



Byron Shire Council



Agenda

Ordinary (Planning) Meeting

Thursday, 21 May 2020

held at Council Chambers, Station Street, Mullumbimby
commencing at 9:00am

Public Access relating to items on this Agenda can be made between 900am and 9.30am 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.

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ORDINARY (PLANNING) MEETING

BUSINESS OF ORDINARY (PLANNING) MEETING

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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 16 April 2020
7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS
8. MAYORAL MINUTE
9. NOTICES OF MOTION
10. PETITIONS
11. SUBMISSIONS AND GRANTS
12. DELEGATES' REPORTS
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Sustainable Environment and Economy

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

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.1 PLANNING - Saddle Road affordable housing precinct - Expression of interest

5 **Directorate:** Sustainable Environment and Economy
Report Author: Sam Tarrant, Planning Support Officer
File No: I2020/236

10 **Summary:**

Following on from Council resolutions **18-823** and **18-543** an expression of interest (EOI) was sent to all property owners within the Residential Strategies 'Area 17' precinct along The Saddle Road. The purpose of the EOI was to seek landowner interest on having their property considered in the Rural Land Use Strategy (RLUS) as a site for providing at least 80% affordable housing in the form of intentional eco-communities.

These resolutions came about in relation to the Brunswick Eco Village, which was a significant planning proposal submitted in 2017 for the Saddle Road precinct which proposed a mix of rural residential and residential lots.

During Council's assessment of this planning proposal, the then Department of Planning raised concerns about the planning proposal proceeding ahead of an approved Residential Strategy. As a result of this and other advice received from the Department regarding Area 17 (Saddle Road Precinct), Council resolved (Res 18-543) to not proceed with assessment of the Saddle Road Planning Proposal. This was followed by Resolution 18-823 to investigate suitable sites for 'intentional eco-communities' in the RLUS including the Brunswick Eco Village site.

The EOIs were sent out to the landowners in January 2020. Those who were not interested in their property being considered for the purpose of providing at least 80% affordable housing in the form of intentional eco-communities did not need to respond to the EOI. Two responses were received and these are summarised within this report.

Amending the RLUS to identify The Saddle Road as a site for future rural-residential housing requires an assessment against the relevant policy directions in the applicable strategic plans.

An assessment against the relevant criteria in the North Coast Regional Plan 2036, North Coast Settlement Planning Guidelines 2019 and the RLUS is provided in this report. The assessment has identified a number of barriers to including either of these sites in the RLUS for this purpose of an intentional community (in the form of rural-residential housing) within The Saddle Road precinct.

RECOMMENDATION:

1. **That Council note the Expression of Interest received for providing affordable housing in the form of intentional eco-communities within Area 17, The Saddle Road.**
2. **That Council not proceed with amending the Rural Land Use Strategy to identify The Saddle Road as a site for providing affordable housing in the form of intentional eco-communities.**
3. **That Council notify those who submitted an Expression of Interest proposal of Council's decision not to proceed with amending the Rural Land Use Strategy.**

Attachments:

45 1 Confidential - EOI Responses Area 17 Saddle Road, E2020/17901

REPORT

5 Council at its 13 December 2018 meeting considered a report on the draft Residential Strategy and resolved amongst other matters to (**Res 18-823 part e**):

- 10 e) *Commence an amendment to the Rural Land Use Strategy to include that land subject to Resolution 18-543 (2) that is not identified in the Residential Strategy as a source of land for housing supply 2016-2036, but is deemed suitable for inclusion as a priority site/s for future rural lifestyle living opportunities in the form of 'intentional eco-communities' in the Rural Land Use Strategy*

In relation to item 'e)', Resolution **18-543** (2) stated that:

- 15 2. *Council invite individual site proposals from within Area 17 (Saddle Road) that include a provision of at least 80% affordable housing.*

The above resolutions are a result of the Brunswick Eco Village proposal that was submitted in 2017. The original planning proposal was for a new urban growth area for the Saddle Road precinct that has the potential to supply approximately 475 rural residential and residential lots, of which 20% of the resulting dwellings would be secured for accessible housing.

20 During Council's assessment of this planning proposal, the then Department of Planning raised concerns about the planning proposal proceeding ahead of an approved Residential Strategy. As a result of this and other advice received from the Department regarding Area 17 (Saddle Road Precinct), Council resolved (Res 18-543) not to proceed with assessment of the Saddle Road Planning Proposal. This was followed by Resolution 18-823 (above) to investigate suitable sites for 'intentional eco-communities' in the RLUS including the Brunswick Eco Village site.

30 Noting the original ecovillage proposal, and the changes in land ownership and time, Council moved forward with the above resolutions to gauge interest from landowners within this precinct for the purpose of providing 80% affordable housing in the form of an intentional eco-community.

35 In January 2020 Council invited land owners within Area 17 to provide an expression of interest to have their property considered in the RLUS as a site for intentional eco-communities that includes a provision of at least 80% affordable housing.

A letter seeking interest from the land owners was sent out on 30 January to all residents within Area 17. The letter included a summary of why this area is being considered and what is intended by an intentional eco-community with a provision of 80% affordable housing.

40 Land owners who were interested were asked to provide a short proposal of why their site would be suitable and appropriate for providing affordable housing in the form of an intentional eco-community and how this might be delivered. Those who were not interested did not need to respond. Two proposals were received.

45 ***Summary of the proposals***

A summary of the proposals received and staff comment is provided in the following table. The complete proposals are contained in Attachment 1.

Site 1 - 82 The Saddle Road

Site suitability	
<i>Proposal</i>	<i>Staff comment</i>
The site is approx. 5 acres. The respondent has plans to build granny flats on the property in the future that could be utilised as affordable housing.	The site is not considered large enough to accommodate a fully self-contained intentional community and could only allow for minimal affordable housing. Also, the current position of the existing dwelling would impede the logical development of affordable housing on site.
Method for delivering the affordable housing component	
<i>Proposal</i>	<i>Staff comment</i>
No information provided on how affordable housing would be delivered on site.	No information provided on which to assess this matter. The intent of the resolution was to ensure access to a range of affordable housing options with housing managed by an affordable housing provider. See further assessment against policy framework below.

Site 2 - 219 & 251 The Saddle Road

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Site Suitability	
<i>Proposal</i>	<i>Staff comment</i>
The respondent owns 2 properties on saddle road totalling 25.5 hectares. It is proposed that 3 hectares be used for intentional eco-community housing. The property currently operates as Byron Rainbow Farm and has eight share farmers operating on the site. The farm promotes organic farming techniques and has room for additional share farmers to operate across the sites. An intentional eco-community would provide affordable housing for those who farm on site or with shared agricultural interests.	Building on the existing farming practices whilst allowing for room to expand is a good basis for creating an intentional community with common interests. Further information would be required, if proceeding, on the location of the proposed affordable housing to assess suitability. See assessment against policy framework below.
Method for delivering the affordable housing component	
<i>Proposal</i>	<i>Staff comment</i>
20 small cottages are proposed within a 3 hectare footprint, with each cottage containing two bedrooms and a loft. A shared laundry and community facility would also be provided on site. It is proposed that the average weekly rent of each cottage must not exceed 30% of the median household weekly income of Byron Shire equating to the weekly rent for each cottage being \$345.	A mixture of housing types would be beneficial including one bedroom dwelling and a variety of housing tenures. There would need to be an agreement with a community housing provider to manage the housing. See further assessment against policy framework below.

All leases would need to be for a minimum of 12 months and copies of the lease would be provided to Council to ensure no short term or holiday letting.	
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5 Staff acknowledge the importance of delivering affordable housing options in rural areas, and the need to ensure that any proposal will achieve the desired outcomes. Without considering the entire Area 17 precinct for affordable rural residential housing, Site 2 EOI presents the stronger case for being considered as a potential site to provide for affordable housing in the form of an intentional community.

10 Notwithstanding this, there are a number of key barriers to including either of these sites in the RLUS for this purpose. The barriers are addressed further in the policy framework consistency assessment, but in summary include:

- being located outside an identified town/village centre;
- potential fragmentation of regionally significant farmland
- 15 - are of a scale that is unlikely to be 'self-contained' and provide a mix of land uses to provide for daily needs of residents
- contain less than 10ha of unconstrained land
- current inadequate road infrastructure that is not at a suitable standard/condition to accommodate the likely increase in traffic (for 20 dwellings)

20 Collectively these barriers do not justify support for an amendment to the RLUS. The significant investment required to upgrade the access and road infrastructure to a suitable standard for the likely increase in traffic generation is a key barrier for this site and is not feasible for the minor gain in affordable housing likely to result.

25 Also, given that only two proposals have been received, it appears that there is limited interest in Area 17 being an 'affordable housing precinct'.

A more detailed assessment of both proposals against the regional and local policy framework is provided below.

30 ***Policy Framework Consistency Assessment***

35 In order to proceed with an amendment to the RLUS, it is important that the location (Area 17, The Saddle Road) is consistent with the relevant policy framework for providing housing within the Byron Shire. To support an amendment to the RLUS the department would require an assessment against the relevant policy framework.

40 The *North Coast Regional Plan 2036*, *North Coast Settlement Planning Guidelines 2019* and the *Rural Land Use Strategy* set out the policy framework for assessing appropriate locations for future residential land use and releases in Byron Shire.

45 Utilising these sites as stand-alone intentional communities poses inconsistencies with a number of key policy directions from the above mentioned plans. These inconsistencies are highlighted below.

Site 1 is the first proposal being 82 The Saddle Road. Site 2 is the second proposal being 219 & 251 The Saddle Road.

Note: the numbering of items in the following tables is based on their numbering in their respective plans.

Table 1 - North Coast Regional Plan 2036

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<i>Principle</i>	<i>Comment</i>	<i>Consistency</i>
Direct growth to identified urban growth areas.	The sites are not located within the Byron Urban Growth Boundary.	Site 1: No
		Site 2: No
<i>Actions</i>	<i>Comment</i>	<i>Consistency</i>
1.3 Identify residential, commercial or industrial uses in urban growth areas by developing local growth management strategies endorsed by the Department of Planning and Environment.	The sites are not located within the Byron Urban Growth Boundary or within the applicable local growth management strategies.	Site 1: No
		Site 2: No
2.1 Focus development to areas of least biodiversity sensitivity in the region and implement the 'avoid, minimise, offset' hierarchy to biodiversity, including areas of high environmental value.	High environmental value vegetation is mapped on a large portion of Site 1. Site 2 is relatively clear of high environmental vegetation mapping although there is some mapped on 251 The Saddle Rd.	Site 1: No
		Site 2: Depends on location of future dwellings
3.1 Reduce the risk from natural hazards, including the projected effects of climate change, by identifying, avoiding and managing vulnerable areas and hazards	While the area is not flood prone and is outside of the coastal strip, parts of both sites are mapped as bushfire prone land.	Site 1: Partly consistent
		Site 2: Partly consistent
6.3 Reinforce centres through local growth management strategies and local environmental plans as primary mixed-use locations for commerce, housing, tourism, social activity and regional services.	Site suitability analysis for 'investigation areas' has been undertaken as part of the draft Residential Strategy. This analysis indicated the subject area as 'an area to be deferred from further consideration until more suitable land (as identified in this Strategy) has been fully developed, or post 2036. The site is not within or adjacent to an identified town/village centre.	Site 1: No
		Site 2: No

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<p>7.1 deliver infrastructure and coordinate the most appropriate staging and sequencing of development.</p>	<p>Infrastructure upgrades may be required, including water and sewer as well as road upgrades, to facilitate any increased development along The Saddle Road.</p>	<p>Site 1: No</p>
	<p>Although the Business & Industrial Lands Strategy identifies possible employment land near the north Gulgan Rd/Brunswick Heads interchange, and this land forms part of the Shire wide infrastructure planning investigations currently underway, the subject sites in this report are outside the scope of these investigations.</p>	<p>Site 2: No</p>
<p>11.3 Identify and protect intensive agriculture clusters in local plans to avoid land use conflicts, particularly with residential and rural residential expansion</p>	<p>There are no intensive agriculture clusters identified in the locality. Site 1 is surrounded by farmland rated agricultural activities to the North, West and East.</p>	<p>Site 1: No</p>
	<p>Site 2 is located well away from the nearest farmland rated agricultural activities to the west, as well as separated by a topographical divide.</p>	<p>Site 2: Yes</p>

<p>21.2 Maximise the cost-effective and efficient use of infrastructure by directing development towards existing infrastructure or promoting the co-location of new infrastructure.</p>	<p>Infrastructure upgrades may be required, including water and sewer as well as road upgrades, to facilitate any increased development along The Saddle Road.</p> <p>Although the Business & Industrial Lands Strategy identifies possible employment land near the north Gulgan Rd/Brunswick Heads interchange, and this land forms part of the Shire wide infrastructure planning investigations currently underway, the subject sites in this report are outside the scope of these investigations.</p> <p>Enabling an eco-community on these sites may compromise the potential of the wider Saddle Road precinct as a longer-term urban release area, particularly from a future infrastructure planning and feasibility standpoint.</p>	Site 1: No
		Site 2: No
<p>22.1 Deliver an appropriate supply of residential land within local growth management strategies and local plans to meet the region's projected housing needs.</p>	<p>An appropriate supply has been established in Councils existing Strategies without the need to incorporate this precinct.</p> <p>Also, enabling an eco-community on these sites may compromise the precincts potential as a future urban release area, particularly from a future infrastructure planning and feasibility standpoint.</p>	Site 1: No
		Site 2: No
<p>23.1 Encourage housing diversity by delivering 40 per cent of new housing in the form of dual occupancies, apartments, townhouses, villas or dwellings on lots less than 400 square metres, by 2036.</p>	<p>Although smaller lots and increased density would put pressure on the agricultural value of the area, such impacts could be minimised by requiring a clustered settlement pattern.</p>	N/A (Sites 1 & 2)

<p>24.1 Facilitate the delivery of well-planned rural residential housing areas by:</p> <ul style="list-style-type: none"> • identifying new rural residential areas in a local growth management strategy or rural residential land release strategy endorsed by the Department of Planning and Environment; and • ensure that such proposals are consistent with the Settlement Planning Guidelines: Mid and Far North Coast Regional Strategies (2007) or land release criteria (once finalised). 	<p>Council has a Rural Land Use Strategy and a Residential Strategy that have been endorsed by the Department. New Settlement Planning Guidelines have been introduced (2019) which any new proposal must be consistent with. Both proposals are inconsistent with the Settlement Guidelines (as discussed below).</p>	<p>Consistency addressed below</p>
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Table 2 - North Coast Settlement Planning Guidelines 2019

<i>Principle</i>	<i>Comment</i>	<i>Consistency</i>
<p>3: Prioritise increased housing diversity and choice in existing urban growth areas</p>	<p>The Saddle Road precinct is not within an existing urban growth area.</p>	<p>Site 1: No</p>
		<p>Site 2: No</p>
Land Release Criteria		
<i>Principle</i>	<i>Comment</i>	<i>Consistency</i>
<p>1. Hazards and Constraints.</p> <p>Primary constraints are generally considered to make the land unsuitable for all types of residential and employment development and should be avoided in most instances when considering land for new urban areas.</p>	<p>The sites are mapped with a number of primary constraints including bushfire prone land, high environmental vegetation and important farmland. Further information would be required to identify Aboriginal cultural significance of the land.</p> <p>Site 1 is completely mapped as important farmland and is mostly occupied by high environmental vegetation and bushfire prone mapping.</p> <p>Site 2 is only partly affected by primary constraint mapping and may be suitable for residential development, depending on the location of future dwellings.</p>	<p>Site 1: No</p>
		<p>Site 2: Mostly consistent</p>

<p>2. Location and Settlement Form.</p> <p>New urban areas are to be either associated with an existing urban area which can provide the day to day needs of the residents, or the new urban area is to be of a suitable scale to permit an appropriate land use mix to provide the day to day needs of residents, such as shopping, recreation, employment and child care.</p>	<p>The Saddle Road precinct is within 5km of the Mullumbimby and Brunswick Heads urban areas, but is not currently easily connected to or associated with these townships. Any development is unlikely to be at a scale that is 'self-contained' and can provide a mix of land uses to provide for daily needs of residents.</p>	<p>Site 1: No</p>
<p>3. Physical and Social Infrastructure.</p> <p>New urban areas need to maximise infrastructure efficiency and service provision and consider servicing viability.</p>	<p>Infrastructure upgrades may be required, including water and sewer as well as road upgrades, to facilitate any increased development along The Saddle Road.</p> <p>Although the Business & Industrial Lands Strategy identifies possible employment land near the north Gulgan Rd/Brunswick Heads interchange, and this land forms part of the Shire wide infrastructure planning investigations currently underway, the subject sites in this report are outside the scope of these investigations.</p> <p>Enabling an eco-community on these sites may compromise the potential of the wider Saddle Road precinct as a longer-term urban release area, particularly from a future infrastructure planning and feasibility standpoint.</p>	<p>Site 1: No</p>
<p>4. Access and Transport Infrastructure.</p> <p>Access to new urban areas and their connection with existing urban areas and local road networks is an essential component of choosing the right location for new urban areas.</p>	<p>Road connection to the Pacific Motorway and nearby towns is available, although considerable upgrades may be required to ensure The Saddle Road can accommodate increased traffic volumes and connect with the existing road network.</p>	<p>Further information needed (Sites 1 & 2)</p>

<p>6. Specific Considerations for Large Lot Residential Land.</p> <ul style="list-style-type: none"> - Large lot residential development, commonly referred to as rural residential development should not be considered an essential component of a local government area's future housing needs, the majority of which should be provided in urban areas. - New large lot residential release areas are to have a direct relationship with a town or village or be clustered with existing large lot residential land to achieve a more resilient community and efficient provision of infrastructure and services. 	<p>Refer to comments in '2' and '3' above.</p>	Site 1: No
		Site 2: No

Table 3 - Rural Land Use Strategy

<i>Our Rural Environment Policy Directions</i>	<i>Comment</i>	<i>Consistency</i>
<p>2. Future rural development will not be supported on sites, or areas within a site:</p> <ul style="list-style-type: none"> - having high environmental value vegetation - generally requiring significant landform modification in the form of excavation or filling 	<p>Most of Site 1 is mapped as containing high environmental value vegetation, with only small parts of Site 2 affected.</p> <p>Due to the topography, some land modification may be required to support additional housing on The Saddle Road Further information would be required to determine this.</p>	Site 1: No
		Site 2: Partly consistent
<i>Our Rural Economy Policy Directions</i>	<i>Comment</i>	<i>Consistency</i>
<p>1. Future rural development will avoid identified state or regionally significant farmland</p>	<p>Site 1 is entirely mapped as regionally significant farmland. Site 2 is partly mapped as regionally significant farmland.</p>	Site 1: No
		Site 2: Partly consistent
<p>2. Future rural development will be located to ensure the protection of existing agricultural land uses and to</p>	<p>Integrating higher density housing along The Saddle Road may be inconsistent with protecting the areas high agricultural values,</p>	Site 1: No

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13.1

protect viability of high quality agricultural land.	unless (in the case of Site 2) delivered via a robust community title scheme centred on primary production and occurring on an economically viable sized parcel.	Site 2: Partly consistent
3. The planning framework will encourage a viable and diverse agricultural industry through appropriate zoning provisions, allotment size and buffers.	Refer to comments above.	Site 1: No
		Site 2: Partly consistent
Criteria for identifying new large lot residential subdivision opportunities (Table 6 in RLUS)		
<i>Criteria</i>	<i>Comment</i>	<i>Consistency</i>
1. Situated west of the Pacific Highway (undeveloped sites only)	Both sites are consistent	Site 1: Yes
		Site 2: Yes
2. Within a 5km radius of a town with a high school	Both sites are within 5km of Mullumbimby	Site 1: Yes
		Site 2: Yes
3. Not identified in a draft or adopted strategy for future urban purposes, or for future village/urban development in this strategy	Both sites are not identified in any Council strategies.	Site 1: Yes
		Site 2: Yes
4. Contains at least 10ha of unconstrained land	Site 1 is only 2 ha. Site 2 is over 23ha but contains approximately 7.5 ha of unconstrained land.	Site 1: No
		Site 2: No
5. Does not require access through constrained land, as identified in Table 1 of the Site Suitability Criteria and Mapping Methodology	Further information required on the location of the dwellings and access	Site 1: Yes
		Site 2: Yes
6. Can be adequately serviced by existing or committed road infrastructure at a standard suitable for the predicted level and type of	Access to the sites via The Saddle Road is not currently at a suitable standard for the level of traffic resulting from increased development on these sites, and	Site 1: No

<p>traffic resulting from development, at no cost to the wider community.</p>	<p>would require significant upgrading.</p> <p>Council's traffic engineer has advised that there would likely be a number of concerns regarding increased development along The Saddle Road, including inadequate sight lines along Mullumbimby Road access, the carriage way width and that part of Saddle Road is unsealed. There are also concerns about increased traffic generation utilising the access along Gulgan Road.</p> <p>Significant upgrades would be required to support an additional 20 dwellings in order to bring the road and access up to standard.</p>	<p>Site 2: No</p>
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Recommendation and next steps

5 As identified in the above tables, there are a number of barriers to including either of these sites in the RLUS for the purpose of an intentional community (in the form of rural-residential housing) within The Saddle Road precinct. Collectively these barriers do not justify support of an amendment to the RLUS and as such, this report recommends:

- not to proceed with amending the RLUS to identify either site for the purpose of providing affordable housing in the form of intentional eco-communities; and
- 10 - notifying the submitters of both EOI proposals of Council's intention not to proceed

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

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CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<p>Community Objective 4: We manage growth and change responsibly</p>	<p>4.2</p>	<p>Support housing diversity in appropriate locations across the Shire</p>	<p>4.2.1</p>	<p>Establish planning mechanisms to support housing that meets the needs of our community</p>	<p>4.2.1.2</p>	<p>Amend Rural Land Use Strategy to include priority site/s for future rural lifestyle living opportunities in the form of 'intentional' communities'</p>

Legal/Statutory/Policy Considerations

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

Financial Considerations

N/A at this time.

