have been provided in Attachment 1 and show a variety of ways in which contemporary development outcomes can be achieved. The anchor tenant concept has been finalised allowing for the location and size of the land proposed to be leased by TAFE.

In looking at the variety of land use options and outcomes available, it is apparent that it will be possible to achieve the outcomes anticipated by the Arts and Industry Precinct Plan; i.e. a contemporary sustainability and innovation hub, with the TFA CLC located as proposed.

Research on innovation hubs indicates that their success depends largely on "**relentless activities and events**". This is the basis for the two versions of the "Reimagined Structure Plan" (Attachment 1), which prioritise a modular exhibition-type space that has the potential for one large floor plate on the first floor, covering and shading a ground floor with intermittent flexible enclosures and kiosk-like spaces that can plug in and out as the need arises. The first (and potential second) levels above this ground floor space then provides a significant development space for a range of business opportunities, or a wider mix of uses and activities, depending on detailed design.

Part of the thinking is that there are plenty of smaller spaces in the vicinity of the site, so its value and point of difference may actually be in going big. Three storey buildings could be suitable on the land, given the neighbouring development.

- 5 Other ideas include mixed use buildings and artists in residence studios, with communal gatherings spaces, communal gardens, solar and wind generators, car charging, etc.

10 Development would provide pedestrian (and potential vehicle) links to Habitat, and there are also a number of alternate transport options that will be possible, for both the TAFE CLC and for the further development of the site. These include, but are not limited to:

- implementing priority actions in Council's adopted Bike Plan and PAMP;
- provision of a dedicated bus stop outside the site;
- pedestrian pathways north and south, including a link to the nearby 'solar train' platform;
- potential to link to the west to existing car park areas at the Cavanbah Centre; and
- 15 • potential to incorporate car share/ bike share services into future development.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

| CSP Objective | L2 | CSP Strategy | L3 | DP Action | L4 | OP Activity |
|---|-----------|--|-----------|--|-----------|--|
| Community Objective 4: We manage growth and change responsibly | 4.1 | Support the visions and aspirations of local communities through place-based planning and management | 4.1.1 | Develop, implement and update Place Plans that promote place-based forward planning strategies and actions | 4.1.1.6 | Develop the Byron Arts and Industry Estate Precinct Plan |

Legal/Statutory/Policy Considerations

25 In terms of Lot 12's future, the proposed TAFE lease is consistent with the draft Byron Arts and Industry Precinct Plan, which was endorsed for public exhibition at Council's Planning Meeting of September 2019 (**Res 19-452**).

30 The draft Precinct Plan includes a priority action CE2 - Develop and deliver a strategy for selling or long term lease of Lot 12 to deliver a 'Sustainability and Innovation Hub'. This requires Council to implement a model for divestment or long term lease of Lot 12 to deliver both an appropriate land use mix on site to achieve this vision; with the need to maximise the commercial value of the site and its return in the long term for the community.

35 The draft Precinct Plan suggests that Lot 12 be developed with a contemporary mix of uses that build on the diversity and success of existing business in the Estate and in the region under a banner of innovation, creativity and sustainability.

40 Continuing education is considered an integral component of such a hub, and the concept design work undertaken confirms that such a use can add to rather than diminish site development options.

Council is able to enter both the agreement for lease and lease under the Local Government Act 1993 (NSW)

If Council decides to enter the agreement for lease with TAFE, the two most important legal consequences of this decision will be:

- 5
- First, by entering the agreement for lease, Council is contracting to grant the lease to TAFE.
 - Second, if a future Council decided to sell the leased land, TAFE must be given the first right to purchase it (although a future Council would need to resolve to actually sell the land).

Financial Considerations

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Should Council enter into the proposed lease agreement, it is recommended that the rental revenue provided by TAFE be reserved to assist with funding the required immediate civil works associated with the TAFE establishment and the broader future development cost of lot 12 Bayshore Drive.

15

The rental revenue should not be treated as general revenue and allocated to other purposes. To facilitate this proposed framework, it is recommended that Council establish a new reserve titled 'Property Development Reserve – Lot 12 Bayshore Drive' and this reserve be used over time to account for the revenues and costs as described in this section of the report.

20

Over a lease term of 20 years, there is the potential for Council to recognise \$7.64million in rental income associated with the site.

Consultation

25

The draft Precinct Plan was reported to Council meeting of September 2019 and adopted for public exhibition. Councillors also endorsed the preparation of structure plan options for Lot 12. Now that the Structure Plans have been developed, and subject to endorsement by Council, public exhibition of the draft Precinct Plan will progress.

Report No. 13.2 **PLANNING - Report Exceptions to Development Standards 1 October 2019 to 31 March 2020**

Directorate: Sustainable Environment and Economy

Report Author: Chris Larkin, Manager Sustainable Development

5 Noreen Scott, EA Sustainable Environment and Economy

File No: I2020/401

10 **Summary:**

This report is provided as a requirement of the NSW Department of Planning Circular PS17-006, for reporting on exceptions to development standards for applications made under clause 4.6 of the Standard Instrument LEP and Clause 6 of SEPP 1.

15 **NOTE TO COUNCILLORS:**

20 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:

25 **That Council adopt the report on exceptions to development standards for the period 1 October 2019 to 31 March 2020.**

REPORT

5 This report is provided as a requirement of the NSW Department of Planning Circular PS17-006, for reporting on exceptions to development standards for applications made under Clause 4.6 of the Standard Instrument LEP and Clause 6 of SEPP 1.

SEPP 1 applies to development applications submitted under Byron Local Environmental Plan 1988. Clause 4.6 applies to development applications submitted under Byron LEP 2014.

10 The period of reporting is for the 1 October 2019 to 31 March 2020 for the following DAs:

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| DA No | 10.2019.469.1 |
| Development | Demolition of Existing Dwelling House and construction of New Dwelling House |
| Property: | 134 Lighthouse Road BYRON BAY |
| Lot and DP: | LOT: 1 DP: 246414 |
| Zoning: | R2 Low Density Residential |
| Development Standard being varied | Height of buildings |
| Justification Summary | <p>The variation sought was minor and as a result of the existing extent of excavation and floor levels on the site.</p> <p>The 10 cm breach of the height will be imperceptible from the surrounds when compared to the existing building to be demolished on the site.</p> <p>Most of the proposed building is below the maximum height of building.</p> <p>The proposed development will not result in loss of privacy, loss of solar access, increased visual impacts or loss of views.</p> <p>No submissions were received.</p> |
| Extent of variation | 1.11% (0.1m or 10cm variation to the 9m height limit) |
| Concurrence | Director- delegate of Council under assumed concurrence |
| Determination Date | 24/10/2019 |
| Determined by | Director |
| DA No. | 10.2019.275.1 |
| Development | Boundary Adjustment |
| Property: | 45 -105 Monet Drive MONTECOLLUM |
| Lot and DP: | LOT: 1 DP: 1231141; Lot 9 DP 259415 |
| Zoning: | RU2 Rural Landscape / PART DM Deferred Matter (1A Hatched General Rural Zone |
| Development Standard being varied: | Minimum Lot Size |
| Justification Summary | <p>The proposal does not result in additional lots or opportunities for additional dwellings.</p> <p>The areas of the existing lots are already significantly less than the 40 hectare minimum lot size development standard and otherwise do not compromise the use or management of the</p> |

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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| | land for rural or environmental purposes. |
| Extent of variation | Areas of existing lots already less than 40ha |
| Concurrence | Secretary of Department of Planning & Environment issued concurrence |
| Determined Date | 20/02/2020 |
| Determined By | Council |
| DA No. | 10.2019.564.1 |
| Development | Boundary Adjustment Two (2) Lots |
| Property: | 196 -220 Friday Hut Road POSSUM CREEK |
| Lot and DP: | LOT: 5 DP: 612814, LOT: 5 DP: 800445 |
| Zoning: | RU2 Rural Landscape (LEP 2014) / 1(a) General Rural Zone LEP 1988 |
| Development Standard being varied: | Minimum Lot Size for land in Zone 1(a) General Rural |
| Justification Summary | <p>The proposal does not result in additional lots or opportunities for additional dwellings.</p> <p>The proposal is not likely to affect the rural character, environmental heritage or scenic quality of the land.</p> <p>Both existing lots are significantly less than the 40 hectare minimum lot size; and there is no public benefit in maintaining the development standard in this instance.</p> <p>Note. Clause 4.1C under LEP 2014 allows boundary adjustment between two lots on land zoned RU2 Rural Landscape.</p> |
| Extent of variation | Areas of existing lots already less than 40ha |
| Concurrence | Secretary of Department of Planning & Environment issued concurrence |
| Determined Date | 19/03/2020 |
| Determined By | Council |
| DA No. | 10.2019.534.1 |
| Development | Dual Occupancy (Detached) Including a Swimming Pool for each Dwelling |
| Property: | 44 Brownell Drive BYRON BAY |
| Lot and DP: | LOT: 7 DP: 248668 |
| Zoning: | R2 Low Density Residential |
| Development Standard being varied: | Height of Buildings |
| Justification Summary | <p>The proposal provides an opportunity for a dual occupancy (detached) in an area that is identified as appropriate through zoning provisions.</p> <p>The proposal is compatible with the bulk and scale of development within the areas and environmental capabilities of the land.</p> <p>The proposal is consistent with the objectives of the development standard and the zone. The proposal will not create an undesirable precedent in the circumstances given the significant slope constraints of the site and the existing</p> |

| | |
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| | <p>disturbed vegetation areas of the site.</p> <p>The site has a slope of 28% with each dwelling being designed with a reduced footprint and stepped down the site to reduce the impact of the development on the site. The proposed development is not significantly contrary to the public interest because it will not adversely affect the welfare and wellbeing of the broader public.</p> <p>The proposed development would produce a better planning outcome than one that strictly complies with the development standard because requiring strict compliance would result in greater areas of vegetation to be removed as a result of additional cut and fill in order to accommodate such a development onsite.</p> <p>The circumstances of the case warrant a more flexible approach to application of the height of buildings development standard.</p> <p>"</p> |
| Extent of variation | 7% (0.724m variation to 9m maximum height) |
| Concurrence | Director- delegate of Council under assumed concurrence |
| Determined Date | 6/03/2020 |
| Determined By | Director |

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 | 4.1.3.1 | Assess and determine development applications |

5

Legal/Statutory/Policy Considerations

The report is provided as a requirement of [NSW Department of Planning circular PS 17-006](#).

Report No. 13.3 **PLANNING - 26.2017.6.1 Byron Bay Town Centre Planning Proposal - Review of Planning Controls and draft DCP 2014 Chapter E9 - Exhibition Outcomes - Submissions Report**

Directorate: Sustainable Environment and Economy

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

File No: I2019/1610

10 **Summary:**

This report presents the outcomes of the most recent public exhibition of proposed amendments to planning controls applicable to the Byron Bay Town Centre.

15 In addition, work is currently underway to develop an affordable housing contribution scheme applicable in nominated areas of the Shire. It may be possible for the town centre area to be included in that scheme, in which case the Planning Proposal could be delayed pending adoption of such a contributions scheme.

20 The Planning Proposal was originally drafted in late 2017. Community engagement was undertaken in the first half of 2018, helping to refine a range of recommendations which were then formally exhibited in late 2019.

25 The planning control amendments flow from recommendations within the Byron Bay Town Centre Master Plan, and aim to improve the design of new buildings in the town centre, facilitating a greater diversity of building type, size, and scale that reflects the town's village character.

Two key intentions of the amendments are to reinforce retail uses at street level and encourage residential uses above.

30 Key amendments to current controls include:

- Change the zoning from B2 Local Centre to B3 Community Core;
 - Remove Floor Space Ratio (FSR) as an applicable planning control; and
 - Reduce car parking requirements for residential and/ or visitor accommodation where it is
- 35 provided above ground floor retail or commercial uses.

The three storey building height is maintained and reinforced by the amended controls.

40 The planning proposal was exhibited from 25 September to 15 November 2019, together with a draft new Chapter to Byron Development Control Plan 2014, which is intended to provide further detailed controls for development within the town centre.

In response, 37 submissions were received, with 28 of these submissions received following the exhibition close date.

45 Many of the submissions expressed concern with the removal of the FSR control and the proposed changes to parking.

50 Most objectors believe that the FSR control is important in minimising density and argued that removing it will increase density in the town centre and result in large bulky buildings not in keeping with the Byron character.

In relation to parking, objectors argued that reducing on-site car parking should only be considered in conjunction with alternate measures to provide additional peripheral parking and/ or alternate

55 active transport option.

The opportunity to apply the SEPP 70 affordable housing contribution scheme provides the potential to encourage residential housing in the upper levels of the town centre and achieve contributions toward affordable housing, either by way of affordable dwelling units or money toward the provision of such units elsewhere.

Further investigation and development of the SEPP 70 Policy and LEP amendment will be required to enable the benefits of this opportunity.

Council also received a report in March 2020 regarding the establishment of a Design Panel. It is recommended that this Panel be established prior to these planning controls going live.

As such it is recommended that this planning proposal be put on hold to enable the establishment of the design panel and to allow for further consideration of applying SEPP 70 within the Byron Bay Town Centre. Putting a hold on the planning proposal will also allow more detailed consideration of issues raised in submissions and an opportunity to potentially develop alternative solutions to best meet the objectives of the Byron Town Centre Masterplan.