5 *Consultation and Engagement*

Consultation with the land owners is outlined in this report.

Report No. 13.2 PLANNING - 26.2019.7.1 - Submissions Report Old Byron Hospital Planning Proposal

Directorate: Sustainable Environment and Economy

Report Author: Sam Tarrant, Planning Support Officer

5 **File No:** I2020/432

Summary:

10 In November 2019 Council resolved (**19-561**) to forward the planning proposal for the former Byron hospital site to the Department of Planning, Industry and Environment for a Gateway determination and following a positive Gateway, proceed to public exhibition.

15 Gateway was received on 7 January 2020. The planning proposal was placed on public exhibition from 19 February to 20 March 2020.

One public submission and three agency submissions were received. These submissions are addressed within this report.

20 One administrative change to the planning proposal is necessary, updating the additional permitted use map from "Area F" to "Area G".

No other changes to the planning proposal are recommended.

25 It is recommended that the planning proposal be forwarded to the Parliamentary Counsel's Office for finalisation.

NOTE TO COUNCILLORS:




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

35

RECOMMENDATION:

1. **That Council forward the planning proposal to amend Byron LEP 2014, as included in Attachment 1 (E2020/23102), to NSW Parliamentary Counsel's Office (PCO) requesting that a draft LEP instrument be prepared.**
2. **That Council liaise with PCO as necessary to finalise the content of the draft LEP and to enable PCO to issue an opinion that the plan can be made.**
3. **That Council make the draft LEP under delegated authority and forward the plan to the NSW Department of Planning, Industry and Environment for notification on the NSW Government legislation website.**

Attachments:

- 40
- 1 26.2019.7.1 Planning Proposal Byron Hospital Site Post Exhibition Version, E2020/23102 
 - 2 26.2019.7.1 Combined submissions redacted, E2020/21474 
 - 3 Form of Special Disclosure of Pecuniary Interest, E2012/2815 

REPORT

Background

5 In May 2019 Council resolved (**19-223**) to purchase the old Byron hospital site from NSW Health Administration Corporation and classify it as operational land.

10 The Byron community has been instrumental in liaising with Council and NSW Health to ensure the site continues to provide for the community.

15 In July 2019 Council noted (**19-286**) the intention of the community steering committee to form a not-for-profit incorporated association to manage the project and nominated the incorporated association formed by said group to be the direct lessee for the site.

20 The steering committee, with support from Council, put together a proposal to adaptively reuse the building for a range of community uses, including education, community facilities and administrative offices for arts, community and welfare organisations. There is also a desire to adaptively reuse the previous hospital kitchen as a commercial kitchen available for hire.

25 In order to facilitate these uses on the site, Council prepared a planning proposal and resolved (**19-561**) to seek a Gateway determination from the Department of Planning, Industry and Environment and proceed to public exhibition.

30 The planning proposal seeks to include a Schedule 1 amendment to Byron LEP 2014 to permit office premises, light industry, being for a commercial kitchen with a maximum floor space of 100m² and restaurant/café for the old Byron hospital site.

35 This amendment will enable these uses to be permissible for this site.

Public Exhibition

35 The planning proposal was placed on public exhibition from 19 February to 20 March 2020. The planning proposal was advertised in the Echo and on Councils website. A letter was sent out to notify the adjoining landowners.

Relevant agencies were notified of the planning proposal and asked to provide comment as per the Gateway determination. The agency responses are as follows.

<i>Agency</i>	<i>Staff response</i>
<i>Transport for NSW</i>	
Raise no objection to the amendment proposed.	Noted.
Suggest a traffic impact assessment (TIA) be prepared for any significantly different land uses, such as an educational establishment and be referred to Transport for NSW for comment.	Noted. This will be considered when further details are known on the scale of each proposed land use, and would be addressed in subsequent development applications.
For future development of the site council should be satisfied that the impact of turning and through traffic is addressed.	Noted. To be addressed in subsequent development applications.
Service vehicles should leave the site in a forward manner.	Noted. To be addressed in subsequent development applications.
Regulatory signs and devices will require	Noted. To be addressed in subsequent

endorsement of the local traffic committee.	development applications.
Consideration should be given to public and active transport.	Noted. To be addressed in subsequent development applications.
Department of Premier and Cabinet (Heritage Division)	
No direct impact on any State heritage items. However, the site is within Shirley Street Conservation Area listed under the LEP. Given the low impact of the proposal it is considered that it will not have a significant impact on the conservation area.	Noted.
NSW Rural Fire Service	
Raise no objection to the planning proposal	Noted
Recommends that Council develop a site vegetation management plan that incorporates bush fire risk and minimises on site fuel loads	To be addressed in subsequent development applications.
Recommends that Council develops a bush fire and evacuation plan in accordance with <i>Planning for Bush Fire Protection 2019</i>	To be addressed in subsequent development applications.
Tweed Byron Aboriginal Land Council	
No response received.	

One public submission was received and is addressed below.

- 5 The submission does not object to the planning proposal but identifies issues that should be considered with any redesign and operation of the site to minimise impacts on neighbours. The issues raised are not directly applicable to the planning proposal process and can be addressed at the development application stage. These points will be passed onto the steering committee and those involved with the redesign and reuse process and can be addressed in subsequent
- 10 development applications.

Issue raised
That access be via Shirley St. and Wordsworth St. with no general vehicle access via Shirley Lane.
Smoking and gathering areas not be situated adjacent to the neighbouring residential property.
The old loading dock backing onto Shirley Lane be decommissioned.
Sound and lighting associated with the repurpose not impact on adjoining neighbours
Maintenance is required with regard to fencing and landscaping.
A pedestrian connection between Shirley Lane and Shirley St. should be included.
Rubbish bins should be placed in Wordsworth St.
Trees in the property require maintenance and are currently a fire and storm hazard

The agency and public submissions are attached to this report (Attachment 2).

Next steps

- 15 This planning proposal will be forwarded to the Parliamentary Counsel's Office for legal drafting.

Additional work will be required to progress development applications for the new uses permitted under this LEP amendment.

Work is continuing with regard to remediation of the site and building.

5

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	4.1.1.8	Amend Local Environmental Plan and Development Control Plan in accordance with Byron Hospital plan

10

Legal/Statutory/Policy Considerations

This planning proposal will amend the Byron LEP 2014

15

Financial Considerations

Council initiated proposal. Funded through existing Council operating budget.

20

Consultation and Engagement

Outlined within this report.

Report No. 13.3 **PLANNING - 26.2018.2.1 The Linnaeus Estate - Options for proceeding with Community Title Subdivision**
Directorate: Sustainable Environment and Economy
Report Author: Steve Daniels, Project Officer - Planning Reforms
5 **File No:** I2020/301

Summary

10 This report is in response to **Resolution 20-158** from the 16 April Planning Meeting where Council resolved as follows in response to Report No 13.7 - PLANNING - 26.2018.2.1 Linnaeus Estate Planning Proposal - Submissions Report:

Resolved:

- 15 1. *That Council defer consideration of the planning proposal.*
2. *That Council request staff to notify the applicant of this decision.*
- 20 3. *That Council request staff to hold without prejudice 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.*
- 25 4. *That Councillors participate in a session at a Strategic Planning Workshop within this timeframe to gain further information on this matter.*
5. *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.*
- 30 6. *That these discussions also consider the matter of establishing a Voluntary Conservation Agreement to ensure creating protective design and infrastructure in place that clearly delineates revegetation areas, protection zones particularly littoral rainforest and wetland rehabilitation, prior to any granting of further development.*
- 35

 By way of background, 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.

40

 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.

45

 A report was considered by Council at the 16 April 2020 Council Planning Meeting (Report 13.7) https://byron.infocouncil.biz/Open/2020/04/PLAN_16042020_AGN_1157.PDF which concluded that the exhibited planning proposal does not achieve its stated objectives due fundamental errors in the way the existing and proposed LEP Controls for this site apply to land zoned *SP1 Special Activities – Mixed use development*. The report also noted that part of the subject land is located within what is highly likely to be the coastal erosion zone; therefore a current coastal hazard study is considered necessary if Council is to give adequate consideration to coastal erosion risks.

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5 Following consideration of the report, Council resolved that staff hold without prejudice discussions with the proponent 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 the report. Discussions also considered the matter of establishing a Voluntary Conservation Agreement for the site.

Discussions were held with the proponent on 27 April 2020 and 1 May 2020. This report includes the outcome of those discussions.

10 The proponent has indicated that they will be submitting a DA for Community Title subdivision as permitted by the existing planning controls and is committed to implementing an appropriate *Biodiversity Conservation Act 2016* Conservation Agreement for the site.

15 This report recommends that the current planning proposal be amended in a manner that achieves Council's objectives for the site, and that the proposed changes be reported to Council for consideration. It is considered critical that the proponent provide a coastal hazard study to support the planning proposal (and DA). The proponent has indicated support for this approach in discussions with Council staff.




20 **NOTE TO COUNCILLORS:**

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

RECOMMENDATION:

1. **That Council note the report PLANNING - 26.2018.2.1 The Linnaeus Estate - Options for proceeding with Community Title Subdivision.**
2. **That Council support the preparation of an amended planning proposal for Lot 1 DP 1031848, Broken Head Road, Broken Head (The Linnaeus Estate) that rectifies the issues noted in this report.**
3. **That Council require the proponent to provide a current coastal hazard study that informs the amended planning proposal to Council's satisfaction.**
4. **That Council receive a further report that considers (i) proposed amendments to the planning proposal, (ii) the outcomes of the coastal hazard study, and (iii) submissions that were received during the public exhibition period.**
5. **That Council support staff to continue to engage with the proponent to ensure that any DA lodged in relation to this site is consistent with Council's objectives for the amended planning proposal.**

Attachments:

- 30
- 1 26.2018.2.1 Planning Proposal – Linnaeus Estate Broken Head - Version 2 - Public Exhibition Version - amended 24 7 19, E2019/54171 
 - 2 26.2018.2.1 Gateway Determination - Linnaeus Estate, E2019/39583 
 - 3 Form of Special Disclosure of Pecuniary Interest, E2012/2815 
- 35

REPORT

Background

5 On 16 April 2020, Council considered a submissions report following public exhibition of a planning proposal relating to land at Lot 1 DP 1031848, Broken Head Road, Broken Head (The Linnaeus Estate, Broken Head).

10 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



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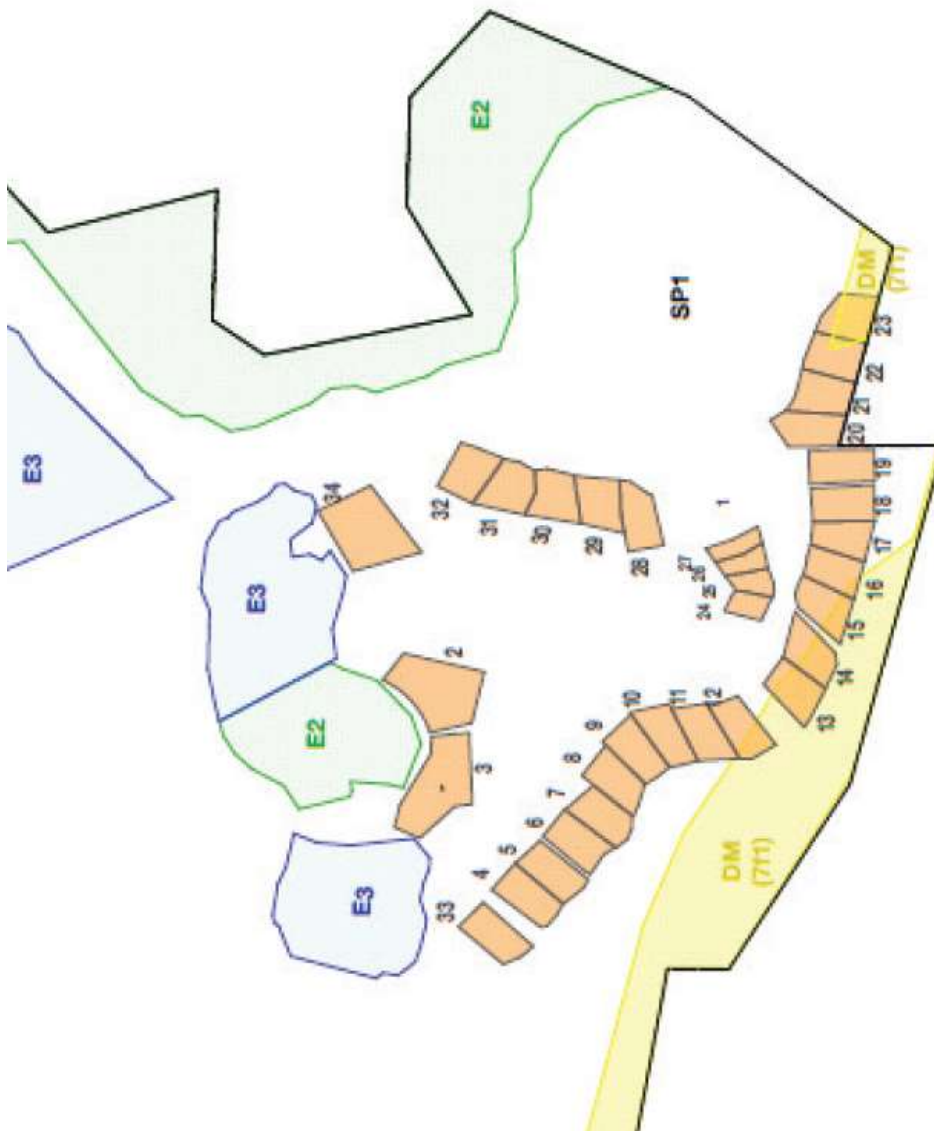
Planning Proposal

20 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

(subject to the findings of an updated coastal hazard study), with existing zones shown on the map.

5 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



10

Issues raised in the 16 April 2020 Submissions Report

15

The 16 April 2020 submissions report detailed a range of issues that prevent the exhibited planning proposal from achieving its key objectives of regulating community title subdivision and permitted land uses on the site.

A brief summary of these issues is provided below:

Issues relating to Byron LEP 2014 controls for the subject land

- 5 • The “zone objectives” of the *SP1 Special Activities* 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. Therefore, any number of uses could be subject to a DA under this label and objectives. For this reason, the objectives of the planning proposal that relate to land use cannot be achieved under the current zoning. The resulting permitted land uses do not align with the intended land uses envisioned by Council or the DPIE.
- 10 • *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 that is already permissible. This means that the Schedule 1 clause cannot restrict use of the neighbourhood lots to the purpose of dwellings (as per the planning proposal) due to the current zoning of the land allowing for any 2 or more uses. Additionally, dwellings are a permitted use under the zoning, making the proposed additional permitted use provision redundant. This is primarily a result of the current *SP1 Special Activities* zoning and ‘mixed used development’ label discussed above.
- 15 • The existing Byron LEP 2014 community title subdivision controls 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. That is, Community title subdivision is already permitted in the SP1 Zone on the subject land and the number of lots is not restricted. For this reason, *Byron LEP 2014 Schedule 1 – Additional Permitted Uses* cannot be used to restrict future community title subdivision of the land to 33 neighbourhood lots with 1 lot for association property (as intended by the current planning proposal).
- 20 •
- 25 •

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

- 30 • There is concern 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.
- 35 • At the present time, a study has not been prepared that adequately establishes coastal erosion processes south of Broken Head and on the subject land in particular. The planning proposal cannot respond to, or effectively manage coastal erosion risks in the absence of this study. In these circumstances, Council is unable to make an informed decision in good faith as per section 733 Local Government Act.
- 40 •

40 Following consideration of the 16 April 2019 Council report, **20-158** resolved:

1. *That Council defer consideration of the planning proposal.*
2. *That Council request staff to notify the applicant of this decision.*
- 45 3. *That Council request staff to hold without prejudice 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.*
- 50 4. *That Councillors participate in a session at a Strategic Planning Workshop within this timeframe to gain further information on this matter.*

5. *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.*

5 6. *That these discussions also consider the matter of establishing a Voluntary Conservation Agreement to ensure creating protective design and infrastructure in place that clearly delineates revegetation areas, protection zones particularly littoral rainforest and wetland rehabilitation, prior to any granting of further development.*

10 ***Discussions with the proponent and agreed outcomes***

In accordance with items 3 and 6 of the above resolution, Council staff held without prejudice discussions with the applicant. The outcomes are summarised below:

15 Key issues discussed on 27/4/20 and 1/5/20

- Staff discussed with the proponent the range of issues noted in this report. The details of an amended planning proposal to rectify these issues were considered.
- 20 • Staff advised that under the current planning controls, the proponent has the option to submit a DA for Community Title subdivision and conversion of approved accommodation units to dwellings. The proponent indicated that they will pursue this option.
- Options for planned retreat in relation to coastal erosion risks were discussed.
- Staff advised that a coastal study identifying the location of the erosion escarpment and establishing future coastal erosion risks is required for any DA or LEP amendment going forward. The proponent has agreed to satisfy this requirement and will be submitting an updated coastal hazard study for the subject land.
- 25 • Staff and the proponent agreed that the development application and amended planning proposal can proceed concurrently.

30 Proponent to lodge DA for Community Title subdivision

The proponent has indicated that they will be submitting a DA for Community Title subdivision as permitted by the existing planning controls. The proposed plan of subdivision seeks to create 33 neighbourhood lots and 1 lot for association property. The community title subdivision changes the tenure model for the site; however it does not result in an expansion of development.

Neighbourhood lots will be located in the *SP1 Special Activities* zone and align with approved accommodation units located within that zone. It is worth noting that some of the existing accommodation units encroach into the *7(f1) Coastal Lands Zone*. Under the NSW planning system the applicant has the option to seek a variation to development standards if an encroachment of the lot into the *7(f1) Coastal Lands Zone* can be justified. Among other considerations, any such justification would need to be supported by the updated coastal hazard study. The association lot will encompass the remainder of the site.

45 As noted above, some of the existing accommodation units encroach into the *7(f1) Coastal Lands Zone* and/or may be at risk of coastal erosion processes, therefore a planned retreat strategy is necessary as part of any subdivision approval. Vacant 'relocation lots' can be created in a suitable location in the *SP1 Special Activities* zone to allow for the orderly relocation of these buildings, and corresponding conditions of consent can be applied as necessary. It is important to note that the plan of subdivision and planned retreat strategy will be informed by a coastal hazard study that identifies the location of the immediate erosion escarpment and establishes long-term coastal erosion risks in this area, as well as the framework prescribed in Council's DCP 2010 Chapter 1 Part J.

- 5 DCP 2010 Part J requires that a building be relocated or demolished if the erosion escarpment comes within 50 metres of the building line. If the coastal study finds that an existing building is already in breach of this rule, then a corresponding neighbourhood lot will not be created in that location. However, a corresponding 'relocation lot' will only be provided subject to relocation conditions being applied to the existing development consent for the subject building. This is because relocation conditions were not applied to the original consent conditions for some buildings on the site.
- 10 The proponent has also indicated that they will seek to amend current approvals to replace 11 of the 3 bedroom accommodation units with 27 one bedroom eco tourism cabins/treehouses. This would result in a slight reduction in the total number of bedrooms currently approved on the site and is a permitted use under the existing *SP1 Special Activities* zoning.
- 15 Proponent to implement a Conservation Agreement for the site
- The proponent has indicated a commitment to implementing an appropriate *Biodiversity Conservation Act 2016* Conservation Agreement for the site. Proposed details of the Conservation Agreement are expected to form part of the DA to be submitted by the proponent. Consideration of the Conservation Agreement would take place under that process, or under the planning proposal process if necessary (under [Section 7.4 of the Environmental Planning & Assessment Act](#)).
- 20 Council to prepare an amended planning proposal addressing issues noted in this report
- 25 This report seeks Council's support for the preparation of a planning proposal that amends Byron LEP 2014 and Byron LEP 1988 in a manner that addresses the issues noted in this report and achieves Council's objectives in relation to this site. It is anticipated that the amendment will include the rezoning of land zoned *SP1 Special Activities* to an *E4 Environmental Living* zone, and will include an Additional Permitted Uses clause to manage land use. Consequential amendments will also be required to certain clauses in Byron LEP 2014 that regulate community title subdivision.
- 30 The coastal study that informs the impending DA will also inform the amended planning proposal for this site. It is anticipated that the planning proposal will include provisions that enable Council to manage land use in accordance with the coastal erosion risks identified in the study.
- 35 The development application lodged by the proponent and the planning proposal initiated by Council will need to be complementary in terms of outcomes for this site, and it is expected that both will progress concurrently.
- 40 ***Consideration of submissions lodged during the public exhibition period***
- 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.
- 45 The 16 April Council report noted that the exhibited planning proposal could not proceed due to fundamental issues with the proposed planning controls. For this reason, submissions could not be addressed in a meaningful way and hence did not form part of that report.
- 50 This report recommends that Council receive a further report to consider an amended planning proposal that deals with these fundamental issues. It is appropriate that the submissions already received during the public exhibition period be considered in that report.

Recommended path forward

Having regard to the information presented in this report, it is recommended that Council:

- 5 1) Support the preparation of an amended planning proposal that rectifies the issues noted in this report, with the proposed amendments to be considered under a separate report to Council.
- 2) Require the proponent to provide a current coastal hazard study that informs the amended planning proposal to the satisfaction of Council.
- 10 3) Receive a further report that considers (i) proposed amendments to the planning proposal, (ii) the outcomes of the coastal hazard study, and (iii) submissions that were received during the public exhibition period.
- 15 4) Continue to liaise with the proponent to ensure that any development application lodged in relation to this site is consistent with Council’s objectives for the amended planning proposal.

STRATEGIC CONSIDERATIONS

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

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

Legal/Statutory/Policy Considerations

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

Financial Considerations

30 If Council chooses to proceed with the above recommendations, further costs may be accrued in relation to the preparation of an amended planning proposal. As the amended planning proposal is being initiated by Council, it is appropriate that associated costs will be borne by Council. However, it should be noted that the proponent is expected to fund the updated coastal study in relation to the subject land.

Consultation and Engagement

35 Consultation has been undertaken for the existing planning proposal in accordance with the Gateway determination. If Council chooses to amend the planning proposal as recommended in this report, a further report that details the proposed amendments will be presented for Council’s consideration. It is expected that further consultation will be required in relation to an amended planning proposal.

40

Staff have had ongoing discussions with the applicant as presented in this report.

Report No. 13.4 PLANNING - Byron Shire Affordable Housing Contribution Scheme and Planning Agreements Policy and Procedure

Directorate: Sustainable Environment and Economy

Report Author: Natalie Hancock, Senior Planner

5 **File No:** I2020/402

Summary:

10

The draft Byron Shire Residential Strategy sets out a land-use vision that includes addressing housing affordability.

15

Council on 11 April 2019, in response to a report on State Environmental Planning Policy No 70 Affordable Housing (Revised Schemes) (SEPP 70) resolved amongst other items, **Res19-152:** to prepare planning agreement policy for Byron Shire .The purpose of this report is to provide Council with a draft Byron Shire Affordable Housing Contribution Policy (Attachment 1) and supporting Procedures (Attachment 2) setting a framework to advocate for, facilitate, provide and manage affordable housing contributions in Byron Shire.

20

Analysis supporting the draft Residential Strategy identified limited opportunities for the market to meet the demand for affordable housing in Byron LGA and significant underlying demand for affordable housing. The analysis concluded that there is a gap between the current needs and supply of rental accommodation for very low, low, and moderate income households and so the collecting of affordable housing contributions by Council, where the development remains viable, is warranted.

25

The purpose of this report is to seek Council support to publicly exhibit draft Byron Shire Affordable Housing Contribution Policy setting a framework to advocate for, facilitate, provide and manage affordable housing contributions in Byron Shire acquired through a planning agreement or delivered through an affordable housing contribution scheme.

30

In addition, this report provides an update on the status of the establishment of a SEPP 70 Affordable Housing Contribution Scheme for Bryon Shire.

35




RECOMMENDATION:

1. **That Council adopt the Draft Byron Shire Affordable Housing Contribution Policy in Attachment 1 (E2020/33355) and accompanying Procedures Attachment 2 (E2020/33359) and place the documents on public exhibition for minimum a period of 28 days.**

2. **That following exhibition, Council receive a further report detailing submissions made. Should there be no submissions as of the close of the exhibition period, that Council adopt the Draft Byron Shire Affordable Housing Contribution Policy in Attachment 1 (E2020/33355) and accompanying Procedures Attachment 2 (E2020/33359).**

Attachments:

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- 1 Attachment 1 Draft Byron Shire Affordable Housing Contribution Policy, E2020/33355 
- 2 Attachment 2 Procedures to accompany draft Byron Shire Affordable Housing Contribution Policy, E2020/33359 
- 3 Special Disclosure of Pecuniary Interest Annexure, E2012/2815 

45

REPORT

The draft Byron Shire Residential Strategy sets out a land-use vision that includes housing affordability.

5 Council on 11 April 2019, in response to a report on State Environmental Planning Policy No 70 Affordable Housing (Revised Schemes) (SEPP 70) resolved amongst other items, (**Res19-152**) to prepare planning agreement policy for Byron Shire. The purpose of this report is to provide Council with a draft Byron Shire Affordable Housing Contribution Policy (Attachment 1) and supporting
10 Procedures (Attachment 2) setting a framework to advocate for, facilitate, provide and manage affordable housing contributions in Byron Shire.

15 Analysis supporting the draft Residential Strategy identified limited opportunities for the market to meet the demand for affordable housing in Byron Shire and significant underlying demand for affordable housing. The analysis concluded that there is a gap between the current needs and supply of rental accommodation for very low, low, and moderate income households and so the collecting of affordable housing contributions by Council, where the development remains viable, is warranted.

20 The purpose of this report is to seek Council support to publicly exhibit a draft Byron Shire Affordable Housing Contribution Policy and Procedures setting a framework to advocate for, facilitate, provide and manage affordable housing contribution in Byron Shire.

25 While this Policy is not legally binding, it is intended that the Council and all persons dealing with Council in relation to affordable housing contributions will follow this policy to the fullest extent possible. The Procedures for Affordable Housing Contributions is intended to assist with implementation of the policy and to allow for more responsive approaches, including shorter review cycles and realistic resource allocations.

30 **Key aspects**

Why is the policy warranted?

35 One of the objectives of *the Environmental Planning and Assessment Act 1979 (the Act)* is to promote the delivery and maintenance of affordable housing. To do this *the Act* incorporates a number of enabling mechanisms.

In the case of Byron Shire, Council has or is in the process of activating the following mechanisms:

- 40 • Local Environmental Plan 2014 Additional local provisions Clause 6.7 Affordable housing in residential and business zones to enable imposing conditions relating to providing, maintaining or retaining affordable housing - currently operational.
- 45 • Planning Agreements with negotiated terms for affordable housing contributions as part of the early implementation affordable housing project.
- SEPP 70 Affordable Housing Contribution Scheme (AHCS) for lands that undergo an upzoning.

50 *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 on a site.

55 Regulations, S119 Directions and the [Guidelines for Development Affordable Housing Contribution Schemes \(NSW Govt. Feb 2019\)](#) all help to inform the terms under which contributions for affordable housing can be accepted/required. [Environmental Planning and Assessment \(Planning](#)

[Agreement\) Direction 2019](#) requires Council to prepare and publish a policy that sets out the circumstances in which it may negotiate a Planning Agreement for affordable housing contributions.

- 5 An Affordable Housing Contribution Policy (Policy) provides a local context by setting out how Council intends to operate the contribution framework in Byron Shire for housing acquired through a planning agreement or delivered through an affordable housing contribution scheme.

Who will be informed by this policy?

- 10 While this Policy is not legally binding, it is intended that the Council and all persons dealing with Council in relation to affordable housing contributions will follow this Policy to the fullest extent possible. The Policy (Attachment 1) identifies guiding objectives. The objectives are to:
- 15 i. ensure that the Council's affordable housing contributions framework is efficient, fair, transparent and accountable.
- ii. encourage and adopt innovative and flexible approaches to the provision of affordable housing in a manner that is consistent with Byron Shire Council's strategic and infrastructure plans and as so enabled under *the Act*.
- 20 iii. give local communities greater clarity about affordable housing contribution schemes in Byron Shire by Council.
- 25 iv. give local communities greater clarity about affordable rental housing planned in their local area.
- v. establish a framework governing the use of Planning Agreements by Council for affordable housing contributions.
- 30 vi. identify the circumstances in which Council will and those where Council will not consider entering a Planning Agreement and the contribution form that is acceptable to Council.
- 35 vii. supplement, but not replace or be in lieu of, the application to development of Byron Shire Developer Contributions Plan established under *the Act*.
- viii. give stakeholders greater involvement in determining the type, standard and location of affordable housing and other public benefits.
- 40 ix. allow the community, through the community participation process under the Act, to agree to the redistribution of the costs and benefits of development in order to realise the community preferences for the provision of affordable housing.

What is the intent of the policy?

45 The draft Policy contains statements of intent setting out Council's policy position for facilitating, considering and accepting affordable housing contributions. The draft Policy includes amongst the statements of intent, a number of which have previously not been made clear by Council to developers and the community. These particular 'intents', are drawn from draft Residential Strategy and the ongoing SEPP 70 Affordable Housing Contribution Scheme analysis state Council:

50

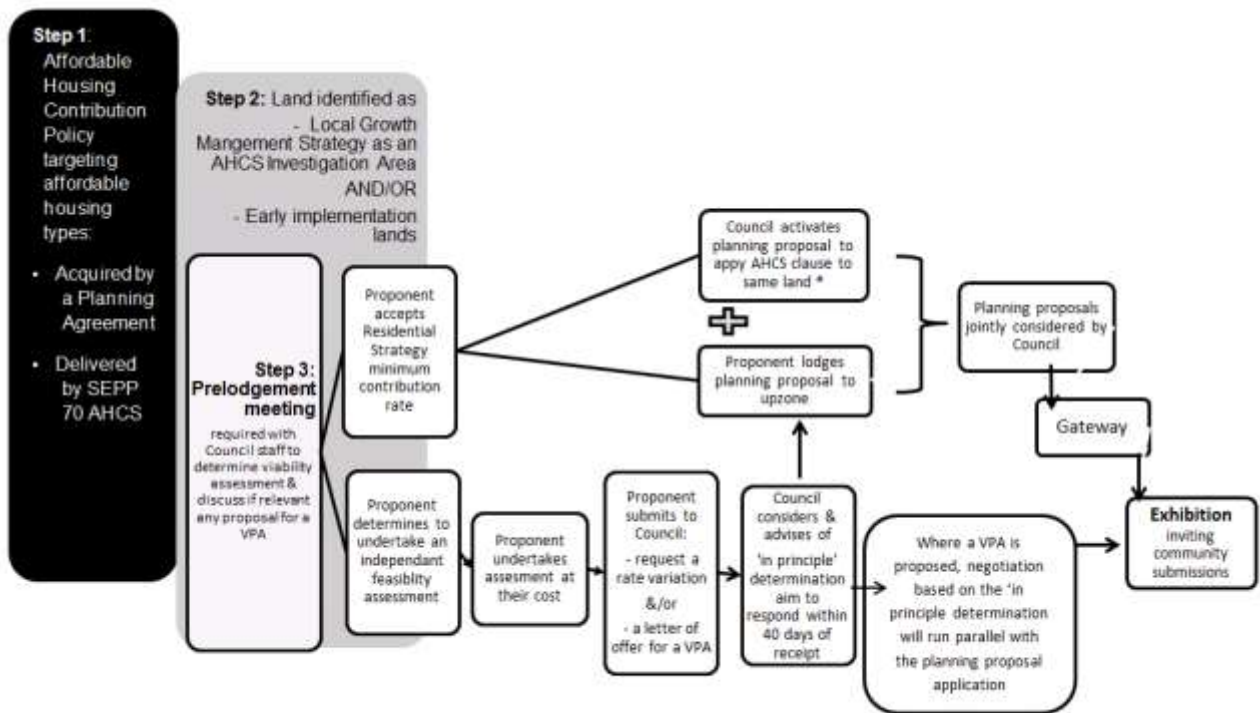
1. Supports a target of about of 60 -70 rental units for very low to moderate income households via development affordable housing contribution schemes in the urban areas over the next 15 to 20 years.

55

2. Favours affordable housing contributions that improve the supply of smaller dwellings (1- 2 bedroom) such as self contained units in retirement villages, residential flat buildings and multi-dwelling housing suited to smaller households.
- 5 3. Seeks the concurrent application of a SEPP 70 Affordable Housing Contribution Scheme clause over land subject to an upzoning.
4. In all cases, will determine the affordable housing contribution form, in order to:
 - a) Support a more even distribution of affordable housing within urban areas
 - 10 b) Improve housing choice, diversity and equity
 - c) Promote affordable housing principles.
- 15 5. Supports, where appropriate, use of Local Environmental Plan (LEP) maps to help illustrate what is the preferred affordable housing contribution form for certain land.
6. Supports engaging with developers on Planning Agreements for the provision of affordable housing however, acceptance of an offer to enter into a Planning Agreement is at the absolute discretion of Council.
- 20 7. Respects in setting contribution rates, the NSW government policy position of a need for a developer's ability to achieve an investment return in order to maintaining a sustainable development market and continued housing supply.
- 25 8. Guides the Residential Strategy to set a minimum affordable housing contribution rate for areas based on Council's understanding of development feasibility.

How does the policy and procedures guide the contribution making process?

To assist Council, developers and the community understand the contribution process the policy is accompanied by a set of procedures including a flow diagram for upzoning processes. A copy of the diagram is shown below:



even if the proponent offers a voluntary planning agreement, Council will seek to apply an AHCS clause for the land in LEP 2014

Key points in the contribution process

- 5 • The use of the term *proponent* means the landowner and/or developer making a development application or a request for an LEP instrument change.
- 10 • Even if the proponent offers a voluntary Planning Agreement for affordable housing, Council will seek to apply an AHCS clause for the land in LEP 2014. The basis for this is to cover instances where the Planning Agreement falls over or where further upzonings are sought after the initial upzoning.
- 15 • Even though the Residential Strategy will set a contribution rate, scope will be provided for proponents to as part of a planning proposal for the upzoning and AHCS undertake an independent viability testing for their individual precincts/project.
- 20 • Council may negotiate an alternative contribution rate request by a proponent in connection with any upzoning planning proposal. A report containing the independent viability testing undertaken in line with the Guidelines for Development Affordable Housing Contribution Schemes (NSW Govt. Feb 2019) will need to be undertaken at the proponent's expense and submitted with the request.
- 25 • Before undertaking an independent viability testing a planning proposal pre-lodgement meeting is to be held with Council staff to discuss the upzoning, alternative contribution rate request and set terms for the testing.
- 30 • An offer for a Planning Agreement or a request for a contribution rate variation is to be made in writing to the Council by the developer before lodging a planning proposal application.
- 35 • Council will aim to consider the offer/request within 40 days of receipt and advise of the proponent of the 'in principle determination' to enable the proponent to progress with the lodgement of the planning proposal. This 'in principle' determination will provide the basis for the Planning Agreement negotiation and preparation of the AHCS. The Policy includes capacity for Council to delegate this advisory determination process in the interest of efficiency.
- 40 • The acceptance of a request for an alternative contribution rate and/or offer for a Planning Agreement is at the absolute discretion of Council.

40 The pre-lodgement meeting and offer for a Planning Agreement or a request for a contribution rate variation steps will assist Council and the proponent to reach agreement on the key issues and information necessary to justify further consideration of the proposed change to land use or development controls. It will also ensure that a proponent does not commit time and resources undertaking unnecessary studies or preparing information that does not address the main areas of concern with appropriate detail.

45 ***Where are affordable housing contributions anticipated?***

The procedures supporting the Policy set the form under which a contribution may be accepted:

50 In case of AHCS, Council can determine an affordable housing contribution in the following forms:

- a) a percentage of dedicated floor space
- b) land (may be part of the said land, or other land of the applicant)
- c) monetary contribution or
- d) combination of the above

55

In the case of a Planning Agreement, the Policy limits the contribution form to land only. The land must be fit for residential purpose.

Included in the Policy 'statements of intent' is one that states;

5 *Council guides the Residential Strategy to set a minimum affordable housing contribution rate for areas based on Council's understanding of development feasibility.*

The procedures provide more detail as to the likely rates and where housing may be delivered:

10 **Greenfield Investigation Areas**

- Mullumbimby private land greenfield housing contribution areas: 5% of the additional lots or developable areas whichever the greater that is to be used for residential uses
- 15 • Mullumbimby Council land greenfield housing contribution areas: 15% of the additional lots or developable areas whichever the greater that is to be used for residential uses.
- Bangalow greenfield housing contribution areas: 5% of the additional lots or developable areas whichever the greater that is to be used for residential uses.
- 20 • Belongil greenfield housing contribution area: 5% of the additional lots or developable areas whichever the greater that is to be used for residential uses.

Infill Investigation Areas

- Mullumbimby old hospital Council land housing contribution area: 15% of the additional dwellings or total gross floor area that is to be used for residential uses
- 25 • Byron Bay Town Centre housing contribution area: 3% of the additional total gross floor area that is to be used for residential uses and 1% of non- residential total gross floor area

30 The above contribution rates are a work in progress at this time, figures will be further rationalised as part of the implementing of an AHCS. They are considered to be reasonably reflective of what may be expected based on maintaining development viability. The rate is set at a higher level for Council land as it is assumed Council will not be seeking the same return on investment margin as a property developer. The private land feasibility includes a 10 - 15% risk margin, usually expected by financiers.

35 The Policy continues on to state that... *in the interest of transparency, Table 1: Investigation areas affordable housing yield shows potential affordable dwellings yields for each area when applying the above rates.* The areas listed have been publicly exhibited as an investigation upzoning in forward planning documents and/or a planning proposal.

40 **Table 1: Investigation areas affordable housing yields**

Area	Potential rental affordable housing yield	Activating referencing document
Mullumbimby non Council land	17 dwellings	Residential Strategy
Mullumbimby Lot 22	15 dwellings	Residential Strategy
Mullumbimby old hospital	10 dwellings	Mullumbimby Master Plan
Bangalow	5 dwellings	Residential Strategy
Belongil	1 dwelling	Residential Strategy
Byron Bay town centre	10 dwellings	Byron Town Centre Master Plan & 26.2017.6.1 Planning Proposal – FSR removal

Will it apply to all development in these areas?

The Guidelines for AHCS require an affordable housing contribution scheme to clearly state the types of development that are exempt from a contribution levy and why. The Procedures guides exemptions, with sample below:

- 5
- community facilities
 - residential purposes that will result in the creation of less than 200 square metres of total floor area or
 - 10 • non-residential purposes that will result in the creation of less than 60 square metres of total floor area or
 - refurbishment of non-residential or residential development when no change of use or increase in floor space areas occurs
 - child care centres
 - 15 • schools.

Using the Procedures as overarching guidance on possible exempt developments, as well as the LEP 2014, the AHCS could provide a statutory list of exemptions, most likely in a schedule. As a proposed AHCS is required to be exhibited, the process is open and transparent to the community as to what is exempted from a levy.

20

What is intended on receipt of contributions?

The Procedures indicates that Council will establish an affordable housing delivery program articulating terms guiding contribution collection, responsibilities of a private certifier, contribution administration, administrator selection and accountability.

25

They also indicate intent of Council to retain ownership of the assets and to select one or more non-profit housing organisations to deliver and manage housing generated under affordable housing contributions.

30

How do the Policy, Procedures and SEPP 70 Affordable Housing Contribution Scheme work together?

The Policy and Procedures provides a framework for housing contributions to be acquired through a planning agreement or delivered through an affordable housing contribution scheme.

35

As reported to the December 2019 Council meeting, work is progressing on an affordable housing contribution scheme under SEPP 70 for Byron Shire. Since December, feasibility investigations have:

40

- established a need for affordable housing; and
- determined that a scheme would have a general 'likely viability' on certain proposed new release residential lands in the Shire.

45

At this stage, Council initiated planning proposals such as Lot 22, Mullumbimby upzoning are anticipated to be the initial land in Byron Shire to which an affordable housing contribution scheme will be applied.

Staff have sought Departmental of Planning, Industry and Environment input on the proposed pathway for introduction of the scheme focusing on:

50

- i. The ability for Council, concurrent to processing a rezoning request, to seeking an amendment of Byron LEP 2014 so as to applying a SEPP 70 AHCS clause

55

- ii. The inclusion of 'land' as a contribution form option
 - iii. Use of LEP Maps to depict differing contributions forms within specific identified lots/areas.
- 5 Verbal advice received to-date indicates that this approach, may be acceptable to the Department and that Council could expect a formal response over the coming weeks.

On this basis, the Affordable Housing Contribution Policy has been framed.

10 ***Next steps for the draft Policy***

This Policy although not legally binding is necessary to provide Council and all persons dealing with Council guidance in relation to a AHCS.

15 As staff are currently drafting AHCS clauses in LEP 2014 for Council lands and require a policy on Planning Agreements for affordable housing contributions, it recommended that Council adopt for public exhibition the attached draft Byron Shire AHCS and Procedure; and:

- 20 a) should no submissions be received, be determined as adopted from date that public exhibition closes.
- b) should submissions be received that all submissions be reported back to Council.

Length of time for consultation on the draft Policy

25 Council must give public notice of a draft Policy after it is prepared under *Local Government Act 1993 – Section 160 Public notice and exhibition of draft local policy*.

Under *Local Government Act 1993 – Section 160* the period of public exhibition must be not less than 28 days.

30

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	OP Activity
Community Objective 4: We manage growth and change responsibly	4.2 Support housing diversity in appropriate locations across the Shire	4.2.1 Establish planning mechanisms to support housing that meets the needs of our community	4.2.1.4 Investigate and implement planning controls to encourage an increase in the supply of affordable and inclusive housing stock (Action in Residential Strategy)
	4.2 Support housing diversity in appropriate locations across the Shire	4.2.1 Establish planning mechanisms to support housing that meets the needs of our community	4.2.1.3 Prepare an Affordable Housing contribution scheme under SEPP 70 to be incorporated in the local planning framework controls (Action in Residential Strategy)

North Coast Region Plan 2036

Direction 25 Deliver more opportunities for affordable housing

- 5
- 5.1 Deliver more opportunities for affordable housing by incorporating policies and tools into local growth management strategies and local planning controls that will enable a greater variety of housing types and incentivise private investment in affordable housing.

10 ***Byron Shire Draft Local Strategic Planning Statement***

A Liveable Shire

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

Byron Shire Draft Residential Strategy

Policy 2: Improved housing choice, diversity and equity

- 20 DIRECTION 2.1: Enable opportunities for innovative new residential forms and models that give a sense of place, promote environmental stewardship and encourage social, economic and cultural diversity and equity.
- 25 DIRECTION 2.2: Facilitate and promote growth in the proportion of rental and to buy housing aimed at the lower end of the market, including those with very low incomes.

Legal/Statutory/Policy Considerations

- 30 As discussed in the report.

Financial Considerations

- 35 Not applicable to this report.

Consultation and Engagement

Consultation and engagement will be provided in a manner consistent with management requirements in dealing with COVID 19.

Report No. 13.5 **PLANNING - 26.2018.4.1 Environmental Zone Implementation**
Program: Stage 2 Planning Proposal 'Submissions Report'
Directorate: Sustainable Environment and Economy
Report Author: Alex Caras, Land Use Planning Coordinator
File No: I2020/403

Summary:

Council at its 22 March 2018 Ordinary Meeting resolved (**Res 18-186**) to implement the Department's 'Northern Councils E Zone Review Final Recommendations Report' in several stages to deliver more timely and effective outcomes for affected landowners.

The engagement process to date has been robust, constructive and well received by the majority of those affected. The conciliatory and consistent approach taken by staff to achieve agreed outcomes has also generated a considerable amount of goodwill for Council.