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 note the submissions received to the exhibition of the Byron Bay Town Centre Planning Proposal - Review of Planning Controls and draft DCP 2014 Chapter E9.**
- 2. That Council put further consideration of the Byron Bay Town Centre Planning Proposal - Review of Planning Controls and draft DCP 2014 Chapter E9 on hold to enable the establishment of a Design Panel and to allow for further consideration of applying SEPP 70 within the Byron Bay Town Centre.**

Attachments:

- 1 26.2017.6.1 - Combined agency submissions Byron Bay Town Centre Planning Proposal and DCP Chapter E9, E2020/909 
- 2 Confidential - 26.2017.6.1 - Combined community submissions Byron Bay Town Centre Planning Proposal and DCP Chapter E9, E2020/907

REPORT

This Planning Proposal was first considered by Council in November 2017, when Council resolved (17-599) to undertake community engagement activities exploring the proposed amendments before finalising the Proposal for submission to the State Government for a Gateway Determination.

Community engagement occurred during the first half of 2018, including community workshops, workshops with students at Byron High School, and discussions with land owners, residents and community groups.

The draft Planning Proposal was adjusted in response to the engagement and the results were reported to Council on 20 September 2018, recommending the following key amendments to Byron Local Environmental Plan 2014:

- Change the zoning of the Town Centre from the current B2 Local Centre, to B3 Commercial Core, and apply that zoning to the entirety of the area currently zoned B2.
- Maintain the current maximum building height at 11.5m within the LEP and introduce new provisions within Byron DCP 2014 to clarify that the maximum height will be three (3) storeys. Amend the LEP to provide that, for flood prone land within the Town Centre, the 11.5m maximum building height is measured from the applicable Flood Planning Level rather than natural ground level.
- Amend the Building Heights Map to extend the area within which a maximum height of 11.5m applies to land bounded by Lawson Street to the south, Bay Lane to the north, Jonson Street to the west and Middleton Street to the east.
- Introduce new provisions within the DCP to set minimum floor to ceiling heights for mixed use buildings in the Town Centre.
- Amend the Floor Space Ratio Map to remove the control from within the Byron Bay Town Centre.
- Amend the LEP to introduce new clauses requiring that applications for new buildings demonstrate Design Excellence, and that streets and laneways are activated at ground level.
- Amend the car parking provisions within the DCP, in relation to the Town Centre, to specify a maximum rather than minimum number of spaces for residential and / or tourist accommodation proposed above ground floor level, with the option for developers to 'opt out' of providing any parking for those uses, in exchange for practical measures that will provide and promote sustainable transport alternatives. (Current parking rates will continue to be applied for ground floor commercial uses).

At the September meeting, Council resolved (18-609) to forward the amended Byron Bay Town Centre planning proposal to the Department for a Gateway determination and proceed to public exhibition with the planning proposal and the draft DCP chapter for the Byron Bay Town Centre.

Resolution 18-609

1. Forward the Planning Proposal at Attachment 1 (#E2018/72394) to the NSW Department of Planning and Environment for a Gateway Determination, to amend Byron Local Environmental Plan 2014 in relation to various town planning controls applicable to the Byron Bay Town Centre with the following amendments:
 - a. delete and replace Section 2.2 Height of Buildings with the following:

2.2 Height of Buildings

 1. Amend the Height of Buildings Map by extending the area within the Byron Bay Town Centre that is subject to a maximum height of 11.5m, to include:

- a) *the area bounded by Bay Lane to the north, Lawson Street to the south, Jonson Street to the west and Middleton Street to the east; and*
- b) *the area bounded by Kingsley Street to the north and Browning Street to the south, Jonson Street to the west and Middleton Lane and unnamed lane to the east.*

b. include backpackers accommodation as a permissible use in the B3 Core Business Zone.

2. Agree that staff can proceed to public exhibition of the Planning Proposal and government agency consultation based on the Gateway Determination.
3. For the purposes of community engagement, endorse the proposed amendment to Byron Development Control Plan 2014 at Attachment 2 (#E2018/72398), to introduce a new Chapter dealing with the Byron Bay Town Centre, to provide more detailed design and building height controls, together with the appropriate amendments to Part A of the DCP, and exhibit the draft Town Centre Chapter in conjunction with the Planning Proposal.

At the November 2018 meeting a Matter of Urgency was tabled and Council resolved **18-777** to remove the height increase proposed from resolution **18-609** for the southern end of Jonson Street.

Resolution **18-777** (relevant part only)

1. *The Planning Proposal for the Byron Bay CBD (26.2017.6.1) be amended to maintain the maximum building height control for the southern end of Jonson Street at 9 metres, as currently mapped under Byron LEP 2014. This will apply to those properties in Byron Bay that are currently zoned B2, located on the eastern side of Jonson Street, between Kingsley and Browning Streets and bound by Ruskin and Middleton Lanes.*

The planning proposal was amended as per the above resolution and, on 18 June 2019, a positive Gateway was received from the Department to proceed to public exhibition.

The planning proposal and DCP 2014 Chapter E9 Byron Bay Town Centre were placed on exhibition from 25 September until 15 November 2019. Letters were sent out to all the property owners in the town centre with a fact sheet explaining the proposed changes. Information on the proposed changes were posted on Council's website and advertised in the Echo.

In accordance with the Gateway determination, the planning proposal was forwarded to several state agencies. The agency responses are addressed below:

| Agency comment | Staff response |
|---|--|
| Planning, Industry & Environment – Biodiversity & Conservation Division Parts of the town centre are affected by 100-year ARI flooding; the proposed removal of FSR control has the potential to increase commercial use at ground level, and therefore flood risk; however the risk can be mitigated through the application of existing planning controls | Noted. It is suggested, however, that a change in the FSR will have a negligible impact on the scale and density of allowable development. See further discussion below. |
| Crown Lands No objections | Noted |

| | |
|--|---|
| <p>Transport Roads & Maritime</p> <p>Support measures that will reduce traffic in the local centre</p> <p>Projections of additional population and/ or increased commercial density would allow a more detailed assessment of impacts on surrounding road networks</p> <p>Support change from <i>minimum</i> to <i>maximum</i> car parking requirements</p> | <p>Noted</p> <p>Noted. See discussion below regarding the change in density. Development applications will continue to be reviewed by Transport for NSW as applicable.</p> <p>Noted</p> |
| <p>Rural Fire Service</p> <p>No Objections</p> | <p>Noted</p> |

- 5 37 submissions were received from the community. 28 of these submissions were received late and raised similar issues in objecting to the proposed amendments. While there was a mixture of feedback, a majority of the submissions were against the proposed changes to FSR and car parking, concerned that the proposed changes may result in bigger and bulkier buildings not in keeping with Byron Bay.

There were some submissions that supported the proposed changes.

- 10 A number of points were raised in the submissions. The common themes of the submissions were:

B3 zoning and land use conflicts

- 15 Some submissions suggested that the B3 zoning was inappropriate and there was some confusion about the differences between the current B2 zoning and the proposed B3 zoning. It was also noted that the proposed amendments would have negative impacts on adjacent residential areas, specifically at the southern end of Jonson Street.

- 20 The differences between the B2 and B3 zoning are very minimal. The following land uses are permitted in the B2 zone but would be prohibited under the B3 zone as currently proposed:

- Amusement centres
- Bed & Breakfast accommodation
- Car parks
- Cellar door premises
- 25 • Farm stay accommodation
- Home industries
- Landscaping material supplies
- Port facilities
- Roadside stalls
- 30 • Specialised retail premises
- Timber yards

These uses are unlikely to be found in or suited to the Byron town centre.

- 35 The town centre has been included within a business zone for a long time. At the moment, it is zoned the same as all other town centres in the Shire – B2 Local Centre. The proposed B3 Commercial Core zone has not yet been used in the Byron LEP 2014. The intention of the change is to differentiate the Byron Town Centre, recognising it as the principal centre in the Shire and

enabling adjustments (now and in the future) that will affect Byron Town Centre without impacting on any other centre in the Shire.

- 5 It will be recommended that the proposal to zone the Town centre as B3 Commercial Core proceed.

Height limit

- 10 A number of submissions raised concerns about increasing the height limit for the town centre. There was also some confusion about measuring the height limits in metres rather than storeys and the role of the LEP and DCP.

- 15 Only a small area, located between Bay Lane and Lawson Street, is proposed for an increase in the maximum permissible height limit from 9m to 11.5m, as this area is in the heart of the town centre. Importantly, this is not extended to the block between Bay Lane and Bay Street (i.e. opposite the beachfront).

Given the topography of land in this location, a three-story building (i.e. at 11.5m) would not be visible from the beach over a two-storey building (i.e. at 9m) fronting Bay Street.

- 20 The Department of Planning, Industry and Environment have steadfastly maintained that the maximum building height standard can only be expressed within an LEP by way metres above existing ground level (or by way of an AHD level). They will not accept a height limit expressed by the number of storeys.
- 25 The DCP can, and the exhibited draft does, set height limits through stories and also provides requirements on minimum floor to ceiling heights.

No changes to the exhibited height controls are recommended.

30 **Removal of FSR**

- A number of submissions expressed concerns regarding the removal of the FSR control, suggesting that this would result in large and bulky buildings dominating the town centre. Many of the submissions quoted the scale of the recent Mercato building, hoping to move away from this style of development.

- 35 The current maximum FSR for the town centre is 1.3:1. This effectively means that a building can have a floor area of up to 1.3 times the area of the lot on which it is developed.

- 40 Depending on how that maximum floor space is distributed, this can result in buildings constructed up to the maximum height limit covering a smaller site footprint (usually with car parking behind), or buildings covering the whole of the site that do not reach the maximum allowable height.

Further consideration is required before removing the FSR controls from the town centre.

- 45 The intention of its removal is to provide greater flexibility in design outcomes. It is important, however, that this flexibility does not have unintended outcomes resulting in bulkier buildings.

Heritage and character

- 50 A submission raised concern that allowing increased density would have negative impacts on existing heritage items in and surrounding the town centre. Additional issues were raised regarding the impact on the local character and “Byron vibe” being eroded due to a potential density increase.

- 55 There are a number of individual heritage items listed within the LEP that are located in the town centre. The Railway Precinct Heritage Conservation Area is also located within the centre. These

items and development within the Heritage Conservation Area are all protected by the provisions of Clause 5.10 of the LEP, with further details outlined in Chapter C1 of DCP 2014.

- 5 The proposed amendments do not change the existing provisions outlined in that clause, nor do they result in any changes to the DCP chapter.

Notwithstanding, it is recommended that additional information be added to the proposed Byron Town Centre DCP Chapter E9 to reference heritage and the appropriate controls.

10 **Parking and alternative transport options**

Many of the submissions raised concerns that providing less parking on site would push cars to park on the street. It was also noted that there are limited other options for transport or parking within the town centre.

- 15 A number of submissions suggested that more studies are needed to clarify the impact on traffic if these amendments were to proceed.

- 20 The primary intention of the proposed changes to parking were to implement the “cars out; people in” recommendations of the Byron Town Centre Master Plan, by reducing parking spaces in town replacing them with a combination of peripheral parking and alternate transport options.

At this time, however, the provision of peripheral parking has not advanced.

- 25 An important secondary objective of reducing the parking requirement is to avoid the need for site consolidation that leads to larger scale development.

- 30 There are many properties within the town centre with a width of 20m or less. Providing for car parking on such sites, either as basement parking or behind a building is very difficult as there is insufficient width for parking spaces plus the required manoeuvring areas. This tends to lead potential developers to consider purchase and consolidation of adjoining lots, which has the effect of ‘ramping up’ the scale of development, based just on the value of land and ‘upfront costs’.

- 35 One of the key aims of the planning control review is to facilitate smaller ‘fine grain’ buildings, so we don’t end up with just large buildings. Consideration of the provision of parking is one consideration in how this might be achieved.

Further consideration is required in relation to parking and alternative transport options prior to advancing this planning proposal.

40 **Design guidelines**

A reoccurring issue raised with regard to the design guidelines was that, while the principle is good, there needs to be more consideration into the design guidelines to make sure they are tailored to the communities’ view of Byron.

- 45 There was also concern that the guidelines are not specific enough to control bulk and scale of development.

- 50 The idea of establishing a design panel was seen as an important feature by the community to facilitate the design guidelines. Council at the March planning meeting received a report outlining how a design panel could be established to give weight to the design excellence clause for the town centre.

It is recommended that the design excellence clause not be finalised until a Design Excellence Panel is established.

SEPP 70 affordable housing contribution scheme

In actioning **Res 19-152** a planning proposal is under preparation for an affordable housing contribution scheme under *State Environmental Planning Policy No 70 Affordable Housing (Revised Schemes)*.

A single contribution scheme may apply to multiple areas within a local government area, as long as the feasibility analysis supporting each area specifically addresses each one.

Contribution schemes apply to developments that are facilitated by up-zoning. As part of the preparation of the scheme, it is necessary to identify areas for future rezoning. *Upzoning* means a change of zone to enable residential development or a change of planning controls (such as floor space ratio) which enables greater residential density in site.

The Town Centre planning proposal, amongst other items, proposes to remove restrictions of Floor Space Ratio. In doing this, it could be considered to be an upzoning.

In addition:

- The planning proposal as exhibited has signalled an intent to *include reference to B3 Commercial Core in Clause 6.7 Affordable housing in residential and business zones*.
- One of the objectives of the planning proposal is *to promote mix used development including residential housing on top of compatible commercial ground uses, while maintaining the small town village feel of the town centre*
- Byron Town Centre Master Plan, the catalysis for the planning proposal, seeks to enable a greater population of residents and workers located within walking distance of the town centre core.

Taking this on board, it is recommended that the area subject to this proposal be investigated as to the feasibility of inclusion in the SEPP 70 affordable housing contribution scheme. If feasible, it has potential to deliver affordable housing that could be made available to key workers and/or residents needing proximity to work or the town centre.

Preliminary estimates are that it may add some 10 affordable rental units in the town centre over 10 – 15 years.

It would be beneficial to hold this planning proposal until further advancement of the SEPP 70 scheme is complete.

Next steps

Advancement of the SEPP 70 affordable housing contribution scheme to enable this provision to apply to the town centre. This will also give additional time to analyse potential FSR and planning control scenarios in relation to SEPP 70, while considering the public submissions in greater depth.

At the same time, a design panel can be established, in accordance with the recent Council resolution, to assist in facilitating the design excellence clause applicable to the town centre.

Council will then receive a report on the proposed changes to the exhibited planning controls.

An extension to the Gateway timeframe will be required as the current Gateway will expire in July 2020. It is possible that a new Gateway determination will be required depending on the changes to the exhibited planning proposal.

A discussion with the Department of Planning, Industry and Environment will be required to determine if any proposed amendments need to be re-exhibited.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

5

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

Legal/Statutory/Policy Considerations

Nil.

10

Financial Considerations

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

15

Consultation and Engagement

Discussed in the report.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.4

Report No. 13.4 **PLANNING - 10.2019.650.1 - Dual Occupancy (detached) - 103 Kings Road Federal**
Directorate: Sustainable Environment and Economy
Report Author: Lachlan Wall, Gateway Planner
File No: I2020/115

Proposal:

| | | | |
|---|--|-------------------------------------|--|
| DA No: | 10.2019.650.1 | | |
| Proposal description: | New Dwelling to create Dual Occupancy (Detached) | | |
| Property description: | LOT: 2 DP: 733182 | | |
| | 103 Kings Road FEDERAL | | |
| Parcel No/s: | 37780 | | |
| Applicant: | Newton Denny Chapelle | | |
| Owner: | Ranamok Pty Ltd | | |
| Zoning: | RU2 Rural Landscape / 1A General Rural Zone | | |
| Date received: | 17 December 2019 | | |
| Integrated / Designated Development: | <input type="checkbox"/> Integrated | <input type="checkbox"/> Designated | <input checked="" type="checkbox"/> Not applicable |
| Public notification or exhibition: | <ul style="list-style-type: none"> – Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications – Exhibition period: 10/01/19 to 31/01/20 – Submissions received: 2 (against) | | |
| Planning Review Committee: | 13/02/2020 | | |
| Delegation to determine | Council | | |
| Issues: | Bushfire Prone Land Drinking water catchment HEV | | |
| Recommendation: | Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.650.1 for New Dwelling to create Dual Occupancy (Detached), be granted consent subject to the conditions of approval at the end of this report | | |

Summary:

The Development application is seeking approval for the construction of a new dwelling house to form a Dual Occupancy (detached) on rural land at 103 Kings Road, Federal. The subject property is zoned RU2 Rural Landscape under Byron LEP 2014 with some smaller areas deferred and zoned 1(a) Rural under Byron LEP 1988. The proposed dwelling is sited in the RU2 Zone approximately 80 metres from the existing dwelling.

The proposed dwelling contains 3 bedrooms and a study in a single storey configuration with a maximum height to the pitch of the roof pitch of 4 metres. The dwelling includes a wrap around verandah for weather protection and climate control. The dwelling is located down slope from Kings Road and is not in a visually prominent position when viewed from there.

An existing gravel farm access is to be formalised to provide access to the dwelling. Conditions of consent are recommended to seal the driveway as a means to mitigate dust impacts on the neighbouring property dwelling. It is also recommended the driveway be landscaped by way of mounding and plantings to visually screen the driveway and to ensure headlights do not affect the neighbouring property dwelling. In this regards the neighbouring property dwelling opens up onto the subject property, however previously there were a row of planted trees and vegetation on this property but have since been removed.

During the assessment of the development it has become apparent that the front post and rail timber fence has been located on the road reserve. Conditions of consent have been recommended requiring the fence to be located back onto the front boundary. The subject property also has a plantation agreement called an "Authorisation for Timber Plantation" in place with the Department of Primary Industries, but this requires a 70 metre buffer around dwellings. It will be necessary for this current plantation agreement to be amended to ensure the new dwelling (if approved) does not conflict with the terms of the plantation agreement.

The development is otherwise consistent with the applicable planning instruments and development controls, and it is recommended that the application be approved subject to conditions.



NOTE TO COUNCILLORS:

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

RECOMMENDATION:

That, pursuant to Section 4.16 of the *Environmental Planning & Assessment Act 1979*, Development Application no. 10.2019.650.1 for new dwelling to create Dual Occupancy (detached) be approved subject to conditions of consent in Attachment 2 (#E2020/23094).

Attachments:

- 1 Attachment 1 - Plans - 10.2019.650.1 - 103 Kings Road Federal, E2020/18138 
- 2 Attachment 2 - DA 10.2019.650.1 - 103 Kings Road Federal - Conditions of consent for Council report, E2020/23094 
- 3 Confidential - Submission Objection - 10.2019.650.1, S2020/1023
- 4 Confidential - Submission objection - 10.2019.650.1 - 103 Kings Road - additional submission information recieved after meeting with objector - combined files #E2020/15539 and #E2020/15540, E2020/19097

**LOT: 2 DP: 733182 103 Kings Road FEDERAL
PN 37780**

Subject Site

RU1

1A

RU2

1A

RU5

1B2

1C1

1C2

R5

KINGS ROAD

BAY'S ROAD

RO SEWOOD ROAD

RISLEY'S HILL ROAD

FEDERAL DRIVE

CHALK ROAD

L'RAY ROAD

0 3570 140 210 280

Scale 1:15,000

Disclaimers: While all reasonable care has been taken to ensure the information contained on this map is up to date and accurate, no warranty is given. Further information contained on this map is to be used as a guide only. Any reliance placed on such information shall be at the user's sole risk. Please verify the accuracy of the information prior to using it.

Note: This information is for informational purposes only and is not a substitute for a professional survey or other relevant information.

Byron Shire

Date: 11/02/2020

Assessment:

1. INTRODUCTION

1.1. History/Background

The site has the following development history

| Application number | Description | Approved date |
|--------------------|--|---------------|
| BA 84/2548 | Dwelling | 5/10/1984 |
| 6.1995.2158.1 | Rural Shed | 19/05/1995 |
| 10.2019.650.1 | New dwelling to create dual occupancy (detached) | pending |

1.2. Description of the site

| | | |
|------------------------------|---|---|
| Land is legally described as | LOT: 2 DP: 733182 | |
| Property address is | 103 Kings Road FEDERAL | |
| Land is zoned: | RU2 Rural Landscape / 1A General Rural Zone | |
| Land area is: | 26.29 m2 | |
| Property is constrained by: | Bushfire prone land Drinking Water Catchment High Environmental Value | |
| | Is a BDAR required due to the location of the proposed development? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| | Are there any easements in favour of Council affecting the site? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| | Is there a Vegetation Management Plan which might affect the proposal? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| | Is there a Voluntary Planning Agreement which might affect the proposal? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

The development site is within a cleared area of the property and located down slope from Kings Road and the existing dwelling and is accessed by an unsealed farm road

NSW Department of Primary Industries have issued an Authorisation for Timber Plantation under the Plantation and Reafforestation Act 1999 on 2 October 2019. Under these arrangements there is a need for a 70 metre buffer from dwellings. The proposal will require the buffer to be extended around the proposed dwelling house if it is approved.

Historical records show that a piggery shed existed on the site but was closed in 1998. The shed located towards the eastern boundary of the property and approximately 140m from the proposed dwelling site. The shed is currently used for storage of timber slabs and associated finishing and sanding of timber. The shed or the use of the shed does not make up part of this application.



View from driveway looking north back toward existing dwelling (right) and Kings Road, (neighbouring dwelling to the left)

5



View of dwelling site looking south



Logs stored next to boundary and view of fence and gate of property. These logs are from neighbouring property and not associated with plantation activities on 103 Kings Road. Fence and gates are located within the road reserve.

1.3. Description of the proposed development

This application seeks approval for New Dwelling to create Dual Occupancy (Detached). The dual occupancy dwelling is a single storey with 3 bedrooms and a studio, and includes an associated on-site waste management system that is subject to a separate plumbing and drainage application. The development also proposes a relocation of the existing internal driveway away from the neighbouring property dwelling to the west.

The dwelling is sited approximately 80 metres from the existing dwelling on the land is located down slope from Kings Road. The dwelling is single storey with a height of 4 metres to the roof pitch.



Floor Plan



The site plan for DP733182 illustrates the proposed development of a dwelling and garage on a sloping site. Key features include:

- Proposed Structures:** A new dwelling (shaded area) and a garage (hatched area) are located at the bottom of the site. A reversing bay for a fire truck is also indicated.
- Existing Features:** An existing house and driveway are shown at the top right. A septic tank is located near the top left.
- Landscaping and Retention:** The plan includes a retaining wall, a lawn (cut), and landscaped fill. It also specifies the planting of indigenous and low water use species within 100m of the existing building.
- Water Management:** A 20,000L water tank and a 6,000L rainwater tank are proposed as per the bushfire report.
- Access and Easements:** An easement for water supply (DP582967) is shown on the left. A proposed 4m wide driveway provides access to the new structures.
- Boundaries and Topography:** The site is bounded by Kings Road to the north and east. Topographic contours and spot heights are shown throughout the plan.

Site Plan

| Referral | Issue |
|-------------------------------|-------------------------------------|
| Environmental Health Officer* | No objections Subject to Conditions |
| Development Engineer | No objections Subject to Conditions |
| S94 / Contributions Officer | No objections Subject to Conditions |

3. SECTION 4.14 – BUSH FIRE PRONE LAND

- 5 Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land that the development complies with the document Planning for Bush Fire Protection 2006. The site is bush fire prone land. The land is dominated by rainforest and camphor laurel vegetation groupings. For the purpose of the bushfire assessment camphor laurel is assessed as rainforest.



10 Using the procedure provided on the NSW Rural Fire Service webpage titled 'Site Assessment Methodology', the asset protection zone and bush fire attack levels for this proposed development (which is in fire weather area FDI 80) are as follows:

| | |
|--|--|
| Direction | All |
| Vegetation formation | Rainforest – west Rainforest– south Rainforest- east Rainforest– north west Managed land - North |
| Distance between vegetation formation and building | West / South west – 20m South - 90m East – 120m North – 60m |
| Effective slope | downslope 10-15% |
| Asset Protection Zone | South / Southwest – 19m North 12m West 17m East / Southeast 18m |
| Bushfire Attack Level (BAL) BAL– 29 to all facades | |

15 The applicant has provided email advice from their Bushfire Certifiers providing the APZ requirements for a minimum BAL rating of BAL 29 to all facades.

Appropriate conditions of consent to apply in relation to Asset Protection Zones (APZ's), construction standards and the like have been recommended.

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

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

4.1 State Environmental Planning Instruments

| | Satisfactory | Unsatisfactory |
|---|-------------------------------------|--------------------------|
| State Environmental Planning Policy No 55—Remediation of Land | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Consideration: The site for the dwelling is considered suitable, however it was noted that there was a mixture of rubbish and builders waste round the old piggery building. Conditions of consent recommended in relation to this waste being sorted, stored and or removed. | | |
| State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Consideration: A BASIX Certificate is provided with all commitments shown on the plans | | |
| State Environmental Planning Policy No. 44 Koala Habitat Protection | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Consideration: The site is greater than 1ha in size. No Koala habitat trees are required to be removed as part of this application. The proposal is considered to not have an impact on potential or core Koala habitat. | | |

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

The subject dwelling is sited on land under Byron LEP 2014. In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:

- (a) The proposed development is defined in the LEP 2014 Dictionary as Dual Occupancy;
- (b) The land is within the RU2 Rural Landscape according to the Land Zoning Map;
- (c) The proposed development is permissible with consent; and
- (d) Regard is had for the Zone Objectives as follows:

RU2 Zone Rural Landscape

| Zone Objective | Consideration |
|---|---|
| To encourage sustainable primary industry production by maintaining and enhancing the natural resource base. | The proposed dual occupancy dwelling is not inconsistent with the existing use across the site as a timber plantation. |
| To maintain the rural landscape character of the land. | The proposed dual occupancy is not inconsistent with the rural landscape character of the area which contains a number of dwellings and other rural buildings on property with various lot sizes. |
| To provide for a range of compatible land uses, including extensive agriculture. | The proposal is for a dwelling house within a rural lot that does not restrict the primary production use of the land as a timber plantation. |
| 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 | N/A, the application is not for tourist accommodation. Conditions of consent to apply. |

| | |
|---|---|
| rural character of the locality. | |
| To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality. | The dwelling is not likely to impact on the scenic quality of the locality. The dwelling is not constructed on a ridgeline or located in a visually prominent location, and is located downslope from Kings Road and the existing dwelling house. |

Clause 4.3 Height of Buildings

The proposed dwelling has a height of 4 metres and satisfies the 9 metre height limit.

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

The subject land has a “dwelling entitlement” with an approved dwelling house already located on it. Dual occupancy development is permitted with consent under the clause.

10 Clause 4.2D – Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2.

The development is approximately 81m from the existing dwelling and will use the same vehicular access from Kings Road. The development is capable of providing connections to services including waste management. The dwelling is not considered to have an adverse impact on the scenic amenity and character of the rural area for the following reasons;

- 15 - The single storey construction is not excessive
- The development is constructed well below the ridgeline of the site
- A condition requiring the colours to be of earth tone, low reflectivity and not allowing white or near white colours is recommended.
- 20 - Significant landscaping will further screen the dwelling and the driveway from the adjoining neighbours as part of the landscaping plan.