Stage 2 Planning Proposal (PP2) applies environmental and non-environmental zones to 619 properties in the Shire based on agreed outcomes. Approximately 1,900 hectares of environmental (E2/E3) zones will be applied in PP2. It also amends other LEP 2014 maps such as Minimum Lot Size, Height of Building, Drinking Water Catchment and Acid Sulfate Soils Maps.

This report presents:

- a summary of submissions received during exhibition of Stage 2 Planning Proposal; and
- proposed property-specific LEP mapping amendments for adoption.

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 adopt the property-specific LEP mapping amendments identified in Table 1 of this report.**
2. **That Council forward a revised Stage 2 Environmental Zoning planning proposal (incorporating Table 1 mapping amendments) to the NSW Parliamentary Counsel's Office requesting that a draft LEP instrument be prepared.**
3. **That Council liaise with Parliamentary Counsel's Office (PCO) as necessary to finalise the content of the draft LEP and to enable PCO to issue an Opinion that the plan can be made.**
4. **That Council request that the NSW Department of Planning and Environment, as the plan-making authority in this instance, make the final LEP for notification on the NSW Government legislation website.**
5. **That Council note when Council has considered the submissions received during public exhibition and has endorsed the final planning proposal, landowners whose land will be subject to an E zone are to be notified in writing of Council's decision and**

advised that they have 28 days to notify the Department of Planning and Environment to request a review of the proposed zoning of their property.

Attachments:

- 1 Confidential - 26.2018.4.1 E Zones PP2 submissions, E2020/28918
- 5 2 Agency Responses - Stage 2 E Zone Implementation Program, E2020/31116 
- 3 Form of Special Disclosure of Pecuniary Interest, E2012/2815 

REPORT

5 Council at its 22 March 2018 Ordinary Meeting resolved (**Res 18-186**) to implement the Department’s ‘Northern Councils E Zone Review Final Recommendations Report’ in several stages to deliver more timely and effective outcomes for affected landowners. An overview of the latest staged implementation program is shown in Figure 1 below.

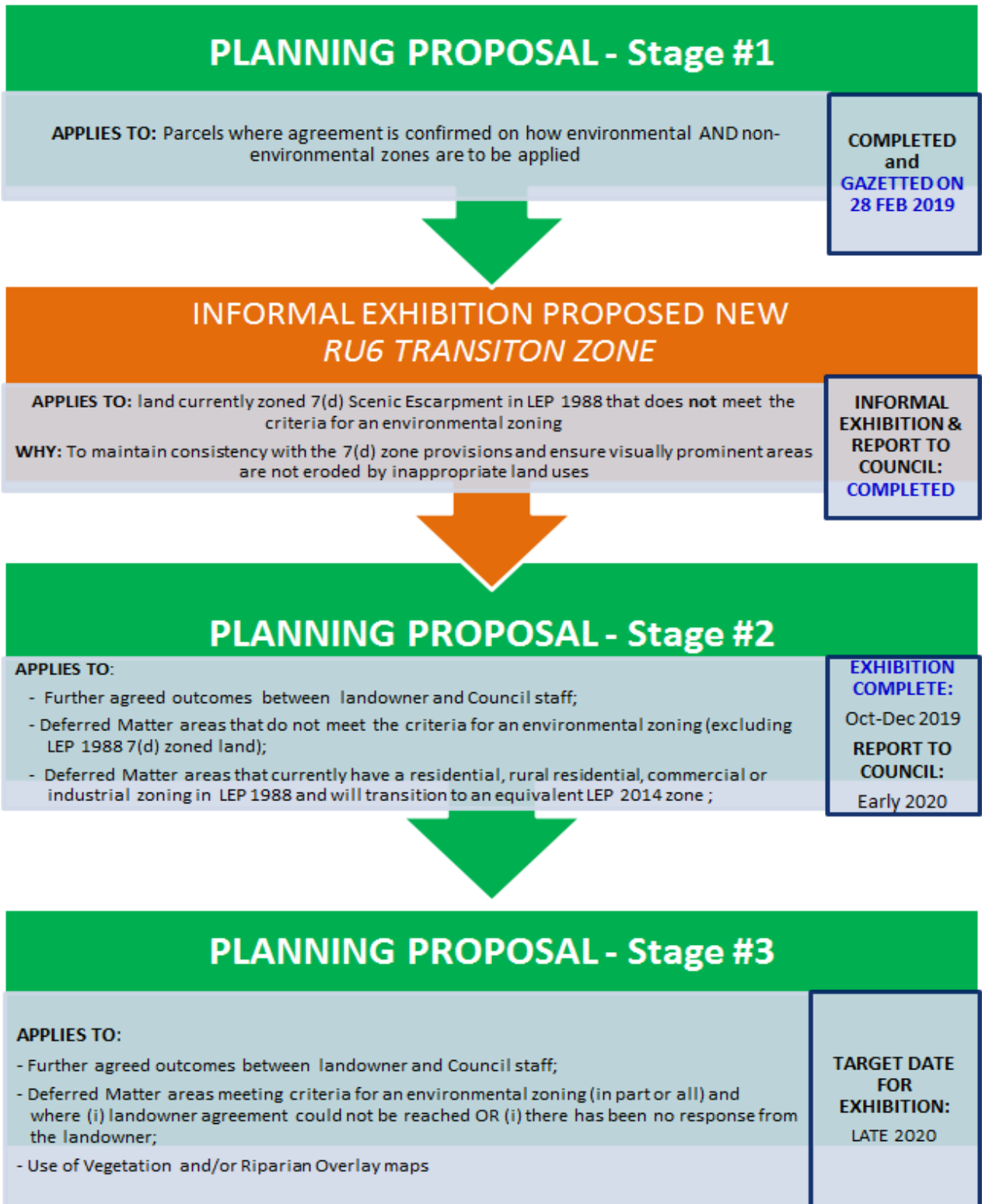


Figure 1: Staging Program to apply environmental and other zones on certain land in Byron LEP 2014

The Stage 1 Planning Proposal was adopted by Council on 20 June 2019 and gazetted on 28 February 2020.

5 Reports on the status of the staged E zone implementation program were considered at the 22 November 2018 and 12 December 2019 meetings of Council, where (on both occasions council resolved to re-allocate funds from other planning projects in order to continue to progress the staged E zone implementation program and build on the high level of community goodwill generated through the preparation of Planning Proposals 1 and 2.

10 The purpose of this report is to present:

- a summary of submissions received during exhibition of Stage 2 Planning Proposal; and
- corresponding property-specific LEP mapping amendments for adoption.

15 **Planning Proposal #2**

20 Planning Proposal 2 (PP2) applies environmental and non-environmental zones to 619 properties in the Shire based on agreed outcomes. Approximately 1485 ha of *E2 Environmental Conservation* zones and 400 ha of *E3 Environmental Management* zones will be applied in PP2. It also amends other LEP 2014 maps such as Minimum Lot Size, Height of Building, Drinking Water Catchment and Acid Sulfate Soils Maps.




PP2 was submitted to Department of Planning & Environment for gateway determination in December 2018. A positive gateway determination was received in June 2019 subject to the following conditions:

- 25
- Consulting with following government agencies (during exhibition):
 - NSW Rural Fire Service;
 - Office of Environment and Heritage;
 - NSW Department of Primary Industries;
 - the Local Aboriginal Land Council; and
- 30
- NSW Division of Resources and Geoscience
- Notifying all affected landowners in writing of the planning proposal and the public exhibition arrangements
 - Amending the planning proposal as follows:
 - 35 – section 1.3 is to be corrected to clarify that the proposal now applies to 618 land parcels;
 - section 3.1 (last paragraph on page 11) is to be amended to clarify that the proposed E2 and E3 land use tables will be added to Byron LEP 2014 through the Stage 1 planning proposal;
 - 40 – the discussion on section 9.1 direction 1.5 Rural Land in Appendix 1 is to be updated to reflect the revised direction which no longer refers to SEPP (Rural Lands) 2008; and
 - the maps in Appendix 5 of the planning proposal are to be amended to ensure all polygons which depict proposed zones and development controls are labelled clearly and correctly.
 - 45 • When Council has considered the submissions received during public exhibition and has endorsed the final planning proposal, landowners whose land will be subject to an E zone are to be notified in writing of Council's decision and advised that they have 28 days to notify the Department of Planning and Environment to request a review of the proposed zoning of their property.


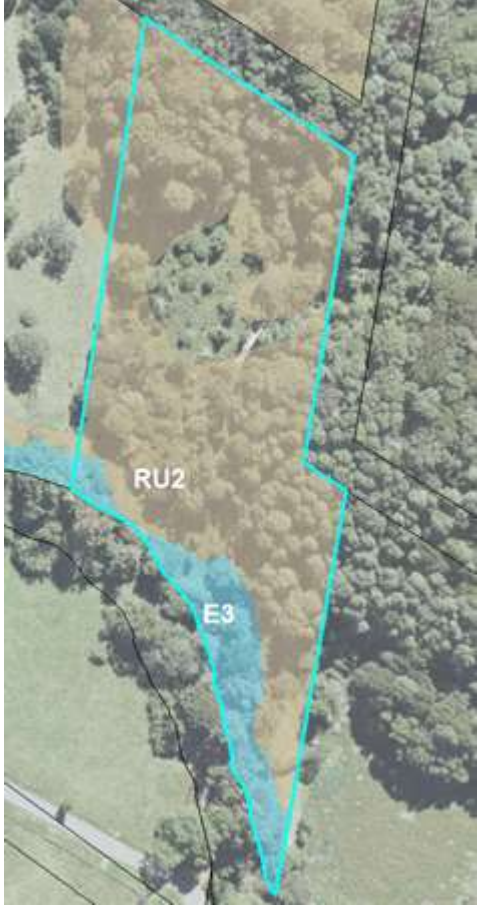
Public Exhibition and submissions received

5 PP2 was exhibited from 6 October to 6 December 2019. Forty eight (48) public submissions were received and these are summarised in Table 1 below. Confidential copies of the submissions are contained in Attachment '1'.

Table 1 – Summary of public submissions received





Subject land (Parcel No)	Issue / Comment	Response
<p>1. 11 Coolamon Avenue Mullumbimby (PN 12180)</p>	<p>E2019/79606</p> <p>Requests that exhibited <i>RU2 Rural Landscape zone</i> be changed to <i>R5 Large Lot Residential</i> (consistent with adjoining R5 zone on this land), with small expansion of <i>E2 Environmental Conservation</i> in SE corner, resulting in only 2 zones (instead 3) for this property.</p>	<p>Minor changes applied to as per submission [namely: RU2 zone changed to R5 (pink); small expansion of E2 zone in SE corner (green)].</p> <p><i>Lot Size</i> map updated accordingly (see below).</p>
	<p><u>‘As Exhibited’: Zones</u></p> 	<p><u>As Amended’: Zones</u></p>  <p>Lot Size (R5 = 4000m² / E2 = 40ha)</p>  <p>No change to <i>Max Building Height</i> (9m)</p>



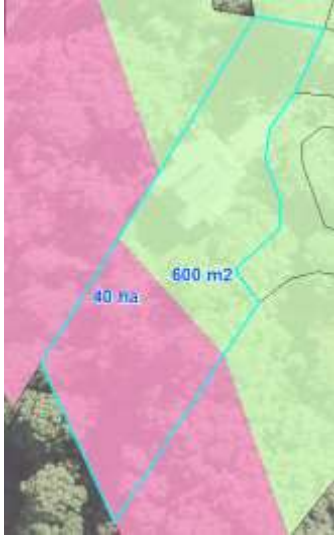
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Subject land (Parcel No)	Issue / Comment	Response
2. 1034 Main Arm Rd Upper Main Arm (PN 117350)	E2019/75503 A missing parcel in same ownership as adjoining land (immediately north) was excluded by oversight. Include missing parcel in PP2 by applying E3 Environmental Management zone over riparian area and RU2 Rural Landscape zone over remainder, consistent with adjoining parcel.	Changes applied as per submission. <i>Lot Size AND Max Building Height maps updated accordingly (see below).</i>
	<p><u>'As Exhibited': Zones</u></p> 	<p><u>As Amended': Zones</u></p>  <p>Lot Size (40ha)</p>

Subject land (Parcel No)	Issue / Comment	Response
		 <p data-bbox="1018 1093 1353 1131">Max Building Height (9m)</p> 




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Subject land (Parcel No)	Issue / Comment	Response
<p>3. 10 Hamiltons Lane Byron Bay (PN 240081) and Cemetery Rd Byron Bay (PN 240082) J</p>	<p>E2019/81070</p> <p>Requests that: (i) both parcels (10 Hamiltons Lane and 65 Cemetery Road) be included in draft Planning Proposal 2, as they are in same ownership; and (ii) an <i>RU2 Rural Landscape zone</i> be applied to the residual <i>1A General Rural</i> zone areas of both parcels.</p>	<p>Changes applied as per submission.</p> <p><i>Lot Size AND Max Building Height</i> maps updated accordingly (see below).</p>
	<p><u>'As Exhibited': Zones</u></p> 	<p><u>'As Amended': Zones</u></p>  <p>Lot Size (40ha)</p>  <p>Max Building Height (9m)</p> 



Subject land (Parcel No)	Issue / Comment	Response
<p>4. 10 Coolalie Place Byron Bay (PN 212480) T</p>	<p>E2019/81070</p> <p>Correct existing zone boundary issue so that house + back garden are included in R2 Low Density Residential zone, (previously 2a Residential Zone), with RU2 Rural Landscape zone applied to the remaining 1A General Rural zone on subject land.</p> <p>Landowner not supportive of RU2 Rural Landscape zone</p>	<p>Applying RU2 Rural Landscape zone over remaining 1A General Rural zone is consistent with surrounding landscape.</p> <p>Maps below show correct zone areas, lot size and Max building Height (9m) for subject land</p>
	<p><u>'As Exhibited': Zones</u></p> 	<p><u>'As Amended': Zones</u></p>  <p>Lot Size (RU2 = 40ha / R2 = 600m²)</p> 

Subject land (Parcel No)	Issue / Comment	Response
		<p>Max building Height (9m)</p> 
<p>5. Seacliffs Hayters Drive Suffolk Park (PN 268113)</p>	<p>E2019/81230 Amend boundaries of E2 Environmental Conservation zone to exclude approved housing lots, all of which should be zoned R2 Low Density Residential zone consistent with existing R2 zoning on subject land.</p>	<p>E2 Environmental Conservation zone amended to R2 Low Density Residential zone on approved housing lots, as per submission.</p>
	<p><u>'As Exhibited': Zones</u></p> 	<p><u>'As Amended': Zones</u></p> 
<p>6. 21 Kingsvale Rd</p>	<p>E2019/79635</p>	<p>By oversight, landowner's</p>





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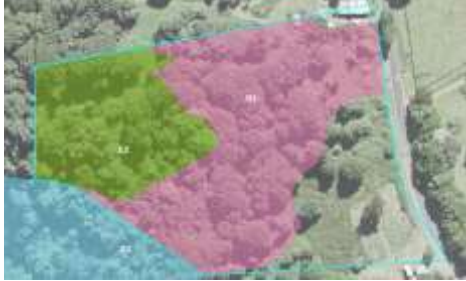
Subject land (Parcel No)	Issue / Comment	Response
Myocum (PN 39350)	Requests that previously agreed E3 Environmental Management Environmental Conservation zones be changed to E2	submission referred to an earlier version of a map showing both E2 & E3 zones on the subject land, and not the PP2 exhibited map (showing E2 zone only). Therefore no change as proposed E2 zoning is correct as per the exhibited PP2 map (below left).
	<p><u>'As Exhibited': Zones</u></p> 	
7. 274 Wanganui Rd (PN 210170)	E2019/79639 Requests that a small area of Lantana — previously agreed E3 Environmental Management zone — be changed to RU2 Rural Landscape zone	Minor change applied as per submission.
	<p><u>'As Exhibited': Zones</u></p> 	<p><u>'As Amended': Zones</u></p> 
8. 373 Left Bank Rd, Mullumbimby	E2019/80980, E2019/80960 Requests that proposed RU1	Minor changes applied as per submission.



Subject land (Parcel No)	Issue / Comment	Response
Creek, (PN 240038)	Primary Production zone (previously Agricultural Protection (b1) Zone) be amended to RU2 Rural Landscape zone , consistent with the current land use as a school.	
	<p><u>'As Exhibited': Zones</u></p> 	<p><u>'As Amended': Zones</u></p> 
9. 59B Kingsvale Road, Myocum (PN 195290)	E2019/84285 Submission relates to site features that do not affect proposed zones on subject land.	No change to proposed zoning as the exhibited PP2 map (below left) was correct.
	<u>'As Exhibited': Zones</u>	

Subject land (Parcel No)	Issue / Comment	Response
		
<p>10. Coopers West Lane (PN 15690)</p>	<p>E2019/90464</p> <p>Submission was supportive of the mapped/exhibited E-zones and rezoning process. However notes that mapping of the zone boundaries and cadastral alignment problems need to be rectified.</p>	<p>Cadastral issues to be amended in future as part of a shire wide rectification process, but in the meantime proposed zoning to follow vegetation so subject land can be finalised for gazettal.</p> <p>Therefore no change to exhibited map (below left).</p>
	<p><u>'As Exhibited': Zones</u></p> 	





BYRON SHIRE COUNCIL




Subject land (Parcel No)	Issue / Comment	Response
11. 315 Coorabell Rd Coorabell (PN16630)	Change proposed RU2 zones to E2 Environmental Conservation zoning as per approved Vegetation Management Plan for DA 10.2019.236.1 (Community Title subdivision of Approved Multiple Occupancy).	Changes applied as per submission.
	<p><u>'As Exhibited': Zones</u></p> 	<p><u>'As Amended': Zones</u></p> 
12. 62 Tickle Rd Upper Coopers Creek (PN 93560)	E2019/85455 Site visit found proposed E2 zone areas comprise mainly regrowth and planted Blackbutt. E3 Environmental Management zone was agreed for consistency with 2 similar adjoining properties and land use, including forestry.	E2 zone areas changed to E3 Environmental Management zone , for consistency with surrounding properties and potential farm forestry.
	<p><u>'As Exhibited': Zones</u></p> 	<p><u>'As Amended': Zones</u></p> 
13. 25 Goonengerry Rd Goonengerry (PN 29610)	E2019/76972 Supports proposed E2/R5 zones; however requests change to the Drinking Water Catchment DWC map layer to align with proposed E2 zoning.	Exhibited DWC map only shows LEP updates on the 'Deferred Matter' area of this parcel, not the entire parcel. The DWC map will apply to entire parcel once planning proposal is finalised. Therefore no change required.

Subject land (Parcel No)	Issue / Comment	Response
	<p><u>'As Exhibited': Zones</u> (E2 = green / R5 = pink)</p> 	
<p>14. 89 Parmenters Rd (PN 190690)</p>	<p>E2019/90559, E2020/17044 Requests minor change from E2 Environmental Conservation zone to E3 Environmental Management zone allow a dam to be built for drought storage and access for fire.</p>	<p>E2020/17044 – Confirmed with WaterNSW that dams allowed in all zones. An E2 zone will not affect landowner's ability to apply for a water storage dam via the applicable legislation. No change to mapping.</p>




Subject land (Parcel No)	Issue / Comment	Response
	<p><u>'As Exhibited': Zones</u></p> 	
<p>15. 499A Binna Burra Road, Federal (PN 159390, 238679)</p>	<p>E2019/88518 Objects to application of Drinking Water Catchment (DWC) map to affected part of property.</p>	<p>DWC mapping layer is fixed by State government and can only be amended by State Govt. It is a mandatory map relating to <i>clause 6.5</i> in LEP 2014.</p> <p>Landowner was contacted with an explanation of the above.</p> <p>No change to mapping.</p>
	<p><u>'As Exhibited': DWC map</u></p> 	




BYRON SHIRE COUNCIL

Subject land (Parcel No)	Issue / Comment	Response
16. 242 Broken Head Rd, SUFFOLK PARK (PN 135130)	E2019/89281 plus others Requests change in Minimum Allotment Size from 40ha to 600m ² to allow subdivision potential consistent with surrounding residential zoned lots.	Changes applied as per submission.
	<p><u>'As Exhibited': Lot size (40ha)</u></p> 	<p><u>'As Amended': Lot size (600m²)</u></p> 
17. 94 Cemetery Rd. Byron Bay (PN 10060)	E2019/89397 Requests that the floor space ratio be changed from 0.3:1 to 0.5: 1 for this parcel, citing differences from remaining urban lots in Lilli Pilli	Due to large size of land in the proposed R2 zone (> 7,000m ²), there are no compelling reasons for applying a 0.3:1 FSR. A 0.5:1 FSR is considered acceptable and the map has been amended accordingly.
	<p><u>'As Exhibited' (FSR = 0.3:1)</u></p> 	<p><u>'As Amended' (FSR = 0.5:1)</u></p> 
18. 17 Scenic Vista Ewingsdale (PN68602 PN88600).	E2019/90623 Requests that small areas in north originally mapped as E2 Environmental Conservation zone be changed to RU2 Rural Landscape zone . This change was already made before exhibition. Large E2 Environmental Conservation zone was exhibited correctly.	No change.