Clause 6.2 – Earthworks

25 The proposal requires earthworks to a maximum depth of 1.5m for the construction of the dwelling and additional earthworks are required for an earth mound along the driveway to create a vegetation screen for the neighbour to the west, which is a maximum of 1m in height (fill).

30 The earthworks are not likely to impact on the drainage or soil stability of the development. Any additional fill required for the earth mounds will need to be sourced from a recognised quarry or landscape supplier. A search of AHIMS database was conducted which revealed that there were no Aboriginal sites or places recorded in or near the subject site. Notwithstanding general conditions of consent are recommended as a precaution should works uncover an item or relic of Aboriginal significance.

35 Conditions of consent are recommended in relation to sedimentation and erosion control measures to mitigate the potential for silt to enter surrounding drainage lines and finding its way into local creeks and watercourses.

Clause 6.5 – Drinking water catchments

40 The site is within a mapped drinking water catchment. The proposed dwelling relies upon onsite effluent disposal. It is considered that there is adequate area on the subject property (26 ha) and buffer to surrounding watercourses and drainage lines to accommodate the development in this regard. Conditions of consent are proposed to address this matter.

45 It is considered that the development will not have an adverse impact on water quality of the catchment.

Clause 6.6 – Essential Services

The subject site has access to all necessary services and the following comments are provided.

- The site proposes to use tank water as a water supply as the site is not serviced by the Rous or council. Condition recommended requiring a minimum tank water supply for drinking of 40,000L in accordance with DCP 2014.
- The site is serviced by electricity
- The site is capable of disposing and managing sewage through an on-site disposal sewage management system.
- Conditions have been recommended for the management of stormwater drainage.
- Conditions have been recommended for the upgrade and construction of the vehicular access and driveway to service the dwelling.

4.2B Byron Local Environmental Plan 1988 (LEP 1988)

Parts of the site are zoned 1A General Rural Zone, however no works are occurring within these areas. Accordingly no further assessment of the LEP 1988 is required.

4.4A Byron Shire Development Control Plan 2014 (DCP 2014)**Chapter B3 Services**

The site is serviced with power and telecommunications and has access to a sealed Council road. Rural dwellings require a minimum of 40,000 litres for domestic purposes plus additional supplies for firefighting purposes in terms of bushfire. Conditions of consent to apply.

Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access.

The proposal requires two car parking spaces. The applicant has indicated that the garage shown on the plans is to be built as exempt development and is not included as part of this application. The Development Engineers have required conditions for the provisions of two (2) hardstand spaces to be provided. Adequate area is available around the dwelling for the required parking. It is considered that the development satisfies the car parking provisions.

Chapter B6 Land Use Conflicts

The site is part of a land holding that used as a timber plantation, it is noted that some cutting of timber occurs on site, but is not the primary location for such activities to occur. Additionally the operator is able to use the site to operate a mobile sawmill for no more than 2 weeks in a 12 month period on any one property without development consent under Schedule 2 of the BLEP 2014.

Council's Environmental Health Officer has considered the site conflict potential of the site as table B6.1 notes that the minimum buffer distance is site specific. Refer to the Environmental Health Officer's referral for their full comment.

Any plantation works on the site are also subject to the *Plantations and Reafforestation Act 1999* (PRA) which has its own set backs outlined. The proposal is able to comply with both the *EP&A Act 1979* and the *PRA 1999* accordingly.

Chapter B14 – Excavation and Fill

The provisions permit a maximum of 1 metre cut and fill under the prescriptive measures. The applicant has proposed a maximum cut of 1.5 metres to provide a level platform for the dwelling and associated garden lawn area

The additional cut further reduces the total height of the structure which will mitigate visual impacts. The earthworks will not be readily visible from the street or other properties given the elevations and would be shielded by the dwelling. It is considered that the extent of the non-compliance will not detract from the existing and future character of the surrounding area. Council's Development

Engineer has not raised any geotechnical concerns that will arise from the earthworks subject to conditions.

Chapter C4 Drinking Water Catchments

5 The dwelling and associated sewage management system is sited in a location that will not impact on the integrity of the drinking water catchment. The applicant has provided a wastewater report that notes it has considered the Rous Water Wastewater management strategy that notes the dwelling is located more than 100m from the top of the bank of any watercourse, and is not sited on land that has a slope greater than 15%.

10 It is considered that there is a sufficient buffer to the creek that meanders through the southern boundary of the site. Council's Environmental Health Officer has considered the proposed development and has no objection to the development subject to a subsequent application being applied for and approved prior to construction works commencing. The proposed use is residential and does not comprise a high impact land use as defined by C4.2.1, and raises no issues in terms of the provisions of C4.

Chapter D2 Residential Accommodation and Ancillary Development in Rural Zones

D2.2.2 Setbacks

20 The development is compliant with the setback requirements of 15 metres for rural dwellings within the zone and satisfies the side and rear boundary setback provisions under the Building Code of Australia.

D2.2.3 Character and Visual Impact

25 The dwelling is sited in a location that is generally not visible from Kings Road. Subject conditions of consent are recommended in relation to landscaping will further screen the development and it is considered that the proposal will not have minimal impacts to the visual amenity and the built or natural environments.

D2.5 Dual Occupancies and Setback

30 The general provisions require dual occupancies do not create land use conflicts and are located and retained on the same property as the principal dwelling house. Access to the dwelling has generated the main concern with potential for dust and headlights from cars entering and leaving impacting on the neighbour to the west. Residential dwellings on average generate 10 vehicle movements per day. Noting the access also serves a farm shed beyond the dwelling it is recommended the access be sealed and landscaped with native trees and shrubs with a 1 metre earth mound.

40 It is noted that the land owner operates a timber plantation on the lot. Although this is an internal conflict for the land owner to manage, there is sufficient space on the site to provide the required buffers under the *Plantations and Reafforestation Regulations code*, as discussed above .

The subject dwelling is located on the same parcel as the main dwelling house.

D2.5.1 On-site car parking

45 The dwelling is capable of providing car parking in compliance with chapter B4. A condition is recommended that requires two hardstand spaces to be provided.

D2.5.2 Character and Siting of Dwellings

50 The dwelling is some 100m from the neighbouring property and due to the slope of the land, more than 10m below the adjoining dwelling. The development is a single storey low set dwelling with a maximum height of 4 metres. It is considered the proposed dwellings bulk, scale, height and location will not generate an adverse impact on the visual amenity of the locality or affect the character of the area. The subject dwelling is located approximately 80 metres from the existing

dwelling on the land and complies with the numerical requirements under the DCP. Both dwellings will be serviced by the one driveway.

D2.5.4 Private Open Space

- 5 Adequate area is available around the subject dwelling for private open space purposes and can easily meet the 30 m2 minimum.

D2.5.5 Adjoining and Nearby Development

- 10 The proposal is adequately sited away from surrounding properties such that there is no potential for a land use conflict to develop in terms of existing agricultural pursuits. As discussed above the dwelling is sited down slope and is a lowset single storey dwelling house and is unlikely to impact on visual characteristics or scenic amenity of the locality. In terms of the neighbouring dwelling to the west adequate measures are proposed and conditioned in terms of impacts associated with the access and driveway to Kings Road.

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

4.5 Environmental Planning & Assessment Regulation 2000 Considerations

- 20 The proposal raises no issues under the regulations

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

| Impact on: | Likely significant impact/s? |
|-----------------------------|---|
| Natural environment | No. The development site is generally clear of vegetation and the proposal will not have a significantly adverse impact on the natural environment of the locality. |
| Built environment | Yes – potential impacts to surrounding built impact have been considered in this application. Measures to reduce impact have been minimised where possible by the inclusion of conditions requiring detailed landscaping plans and the inclusion of a earth mound along the length of the driveway to screen the development to the surrounding built form. |
| Social Environment | No. The proposal will not have a significant social impact on the locality. The dwelling will provide further housing in the Mullumbimby area. |
| Economic impact | No. The proposal will not have a significant economic impact on the locality. Minor economic benefits will accrue during the construction phase for the Building Industry. |
| Construction Impacts | The development will generate minor impacts during its construction. Conditions of consent recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts. |

4.7 The suitability of the site for the development

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

- 30 Under the *Plantations and Reafforestation Code Regulation* 2001, clause 25A (3) requires a minimum separation of 70m for habitable dwellings from the plantation activities. Based on the submitted plan, the buffer under this agreement will need to be amended to ensure compliance with the Code. Although a conflict for the land owner to manage as it's on the applicants land, it is considered prudent to impose a condition requiring the "Authorisation for Timber Plantation" be amended to ensure there is no conflict between the consent and plantation agreement.
- 35

4.8 Submissions made in accordance with this Act or the regulations

5 The development application was publicly exhibited. Various submissions were received from one objector. A summary of the key issues raised in the submission are provided below.

| Issue | Comment |
|---|--|
| Conflict of interest – consultant planner previously worked for Council | This application is to be determined by the full Council to remove any perception of bias or otherwise from delegated staff. The consultant planner worked intermittently as a contractor for Council during a period of staff shortages in 2018. |
| Access | Vehicle access from Kings Road is considered acceptable for the proposed dwelling. Conditions of consent recommended in relation to the driveway and sealing of the internal driveway to remove the potential for dust to affect the closest neighbour to the west. |
| Car parking | The proposal requires 2 car parking spaces as per DCP 2014 chapter B4, there is sufficient space surrounding the dwelling to provide these. Development engineering assessment has required 2 hardstand spaces to be provided and shown as part of Construction Certificate plans. |
| Stormwater draining into the gully | Roof water is directed to rainwater tanks and any overflow from the tanks is piped into a dispersion trench. Conditions of consent have been recommended for a stormwater drainage dispersion trench. |
| The dwelling should be re-sited to the west | The current location is compliant with clause 4.2D of the BLEP 2014. The location as suggested would result in multiple significant variations to the LEP and DCP provisions including a separate access and a minimum 200 metre variation to the 100 metre requirements for rural dual occupancy. The applicant has responded to the submission and does not wish to re-site the dwelling. |
| Headlights entering habitable rooms | A condition of consent requiring a landscape screen to the boundary is recommended. The landscaping plan requires a 1m high earth mound to be formed along the western edge of the driveway which combined with landscaping will significantly reduce any light entering adjoining properties. It is considered that this is a reasonable response to the issue considered rural dwellings on average generate 10 vehicle movements per <u>day</u> . Conditions of consent to apply for fencing. |

| | |
|---|--|
| Enclosure of council road reserve – fence not on the boundary | A condition requiring the front post and rail fence to be moved is included in the recommendation. |
| Vegetation removal | <p>The site is an approved timber plantation; certain areas may be cleared without consent from Council or under the EP&A Act.</p> <p>Under the plantation approval issued by the Department of Primary Industries on 2 October 2019 the <i>Plantations and Reafforestation Code</i> applies to areas of the site to which vegetation may be removed under the <i>Plantations and Reafforestation Code</i>. This development application does not propose or require the removal of any further vegetation.</p> |
| Visual Impact | <p>The significant separation and elevation differences to the adjoining property and the new dwelling are unlikely to result in significant visual impacts.</p> <p>The dwelling may be visible in the outlook from the neighbouring property, but the dwelling would not dominate the skyline, or significantly restrict views to the south over the valley.</p> <p>The proposed dwelling sits at approximately 194m AHD with some slight variations would result from the earthworks noted. The proposed dwelling is a single storey construction with a total height of 4m. The adjoining property is located at an elevation of 210m AHD or higher, the adjoining property is on the ridgeline of Kings Road. There is significant vertical separation between the two dwellings that will not result in a loss of views.</p> <p>A condition of consent requiring a landscaping buffer to the common boundary adjoining the neighbouring dwelling has been recommended. It is noted that the adjoining property had previously trees planted on the boundary, but these have since been removed with the remnant logs now located within the subject property. It is considered the landscaping proposed will provide a suitable screen and buffer to the neighbouring dwelling.</p> |
| Noise, Fumes, Dust | The development is not likely to result in a noticeable increase in noise, dust or fumes that are associated with a dwelling house. Conditions of consent are proposed for the driveway to the house to be sealed to |

| | |
|---|--|
| | minimise the potential of these impacts. |
| Use as tourist accommodation or other commercial uses | <p>A condition of consent is recommended that outlines the approved use of the dwelling.</p> <p>If the dwelling is used for uses that are not approved this will become a compliance matter. Future adaptive re-use of the dwelling or the site for other uses would be subject to subsequent development applications or applicable state policy.</p> |

It is noted that a number of other issues raised within the submission received were not directly related to the development as proposed but related to other uses on site including the timber plantation activities on this land and other associated properties in the locality. Such activities are permitted by the NSW Department of Primary Industries under other legislation and are beyond the remit of the proposed development. Notwithstanding, Conditions of consent for the sealing and landscaping of the driveway have been proposed from Kings Road to the dwelling which will address some of those concerns relating to vehicle access.

4.9 Public interest

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

5. DEVELOPER CONTRIBUTIONS

Section 7.11 Contributions will be payable.

6. CONCLUSION

The DA proposes a new single storey dwelling to create a Dual Occupancy (Detached). The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development. The application appropriately addresses the relevant constraints applying to the site, and is recommended for approval subject to the conditions listed in the Recommendation of this Report below.

7. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED

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

Statement of Reasons

| |
|--|
| The proposed development complies with the provisions of Byron Local Environmental Plan 2014. |
| The proposed development complies with relevant State Environmental Planning Policies |
| The proposed development complies with relevant provisions of Development Control Plan 2014 |
| The proposed development complies with relevant provisions of Development Control Plan 2010 |
| The proposed development complies with Environmental Planning & Assessment Regulation 2000 considerations. |
| The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality. |
| The proposed development is considered suitable for the proposed site. |
| The development application was notified/advertised in accordance with Development Control Plan 2014. Issues raised in the submissions have been addressed during assessment of the application. |
| The proposed development is unlikely to prejudice or compromise the public interest. |

| |
|---|
| How community views were addressed |
| <p>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.</p> <p>To view the considerations, please contact Council to view a copy of the assessment report relating to this DA.</p> |

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.5

Report No. 13.5 **PLANNING - Development Application 10.2019.566.1 Secondary Dwelling at 26 Coolamon Scenic Drive, Mullumbimby**
Directorate: Sustainable Environment and Economy
Report Author: Ivan Holland, Planner
File No: I2020/444

Proposal:

| | | | |
|---|---|-------------------------------------|--|
| DA No: | 10.2019.566.1 | | |
| Proposal description: | Secondary Dwelling | | |
| Property description: | LOT: 2 DP: 1007895 | | |
| | 26 Coolamon Scenic Drive MULLUMBIMBY | | |
| Parcel No/s: | 228960 | | |
| Applicant: | Ms J L Martin | | |
| Owner: | Ms J L Martin & Mr H M Lange | | |
| Zoning: | R2 Low Density Residential / PART 2(a) Residential | | |
| Date received: | 24 October 2019 | | |
| Integrated / Designated Development: | <input type="checkbox"/> Integrated | <input type="checkbox"/> Designated | <input checked="" type="checkbox"/> Not applicable |
| Concurrence required | No | | |
| Public notification or exhibition: | <ul style="list-style-type: none">– Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications– Exhibition period: 11/11/19 to 24/11/19– No submissions received. | | |
| Variation request | <input type="checkbox"/> Clause 4.6 | <input type="checkbox"/> SEPP 1 | <input checked="" type="checkbox"/> Not applicable |
| Delegation to determine | Council | | |
| Issues: | No issues identified. | | |

Summary:

Development consent is sought for a Secondary Dwelling. The secondary dwelling is to be constructed over the existing garage. The secondary dwelling will be single level comprising living and dining areas, kitchen, bathroom, one bedroom and a covered deck. The site is on the northern outskirts of Mullumbimby Township and is adjacent to Chinbible Creek. The application appropriately addresses the relevant constraints applying to the site. The application raises no planning issues and is recommended for approval subject to the recommended conditions.

The application is reported to Council for determination (as per the Management of Conflicts of Interest in Development Matters Procedure) as it is a development application submitted by a Councillor of Byron Shire Council.



NOTE TO COUNCILLORS:

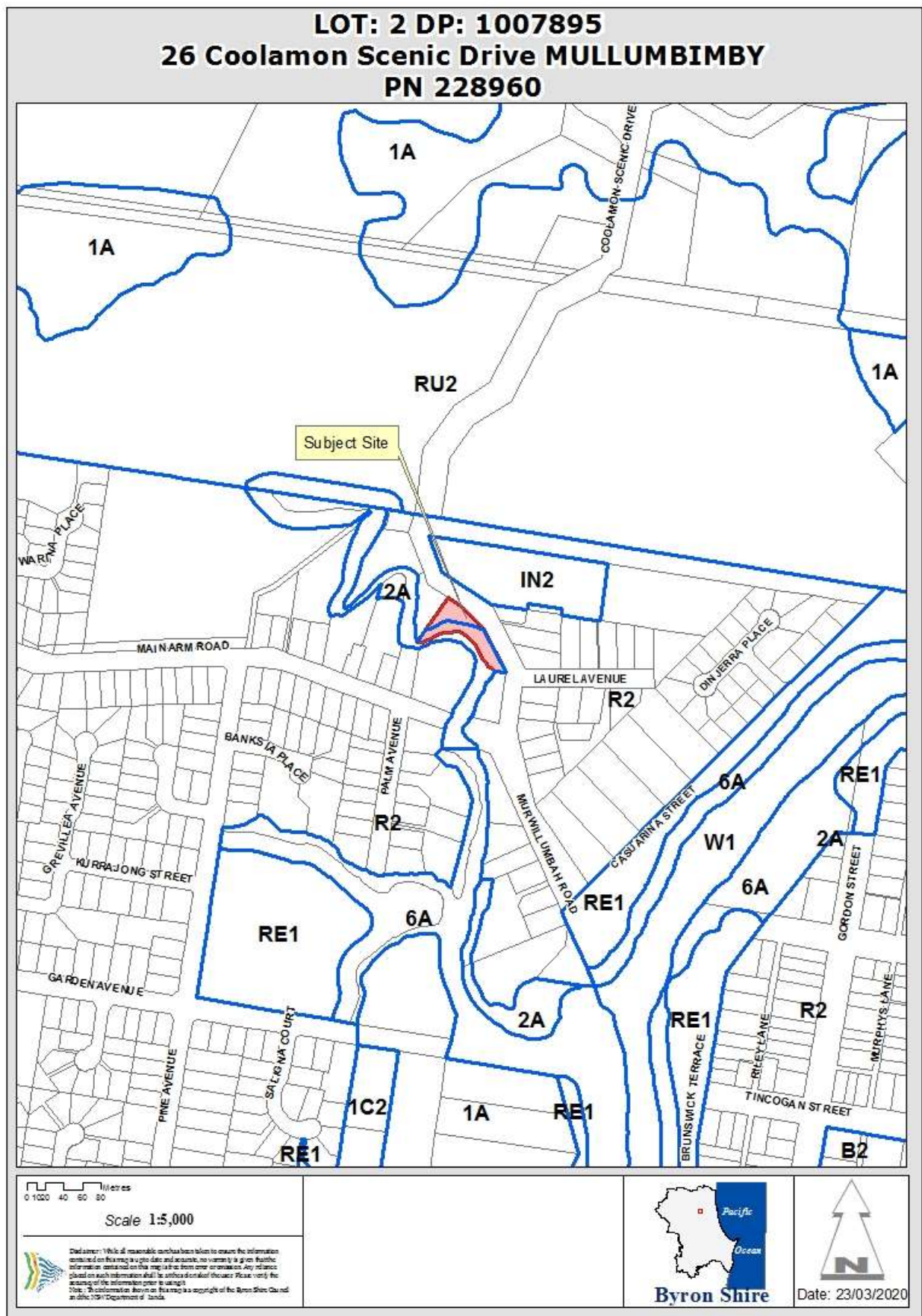
In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes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

RECOMMENDATION:

That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.566.1 for Secondary Dwelling, be granted consent subject to the conditions of approval in Attachment 2 (E2020/21177).

Attachments:

- 1 Proposed plans -10.2019.566.1, E2019/80776 
- 5 2 Recommended conditions of approval - 10.2019.566.1, E2020/21177 



Assessment:

1. INTRODUCTION

1.1. History/Background

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

- 10.2004.349.1 – single storey dwelling house including carport – approved 16/6/2005 – then surrendered; and
- 10.2006.459.1 – single storey dwelling and shed – approved 28/9/2006.

1.2. Description of the proposed development

This application seeks development consent for a Secondary Dwelling. The secondary dwelling is to be constructed over the existing three-car garage. The dwelling comprises one bedroom with a modest kitchen, living room and bathroom with a 60 m2 floor area. The living room opens up onto an external deck verandah area.

1.3. Description of the site

| | |
|------------------------------|--|
| Land is legally described as | LOT: 2 DP: 1007895 |
| Property address is | 26 Coolamon Scenic Drive MULLUMBIMBY |
| Land is zoned: | R2 Low Density Residential / PART 2(a) Residential |
| Land area is: | 2364 m ² |
| Property is constrained by: | <ul style="list-style-type: none"> • Flood Liable Land (southern portion of property) • Bushfire prone land (buffer – entire property) • High Environmental Value vegetation (southern portion of property – mapped as subtropical rainforest) • Easement for drainage of water and building envelope • Overhead powerlines |

A site inspection was carried out on 4 March 2020



Photo 1 – Subject site viewed from northern side of Coolamon Scenic Drive.



Photo 2 – Location of proposed development (above garage).



Photo 3 – North west corner of garage with Chinbible Creek below.



Photo 4 – View north from subject site.

2. SUMMARY OF REFERRALS

| Referral | Issue |
|--------------------------------|--------------------------------------|
| Development Engineer | No objections subject to conditions. |
| Building Surveyor | No objections subject to conditions. |
| S64 / Systems Planning Officer | No objections subject to conditions. |

Conditions recommended in the above referrals are included in the Recommendation of this Report below.

3. SECTION 4.14 – BUSH FIRE PRONE LAND

The applicant provided a single dwelling bushfire self-assessment on 23/3/20 (E2020/21033).

Using the procedure provided by the NSW Rural Fire Service titled 'Site Assessment Methodology', the asset protection zone and bush fire attack levels for this proposed development (which is in fire weather area FDI 80) are as follows:

| | |
|---|--------------------------------------|
| Direction | North & west |
| Vegetation formation (see Note and Figure 2) | North & west – Camphor laurel 51-80% |
| Distance between vegetation formation and building | North ~ 53m, west ~ 46m |
| Effective slope | North – upslope, west - ~5% |
| Asset Protection Zone | North – 10m, west – 15m |
| Bushfire Attack Level (BAL) BAL– 12.5 to the west façade and therefore all facades (Note: A building with any facade identified as requiring a construction level must build all facades to at least Level 1, corresponding to Medium attack). Appropriate conditions of consent are recommended | |

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

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

4.1 State Environmental Planning Instruments

| | Satisfactory | Unsatisfactory |
|---|-------------------------------------|--------------------------|
| State Environmental Planning Policy No 55—Remediation of Land | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Consideration: The property is not identified as contaminated in Council's GIS records. There is an approved residential dwelling on the property. | | |
| State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Consideration: The proposal is for BASIX affected development and BASIX Certificate was provided with the application. | | |
| State Environmental Planning Policy (Coastal Management) 2018 | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Consideration: The nature of the development, being a secondary dwelling of 60m ² to be constructed above the garage on a private property, will not have an adverse impact on coastal environment area matters (c.13) or coastal use area matters (c.14). | | |
| State Environmental Planning Policy (Infrastructure) 2007 | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Consideration: Council's GIS information shows an overhead powerline crossing over the location of the proposed development. Pursuant to clauses 45(1)(b)(iii) and (2) the application was referred to Essential Energy who raised no objection the development. | | |

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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 Secondary Dwelling;
- (b) The proposed development is entirely within the **R2 Low Density Residential Zone** according to the Land Zoning Map;
- (c) The proposed development is permitted with consent; and
- (d) Regard is had for the Zone Objectives as follows:

| Zone Objective | Consideration |
|---|---|
| <ul style="list-style-type: none"> • To provide for the housing needs of the community within a low density residential environment. • To enable other land uses that provide facilities or services to meet the day to day needs of residents. | The proposed secondary dwelling will provide housing. Having regards to its location to Mullumbimby, the development raises no issues in terms of the objectives of the zone. |

Clause 4.3 Height of Buildings

Based on the annotations on the elevations and sections provided with the application, the maximum height of the proposed secondary dwelling is ~8.3m which is less than the 9m height limit (c.4.3).

Clause 4.4 Floor Space Ratio

The property is 2364m² in area. The gross floor area of all buildings, including the proposed secondary is ~285m², well below the maximum floor space ratio of 0.5:1.

5 **Clause 6.3 Flood Planning**

Council's Engineer reviewed the application in relation to flood planning (c.6.3) and found the proposal to be acceptable subject to conditions.

10 The proposal raises no other issues under the LEP.

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

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

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

Chapter B2: Preservation of Trees and Other Vegetation

20 The application states that "...no vegetation will be removed for the development of the dwelling".

Chapter B3: Services

25 Council's Engineer reviewed the application in relation to stormwater management and found the proposal to be consistent with plan requirements subject to recommended conditions. The property has access to reticulated water and sewer, and electricity.

Chapter B4: Traffic Planning, Vehicle Parking, Circulation and Access

30 Council's Engineer reviewed the application in relation to vehicle traffic access, parking and manoeuvring, and found the proposal to be consistent with plan requirements subject to recommended conditions.

Chapter B8: Waste Minimisation and Management

A waste minimisation and management plan was provided with the application (B8).

35 **Chapter C2: Areas Affected by Flood**

Although the southwestern margin of the property is mapped as flood prone, the proposed building footprint is not within this area (Chapter C2). Council's Engineer reviewed the application in relation to flooding and found the proposal to be consistent with plan requirements subject to recommended conditions.

40 **Chapter D1: Residential Accommodation in Urban, Village and Special Purpose Zones****D1.2 General Provisions**

45 The proposed secondary dwelling complies with the building height plane (D1.2.1) as the principal dwelling is located to immediately to the west and there is ample vegetated land within the property to the east beyond which is Coolamon Scenic Drive and to the south is Chinbible Creek. As such, solar access, privacy and view impacts on neighbouring properties are expected to be non-existent or negligible.

50 The proposed secondary dwelling is setback between 5.5 and 6.3m from the nearest boundary: being to Coolamon Scenic Drive (see Plan 7a) thus meeting relevant boundary setbacks (D1.2.2). However, the additional parking shown on the "Parking Plan" provided with this application is not supported as it is within the street front setback (see also Engineering review).

55 The proposed secondary dwelling will not have a negative visual impact or derogate from the character of the area as it:

- meets street front setback requirements;
- it will be shielded from Coolamon Scenic Drive by vegetation;
- the opposing side of Coolamon Scenic Drive is elevated (see photos 1 and 4);
- the design is generally consistent with performance criteria such as avoiding long, straight walls, provides a balcony and overhanging eaves; and
- The proposed secondary dwelling is complimentary in design to the principal dwelling thus providing integration with the existing built environment (D1.2.4).

D1.4 Secondary Dwellings

Although private open space for the secondary dwelling is not identified on the site plan, ample space is available on the property to meet requirements and the proposed deck is under 20m² (D1.4.1). Access and Parking has been addressed above under Chapter B4 (D1.4.2).

The proposed secondary dwelling is consistent with siting, design and character requirements (D1.4.3) as it is complimentary in design to the principal dwelling, is visually and acoustically separated from adjoining sites by vegetation and/or Coolamon Scenic Drive and is appropriately located on the site regarding potential off-site impacts.

Chapter E3: Mullumbimby

The property is located within the residential area of Precinct 4 (West Mullumbimby Residential). There are no specific provisions/prescriptive measures that relate to Precinct 4 and the proposed development is not inconsistent with relevant general objectives relating to character, bulk and scale of development and urban design (E3.3, E3.4).

The proposed secondary dwelling is consistent with relevant planning requirements.

The proposal raises no other issues under the DCP.

4.5 Any Planning Agreement or Draft Planning Agreement?

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

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

| Clause | This control is applicable to the proposal: | I have considered this control as it relates to the proposal: | If this control is applicable, does the proposal comply? |
|---------------|--|--|---|
| 92 | N/A | No | No |
| 93 | N/A | No | No |
| 94 | Yes | Yes | The new dwelling will comply with the BCA. |
| 94A | N/A | No | No |

4.7 Any Coastal Zone Management Plan?

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

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

| 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. The dwelling will provide further housing in the Mullumbimby area. |
| Economic impact | No. The proposal will not have a significant economic impact on the locality. Minor economic benefits will accrue during the construction phase for the Building Industry. |
| Construction Impacts | The development will generate minor impacts during its construction. Conditions of consent recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts. |

5 Council Policies that are applicable to the proposed development:

| Council Policy | Consideration |
|--|--|
| Rainwater Tanks in Urban Areas Policy | The application proposes diverting roof run-off via a 4000L water tank which is not inconsistent with this policy. |

4.9 The suitability of the site for the development

10 The site is a serviced, has manageable constraints and is generally suitable for the proposed development. The dwelling is located outside of the drainage easements and is clear of overhead power lines.

4.10 Submissions made in accordance with this Act or the regulations

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

4.11 Public interest

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

5. DEVELOPER CONTRIBUTIONS

25 As the DA was lodged prior to 30 October 2019 no developer contributions or headworks charges are to apply to the proposed secondary dwelling.

6. CONCLUSION

30 The DA proposes a Secondary Dwelling. The proposed secondary dwelling is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development. The application is recommended
35 for approval.

7. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED

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

5

Statement of Reasons

| |
|--|
| The proposed development complies with the provisions of Byron Local Environmental Plan 2014. |
| The proposed development complies with relevant State Environmental Planning Policies |
| The proposed development complies with relevant provisions of Development Control Plan 2014 |
| The proposed development complies with Environmental Planning & Assessment Regulation 2000 considerations. |
| The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality. |
| The proposed development is considered suitable for the proposed site. |
| The development application was notified/advertised in accordance with Development Control Plan 2014. No submissions were received. |
| The proposed development is unlikely to prejudice or compromise the public interest. |

How community views were addressed

| |
|--|
| The DA was notified/advertised in accordance with Development Control Plan 2014. No submissions were received. |
|--|

Report No. 13.6 **PLANNING - Development Application - further report following resolution 20-015 10.2018.384.1 Alterations and Additions to existing Dwelling House, Alterations and Additions to existing structure to create Dual Occupancy (Detached) and Upgrade existing Wastewater System**

Directorate: Sustainable Environment and Economy

Report Author: Ivan Holland, Planner

File No: I2020/458

Summary:

This application seeks approval for alterations and additions to an existing dwelling house, alterations and additions to existing structure and use of the building to create a dual occupancy (detached) and an upgrade to the onsite sewage management system. The subject property is located at Coopers West Lane, Main Arm in a rural hinterland area characterised by rural acreage living including a multiple occupancy and a number of other small rural residential lots.

Council first considered this development application at the Planning Meeting of 20 June 2019 (see Report No 6.10 - I2019/833 and the addendum to this report – E2019/43207) and resolved to defer the determination until further detail was provided on:

- alignment of the Right of Way;
- whether any further road widening is required to satisfy the requirements of the Rural Fire Service; and
- the fire assessment (Resolution 19-279).

This development application was presented again to Council at the Planning Meeting of 24 February 2020 (see Report No 13.3 - I2019/1124) with information in response to resolution 19-279.

Council resolved at the Planning Meeting held 24 February 2020 as follows:

20-015 Resolved that:

1. *That Council defer this matter until such time as a meeting is arranged and held with the Rural Fire Service (RFS), staff, applicants and objectors to the DA to discuss issues relating to access and bushfire protection for Lot 2, including but not limited to the following points of contention:*
 - a) *increases in bushfire risk, as highlighted this Spring and Summer;*
 - b) *clarification as to whether RFS inspectors were made aware of the narrow legal width of the 630 metre section of the RoC and the unacceptability to the owner of Lot 3 to increasing the legal width on which they have based their assessment;*
 - c) *explanation of why several seemingly insurmountable access issues have not been addressed in fire reports or reports to Council;*
 - d) *why the 30-degree slope north-west of the proposed building does not rule out that location;*
 - e) *why Section 3.3 of the RFS Guide does not apply, where it states "a combination of poor access, rugged topography, remote location and an inability to provide an adequate APZ would pose an unacceptable bush fire risk, even if the building was*

constructed in accordance with the strictest construction standards. In these cases, there is a strong argument for refusal of the development application.

- 5 2. *That Council, once the above has been actioned, report the matter back to the first available Council meeting.*

This report addresses the matters contained in the above resolution.

10 Following the February Council Planning Meeting, Planning staff provided the Rural Fire Service with a copy of the resolution and requested a meeting as per the resolution. The Rural Fire Service declined the invite to attend a meeting with staff, applicant and objectors, but instead provided a detailed written response to all points of contention listed in Item 1 of the Council Resolution (see Attachment 1).

15 In summary, the Rural Fire Service stated that:

1. They are familiar with the property and access, having undertaken two site inspections and being provided a copy of the access road survey; and
- 20 2. They are satisfied that their previous advice (see Attachment 3) takes into account all relevant bush fire considerations, is appropriate for the development and property and will result in improved property access, in relation to bush fire management, for the subject property and the properties further up Coopers Lane West.

25 A further submission has since been received from a neighbour in relation to bushfire issues which is discussed in the body of the report. It is considered, the further information provided by the Rural Fire Service addresses the matters contained in the Resolution. The application is recommended for approval subject to conditions of consent.

30 However, should Council based on the circumstances of the case, want to refuse the application, reasons for refusal are provided as Attachment 11.

NOTE TO COUNCILLORS:





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

40

RECOMMENDATION:

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 9 (E2020/5837).








Attachments:

- 45 1 Rural Fire Service correspondence, E2020/21690 
- 2 Rural Fire Service - Amended referral and recommended conditions, E2020/3631 
- 3 Amended Bush Fire Assessment Report, E2020/5697 
- 4 Survey of access road, E2020/5751 

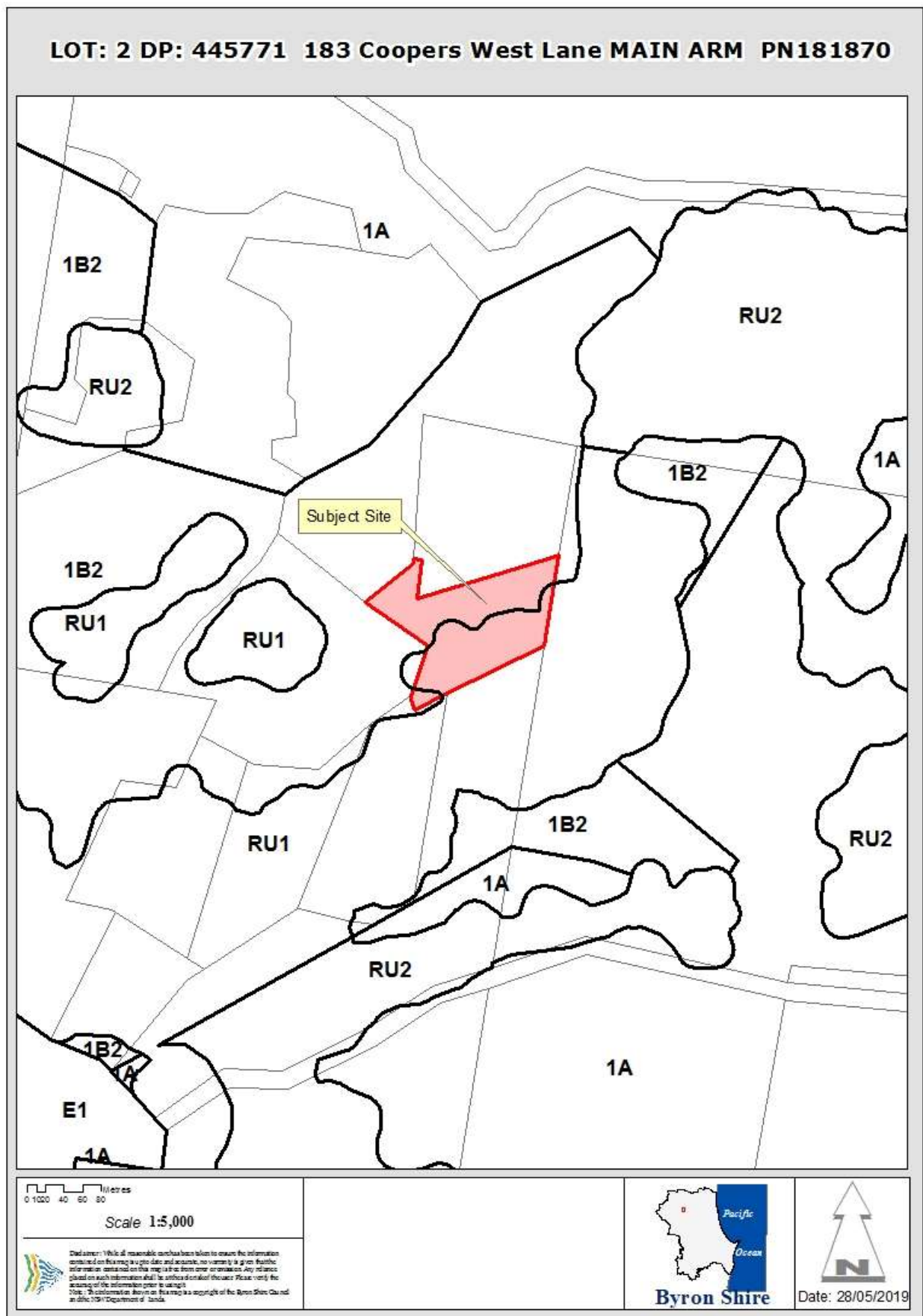
BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.6

- 5 Written approval from owner of Lot 1 DP 445771 for modification of easement, E2020/5721 
- 6 Written approval from owner of Lot 7 DP 591828 for modification of easement, E2020/24726 
- 7 Applicant's legal advice regarding amendment of easements, E2020/11984 
- 8 Email from Ewan Willis, E2020/24727 
- 5 9 Recommended conditions, E2020/5837 
- 10 10 Proposed plans, E2020/5808 
- 11 11 Draft reasons for refusal, E2020/23336 

10



REPORT

Background:

- 5 Council first considered this development application at the Planning Meeting of 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.

15 This development application was presented again to Council at the Planning Meeting February 2020. In response to Resolution 19-279, the following information was presented:

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

20 A survey plan was provided by the applicant that indicates that the access road is largely consistent with the legal right of carriageway (ROC) through Lot 3 DP 558858 (see Attachment 4). 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 (see Attachment 7). A condition has been recommended to require this to occur.

30 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 (see Attachments 5 & 6) 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

35 The applicant provided a revised Bush Fire Assessment Report (Attachment 3) which was referred to the RFS for further assessment. RFS issued an updated approval and conditions for the development on 3 December 2019 (see Attachment 2) which in relation to external property access requires the following:

45 *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.*

The fire assessment be further considered

50 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.

Resolution 20-015:

Council considered 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, at the Planning Meeting February 2020 and resolved as follows:

20-015 Resolved that:

1. *That Council defer this matter until such time as a meeting is arranged and held with the Rural Fire Service (RFS), staff, applicants and objectors to the DA to discuss issues relating to access and bushfire protection for Lot 2, including but not limited to the following points of contention:*
 - a) *increases in bushfire risk, as highlighted this Spring and Summer;*
 - b) *clarification as to whether RFS inspectors were made aware of the narrow legal width of the 630 metre section of the RoC and the unacceptability to the owner of Lot 3 to increasing the legal width on which they have based their assessment;*
 - c) *explanation of why several seemingly insurmountable access issues have not been addressed in fire reports or reports to Council;*
 - d) *why the 30-degree slope north-west of the proposed building does not rule out that location;*
 - e) *why Section 3.3 of the RFS Guide does not apply, where it states "a combination of poor access, rugged topography, remote location and an inability to provide an adequate APZ would pose an unacceptable bush fire risk, even if the building was constructed in accordance with the strictest construction standards. In these cases, there is a strong argument for refusal of the development application."*
2. *That Council, once the above has been actioned, report the matter back to the first available Council meeting.* (Lyon/Cameron)

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

Resolution 1 – Meeting with Rural Fire Service (RFS), staff, applicants and objectors to discuss issues relating to access and bushfire protection for Lot 2

Following the February Council Planning Meeting, Council Planning staff provided the RFS with a copy of the resolution and requested a meeting as per the resolution. The RFS declined the invite to attend a meeting with staff, applicants and objectors, but instead provided a detailed written response to all points of contention listed in Item 1 of the Council resolution (see Attachment 1).