Subject land (Parcel No)	Issue / Comment	Response
	<p><u>'As Exhibited': Zones</u></p> 	
<p>19. 409 Coorabell Road, Coorabell (PN 241401)</p>	<p>PFP S2019/9564 Received notification of Timber plantation agreement over part of the site (11 Dec 2019).</p>	<p>Minor amendments to zoning map amended to exclude timber plantation areas from E2 Environmental Conservation zone.</p>
	<p><u>'As Exhibited': Zones</u></p> 	<p><u>'As Amended': Zones</u></p> 
<p>20. Johnsons Rd Huonbrook (PN34040)</p>	<p>E2019/81223 Requests area around existing house be changed from E3 Environmental Management to RU2 Rural Landscape zone, consistent with neighbouring lands and existing land use.</p>	<p>Changes applied as per submission.</p>

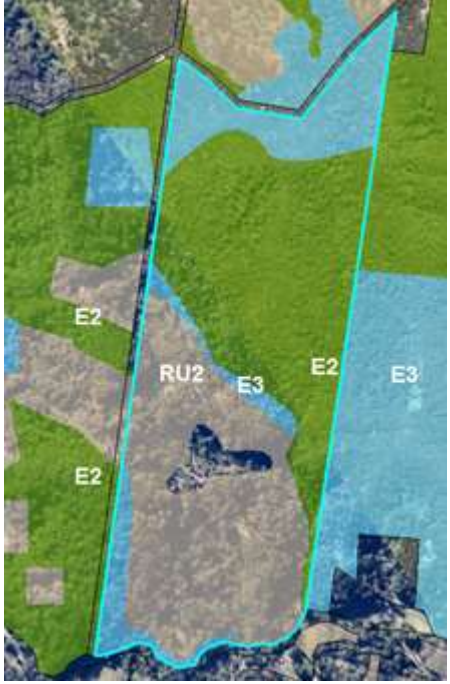

BYRON SHIRE COUNCIL


Subject land (Parcel No)	Issue / Comment	Response
	<p><u>'As Exhibited': Zones</u></p> 	<p><u>'As Amended': Zones</u></p> 
<p>21. 1016 Wilsons Creek Road WILSONS CREEK (PN99350)</p>	<p>E2019/78629, E2019/93312</p> <p>Concerned that E-zoned sections of the property extend outside the mapped cadastral boundary, so would miss out on being zoned E2 Environmental Conservation because they appear to be on the neighbours property.</p>	<p>Cadastral issues to be amended in future as part of a shire wide rectification process, but in the meantime proposed zoning to follow vegetation so subject land can be finalised for gazettal.</p> <p>Therefore no change to exhibited map (below left).</p>
	<p><u>'As Exhibited': Zones</u></p> 	
<p>22. 131 The Tunnel Rd, Billinudgel (PN93350)</p>	<p>E2019/74919, E2020/6584</p> <p>Requests no E zone anywhere on the property as primary land use is agricultural.</p>	<p>As both of the exhibited E2 Environmental Conservation zones were less than 0.5 ha, the zoning of these areas has been amended to RU2 Rural Landscape zone), consistent with remainder of property.</p>

Subject land (Parcel No)	Issue / Comment	Response
	<p><u>'As Exhibited': Zones</u></p> 	<p><u>'As Amended': Zones</u></p> 
<p>23. 361 Hunbrook Rd Hunbrook (PN210910)</p>	<p>E2019/78064 Supports proposed mix of E2/RU2 zoning, but queried Drinking Water Catchment (DWC) layer and potential for Community title on land (unrelated to this planning proposal. Landowner contacted to explain these matters.</p>	<p>DWC mapping layer fixed by State government and can only be amended by State Govt. It is a mandatory map relating to <i>clause 6.5</i> in LEP 2014. Therefore no change to mapping.</p>
	<p><u>'As Exhibited': DWC map</u></p> 	





BYRON SHIRE COUNCIL

Subject land (Parcel No)	Issue / Comment	Response
24. 252 Settlement Rd Main Arm (PN 81610)	E2019/79603 E2019/79603 Exhibited E2 Environmental Conservation area considered invalid, as area contains an access road, powerlines and very few trees, therefore lacking an E zone vegetation structure.	Zoning map amended to remove E2 zone and replace with RU1 zone, consistent with submission request and surrounding zoning on this property.
	<p><u>'As Exhibited': Zones</u></p> 	<p><u>'As Amended': Zones</u></p> 
25. 1356 Main Arm Rd Upper Main Arm (PN 47560)	E2019/89421 Supports proposed zones on this property, but suggests that the adjoining E3 Environmental Management zone on eastern neighbours (Kohinoor Pty Ltd) land be changed to E2 Environmental Conservation to strengthen wildlife corridor, as per map provided.	This request was discussed with Kohinoor Pty Ltd, but a historical multiple occupancy share exists near boundary, an E3 Environmental Management zoning is considered more suitable. No change



Subject land (Parcel No)	Issue / Comment	Response
	<p><u>'As Exhibited': Zones</u></p> 	<p><u>'As Amended': Zones</u></p>
<p>26. 11 Luan Court Byron Bay (PN 211770)</p>	<p>E2019/89775</p> <p>Objects to R2 Low Density Residential zone zoning in favour of E4 Environmental Living, consistent with the established environmental values and community character of the Lilli Pilli neighbourhood.</p>	<p>The Northern Councils E Zone Review FINAL Recommendations Report (2015) stipulates that Byron Shire Council shall “<i>apply a suitable residential zone to that land where an E4 zone was proposed under the draft Byron LEP</i>”. This includes the Lilli Pilli neighbourhood.</p> <p>No change.</p>
	<p><u>'As Exhibited' (proposed R2 zone)</u></p> 	

Subject land (Parcel No)	Issue / Comment	Response
27. 294 Skinners Shoot Rd (PN 84380)	E2019/79204 Support for the zoning <i>RU2 Rural Landscape zone</i> .	Noted. No change.
	<p><u>'As Exhibited': Zones</u></p> 	
28. 47 Cemetery Rd (PN 267630)	E2019/89764 Requests that the floor space ratio be changed from 0.3:1 to 0.5: 1 for Lilly Pilly, as site coverage is a more effective control	<p>The 0.3 FSR applied to properties in the 'Lilli Pilly' residential area is consistent with the draft LEP 2012 exhibition mapping, due to its established environmental setting and character.</p> <p>No change.</p>
29. 121-123 Broken Head Rd Suffolk Park (PN 2970)	S2019/9169, S2019/9170 Confusion about proposed <i>R5 Large Lot Residential</i> zoning, as mistakenly thought zone was changing to <i>RU2 Rural Landscape zone</i> and doesn't want the current 2A residential zoning to change.	<p>Landowner was contacted and proposed zoning explained.</p> <p>It was agreed to treat this parcel the same as the surrounding land in this precinct, namely:</p> <ul style="list-style-type: none"> • change proposed <i>R5 Large Lot Residential Zone</i> to <i>R2 Low Density Residential Zone</i> • change proposed 4,000m² Min Lot Size to 2,000m² Min Lot Size, consistent with draft LEP 2012 exhibition map for this precinct (i.e. before becoming DM)




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Subject land (Parcel No)	Issue / Comment	Response
	<p><u>'As Exhibited': R5 Zone proposed</u></p> 	<p><u>'As Amended': R2 Zone proposed</u></p>  <p><u>Lot size (2,000m²)</u></p> 
<p>30. 17 Ti Tree Road (PN 94260)</p>	<p>E2019/85184 Does not support proposed environmental zoning (shown below in green), but no reasons given.</p>	<p>Current property zonings are 7a Wetlands zone and 7b Coastal Habitat Zone. As vegetation in these areas still satisfies criteria for E2 Environmental Conservation, no change.</p>
	<p><u>'As Exhibited': Zones</u></p> 	
<p>31. 6 Bunjil Place Byron Bay (PN 204620)</p>	<p>E2019/89021 Objects to R2 Low Density Residential zone zoning in favour of E4 Environmental Living, consistent with the established environmental values and community character of the Lilli Pilli neighbourhood.</p>	<p>The Northern Councils E Zone Review FINAL Recommendations Report (2015) stipulates that Byron Shire Council shall “<i>apply a suitable residential zone to that land where an E4 zone was proposed under the draft Byron LEP</i>”. This includes the Lilli Pilli neighbourhood. No change.</p>



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Subject land (Parcel No)	Issue / Comment	Response
	<p><u>'As Exhibited' (proposed R2 zone)</u></p> 	
32. 4 Bunjil Place Byron Bay (PN 204630)	<p>E2019/89787</p> <p>Objects to R2 Low Density Residential zone zoning in favour of E4 Environmental Living, consistent with the established environmental values and community character of the Lilli Pilli neighbourhood.</p>	<p>The Northern Councils E Zone Review FINAL Recommendations Report (2015) stipulates that Byron Shire Council shall “<i>apply a suitable residential zone to that land where an E4 zone was proposed under the draft Byron LEP</i>”. This includes the Lilli Pilli neighbourhood.</p> <p>No change.</p>
	<p><u>'As Exhibited' (proposed R2 zone)</u></p> 	
33. Coopers West Lane (PN15720)	<p>S2019/9597</p> <p>New landowner. Did not receive a letter when PP2 was on public exhibition so hasn't had a chance to comment. After review of new mapping, areas of Lantana and Camphor Laurel were changed to RU2 Rural Landscape zone and a small area of E3 Environmental Management added in south.</p>	<p>Changes applied as agreed by current landowner.</p>

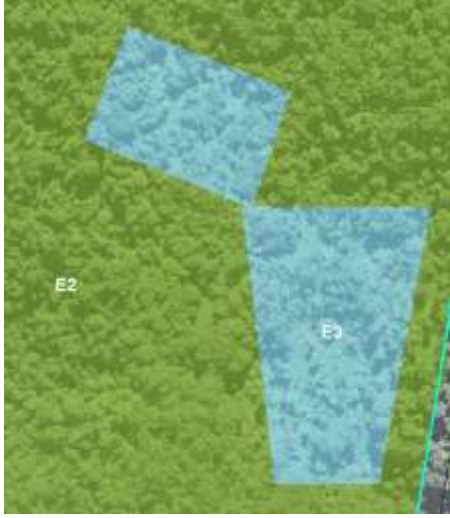
BYRON SHIRE COUNCIL



Subject land (Parcel No)	Issue / Comment	Response
	<p><u>'As Exhibited': Zones</u></p> 	<p><u>'As Amended': Zones</u></p> 
34. 390 Blindmouth Rd Main Arm (PN 107150)	E2019/80093 Supports proposed zones.	Noted. No change.
35. Middle Pocket Rd Middle Pocket (PN 240578).	E2019/79310 Supports proposed zones.	Noted. No change.
36. 248 Broken Head Rd Suffolk Park (PN3750)	E2019/80091 Supports proposed zones.	Noted. No change.
37. 1982 Coolamon Scenic Drive, MULLUMBIM BY (PN 240596)	E2019/77188, E2020/3202 Requests no E2 Environmental Conservation zone due to farming practices on land	Landowner was contacted to discuss/explain confusion about continuation of existing uses. No changes proposed.
	<p><u>'As Exhibited': Zones</u></p> 	
38. 99 Broken	E2019/88392, E2020/1214	Current legislation reviewed and

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Subject land (Parcel No)	Issue / Comment	Response
Head Rd, Suffolk Park (PN 242056)	Questions regarding rezoning of "Cypress" land.	landowners advised that Cypress will be protected by LEP vegetation overlay. No change.
	<p><u>'As Exhibited': Zones (R2 / E3)</u></p> 	
39. 19 Blueberry Court, Byron Bay	<p>E2019/88729</p> <p>Objects to R2 Low Density Residential zone zoning in favour of E4 Environmental Living, consistent with the established environmental values and community character of the Lilli Pilli neighbourhood.</p>	<p>The Northern Councils E Zone Review FINAL Recommendations Report (2015) stipulates that Byron Shire Council shall "apply a suitable residential zone to that land where an E4 zone was proposed under the draft Byron LEP". This includes the Lilli Pilli neighbourhood.</p> <p>No change.</p>
	<p><u>'As Exhibited' (proposed R2 zone)</u></p> 	
40. Kohinoor Pty Ltd, Upper Main Arm (PN197850)	<p>E2019/87169</p> <p>Requests minor changes to E3 Environmental Management boundaries based on new mapping showing show areas of activity (i.e. orchards etc.) and lantana infestation.</p>	Changes applied as per submission.
	<u>'As Exhibited': Zones</u>	<u>'As Amended': Zones</u>


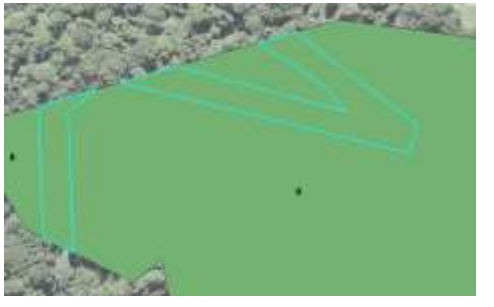

BYRON SHIRE COUNCIL

Subject land (Parcel No)	Issue / Comment	Response
		
<p>41. 7 Blueberry Court, Byron Bay</p>	<p>E2019/89020 Objects to R2 Low Density Residential zone zoning in favour of E4 Environmental Living, consistent with the established environmental values and community character of the Lilli Pilli neighbourhood.</p>	<p>The Northern Councils E Zone Review FINAL Recommendations Report (2015) stipulates that Byron Shire Council shall “<i>apply a suitable residential zone to that land where an E4 zone was proposed under the draft Byron LEP</i>”. This includes the Lilli Pilli neighbourhood.</p> <p>No change.</p>

Subject land (Parcel No)	Issue / Comment	Response
	<p><u>'As Exhibited' (proposed R2 zone)</u></p> 	
<p>42. 65 Citriodora Drive (PN 267705)</p>	<p>Island quarry (IQ) submission recommends that proposed <i>RU2 Rural Landscape</i> zone along adjoining neighbour's NE boundary should be E2 Environmental Conservation. However IQ does not want any Environmental zoning on their own adjoining land, which is same condition.</p>	<p>The RU2 area in question was ground-truthed and found not to meet E2/E3 criteria. The proposed Ru2 Rural landscape zone is consistent with adjoining land having same attributes.</p> <p>No change.</p>
	<p><u>'As Exhibited': Zones</u></p> 	

BYRON SHIRE COUNCIL

Subject land (Parcel No)	Issue / Comment	Response
43. 4/2-6 Cemetery Road Byron Bay (PN 226940)	E2019/89418 Objects to R2 Low Density Residential zone zoning in favour of E4 Environmental Living , consistent with the established environmental values and community character of the Lilli Pilli neighbourhood.	The Northern Councils E Zone Review FINAL Recommendations Report (2015) stipulates that Byron Shire Council shall “ <i>apply a suitable residential zone to that land where an E4 zone was proposed under the draft Byron LEP</i> ”. This includes the Lilli Pilli neighbourhood. No change.
	<p><u>‘As Exhibited’ (proposed R2 zone)</u></p> 	
44. 230 Mafeking Road, Goonengerry (PN 241871)	E2019/36072 26.2018.4.1 Internal Submission to include missed “road reserve” polygon in PP2; in same ownership as adjoining E2 area	Changes applied as per submission. Lot Size and Height of Building maps amended accordingly.
	<p><u>‘As Exhibited’: Zones</u></p> 	<p><u>‘As Amended’: Zones</u></p> 

Subject land (Parcel No)	Issue / Comment	Response
		<p><u>Lot size (40ha)</u></p>  <p><u>Max Building Height (9m)</u></p> 
<p>45. 168 Tandys Lane Brunswick Heads 267780.</p>	<p>New owner advised of agreed zoning outcomes with previous landowner. No objection received.</p>	<p>No changes required</p>
	<p><u>'As Exhibited': Proposed E2 / RU2 Zones</u></p> 	
<p>46. Hayters Drive (PN 268113)</p>	<p>Supports zoning as exhibited.</p>	<p>Noted. No changes required.</p>

RECOMMENDATION: That Council adopt the property-specific LEP mapping amendments identified in Table 1.

5

Agency Submissions

In accordance with the Gateway Determination issued 19 June 2019, the following public authorities were consulted under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:

- 10 - NSW Rural Fire Service;
- Office of Environment, Energy & Science (formally Office of Environment and Heritage);
- NSW Department of Primary Industries
- Arakwal Aboriginal Corporation;
- Tweed Byron Aboriginal Land Council; and
- 15 - NSW Division of Resources and Geoscience .

Three (3) government agency submissions were received. These are summarised in Table 2 below. Copies of the actual submissions are contained in Attachment '2'.

20 Table 2 – Summary of government agency submissions received

Agency Name	Comments	Response
1. NSW Rural Fire Services	Requested further information on: - parcels mapped bush fire prone land; and - proposed land use zone changes on mapped bush fire prone land, with respect to increased (i) subdivision yields and/or (ii) dwelling opportunities	This information was sent to RFS confirming that no increased subdivision yields or dwelling opportunities based on proposed land use zones in PP2. [No further response from RFS had been received at time of writing this report. NO CHANGE RECOMMENDED

Agency Name	Comments	Response
<p>2. Office of Environment, Energy & Science</p>	<p><u>General</u></p> <p>Outlines a suggested decision process to follow when applying E zones to land formerly zoned 7(a), 7(b), 7(j) or 7(k) under BLEP 1988, as well as land not formerly zoned as such.</p> <p><u>E2 Environmental Conservation zones</u></p> <p>Recommends applying 40ha Minimum Lot Size (MLS) to all land proposed to be zoned E2</p> <p><u>E3 Environmental Management zones</u></p> <p>Raised concerns about applying large Minimum Lot Size (generally 40ha) to land proposed to be zoned 'E3', given the wide range of land uses permitted with consent. Notes that as a result, any future development in such areas is unlikely to trigger the Biodiversity Offset Scheme requirements. Recommends a smaller MLS be applied to E3 area according to their total lot size.</p>	<p>Noted. The process applied in PP2 is largely consistent with that contained in the OEES submission.</p> <p>Noted. PP2 has applied a 40ha MLS to the majority of affected parcels.</p> <p>The MLS applied to the majority of proposed E3 zones is based on maintaining 'like for like' where possible with the current subdivision potential of the land. This is a key part of the process for achieving agreed outcomes with landowners. Applying a smaller MLS to these areas according to actual lot size is likely to result in increased subdivision potential throughout the Shire and hence greater impacts on native vegetation and/or threatened species habitat.</p> <p>NO CHANGE RECOMMENDED</p>
<p>3. NSW Division of Resources & Geoscience (GSNSW)</p>	<p>GSNSW advises that it has no resource sterilisation issues for consideration under section 9.1 of the Environmental Planning and Assessment Act 1979, Direction 1.3 – <i>Mining, Petroleum production and Extractive industry.</i></p>	<p>Noted.</p>

Conclusion

5 The relatively low number of public submissions received (< 10% of affected properties) is a reflection of the conciliatory and consistent engagement approach taken by staff to achieve agreed outcomes. Such agreements were either 'explicit' (i.e. confirmed by landowner email, letter or a signed zoning map) or 'implicit' (i.e. where e zone has been removed on affected land in accordance with submission). Inevitably there will be a minority of landowners where there's been

10 (i) a change of mind about what was originally agreed to on their land, (ii) a change in ownership since an agreed outcome was reached or (iii) cadastral boundary issues were identified which were outside the scope of the zoning review. Staff have addressed such all issues personally with

each landowner and where required, amended the exhibited maps accordingly. These circumstances form the basis for the minor mapping amendments identified in Table 1.

Financial Implications

- 5 The remaining 2019/20 budget for the E zone Implementation program will be exhausted by 30 June 2020. A budget bid has been included in the 2020/21 budget to finalise Stage 3 planning proposal and commencement Stage 4. Stage 4 includes council and public authority lands and will be the final stage of applying E Zones.

10 **Statutory and Policy Compliance Implications**

- The process of applying E zones and mapped overlays in Byron LEP 2014 is being undertaken in accordance with Section 117 Direction 2.5 – *Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs*. This direction specifically requires that a planning proposal that introduces or alters an *E2 Environmental Conservation* or *E3 Environmental Management Zone*, or an overlay and associated clause must be consistent with the *Northern Councils E Zone Review Final Recommendations*.
- 15

Report No. 13.6 PLANNING - 26.2019.10.1 Proposed Rezoning North Beach Byron - Options Report

Directorate: Sustainable Environment and Economy

Report Author: Rob Van Iersel, Major Projects Planner

5 **File No:** I2020/321

Summary:

10 Council has received a request to amend Byron Local Environmental Plan (BLEP) 2014 to rezone a section of beach-front land immediately to the north-west of the Elements of Byron resort. The land had previous use as a private golf course associated with a former tourist facility on the land.

15 The rezoning request is made to enable a residential subdivision of the land to create nine (9) larger lots, each with provision for a single dwelling.

20 Part of the subject land is zoned SP3 Tourist under Byron Local Environmental Plan 2014, with other parts of the land deferred, retaining the zoning under Byron Local Environmental Plan 1988, including 2(t) Tourist Area, 7(a) Wetlands, 7(b) Coastal Habitat and 7(f1) Coastal Lands.

25 The requested rezoning only relates to the cleared grassed parts of the land, to implement a zoning of E4 Environmental Living. This zoning has not previously been applied within LEP 2014, and this would be the first property zoned as such in the Shire.

The land has long been identified as subject to coastal hazards, with the previously adopted 100 year hazard line forming the landward boundary of the existing 7(f1) Coastal Lands zone.

30 The request for rezoning is supported by a detailed Coastal Hazards Assessment, which has been undertaken for the site by Royal Haskoning DHV, who are acknowledged coastal experts.

35 The report maps 50 year (2070), 80 year (2100) and 100 year (2120) hazard lines for the site, based on contemporary "probabilistic" modelling. This modelling approach was agreed by staff of the Department of Planning, Industry and Environment, and therefore forms a sound basis for the hazard assessment. The same modelling approach will be used to undertake the Shire-wide hazard assessment, soon to be commenced.

40 The modelling shows that the contemporary 100 year hazard line is located approx. 135m seaward of the previously mapped 100 year hazard line (i.e. the existing 7(f1) zone boundary), demonstrating that the area within the site subject to coastal hazard is far smaller than previously thought. This result is consistent with the findings of a 2013 hazard review undertaken for Council by WBMBMT.

45 The rezoning proposal requests the application of the E4 zone over all of the cleared parts of the land, with an accompanying Development Control Plan (DCP) to address coastal risks for the part of the land identified as being within the 50 and 100 year hazard areas.

50 Council is currently working on a Coastal Management Program for the whole of the Shire. Amongst other things, the Program will identify all lands subject to coastal risk, by way of contemporary "probabilistic" modelling, and develop policies for how that land will be managed.

Pending the completion of that work, it is recommended that a precautionary approach be taken in respect of land currently identified as subject to coastal risk.

55 In relation to the rezoning request, therefore, such a precautionary approach would allow for the E4 zoning of the cleared parts of the site located landward of the contemporary 100 year hazard line.

It is recommended, however, that the current 7(f1) Coastal Land zoning remain in place for the part of the site located seaward of the contemporary 100 year hazard line, until completion of the Coastal Management Program, at which time it could be reviewed.

- 5 The coastal assessment demonstrates that the majority of the cleared part of the property is not constrained by coastal hazard, and other supporting information indicates that a zoning of E4 Environmental Living would be suitable for that area.

10 Council is requested to consider whether the rezoning should proceed prior to completion of the Coastal Management Program and, if so, how the land seaward of the contemporary hazard line should be managed in the interim.

The options are:

- 15 1. Decline to proceed with any rezoning of the land at this time, pending the outcomes of the Coastal Management Program;
2. Proceed with a Planning Proposal to rezoning the land, consistent with the approach requested by the applicant, which is:
- 20 • apply the E4 Environmental Living zone to all of the cleared parts of the land, including the land seaward of the 100 year 1% coastal hazard line; and
- manage future development within the identified coastal risk area through the application of DCP provisions which mirror the current controls within Part J of DCP 2010.
- 25 3. Proceed with a Planning Proposal to rezone only the part of the cleared site that is located landward of the 100 year 1% coastal hazard line, leaving the existing 7(f1) zone in place seaward of that line.

30 The land owners have expressed a strong preference for Option 2, arguing that this approach has formed the historical basis for managing coastal hazard throughout the Shire.

Written advice from the Biodiversity and Conservation Division of the Department of Planning, Industry and Environment recommended that an E2 Environmental Conservation Zone be applied to land seaward of the hazard line, which would prohibit residential development in that area.

35 However, without the written consent of the land owner, applying the E2 zone on land that does not have biodiversity values is inconsistent with the Minister's Guidelines for applying E zones.

Those Guidelines suggest that coastal hazards should be addressed by an LEP overlay map and local LEP provision. The overlay map and LEP provision could not prohibit development; it could

40 only outline assessment considerations that would apply to applications to develop the mapped land.

Leaving the 7(f1) Coastal Land zone in place seaward of the hazard line achieves substantially the same outcome as that recommended by the Biodiversity and Conservation Division, as residential

45 development is prohibited in that zone.

It is considered that, pending completion of the Coastal Management Program, a precautionary approach is warranted to development in areas of identified hazard. Option 3, above, is therefore

50 recommended by staff.

This approach would allow the preparation of a Planning Proposal to apply the E4 Environmental Living zone, but only over the cleared parts of the site, landward of the identified hazard line. The existing 7(f1) zoning would remain in place prohibiting residential development seaward of that

55 line.

This option would allow the land owner to pursue a residential subdivision of the land, albeit creating lots with 'split zoning' of E4 & 7(f1). Construction of dwellings on those lots would need to be located within the E4 parts of the sites (i.e. landward of the 100 year hazard line).


5 NOTE TO COUNCILLORS:

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

RECOMMENDATION:

1. **That Council endorse the preparation of a Planning Proposal for the land, to apply an E4 Environmental Living zone to the area identified as unconstrained by coastal hazard, leaving the current zoning in place for the parts of the site identified as subject to the 100 year coastal hazard.**
2. **That the draft planning proposal be reported to the June Planning meeting of Council.**

15 **Attachments:**

- 1 Form of Special Disclosure of Pecuniary Interest, E2012/2815 

20

REPORT

1. The Site

<i>Property</i>	<i>Total Area (ha)</i>	<i>Zoning</i>	<i>Existing Uses</i>
Lot 1 DP 1215893	32.73	SP3 Tourist	Elements of Byron resort
		2(t) Tourist Area	
		7(a) Wetland	
		7(f1) Coastal Lands	
Lot 2 DP 1215893	2.02	SP3 Tourist	Vacant
		7(f1) Coastal Lands	
Lot 12 DP 243218	2.73	SP3 Tourist	Vacant
		7(f1) Coastal Lands	
Lot 13 DP 243218	3.95	SP3 Tourist	Vacant
		7(f1) Coastal Lands	
Lot 449 DP 812102	32.08	SP3 Tourist	Vacant
		2(t) Tourist Area	
		7(a) Wetland	
		7(b) Coastal Habitat	
		7(f1) Coastal Lands	

5 The land is located at the northern end of Bayshore Drive. The lots subject to the proposed rezoning are located generally to the north and east of Bayshore Drive. All of the subject land is owned by Ganra Pty Ltd.

10 Lot 1 contains the approved Elements of Byron resort. The remaining lots are vacant.

The north-eastern boundary of the land abuts vegetated sand dunes landward of Belongil beach. The Belongil Creek mouth is located at the south-east end of the subject land.

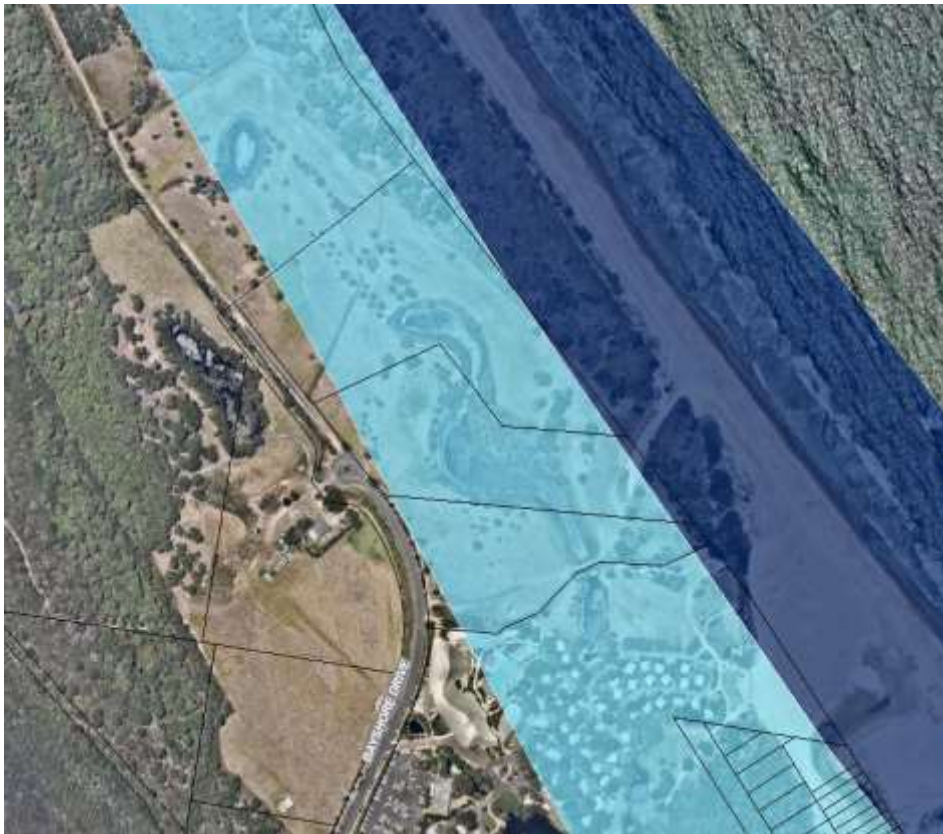
15 North of the Elements resort, the land is predominantly cleared, having been used in the 1980s as a private golf course. An existing 3.0 m wide Right of Way is located in this area, across Lot 2 DP 1215893 & 12 DP 243218, connecting public parking areas on Bayshore Drive and the beach, to provide for public access to the beach.

20 The whole of the land is generally flat, with levels averaging around RL 1.8 to 2.2 m AHD in the central part of the land. It rises to the rail line to approximately 3.0 m AHD, and to a ridge along the north-eastern sand dunes to around RL 7.5 to 10.0 m AHD.

25 Two main drainage lines traverse the site, draining to Belongil Creek, with a number of artificial water bodies located across the property.



Figure 1 Subject Land



5 Figure 2 Location of current 100 year hazard line (shown light blue)

2. Proposed Zone Changes

5 The land owner requested proposal seeks to apply an E4 Environmental Living zone over the cleared parts of the property, to facilitate a subdivision of the land to create nine (9) single dwelling lots.

The rezoning request was supported by assessments of flooding, biodiversity and coastal hazard. Preliminary assessment of those studies indicates that, while there are some issues to be fully addressed, there is a sound basis for moving forward with the proposal.

10 The Coastal Hazards Assessment, which has been undertaken for the site by Royal Haskoning DHV, maps 50 year (2070), 80 year (2100) and 100 year (2020) hazard lines for the site, based on contemporary “probabilistic” modelling. The modelling approach was agreed by staff of the Department of Planning, Industry and Environment Coastal Division, and therefore forms a sound basis for the hazard assessment.



Figure 3 Contemporary Hazard Lines from Royal Haskoning DHV Study

20 The figure above shows the potential subdivision of the land with the position of the various coastal hazard lines.

25 The Scoping Report prepared for the first stage of the Coastal Management Program addresses land understood to be subject to year 2100 hazards, which is represented on this site by the “Year 80” line above.

30 The Scoping Study is a precursor to Shire-wide hazard studies that will result in contemporary hazard mapping across the whole coastline. In accordance with the mandatory requirements of the Coastal Management Manual, that hazard mapping will need to identify areas of immediate hazard, as well a projected hazards over 20, 50 and 100 year timeframes.

Assuming that hazard assessment will take place later this year, it will result in a 100 year line, which equates to the year 2120.

35 Given that, it is recommended that the 2120 line (100 year) be adopted as the basis of zoning at this property. This is considered to be a conservative approach, as it effectively relates to a 1% chance that the coastal erosion would be ‘worse’ than this in 100 years from now.

Given that this rezoning is seeking to move forward prior to the completion of the Coastal Management Program, this conservative approach is recommended.

5 The contemporary 100 year line shown above is located approx. 135m seaward of the 100 year hazard line that currently forms the basis of the 7(f1) zoning and Part J Erosion Precinct 3, demonstrating that the area within the site that is subject to coastal hazard is far smaller than previously thought.

10 In relation to the rezoning request, such a precautionary approach would allow for the E4 zoning of the cleared parts of the site located landward of the contemporary 100 year hazard line. It is recommended, however, that the current 7(f1) Coastal Land zoning remain in place for the part of the site located seaward of the contemporary 100 year hazard line.

STRATEGIC CONSIDERATIONS

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

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

Legal/Statutory/Policy Considerations

20 If Council adopts the recommendation, a Planning Proposal will be finalised to seek the rezoning of parts of the land. That Proposal will be reported to Council with the intention that it be forwarded to the Department of Planning, Industry and Environment for a Gateway Determination that would allow the proposed rezoning to proceed.

25 ***Financial Considerations***

This is a land owner funded proposal.

Consultation and Engagement

30 No consultation has occurred at this stage. Consultation will occur after a Gateway determination.

Report No. 13.7 PLANNING - 26.2016.4.1 Submissions to Planning Proposal Rural Events

Directorate: Sustainable Environment and Economy

Report Author: Rob Van Iersel, Major Projects Planner

5 **File No:** I2020/462

Summary:

10 Council has been investigating the potential to create an approval pathway for weddings/ events on rural land in the Shire. Preliminary community engagement regarding this issue was undertaken in late 2017, leading to a report to Council in June 2018 recommending that the Byron LEP 2014 be amended to provide for approval for rural events on land zoned RU2 Rural Landscape.

15 Following receipt of Gateway Determination from the State Government, a Planning Proposal was formally exhibited for community comment in late 2018.

20 Following that exhibition, an amended Planning Proposal was reported to Council in June 2019, resulting in a resolution to seek an amended Gateway Determination (**Res 19-275**). That resolution included extending the planning proposal to apply to land zoned RU1 Primary Production in addition to RU2 Rural Landscape.

25 An amended Gateway determination was issued on 3 December 2019. The Gateway required two changes to the planning proposal:

- removal of the reference to permitting rural events on land zoned RU1 Primary Production, (events would only be permitted on land zoned RU2 Rural Landscape); and
- removal of a number of detailed provisions to be included within an amendment to the Byron Development Control Plan 2014 (DCP).

30 The required changes do not fundamentally alter the recommend approach, which is to provide for a “rolling approval”, establishing an LEP provision that allows a temporary use, with both a maximum number of annual events and a restricted 3-year approval.

35 Public exhibition of the amended planning proposal and proposed DCP amendment was undertaken in January/ February 2020, including letters to all who had previously made submissions, notification and information on Council’s website and a public information forum at Bangalow on 11 February.

40 Following the exhibition, a total of 25 submissions were received:

- 4 in support of the proposal & DCP;
- 7 opposing the proposal & DCP on the basis that weddings/ events should not be allowed in the rural area;
- 9 opposing the proposal & DCP on the basis that the controls are too restrictive, particularly requesting that a greater number of weddings/ events be allowed;
- 2 opposing on the basis that proposal & DCP should apply to all rural zones; and
- 3 providing commentary/ suggestions for inclusion.

50 The issues raised in the submissions are addressed in this report. Divided opinions remain; some respondents are of the view that the wedding industry is an important part of the Shire that can be managed to avoid disturbance to neighbours; while others are strongly opposed to such activities in the rural hinterland, concerned that the approval mechanism will lead to a proliferation of event sites and that it will not be possible to ensure that disturbance is avoided or minimised.

Based on the assessment, it is recommended that the planning proposal be forwarded to the Parliamentary Counsel's Office for finalisation, and that Byron Development Control Plan 2014 be amended by the addition of Chapter D9 – Rural Event Sites, with the following minor amendments:

- 5 • amendment to prescriptive measure 2 in D4.9.1 Site Suitability, to read: “a Traffic Impact Assessment has been prepared, addressing traffic numbers, impact on local roads, access and on-site parking, demonstrating that the use of the site for a Rural Event Site will not result in unacceptable adverse impacts on the safety or efficiency of local traffic or the amenity of the neighbourhood”;
- 10 • amendment to prescriptive measure 3 in D4.9.1 Site Suitability, to read: “a Land Use Conflict Risk Assessment has been prepared demonstrating that the use of the site for a Rural Event Site will not result in any land use conflict in relation to adjoining or nearby farming activities or preclude future farming activities”; and
- 15 • add a note to the end of the new Chapter to read: “A condition of approval will be applied for all development consents for Rural Event Sites specifying that development consent would cease if three substantiated complaints were received in relation to functions at the site within a twelve-month period”.




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
25 been called by the mover and seconder of all motions relating to this report.

RECOMMENDATION:

1. **That Council forward the planning proposal to amend Byron LEP 2014, as included in Attachment 1 (E2020/26186), to the NSW Parliamentary Counsel's Office (PCO) requesting that a draft LEP Instrument be prepared.**
2. **That Council liaise with PCO as necessary to finalise the content of the draft LEP and to enable PCO to issue an opinion that the plan can be made.**
3. **That Council make the draft LEP under delegated authority and forward the plan to the NSW Department of Planning, Industry and Environment for notification on the NSW Government legislation website.**
4. **That Council upon the LEP being made, adopt the amendment to Byron DCP 2014, as included in Attachment 2 (E2020/26188), and give notice of this decision in accordance with the Environmental Planning and Assessment Regulation.**

Attachments:

- 30 1 26.2016.4.1 Planning Proposal Rural Events v.9 - Following public exhibition, E2020/26186 
- 2 26.2016.4.1 Proposed Amendment to Byron Development Control Plan 2014, E2020/26188 
- 3 Confidential - 26.2016.4.1 Combined submissions - Rural weddings and events Planning Proposal and DCP Chapter D9, E2020/28974
- 35 4 Form of Special Disclosure of Pecuniary Interest, E2012/2815 

REPORTBackground

5 The most recent report on this planning proposal was considered at the Council (Planning) Meeting of 20 June 2019, following previous community engagement activities.

10 That report recommended that Council amend a previous planning proposal, to provide an approval mechanism for rural event sites in the RU2 Rural Landscape zone and seek an updated Gateway Determination from the Department of Planning, Industry & Environment (DPIE) that would allow further community exhibition.

At the meeting, Council resolved (**Res 19-275**):

- 15 1. *That Council forward the amended Planning Proposal (Attachment 1 E2019/23021) to NSW Department of Planning, Industry and Environment for an amended Gateway Determination, to provide an approval mechanism for rural event sites in the RU2 Rural Landscape Zone and RU1 Primary Production Zone.*
- 20 2. *That, following Gateway, if required, the Planning Proposal be publicly exhibited for a period of 28 day; and following this time a further report be put to Council.*

20 In accordance with that resolution, DPIE was requested on 25 June 2019 to consider amending the previous Gateway determination. An amended Gateway was received on 3 December, 2019. It was conditioned to require amendment of the planning proposal to:

- remove the reference to permitting rural events on land zoned RU1 Primary Production, (events would only be permitted on land zoned RU2 Rural Landscape); and
- 25 • remove a number of detailed provisions to be included within an amendment to the Byron Development Control Plan 2014 (DCP).

Exhibited Provisions

30 Based on the amended Gateway, the proposed new LEP provision was redrafted to:

6.11 Temporary Use – Rural Event Site in RU2

- (1) *Despite any other provision of this Plan, development consent may be granted for development on land within Zone RU2 Rural Landscape for a Rural Event Site, up to a maximum of 20 events per calendar year over a period of three (3) years.*
- 35 (2) *In this clause:*
- Rural Event Site** *means the temporary use of a building or defined area within a property zoned RU2 Rural Landscape, where weddings and other similar gatherings/ events are held for commercial purposes for a maximum number of events in the three (3) year period, with a maximum number of 150 attendees per event, but does not include convention centres or exhibition centres or music festivals.*
- 40

45 In addition, a new Chapter was drafted to be included in Byron Development Control Plan 2014 – Chapter D9 Rural Event Sites. It sets out provisions addressing site suitability and management of events, primarily containing the provisions that were included in the previous version of the draft LEP amendment.

Chapter D9 – Rural Event Sites**D9.1 Introduction**

50 Under Clause 6.11 of Byron Local Environmental Plan 2014, rural event site is defined as:
the temporary use of a building or defined area within a property zoned RU2 Rural Landscape, where weddings and other similar gatherings/ events are held for commercial purposes for a

maximum number of events in a three (3) year period, with a maximum of 150 attendees per event, but does not include convention centres or exhibition centres or music festivals.

By definition, rural event site is a land use only permissible on land zoned RU2 Rural Landscape.

5

D9.2 Aim of this Chapter

The aim of this chapter is to manage weddings and events of a similar scale held in the Byron Hinterland, to address a history of disturbance to neighbours associated with these unregulated events.

10

The provisions of this Chapter address the suitability of potential sites and establish minimum standards for the management of events on those sites.

D9.3 Application of this Chapter

This Chapter applies to development applications for rural event sites, as defined in Clause 6.11 of the Byron Local Environmental Plan 2014.

D9.4 Provisions

D9.4.1 Site Suitability

Objective

To ensure that rural events are held on sites that are suitable to such events, particularly in relation to the ability to avoid or manage disturbance to the amenity of the neighbourhood.

Performance Criteria

1. *Use of the property for events will not result in offensive or intrusive noise at neighbouring residences.*
2. *The local road network has the capacity to accept the additional traffic associated with event use at the site without compromise to safety or efficiency.*
3. *Event use at the site will not result in land use conflicts with neighbours, particularly in respect of local farming activities.*

30

Prescriptive Measures

Development consent must not be granted for a Rural Event Site unless the consent authority is satisfied that:

- 35 (1) *the proposal is supported by a site specific acoustic assessment, prepared by a suitably qualified person, quantifying existing background noise levels and noise levels predicted for events in relation to all nearby dwellings, and demonstrating that the use of the property for events will not result in the generation of offensive noise, as defined in the Protection of the Environment Operations Act 1997;*
- 40 (2) *the use of the site for a Rural Event Site will not result in unacceptable adverse impacts on any adjoining land or the amenity of the neighbourhood, particularly in relation to noise and traffic;*
- (3) *the use of the site for a Rural Event Site will not result in any land use conflict in relation to adjoining or nearby farming activities or preclude future farming activities;*
- 45 (4) *no clearing of native vegetation is required for the Rural Event Site;*
- (5) *the Rural Event Site is not located in or immediately adjacent to areas of high Aboriginal cultural heritage significance.*

D9.4.2 Management of Events

Objective

To ensure that events held on approved sites do not disturb the amenity of the neighbourhood.

50

Performance Criteria

1. Use of the property for events will not result in offensive or intrusive noise at neighbouring residences.
- 5 2. Event use at the site will not result in land use conflicts with neighbours, particularly in respect of local farming activities.

Prescriptive Measures

10 Applications for development consent for a temporary Rural Event Site must include an Events Management Plan, which contains (as a minimum) provisions that:

- (1) provide for all event guests (other than the bridal party) to be transported to and from each event by bus, suitable to the road network to be utilised for transportation to the event; and
- (2) ensure that all amplified music will cease no later than 10:00pm; and
- 15 (3) ensure that all event attendees (other than those residing on site) will be off-site no later than 11:00pm, other than those staying overnight on the premises; and
- (4) outline measures that will be in place to ensure predicted noise levels are not exceeded at nearby dwellings; and
- (5) provide for the monitoring of noise generated at events and annual compliance reporting to Council; and
- 20 (6) provide for the notification of nearby residents, including contact details for an appropriate management person who must be on-site and contactable during each event and provision of a sign, located so that it can be viewed from a public space outside of the property notifying the name and contact phone number of the management person; and
- (7) ensure that adequate arrangements are in place to manage wastewater and general waste
- 25 (8) manage the potential noise/ amenity impacts associated with any persons staying overnight at the site at the conclusion of the function; and
- (9) prohibit the use of fireworks, helicopters and/or other comparable activities known to cause disturbance to livestock and/or farming activities.

30 In deciding whether to grant consent for a temporary Rural Event Site, the consent authority must consider:

- (1) the maximum number of events permitted in any calendar year; and
- 35 (2) the potential loss of farming on the property, particularly where part or all of the site is mapped as State and/ or Regionally Significant Farmland; and
- (3) the potential impact on areas of environmental value, whether on the property the subject of the Rural Event Site or on adjacent and nearby land, including koala habitat; and
- (4) whether a trial period is appropriate; and
- 40 (5) the need to impose a condition specifying that development consent would cease if three substantiated complaints were received in relation to functions at the site within a twelve-month period; and
- (6) the need for a biosecurity management plan.