The following is a summary of the RFS response to the points of contention listed in Item 1 of the Council resolution direct quotes from the RFS correspondence are in *"italics"*:

Resolution 1(a) – increases in bushfire risk, as highlighted this Spring and Summer;

Bush fire risk to the development, including seasonal variations, are a core component of the NSW RFS bush fire assessment guidelines. *"As such the development proposal was assessed against*

the requirements of Planning for Bushfire Protection 2006. The opportunity to improve access arrangements and bushfire measures to the subject property also provides an improved level of protection for the neighbouring properties. If no upgrading of the access occurs, the existing developments are still at risk and an opportunity to improve the situation would be lost."

This is a reasonable view of the proposal as it is understood the access road to the development site serves not only this property but also a further nine properties plus two houses within the Karu Kali Multiple Occupancy on Lot 3. This will be of benefit to not only the applicant but also the other land owners in improving bushfire access as opposed to a refusal and a "do nothing option".

Resolution 1(b) –whether RFS inspectors were made aware of the narrow legal width of the RoC and the unacceptability to the owner of Lot 3 to increasing the legal width of the RoC.

The NSW RFS made two site inspections and requested, received and reviewed the survey plans of the property road access (Right of Carriageway). The RFS noted that Condition 12 of the draft conditions of consent appears to address legal access and owners consent.

In this regard it is noted the consent conditions do not require the easement to be widened on Lot 3, but for it to be repositioned over the actual formation of the road where it is misaligned. Further where the formation is to be widened this is to occur within the easement width of 5.03m at two locations within Lot 3. Further widening will occur on the subject property in terms of a turning bay for RFS vehicles and another passing bay on Lot 7 DP591828 immediately to the east of the property.

Resolution 1(c) – explanation of why several seemingly insurmountable access issues have not been addressed in fire reports or reports to Council.

"Planning for Bush Fire Protection 2006' allows for alternative solutions to be presented that achieve the performance outcome for the development. In this instance, a performance outcome was presented with respect to the property road access". The applicant's BPAD accredited Bush Fire Consultant adequately demonstrated that the property access proposal can achieve the performance requirement of Planning for Bushfire protection 2006, section 4.1.3 Property Access provisions specifically –

- *Access to properties is provided in recognition of the risks to fire fighters and evacuating occupants;*
- *Road widths and design enable safe access for vehicles"*

"To verify satisfaction with the performance criteria, the NSW RFS Far North Coast District Deputy Fire Control Officer attended the site meeting on 24 September 2019, to provide comment on the proposed property access works with respect to fire fighting response to the locality."

Resolution 1(d) – why the 30-degree slope north-west of the proposed building does not rule out that location.

The northwest slope was assessed by the RFS and determined that, although steeper localised slopes are present within the gully, the gully deviates in a southerly direction and does not provide a direct fire run towards the proposed development. As such, the fire run within the gully was assessed as a flanking fire (where only radiant heat exposure is considered) by both the applicant's accredited bush fire consultant and RFS.

Resolution 1(e) – why Section 3.3 of the RFS Guide does not apply to the proposed development.

The referenced text from Section 3.3(a) of 'Planning for Bush Fire Protection 2006' relates to Exceptional Circumstances for asset protection zones (APZ) with the quoted reference being an extract from Section 3.3(a) reduced APZ. *"The referenced statement commences 'There may be situations where a combination of poor access, rugged topography ...'.* The referenced text does not require the development to be refused but certainly emphasises that consideration needs to be given.

The RFS advice then states that the access issued has been considered in point 1(c) above and are satisfied with those arrangements. They also do not consider the site remote as it's surrounded by similar developments with access via a managed and sealed road utilised by numerous land holdings in the locality. As to rugged topography the RFS state this a subjective term and in relation to the site the terrain is sloping generally south to north with localised influences such as the previous mentioned gully to the west and north west of the site. *"Such sites and topographical influences are not uncommon".*

In relation to the Asset Protection Zones the RFS have advised *"the applicant's BPAD Bush Fire consultant has adequately demonstrated that suitable APZ's can be accommodated within the boundaries of the subject property."*

Further Submission from Neighbour

Council received further correspondence on 9 March 2020 (Attachment 8) from Ewan Willis, a resident of the Karu Kali Pty Ltd (Lot 3 DP 558858) property. The correspondence raised a number of concerns mostly relating to the bush fire assessment and Rural Fire Service advice on this application. The detailed response by RFS to the matters listed in Council Resolution 20-015 (Attachment 1) addresses the majority of matters raised by Mr Willis. Below is a response to the matters raised in Mr Willis' correspondence of 9 March 2020:

1. *The RFS has a non-verification role when signing off development applications with the effect of total reliance on council and bush fire assessors to provide complete, accurate data.*

The NSW RFS made two site inspections to the subject property and requested, received and reviewed the survey plans of the property road access (Right of Carriageway) prior to providing their advice and recommended conditions of approval for this DA to Council. By carrying out site inspections, RFS did not need to rely solely on Council and/or bush fire assessors for complete and accurate data in conducting their assessment and preparing their recommendations.

2. *Verifying data as being correct and complete should be part of council process. Further Mr Sketchley felt that, as owners of Lot 3 DP 558858, we should have been present at the site meeting to articulate any short comings.*

As noted above, RFS made two site inspections to the subject property thus enabling information provided by Council and in the applicant's bush fire assessment to be verified as correct and complete. RFS declined the request to meet with objectors stating that they have no legislative requirement to do so.

3. *Any performance criteria that cannot be met ought be addressed in the bush fire assessor's report rather than being unexplained. Again, please see attachment for unexplained, un-met criteria.*

As in this case, 'Planning for Bushfire Protection 2006' allows for alternate solutions to the performance criteria to be proposed that achieve the specified performance outcome where developments do not comply with the acceptable solutions. The applicant's bush fire consultant

adequately demonstrated that the property access proposal can achieve the performance requirements for property access through an alternate solution. RFS staff conducted a site inspection to confirm the acceptability of the proposed alternate solution which was supported in their advice to Council on this development application.

- 5 4. *The RFS is unable to reliably fulfil its planning obligations unless it is provided with complete, accurate data. In Mr Sketchley's words: "If we haven't got the right details then how can we do the job?"*

By carrying out two site inspections, RFS were able to verify that information provided by Council and the applicant's bushfire consultant was complete and accurate.

- 10 5. *In the event of a death attributable to process failures in relation to bush fire safety planning matters the coroner's office would examine the council's role, rather than that of the RFS, due to the non-verification role of the RFS.*

Council has sought, and received advice from the RFS that the development conforms to the specifications and requirements of Planning for Bush Fire Protection in accordance with the prescribed statutory process (S4.14 (1) Environmental Planning and Assessment Act 1979). In
15 terms of any matter before the coroners court, the court may call any number of witnesses to give evidence including Council.

6. *The correct mechanism to review the RFS decision making process is a clause 55 review under the Environmental Planning and Assessment Act 1979.*

- 20 Clause 55 of the EPA Regulations 2000 enables applicants to amend Development Applications after they have been lodged to address matter raised during the assessment process. The provisions state:

55. What is the Procedure for amending a development application

- 25 (1) *A development application may be amended or varied by the applicant (but only with the agreement of the consent authority) at any time before the application is determined.*

The proposal was in part amended with additional information and in particular details addressing bushfire matters. This has been accepted by Council and the amended detail forwarded to the RFS for further comment, who have provided recommended conditions of consent.

7. Multiple fire reports

- 30 As noted above, an applicant is able to modify their development application with approval of Council. A modification to a development application on bush fire prone land would generally require an amended/updated bush fire assessment. The applicant provided an updated bush fire assessment to support their development and then provided further information in relation to Planning for Bush Fire Protection in response to the Council Resolution.

- 35 This is a common occurrence with assessment of development applications in that plans are amended in response to issues identified during the assessment of proposals.

8. Slope and building construction standards.

By carrying out a site inspection, RFS were able to verify that information provided by the applicant's bushfire consultant was complete and accurate, including in relation to slopes adjacent

to the development sites. The process for assessing slope in relation to this application is addressed by the RFS in their most recent letter to Council on this matter (Attachment 1). The RFS determination of the appropriate building construction standards was informed by their site inspection and review of the relevant slopes adjacent to the development sites.

- 5 *9. Fire risk concerns for 630 metre private road easement over our property (Lot 3 DP 558858) - A significant number of performance criteria have not been met at this time and are not addressed in the existing report.*

10 As explained in the most recent correspondence from RFS (attachment 1), Planning for Bushfire Protection 2006 allows for alternate solutions to the performance criteria to be proposed that achieve the specified performance outcome where developments do not comply with the acceptable solutions. The RFS are satisfied with the access as discussed above.

10. Fire access is via a degraded causeway. An engineers report has not been produced to establish load bearing capability and there is no signage.

15 The degraded causeway referred to is under a section of Coopers West Lane that is managed by Council. It is likely that degradation to this causeway has been exacerbated by the prolonged wet weather experience in the Shire earlier this year. Council's asset manager for the subject section of road has been made aware of the concern about the degraded causeway.

Options:

- 20 1) Approve the development application subject to the recommended conditions in Attachment 9.

Or

- 25 2) Refuse the development application as per the reasons for refusal in Attachment 11.

Should the application be refused, Council will need to consider other compliance action in terms of the dual occupancy building as it is already constructed but remains unoccupied.

30

Conclusion:

35 The proposal has been assessed as satisfactory in terms of those bushfire and access matters and provides for a better outcome than the present arrangements for emergency vehicle access and evacuation for not only the applicant but for the other land owners that use and benefit from the access road. The Correspondence received from RFS addresses the matters in Council resolution 20-015. The application is recommended for approval subject to conditions of consent.

Report No. 13.7 PLANNING - 26.2018.2.1 Linnaeus Estate Planning Proposal - Submissions Report

Directorate: Sustainable Environment and Economy

Report Author: Steve Daniels, Project Officer - Planning Reforms

File No: I2020/503

Summary:

On 21 February 2019 Council considered a planning proposal in relation to land at Lot 1 DP 1031848, Broken Head Road, Broken Head (The Linnaeus Estate). The planning proposal (Attachment 1) seeks to amend Schedule 1 of Byron LEP 2014 and Schedule 8 of Byron LEP 1988 to permit a community title development comprising 33 neighbourhood lots with a minimum size of 250 m² and one lot for association property on the subject land. The small lots correspond with existing approved accommodation units on the property, with the use of these buildings for the purpose of dwellings foreshadowed subject to future development consent.

A Gateway determination (Attachment 2) was issued by the Department of Planning, Industry and Environment (DPIE) on 29 May 2019. In accordance with the Gateway determination, the planning proposal was placed on public exhibition for a period of 4 weeks from 24 July to 23 August 2019, and consultation was undertaken with relevant public authorities.

Following public exhibition, Council staff became aware of a fundamental error in the way the existing and proposed LEP Controls for this site apply to land zoned *SP1 Special Activities – Mixed use development*. The error stems from advice received from the DPIE when establishing the current zone description and Schedule 1 – Additional Permitted Use clause (2017). Additionally, the way in which Byron LEP 2014 regulates community title subdivision in the SP1 zone was not fully understood when the DPIE issued a Gateway determination for this planning proposal. Council has commissioned legal advice on this matter which establishes that the proposed amendment to Byron LEP 2014 is redundant.

It should be noted that under the existing planning controls, the applicant currently has the option to submit a development application for community title subdivision of subject land zoned *SP1 Special Activities – Mixed use development*.

Legal advice commissioned by Council also recommends that Council not proceed with the proposed amendment to Byron LEP 1988 that seeks to permit community title subdivision of approved structures located in the *7(f1) Coastal Lands Zone*. Permitting the creation of lots on this part of the site for the purpose of dwellings presents liability risks to Council because the zone is located within what is highly likely to be the coastal erosion zone. Options exist at the DA stage to create lots in more suitable locations on the site, while still ensuring that there are no more than 33 neighbourhood lots and 1 lot for common property, with no increase in the total number of structures already approved for the site.

For these reasons, it is recommended that Council's support for the planning proposal is withdrawn (and the Minister requested not to proceed with the planning proposal).

It is also recommended that Council consider initiating a new planning proposal to amend Byron LEP 2014 to rectify these issues. The objective of the planning proposal would be to ensure that development on the site is regulated in the manner originally intended by the applicant, Council and the DPIE, and in a manner that achieves the objectives of the Rural Land Use Strategy. This would be a new planning proposal considered under a separate report, once discussions with the applicant have formally occurred.