Public Exhibition

45 Public exhibition of the draft LEP amendment and proposed DCP amendment was undertaken in January/ February 2020, including letters to all who had previously made submissions, notification and information on Council's website and a public information forum at Bangalow on 11 February. Approx. 40-50 people attended that forum.

As required by the Gateway, letters were also sent to Department of Planning, Industry and Environment – Agriculture & Biodiversity and Conservation divisions; NSW Rural Fire Service and Transport for NSW (RMS).

5 Submissions

The agency responses to exhibition of the proposal area addressed below:

Agency Comment	Staff Response
Department Primary Industries - Agriculture	
Support amended proposal, based on removal of consent opportunity in RU1 Primary Production zone	Noted.
Suggest that a requirement for a Land Use Conflict Risk Assessment be added to draft DCP provisions	Accepted – provision added.
Where there is potential for land use conflict an acceptable vegetated buffer should be established on the proponent's land.	This would be a logical outcome of a Land Use Conflict Risk Assessment where risk is identified. It is not considered necessary to add this to the draft DCP.
Transport for NSW	
Question need for guests to be transported to and from venues by bus in all cases; suggest that each site be assessed on their merits	Impacts associated with the number of cars attending rural weddings have been a significant issue of concern for many rural residents. It is considered that limiting cars will have a significant benefit not only for the amenity of neighbours, but also in relation to safety and efficiency for local roads. The current provisions require applicants to demonstrate that local roads have sufficient capacity for the safe movement of buses, and that buses can enter and leave event sites in a forward direction. No changes recommended.
Recommend that development applications for rural event sites should be supported by a Traffic Impact Assessment, addressing traffic numbers, impact on local roads, access and on-site parking.	Accepted – provision added.

10 Council did not receive a response from NSW Rural Fire Service or the Biodiversity Conservation Division of DPIE.

25 submissions were received from the community:

- 4 in support of the proposal & DCP;
- 7 opposing the proposal & DCP on the basis that weddings/ events should not be allowed in the rural area;
- 9 opposing the proposal & DCP on the basis that the controls are too restrictive, particularly requesting that a greater number of weddings/ events be allowed;
- 2 opposing on the basis that proposal & DCP should apply to all rural zones; and
- 3 providing commentary/ suggestions for inclusion.

20

The following table summarises some of the key themes and comments:

Theme	Various Opinions
Support for proposal	Well run venues are needed and support the community with jobs and as well as our local community
	Provisions will provide for appropriate regulation and control to avoid/ minimise amenity impacts
Opposition to allowing weddings & events	Weddings and events are inconsistent with the objectives of the RU2 zone
	Weddings and events are inconsistent with rural amenity – it is not possible to avoid or minimise impacts associated with traffic and noise
	20 events per year are too many – experience indicates at each wedding involves parties before and after, associated with accommodation at the venue
	DCP does not provide sufficient protection as State Government requires that Councils be flexible in applying DCPs
	Acoustic assessment cannot be solely relied on to determine potential impacts – weather conditions can vary noise ‘travel’ greatly Significant lack of trust in the assessment process
	Traffic impacts – rural roads do not have sufficient capacity; associated safety issues
	There is no need for the plan change – there are sufficient venues in urban areas and community halls
	Creating jobs and associated economic benefits should not be at the expense of the amenity of existing rural residents
Opposition based on inability to enforce controls	The planning proposal should not be considered without a corresponding compliance and enforcement proposal that has approved funding/resourcing
	Many objectors do not believe that it is possible for Council to enforce compliance
	It is not fair that neighbours need to ‘police’ activities, needing to provide unrealistic evidence to substantiate complaints
	Previous experience has demonstrated that Council is not able to shut venues
Objection on basis that provisions are too restrictive	Restrictions would be devastating to small businesses, jobs, and the tourism industry at whole
	Only 20 weddings/ events per year is too restrictive
Objection to deletion of RU1 and/ or R5	Council should support farmers by allowing supplementary income
	Weddings should be allowed where there is an approval for rural tourist use in RU1
	Regardless of zoning, each proposed site should be assessed on its merits

Theme	Various Opinions
Comments/Suggestions	Proposal should include minimum separation distance to nearby homes
	The host of an approved event must provide written notice by registered mail of the date of any event to the owners of the properties directly adjoining to the event location at least 14 days prior to the event so that the adjoining owners can relocate themselves on the day of the event
	The “three strikes” provision should be strengthened to apply in all cases.
	Amplified music should not be allowed – if this were enforced, most noise issues would disappear
	Separation distance of at least 2kms
	Require an annual approval fee and a fee for each event
	Limit guests to 50
	All guests off site no later than 8pm
	Functions only permitted inside approved Council structures

Key Issues

Local Amenity Impacts

5 Many rural residents remain strongly of the view that allowing weddings/events will erode their rural amenity.

10 In many cases, this view is based on a history of activities at previous unauthorised sites. In some of those cases, it is clear that events were being held on sites that were not suitable, where there was no assessment of potential disturbance.

There is no doubt that activities associated with weddings in the rural area have resulted in significant disturbance to neighbours in some locations.

15 It is also clear, however, that there have been wedding venues that have operated with no history of complaints. As outlined in previous reports to Council, staff have heard from neighbours of such venues who report that, while they are aware of the weddings and events, their amenity is not disturbed by such events.

20 The intention of the proposed LEP & DCP provisions is provide a mechanism whereby the suitability of a site can be measured and management measures can be put in place so that the wedding and event industry can proceed but only in locations that will protect the amenity of neighbours.

25 The requirement for a site-specific professional acoustic assessment and the limits on approvals – i.e. approval period of 3 years; maximum of 20 events per calendar year; maximum of 150 attendees – provide the primary mechanisms for the protection of amenity.

30 Additional DCP provisions regarding transport by bus curfews and the like also provide protection for rural amenity.

35 There is also the DCP “three strikes” provision that allows the application of a condition on any approval specifying that development consent would cease is three substantiated complaints were to be received in a 12 month period.

It was suggested that this should be strengthened to be applicable in all cases. That suggestion has merit, and the draft DCP provisions have been amended accordingly (see Attachment 2).

Compliance/ Enforcement

5 The ability to enforce planning controls and/or conditions of approval is an issue of significant concern for the community. Many of the submissions and comments opposing the proposed LEP amendment were from rural residents who had previously experienced negative impacts from neighbouring unauthorised events.

10 In addition to outlining the nature and severity of disturbance from those experiences, many of the objectors indicated frustration that Council had been unable to take immediate, or in some case any, action to stop events.

15 Enforcement actions and infringements are governed by the provisions of the *Environmental Planning and Assessment Act 1979*. Under this Act, Council does not have the authority to arbitrarily 'shut down' a venue. Council can, however, issue orders to stop unauthorised use of a venue or in respect to compliance with conditions.

20 For 'development without consent' Council has authority to issue fines of up to \$3,000 for individuals or \$6,000 for companies, if sufficient evidence is collected. For continuing offences or serious issues, Council can issue Court Attendance Notices.

25 The current situation, where there is continued strong demand for rural weddings and events, but a significantly limited ability to approve such land uses, has led to the proposal to provide a controlled approval mechanism.

There has been, and continues to be, regular community complaints arising from weddings and events on rural properties.

30 In order for Council to take enforcement action regarding these complaints, evidence needs to demonstrate a breach of the LEP. For example, evidence needs to demonstrate that the event was commercial in nature rather than a family event. This can be difficult to prove.

35 Anecdotally, it has also been suggested that some venues have been "building in" the potential for a \$3,000 fine into their site fees, to address the risk of infringement action.

40 A number of the engagement attendees, both residents and industry, expressed the views that fines could be increased. This, however, is not possible as the amount of the fines is set in State legislation.

45 Establishing the approval mechanism as a "rolling approval" system provides that approved sites would need to apply, toward the end of the three year approval period, for a further three year approval. In doing so, they would need to demonstrate that events at the site have operated without creating unacceptable neighbourhood impacts.

50 This "rolling approval" system provides a balanced approach, addressing the issues and concerns raised through the engagement process. It also avoids the potential whereby Council is required to continually act against an operator with a "permanent" approval who does not comply with conditions of that approval.

55 Requiring annual compliance reporting will also allow Council to collate data regarding events. Further, the "three-strike" provision would allow intervention within a three-year approval period in extreme circumstances.

Restricting approval pathway to RU2 zone

These concerns were addressed in some detail in the staff report of 20 June 2019. The recommendation of that report was that the approval mechanism not be extended to other zones.

5 In considering that report, Council resolved to seek approval for the mechanism to extend to the RU1 Primary Industry Zone.

10 In providing the amended Gateway Determination, the Department of Planning, Industry and Environment has specifically required that the planning provisions not apply to the RU1 zone.

That avenue, therefore, is closed and there is no further opportunity to extend the provisions to RU1 (or other zones) as part of this planning proposal.

Provisions are too restrictive

15 There were 9 written submissions expressing the view that the proposed provisions are too restrictive and would have a significant impact on many small businesses associated with the wedding industry.

20 Previous discussions with industry representatives indicated that they were willing to work with Council to develop an approval mechanism that provides for continuation of opportunities for the industries in a manner that protects rural amenity.

25 Achieving this balance is the primary objective of this proposal, and it is considered that the approach outlined in the planning proposal is not overly 'punitive' on the wedding industry.

Conclusion

Based on assessment of all submissions, it is recommended that the draft LEP amendment be forwarded to the Parliamentary Counsel's Office for finalisation without change.

30 It is also recommended that the proposed amendment to Byron Development Control Plan 2014, by the addition of Chapter D9 – Rural Event Sites, be adopted with the following minor amendments (as included in Attachment 2):

- amendment to prescriptive measure 2 in D4.9.1 Site Suitability, to read: "a Traffic Impact Assessment has been prepared, addressing traffic numbers, impact on local roads, access and on-site parking, demonstrating that the use of the site for a Rural Event Site will not result in unacceptable adverse impacts on the safety or efficiency of local traffic or the amenity of the neighbourhood";
- amendment to prescriptive measure 3 in D4.9.1 Site Suitability, to read: "a Land Use Conflict Risk Assessment has been prepared demonstrating that the use of the site for a Rural Event Site will not result in any land use conflict in relation to adjoining or nearby farming activities or preclude future farming activities"; and
- add a note to the end of the new Chapter to read: "A condition of approval will be applied for all development consents for Rural Event Sites specifying that development consent would cease if three substantiated complaints were received in relation to functions at the site within a twelve-month period".

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

50

Objective: 3:	We protect and enhance our natural environment
Strategy 3.4:	Support and secure our farming future
Action	Develop and implement strategies to support agriculture, agri-business and

	farmers
Activity:	Implement priority actions of the Rural Land Use Strategy
Objective: 4:	We manage growth and change responsibly
Strategy 4.5	Work to improve community resilience in our changing environment
Action 4.5a)	Develop and implement strategies for our community's needs
Activity:	Prepare planning controls to facilitate Rural Events

5 This Planning Proposal also supports Objective 4 – We Manage Growth and Change Responsibly, Strategy 4.3 – Promote and support local business development, education and employment opportunities and action 4.3 – Facilitate and support sustainable development of our business community.

Legal/Statutory/Policy Considerations

10 The planning proposal has received Gateway determination and can proceed.

Financial Considerations

15 Council initiated planning proposal. Funding from the existing operational budget.

Consultation and Engagement

Relevant consultation has been discussed above.

Report No. 13.8 **PLANNING - DA 10.2019.616.1 Mixed Use Development cnr Jonson & Browning Streets Byron Bay**

Directorate: Sustainable Environment and Economy
Report Author: Rob Van Iersel, Major Projects Planner
File No: I2020/599

5

Proposal:

10

DA No: 10.2019.616.1

Proposal description: Demolition of Existing Buildings and Construction of Mixed Use Development

Property description: LOT: 21 DP: 247289, LOT: 5 SEC: 51 DP: 758207, LOT: 60 DP: 1256365, LOT: 61 DP: 1256365

Address: 137 Jonson Street BYRON BAY, 139 Jonson Street BYRON BAY, 3 Browning Street BYRON BAY

Parcel No/s: 34700, 34710, 269932, 269933

Applicant: Mr M Scott

Owner: JGD Developments Pty Ltd

Zoning: B2 Local Centre

Date received: 26 November 2019

Integrated / Designated Development: Integrated Designated Not applicable

Concurrence required No

Public notification or exhibition:

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 2/1/20 - 29/1/2020
- Submissions received: 64; 40 support; 24 objection

Planning Review Committee: Not applicable

Variation request Clause 4.6 – request to vary 9.0m building height and 1.3:1 floor space ratio

Delegation to determine Council

Issues:

- Clause 4.6 Submission – Building Height
- Clause 4.6 Submission – Floor Space Ratio
- Traffic – access via Ruskin Lane
- Consistency with SEPP 65 Apartment Design Guide

Summary:

15 The development application proposes the construction of a mixed use development involving two levels of underground car parking, retail, commercial and café tenancies at ground level, with 28 shop top residential units in two levels above.

20 A previous development application for a mixed use proposal was refused by the Northern Regional Planning Panel on 14 November 2018. That application proposed a four storey development that included commercial premises, a child care centre, shop top housing, serviced apartments and basement car parking.

The Regional Panel refused the application on the basis that the height of the building was excessive. The applicant's clause 4.6 submission, arguing that compliance with the development standard was unreasonable or unnecessary, was not accepted by the Panel.

5 The maximum height applicable in this part of the town centre is 9.0m. The previous application proposed a maximum height of approx. 12m (to a lift overrun) and sought to justify the noncompliance with the standard on the basis that the Byron Bay Town Centre Masterplan contains a recommendation that the maximum building height be increased to match the 11.5m standard applicable throughout the majority of the town centre.

The current development application presents a redesign of the previous proposal. The key changes are:

- removal of the top storey;
- 15 • deletion of the child care centre; and
- deletion of serviced apartments.

20 This development application seeks approval for demolition of all existing buildings, removal of on-site vegetation and the construction of a mixed use development comprising two three-storey buildings either side of a central courtyard, over two levels of basement car parking.

The architectural plan set is contained as Attachment 1.

Development Summary:

<u>Ground Floor</u>	<u>Upper Floors</u>
614m ² retail floor space	2 x 1 bedroom units
120m ² café/ restaurant	20 x 2 bedroom units
799m ² commercial floor space	2 x 3 bedroom units
57m ² ancillary space (storage, amenities, etc.)	4 x 4 bedroom units
Central landscaped courtyard	

25 The application proposes that all residential units would be for permanent occupation. Conditions of consent proposed to prevent their use for holiday letting or as tourist and visitor accommodation.

30 The proposed building has a maximum height of 9.9m over a relatively small part of the roof edge. The majority of the structure complies with the 9.0m maximum height standard.

35 The floor space ratio of the proposal is 1.42:1, which exceeds the 1.3:1 development standard applicable to the locality.

The application includes clause 4.6 submissions in respect of these two non-compliances, arguing that strict adherence to the standards is unnecessary or unreasonable in the subject circumstances.

40 These submissions are addressed in detail in the report below and are considered to be acceptable in the circumstances.

Access to the development is proposed off the southern end of Ruskin Lane, and has been designed in consideration of the roundabout proposed at the Jonson / Browning Street intersection,

5 which will be constructed as part of the town centre bypass works. A left in/ left out restriction is proposed for the Ruskin Lane/ Browning Street intersection, by way of a concrete median in the centre of Browning Street and appropriate signage. The proposal also includes the widening of Ruskin Lane from Browning Street to the north for approx. 65m to cater for two-way traffic entering from Browning Street. Restrictions at the development exit point discourage traffic from using the remainder of Ruskin Lane.

10 A loading bay is proposed adjacent to the car park access ramp, accessed from Ruskin Lane, also providing for garbage collection, with enclosed waste collection stores located either side of the bay. Garbage collection undertaken by a Heavy Rigid Vehicle (such as those used by Solo Waste), will be undertaken in Ruskin Lane, with the HRV using the loading bay to turn so as to exit Ruskin Lane in a forward direction.

15 The traffic assessment submitted in support of the application estimates that the completed development will generate 976 daily vehicle trips, 163 trips in the morning peak and 117 trips in the afternoon peak.

20 Public exhibition of the development application resulted in 40 submissions in support of the proposal, mostly citing the benefit of increased residential housing in the town centre, and 24 submissions of objection, primarily relating to traffic issues and associated impacts on the character and amenity of neighbours, particularly properties fronting Ruskin Lane.

25 The site is located at the southern end of the town centre, on land zoned B2 Local Centre. The Ruskin Lane frontage of the property forms the boundary between this zone and the R2 Low Density Residential zoning on land to the east. The property currently contains a number of residential houses, most of which are single storey.

30 The two properties immediately opposite the site, on the eastern side of Ruskin Lane, contain single storey dwellings that are used for holiday accommodation. These properties would be most impacted by the proposed development, and there is no doubt that construction of the development would alter the existing character of the locality and the current amenity.

35 A two storey dwelling is located on the property adjoining to the north, on land zoned B2 Local Centre. The dwelling was obviously built prior to the current zoning, which prohibits residential development other than shop top housing. That dwelling enjoys existing use rights, but it is reasonable to consider that the property would be redeveloped for a commercial uses at some time in the future commensurate with the B2 zoning.

40 Land to the north along Jonson Street is zoned for commercial development, and it is reasonable to expect the existing character and amenity to change, in line with the nature and scale of the development permitted in that zone. In this way, the proposed development establishes the future character of the southern end of the Byron Bay town centre.

45 The Byron Bay Town Centre Masterplan sets out a strategy for this locality to “*Incrementally transform Jonson Street South into a mixed use district that supports medium density living and local business. By achieving this outcome a greater population of residents and workers can be located within walking distance of the town centre core.*”

50 This Masterplan strategy is consistent with the objectives of the B2 zone. In providing a mix of retail, commercial and residential uses, the proposed development is consistent with both the existing zoning and the Masterplan strategy for the locality.

55 Objections have been raised in regard to traffic impacts, particularly concerned with increased traffic volumes within Ruskin Lane, which has a sealed width of only 3m for much of its length.

The combination of entrance orientation and regulatory signage will prevent additional traffic within Ruskin Lane for all but the short length between the access ramp and Browning Street.

5 Overall, the measures proposed to manage traffic associated with the development are considered to be sufficient to mitigate the impacts of the additional traffic likely to be generated.

10 A report has been provided by opponents of the development, reviewing the traffic assessment provided in support of the applicant. That review was prepared by a qualified traffic consultant and is critical of a number of matters in the applicant's report. The review report has been assessed by Council's Development Engineer, who concludes that, on balance of all issues, the traffic management measures proposed by the applicant will successfully manage potential traffic impacts associated with the development.

15 In addition to traffic / amenity issues, many of the objections suggest that the proposal is an over-development of the site, because of non-compliances with height and floor space requirements of the Byron LEP and inconsistencies with guidelines within the SEPP 65 Apartment Design Guide, primarily associated with deep soil zones and sunlight to all apartments.

20 These issues are addressed in this report and it is considered that non-compliances and inconsistencies are justified in the circumstances. In conclusion, it is recommended that Council approve the development application subject to a range of specific conditions of consent.

NOTE TO COUNCILLORS:




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

30

RECOMMENDATION:

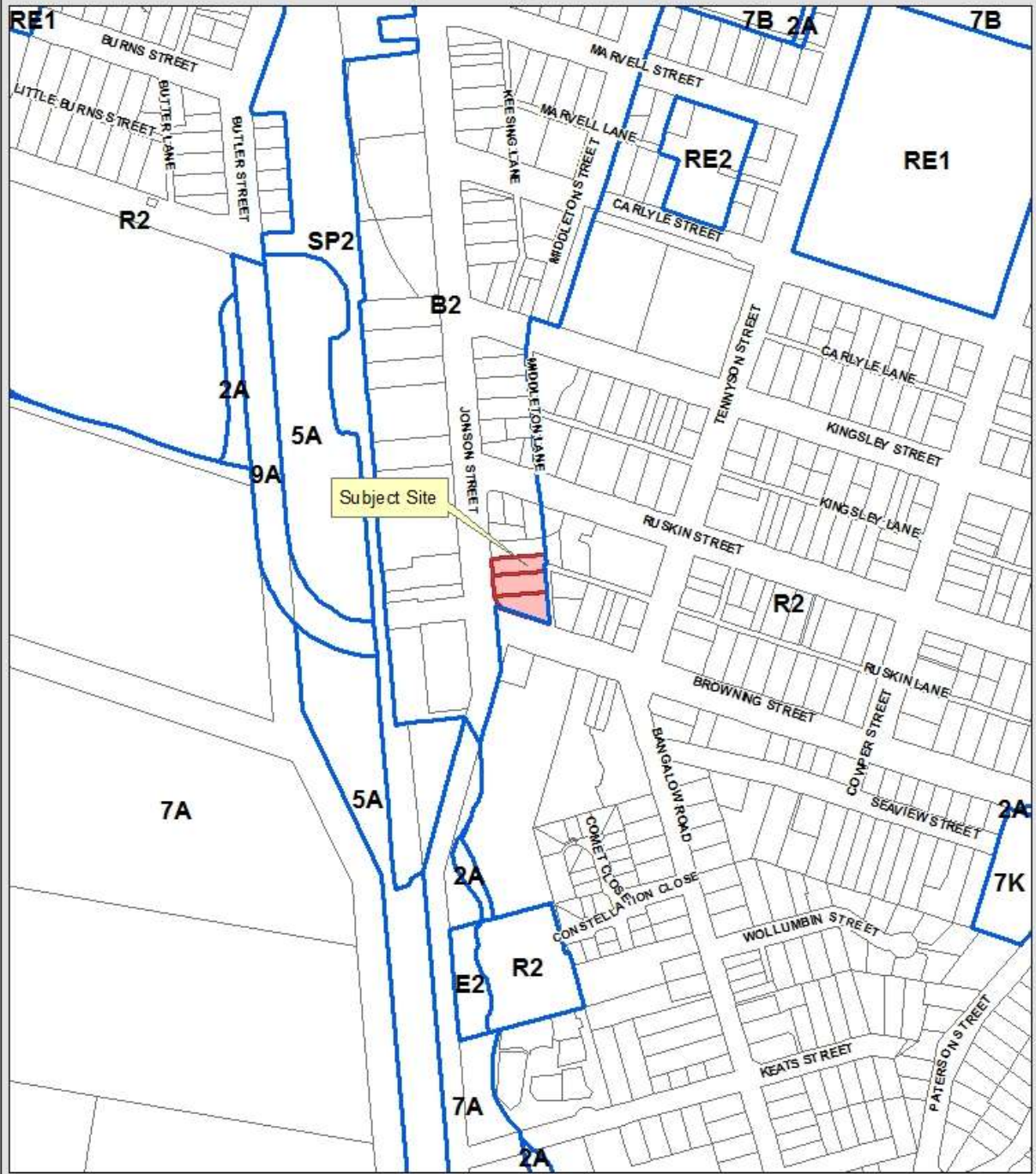
That, pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.616.1 for a mixed use development, be granted consent subject to the conditions of approval in Attachment 3 (E2020/29438).