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:

1. **That Council withdraw support for the planning proposal, and request the Minister to determine that the planning proposal not proceed.**
2. **That Council request staff to notify the applicant of this decision.**
3. **That Council request staff to hold discussions with the applicant to establish options for proceeding with the proposed community title subdivision, either by way of a development application and merit based assessment, or following a further amendment to Byron LEP 2014 that rectifies the issues noted in this report.**
- 10 4. **That Council receive a further report that considers options to amend Byron LEP 2014 in a manner that achieves the objectives of the applicant, Council, the DPIE consistent with the objectives of the Rural Land Use Strategy in relation to the subject land.**

Attachments:

- 1 26.2018.2.1 Planning Proposal – Linnaeus Estate Broken Head - Version 2 - Public Exhibition Version - amended 24 7 19, E2019/54171 
- 15 2 26.2018.2.1 Gateway Determination - Linnaeus Estate, E2019/39583 
- 3 Template - Form of Special Disclosure of Pecuniary Interest, E2012/2815 

REPORT

On 21 February 2019 Council considered a planning proposal in relation to land at Lot 1 DP 1031848, Broken Head Road, Broken Head (The Linnaeus Estate, Broken Head).

The subject land has an area of 111 hectares with a 1500 metre beach frontage and a 530 metres frontage to Broken Head Road. It is located on the boundary with Ballina Shire immediately south of Broken Head. It has a series of approvals relating to its use as a private education facility. These approvals include 33 accommodation units of which 20 have been built.

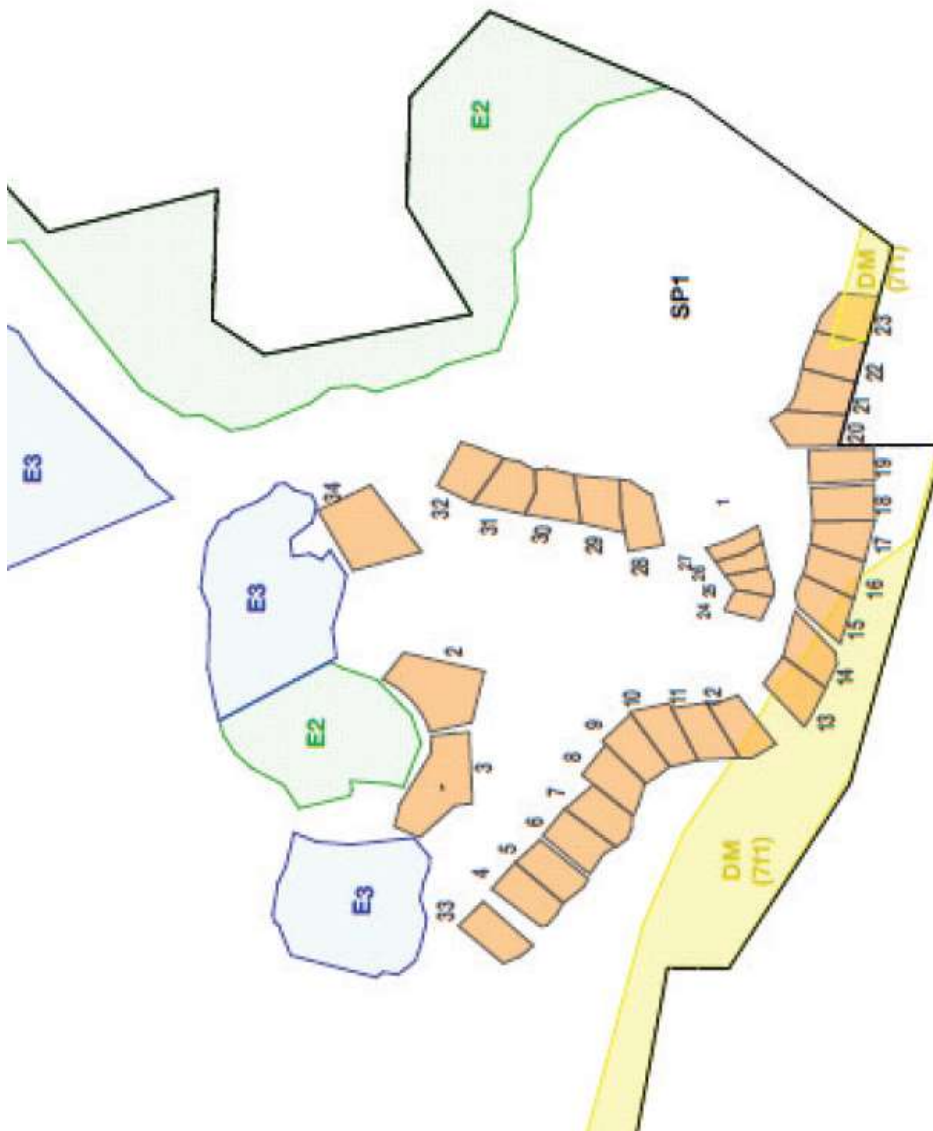
Figure 1: Subject site (in part) showing existing structures

***Planning Proposal***

The planning proposal (Attachment 1) seeks to amend Schedule 1 of Byron LEP 2014 and Schedule 8 of Byron LEP 1988 to permit a community title development comprising 33 neighbourhood lots with a minimum size of 250 m² and one lot for association property on the subject land. The small lots correspond with existing approved accommodation units on the property, with the use of these buildings for the purpose of dwellings foreshadowed subject to future development consent. Figure 2 below provides an indicative community title lot layout, with existing zones shown on the map.

Byron Rural Land Use Strategy 2017 has identified the subject land as a “priority site for future rural lifestyle living opportunities”. The subject land is identified for “Community Title conversion of approved accommodation units only (i.e. no additional dwelling yield)”. This strategy was endorsed by the NSW Department of Planning and Environment (DPE) in July 2018.

Figure 2: Indicative community title lot layout and existing zone map



Following consideration of the 21 February 2019 Council report, **19-007** Resolved that Council:

1. Request the NSW Department of Planning and Environment to issue a Gateway determination for the planning proposal, as included at Attachment 1 (E2018/87474) which proposes to include Lot 1 DP 1031848 (The Linnaeus Estate, Broken Head) in Schedule 1 of BLEP 2014 and Schedule 8 of BLEP 1988 to permit the Community Title subdivision of the land to create 33 small lots, with the balance in a single community lot.
2. Prior to forwarding the Planning Proposal to the NSW Department of Planning and Environment for a Gateway determination, amend Attachment 1 under 'Part 2 – Explanation of Provisions' and table 'Consistency with s9.1 Directions' to insert the following paragraph:

Additionally, the planning proposal seeks to replicate clause '8' in Schedule 1 of Byron LEP 2014 in Schedule 8 of BLEP88. This is to ensure that all lots under a community title scheme are subject to the same development restrictions.

3. *Obtain any further studies from the applicant if required by the Gateway determination. Then undertake public exhibition of the planning proposal and government agency consultation based on the Gateway determination; and*
4. *Receive a further report post-exhibition about issues raised in public and/or government agency submissions received (if any).*

Gateway Determination & Public Exhibition

A Gateway determination (Attachment 2) was issued by the DPIE on 29 May 2019.

In accordance with the Gateway determination, the planning proposal was placed on public exhibition for a period of 4 weeks from 24 July to 23 August 2019, and consultation was undertaken with relevant public authorities.

This report recommends that the planning proposal not proceed for reasons outlined below. For this reason the issues raised in the submissions have not been addressed. Any future planning proposal or development application proposing community title subdivision on the subject land will require further consultation with the community and public authorities.

Issues relating to existing and proposed Byron LEP 2014 controls for the subject land

Following public exhibition, Council staff became aware of a fundamental error in Byron LEP 2014 that makes the objectives of this planning proposal redundant, and negates the current ability to regulate development on this site in the manner intended by Council and the DPIE when the existing LEP controls for the site were put in place.

In 2017, a "housekeeping" planning proposal introduced two changes to Byron LEP 2014 in relation to this site:

- 1) The SP1 – *Special Activities* zone label (map sheet LZN 003D) was changed from "educational establishment" and replaced with the label "Mixed use development".

At the time this was considered justified by the DPIE because the approved educational component of the site did not fit the standard instrument definition for "educational establishment". Therefore, a label change to "Mixed use development" was made on advice of the DPIE who viewed this label as being the best fit to accommodate the existing approvals.

- 2) A corresponding 'Schedule 1 – Additional Permitted Use' clause (below) was introduced to BLEP 2014 that sought to restrict the expansive "Mixed use development" label by linking future permitted development to the existing approvals.

8 Use of certain land at Coast Road, Broken Head

- (1) *This clause applies to land at The Coast Road, Broken Head (known as the Linnaeus Estate) being part of Lot 1, DP 1031848, and identified as "Area D" on the [Additional Permitted Uses Map](#).*

- (2) *Development for the purposes of mixed use development that includes tourist or visitor accommodation is permitted with development consent.*

(3) *Development consent may only be granted under this clause if the consent authority is satisfied that the proposed development—*

- (a) *is ancillary to a lawful existing land use, and*
- (b) *is for the purpose of providing education or training for professional and personal development through a variety of academic, cultural and vocational programs.*

Legal advice commissioned by Council has identified a fundamental error with this approach - namely that an 'additional permitted use' cannot restrict the land uses permitted in a zone, it can only add to those uses. This is problematic because the labelling of the *SP1 Special Activities* zone as "Mixed use development" is extremely expansive in terms of permitted land uses, which goes beyond the intent of the 2017 planning proposal.

Mixed use development is defined as "a building or place comprising 2 or more different land uses." Therefore the assumption made by the DPIE and the Parliamentary Counsel's Office that the Schedule 1 clause would restrict development on the site to that which is "ancillary to a lawful existing land use" (i.e. existing approvals) is legally invalid.

Current Planning Proposal – Issues relating to the permissibility of community title subdivision

Notwithstanding the issues highlighted above, the key objective of the exhibited planning proposal is to allow community title subdivision of existing approved structures on the site by amending BLEP 2014 and BLEP 1988. This follows identification of the subject land in the Byron Rural Land Use Strategy.

However, legal advice has established that clause 4.1 of BLEP 2014 already permits community title subdivision in the *SP1 Special Activities* zone, and that the number of lots are not restricted because the Lot Size Map does not apply to *Community Land Development Act 1989* subdivisions (under clause 4.1(4)(b)).

Although Clause 4.1AA restricts some community title developments, the clause only applies to land zoned RU1, RU2 and R5 (the subject land is zoned *SP1 Special Activities*).

Therefore, that part of the planning proposal seeking to enable community title subdivision of land zoned *SP1 Special Activities* is redundant. Under the current planning controls, the applicant is already able to lodge a DA for community title subdivision of land zoned *SP1 Special Activities* without the need for a Schedule 1 - Additional Permitted Use clause.

Consequences of this error

- The "zone objectives" of the SP1 zone are expansive and include "facilitate development", while the 'mixed used development' label permits **any 2 uses or more** in relation to land uses on the site. The resulting permitted land uses do not align with the intended land uses envisioned by Council or the DPIE.
- *Byron LEP 2014 Schedule 1 – Additional Permitted Uses* can only be used to add to land uses that are already permissible under the current zoning and cannot be used to restrict development. This means that the existing Schedule 1 clause relating to the site is legally invalid and cannot achieve its intended objective of restricting land uses on the site.
- The existing LEP controls for the site negate the need for a planning proposal to permit community title subdivision on that part of the land zoned *SP1 Special Activities – Mixed use development* under Byron LEP 2014. Community title subdivision is already permitted and the number of lots is not restricted. For this reason, *Byron LEP 2014 Schedule 1 – Additional Permitted Uses* cannot be used to restrict any future community title subdivision of the land to

33 neighbourhood lots with 1 lot for association property (as intended by the current planning proposal).

Issues relating to proposed *Byron LEP 1988 controls for the subject land*

In addition to establishing community title subdivision as an additional permitted use in the *SP1 Special Activities* zone, the planning proposal also seeks to amend Byron LEP 1988 to permit community title subdivision in the *7(f1) Coastal Lands Zone*. This is because a portion of the existing and approved accommodation units are partly located within this zone.

Council staff and members of the community were concerned that allowing the creation of lots for the purpose of dwellings in the *7(f1) Coastal Lands Zone* could expose Council to liability risks in the event that property is damaged by coastal erosion processes, or in the event that buildings are required to be relocated.

Legal advice commissioned by Council recommends that Council not proceed with the proposed amendment to Byron LEP 1988 that seeks to permit community title subdivision of approved structures located in the *7(f1) Coastal Lands Zone*. Permitting the creation of lots on this part of the subject land for the purpose of dwellings presents liability risks to Council because the zone is located within what is highly likely to be the coastal erosion zone. At the present time, no study has been prepared that establishes coastal erosion processes south of Broken Head, and it is prudent to exercise the precautionary principle in this regard.

However, options exist at the DA stage to create lots in more appropriate locations on the site, while still ensuring that there are no more than 33 neighbourhood lots and 1 lot for common property, with no increase in the total number of structures already approved for the site.

Recommended path forward

Despite the issues noted above, a community title development comprising 33 neighbourhood lots and one lot for association property on the subject land is still achievable. It is understood that a departure from the current planning proposal is inconvenient for the applicant, but necessary to meet the objectives of Council.

The following actions are recommended:

- 1) That Council withdraw support for the current planning proposal for the reasons outlined above.
- 2) That Council hold discussions with the applicant to establish options for proceeding with the proposed community title subdivision, either by way of a development application and merit based assessment, or following a further amendment to Byron LEP 2014 that rectifies the issues noted in this report.
- 3) That Council consider the preparation of a new planning proposal to amend Byron LEP 2014 in manner that rectifies the issues noted in this report. The proposed amendments would be considered under a separate report to Council.

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 |

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Legal/Statutory/Policy Considerations

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

10 ***Financial Considerations***

If Council chooses to proceed with the above recommendations, no further costs will be accrued in relation to this planning proposal.

15 ***Consultation and Engagement***

Consultation has been undertaken for this planning proposal in accordance with the Gateway determination.

20 There have been ongoing discussions with the applicant also.