Attachments:

- 35
- 1 10.2019.616.1 Architect Plan Set, E2019/86364 
 - 2 10.2019.616.1 SEPP 65 Evaluation, E2020/744 
 - 3 10.2019.616.1 Recommended Conditions of Consent, E2020/29438 
 - 4 Confidential - 10.2019.616.1 - Submissions Received, E2020/14989

40

LOT: 21 DP: 247289, LOT: 5 SEC: 51 DP: 758207, LOT: 60 DP: 1256365,
 LOT: 61 DP: 1256365
**137 Jonson Street BYRON BAY, 139 Jonson Street BYRON BAY,
 3 Browning Street BYRON BAY
 PN 34700, 34710, 269932, 269933**



<p>Scale 1:5,000</p>		<p>Byron Shire</p>	
<p><small>Disclaimer: 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. The information contained on this map is for general information only. Any reliance placed on such information shall be at the user's own risk. Please verify the accuracy of the information prior to using it.</small></p> <p><small>Note: The information shown on this map is a copyright of the Byron Shire Council and is the property of the Department of Lands.</small></p>			<p>Date: 21/04/2020</p>

Assessment:

1. INTRODUCTION

5 1.1. History/Background

137 Jonson Street – Lot 21 DP 247289:

BA 1974/80	Dwelling – 4 bedrooms	Approved 24/05/1974
DA 5.1988.398.1	Conversion of garage to dual occupancy	Approved 11/10/1988
BA 1998/2746	Alterations to existing flat	Approved 01/12/1998
BA 1991/2038	Additions to Dwelling	Approved 26/02/1991

139 Jonson Street – Lot 5 Sec 51 DP 758207:

DA 10.2011.553.1	Car hire business & use of garage as office	Approved 06/04/2012
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3 Browning Street – Lots 61 & 61 DP 1256365 (previously Lot 6 Sec 51 DP 758207):

DA 10.2009.9.1	Tree removal – 1 tree	Approved 28/01/2009
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Whole site:

DA 10.2017.510.1	Mixed use development comprising demolition of all existing structures, removal of vegetation and construction of commercial premises, cafe, child care centre, shop top housing, serviced apartments and associated basement car parking and landscaping.	Refused (JRPP) 14/11/2018
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DA 10.2017.510.1:

10 The application proposed a building of four storeys, with a maximum height of 12.2m. It included a clause 4.6 objection in relation to exceedance of the 9.0m maximum building height standard, which relied, in part, on recommendations of the Byron Bay Town Centre Masterplan that the height limit in this part of Jonson Street be increased to match the 11.5m standard applicable in the remainder of the Town Centre.

15 The JRPP refused the clause 4.6 variation because:

- a) *the extent of the non-compliance with the development standard (height of buildings) is excessive (being most of the top level of Building 1 and all of the top level of Building 2);*
- b) *the applicant’s justification relies on the proposed amendment to the height control in Planning Proposal 26.2017.6.1, a Proposal that has not passed the Gateway stage, has not been publicly exhibited, and the making of which is neither imminent nor certain;*
- c) *notwithstanding the applicant’s reliance on Planning Proposal 26.2017.6.1, the applicant proposes four storey buildings rather than the preferred three storey buildings anticipated in the Byron Bay Masterplan which preceded the Planning Proposal;*
- d) *the applicant has not demonstrated any particular site characteristics that justify the proposed variation;*
- e) *the applicant has not addressed the relationship of the proposed variation to existing or potential future buildings to the north and east of the site, nor the context of the development, apart from considering land to the west across Jonson Street which is subject to a different height control.*

30 Based on this, the Panel refused the Development Application for the following reasons:

- *The proposal does not comply with the Apartment Design Guide criteria pursuant to the SEPP 65 with respect to setbacks, deep soil zones and other matters, and therefore does not adequately address the amenity impacts on neighbouring properties;*
- 5 • *The proposal does not comply with the requirements of Byron LEP 2014 with respect to height and floor space ratio and the applicant's written submissions do not adequately justify the proposed contravention of the standards;*
- 10 • *The development relies excessively on compliance with proposed planning controls in a draft planning proposal, rather than seeking to comply with the current planning controls. It would not be in the public interest for this application to be approved, thereby pre-empting the public consultation and consideration of submissions required by the Environmental Planning and Assessment Act 1979 before a local environmental plan amending development standards can be made.*

Planning Proposal 10.2017.6.1:

15 The Proposal was originally reported to Council in November 2017, recommending a number of amendments to existing planning controls applicable to the Byron Bay Town Centre. The proposal was prepared in response to recommendations of the Byron Bay Town Centre Masterplan.

20 Of relevance to the subject application, the Planning Proposal addressed building height, floor space ratio and car parking controls, and also sought to introduce a 'design excellence' provision into Byron LEP 2014.

25 Following preliminary community engagement, the draft Proposal was reported to Council's Meeting of 20 September 2018. In relation to building height, the report recommended that the 9.0m maximum applicable to this lower part of Jonson Street be retained.

At the meeting, Council resolved (**18-609**) to seek an increase in the 9.0m maximum, to 11.5m to match the maximum applicable elsewhere in the Town Centre.

30 That resolution was overturned at Council's meeting of 22 November 2018, where Council resolved (**18-777**) to maintain the existing 9.0m maximum building height in this location.

35 The Department of Planning, Industry and Environment issued Gateway for the Planning Proposal in June 2019, and public exhibition was undertaken in September to November 2018.

40 Consideration of the Planning Proposal is continuing. Based on submissions received, a number of matters are being analysed in more detail, including the applicability of floor space ratio as a development control. There is also an opportunity to link the Planning Proposal to work being undertaken in relation to an affordable housing contributions scheme, to determine whether such a scheme could be extended to the Byron Bay Town Centre.

45 At the Planning Meeting of 16 April 2019, Council resolved (**20-151**) to defer further consideration of the Planning Proposal to enable the establishment of a Design Panel and to allow for further consideration of applying SEPP 70 within the Byron Bay Town Centre.

Byron Bay Town Centre Masterplan:

The Masterplan was adopted by Council on 9 June 2016, following an extensive community engagement program.

50 Within the Masterplan, the strategy for this location is: *"Incrementally transform Jonson Street South into a mixed use district that supports medium density living and local business. By achieving this outcome a greater population of residents and workers can be located within walking distance of the town centre core."*

1.2. Description of the proposed development

5 This development application seeks approval for demolition of all existing buildings, removal of on-site vegetation and the construction of a mixed use development comprising two three-storey buildings either side of a central courtyard.

The architectural plan set is contained as Attachment 1.

Development Summary:

<u>Ground Floor</u>	<u>Upper Floors</u>
614m ² retail floor space	2 x 1 bedroom units
120m ² café/ restaurant	20 x 2 bedroom units
799m ² commercial floor space	2 x 3 bedroom units
57m ² ancillary space (storage, amenities, etc.)	4 x 4 bedroom units

Central landscaped courtyard/
walkway

10

The development includes two levels of basement parking:

- Level 1: fifty-eight (58) car spaces, including two (2) disabled accessible spaces; two (2) staff spaces in a stacked arrangement; two (2) electric car charging bays; eight (8) motorcycle spaces; fifteen (15) bicycle racks and charging station for battery operated bicycles; four (4) lifts – one (1) immediately adjacent to cycle parking and one (1) goods lift; one (1) plant room; two-way vehicle ramp access to exit above and two-way vehicle ramp access to basement below.
- Level 2: sixty-five (68) car spaces, including forty (40) with private storage; four (4) disabled accessible spaces; six (6) motorcycle spaces; two (2) lifts plus one (1) goods lift; two (2) stairwells; one (1) plant room; two (2) store rooms; and a two-way vehicle ramp access to basement level 1 above.

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Above the basement levels, the development involves two (2) building modules either side of a central open courtyard.

- Building 1 (north): a three (3) storey building containing:
 - Ground level – café/ restaurant (120m²); retail premises (74m² & 226m²); commercial premises (311m²); manager’s office (20m²); end of trip facilities (bike racks and amenities/ change rooms); storage; toilets; tank room; stairs and lift off the landscaped courtyard;
 - Level 1 – seven (7) shop top dwellings – 1 x one bedroom; 4 x two bedrooms; 2 x four bedrooms; and
 - Level 2 – seven (7) shop top dwellings – 1 x one bedroom; 4 x two bedrooms; 2 x four bedrooms.
- Building 2 (south): a three (3) storey building containing:
 - Ground level – retail premises (313.6m²); commercial premises (478.5m²); vehicular access ramps from Ruskin Lane; a service area/ loading bay and storage area accessed from Ruskin Lane; stairs and lift off the landscaped courtyard.
 - Level 1 – seven (7) shop top dwellings – 6 x two bedrooms; 1 x three bedrooms; and
 - Level 2 – seven (7) shop top dwellings – 6 x two bedrooms; 1 x three bedrooms.

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The proposed development also includes works within the roads reserves, including new footpaths, street tree planting and awnings in the Jonson and Browning Street frontage, 'undergrounding' of existing electrical services, and the upgrade of Ruskin Lane for the frontage of the property.

5 A landscaped central courtyard is a key feature of the design, with open pedestrian walkways connecting the courtyard to the Jonson / Browning Street intersection and to Ruskin Lane. It provides an interesting visual focal point off the roundabout and also provides a vibrant, attractive and useful passive space for the residents and users of the site.

10 It also provides a 'light well' for the development and supports natural ventilation of residential units.

15 Excavation for the basement car parking will extend over the majority of the property, to varying depths, involving the removal of approx. 21,500m³ of existing material (silts, sand and gravelly clay).

Tree removal will involve:

- 1 Lilly pilli;
- 2 Tuckeroos;
- 1 Brazilian pepper;
- 20 • 1 Chinese elm;
- 1 Frangipani;
- 1 Liquid amber; and
- 1 Oleander.

25 The proposed development has a total of 4,042.2m² of *gross floor area*, as defined in Byron LEP 2014.

Commercial Uses:

30 The ground floor of the proposed development includes a number of retail and commercial tenancies, as well as a café. At this stage, the individual uses of the retail and commercial spaces are not known.

35 The café has a total floor area of 120m² and a seating capacity of approx. 35 people inside and 20 people in the courtyard. Hours of operation for the café are proposed as 6:30am to midnight.

Shop Top Housing:

A total of 28 residential units are proposed. The developer has stated that they will be available for permanent occupation.

40 Four of the dwellings provide for people with disabilities and another two are potentially adaptable. Strata subdivision of the completed development is also proposed in this application.

45 All units face the external faces of the building and include open balconies in addition to the internal living spaces. The units are accessed via lifts and staircases from the basement and open onto internal walkways, which frame the central landscaped courtyard. Timber screens are proposed on the edge of the walkways to provide privacy.

50 Landscaping, including mature trees, is proposed within the courtyard and on the internal walkways, as shown below:



ARTIST'S IMPRESSION - COURTYARD SCREEN

Access:

5 Access to the development is proposed off the southern end of Ruskin Lane. A left in/ left out restriction is proposed for the Ruskin Lane/ Browning Street intersection, with a further restriction at the development exit point to prevent traffic from using the remainder of Ruskin Lane.

The proposal includes the widening of Ruskin Lane from Browning Street to the north for approx. 65m to cater for two-way traffic entering from Browning Street.

10 A medium rigid vehicle (MRV) loading bay is proposed adjacent to the car park access ramp, also accessed from Ruskin Lane. The loading bay will also provide for garbage collection, with enclosed waste collection stores located either side of the bay, catering for both the commercial and residential components of the development. Garbage collection undertaken by a Heavy Rigid Vehicle (such as those used by Solo Waste), will be undertaken in Ruskin Lane, with the HRV
 15 using the loading bay to turn so as to exit Ruskin Lane in a forward direction. The on-site manager will be responsible for the movement of waste bins for this collection. Waste collection is proposed to be undertaken once per week for each of the waste streams.

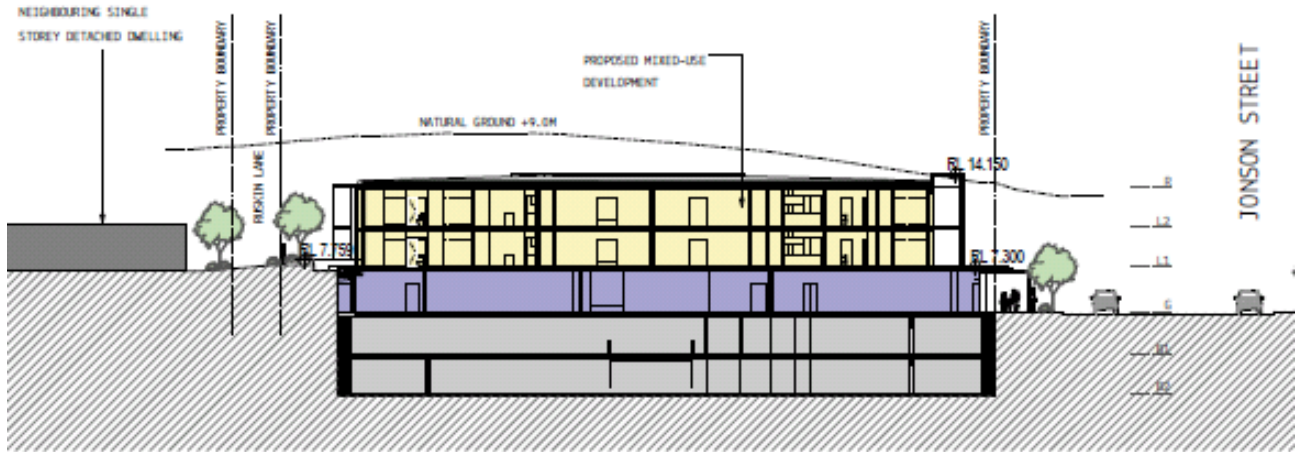
20 The traffic assessment submitted in support of the application estimates that the completed development will generate 976 daily vehicle trips, 163 trips in the morning peak and 117 trips in the afternoon peak.

Building Height:

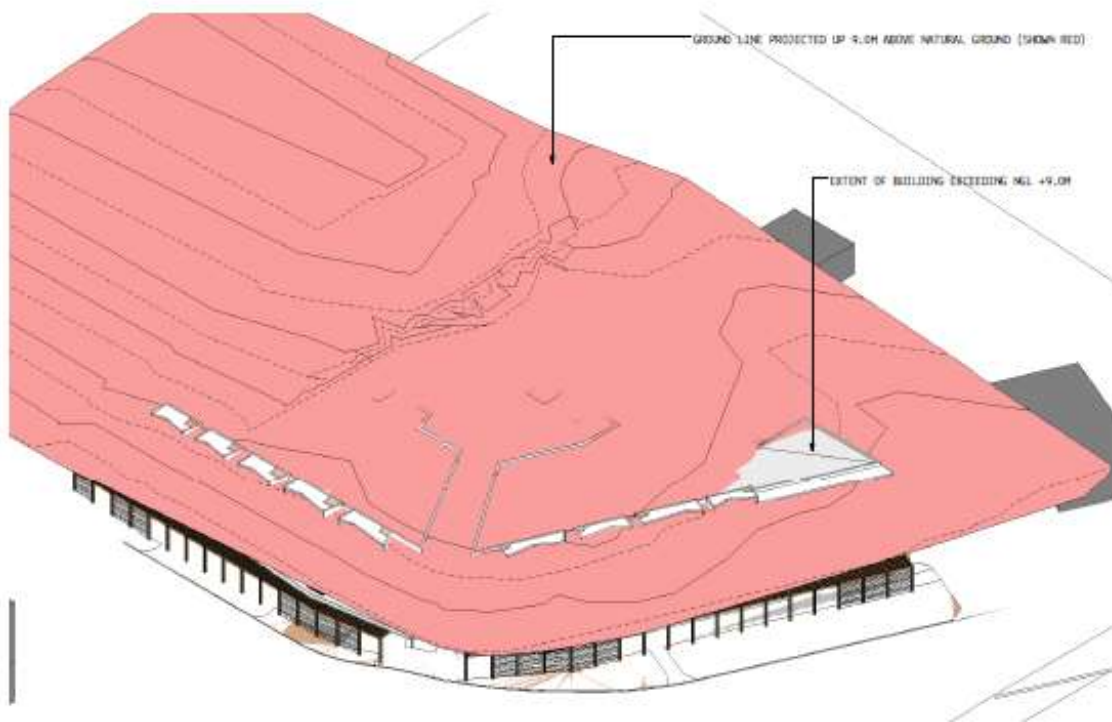
25 All of the proposed building is three (3) storeys in height. The ground floor of the development (i.e. the commercial component) is set at around ground level at the Jonson and Browning Street frontages. Because of the slope of the land, that ground floor level is below existing ground level within the majority of the site.

30 As such, the major part of the building is well below the 9.0m height limit, when measured from existing ground level to the top of the roof.

There are, however, parts of the roof edges that exceed the 9.0m height limit (see below).



Building section - height in relation to 9.0m height standard



5 Perspective view - extent of building height exceedance shown

Sustainability:

10 The proposed development achieves an average 7.6 star band rating in the Nationwide House Energy Rating Scheme (NatHERs). This is as an average across all apartments with individual apartments reaching up to 8.6 stars.

For apartment design, this is a high standard that is difficult to achieve. The rating depends on:

- the layout
- the construction of roof, walls, windows and floor
- 15 • the orientation of windows and shading to the sun's path and local breezes; and
- how well these suit the local climate.

Note: Typical ratings - Houses built in 1990 averaged about one star on the NatHERS scale. Before the introduction of national energy efficiency regulations for houses in 2003, less than one

per cent of Australian houses achieved six stars. Many well designed houses are now being built that are rated at seven stars or more. (www.nathers.gov.au)

The design provides a number of sustainability initiatives, including:

- 5 • significant natural ventilation for all apartments, through the use of the central courtyard/ void, and good solar access to most;
- vertical timber screening to block western sun;
- connection to reticulated treated wastewater for all landscape irrigation;
- photovoltaic solar system to power building, services etc. and
- 10 • innovative use of planting (green walls etc.) to increase the cooling effects of vegetation.

The overall building performance exceeds the minimum requirements of BASIX in terms of water and energy efficiency.

15 **Construction staging:**

The development is proposed to be constructed in two stages, with the basement carparking levels constructed first, followed by the remainder of the building.

1.3. Description of the site

20

The Site:

137 Jonson Street	Lot 21 DP 247289	758.8m ²
139 Jonson Street	Lot 5 Sec 51 DP 758207	1,012.0m ²
3 Browning Street	Lot 60 DP 1256365	1,009.0m ²
	Lot 61 DP 1256365*	29.1m ²
		2,835.9m ²

* Lot 61 is currently owned by Byron Shire Council. It was created as part of a 'land swap' arrangement to facilitate the construction of the Bypass roundabout at the Jonson/ Browning Street intersection, where part of the previous lot (Lot 6 Sec 51 DP 758207) was dedicated to Council for road widening, in exchange for a strip of land approx. 0.6m wide along the Browning Street frontage. A condition of consent is recommended requiring the amalgamation of all lots prior to occupation of the building.



Land is zoned: B2 Local Centre
Property is constrained by: Acid Sulfate Soils (Class 5)
Proximity to Heritage Items – Norco Building located on opposite side of Jonson Street; Jasmin House located on opposite side of Browning Street.

5 Each of the existing properties contains a dwelling, with a second dwelling located on Lot 21. The dwellings are single storey, except for the two-storey dwelling at the Jonson Street frontage of Lot 21. There are a number of existing trees across the properties that will be removed for the proposed development.

10 The combined properties have a frontage to Jonson Street of approx. 49m, with approx. 48m to Browning Street and approx. 60m to Ruskin Lane. The property has a high point in its north-east corner, at approx. RL 8.0m AHD. It slopes to the south west at around 3⁰, with low points at the Browning Street frontage of approx. RL 3.8m AHD. The Jonson Street frontage of the property is at approx. RL 4.2m AHD. The property is oriented towards the Jonson/ Browning Streets intersection. The approved Byron Town Centre Bypass will exit at this point, with a new four-way roundabout proposed.

15 The property is located at the southern fringe of the Byron Bay Town Centre. It is zoned B2 Local Centre, as is land immediately north and on the opposite side of Jonson Street. Land on the eastern side of Ruskin Lane is zoned R2 Low Density Residential. Land in the vicinity of the property, on the eastern side of Jonson Street and further to the east, is currently largely residential in nature, although there are a number of holiday properties among the existing dwellings. On the opposite side of Jonson Street, land uses are more commercial, other than shop-top dwellings immediately opposite. Byron RSL Club is located in close proximity.

25 The approved design for the Byron Bypass includes the construction of a roundabout at the Jonson/ Browning Streets intersection, directly in front of the site. An acquisition of a small part of the subject land has previously occurred to allow for a widening of the road reserve in this location to accommodate the roundabout works. That adjustment also provided for the creation of Lot 61 DP 1256365, which is a narrow (approx. 0.6m wide) strip of land along the Browning Street frontage of the property, which will be transferred to the land owners and consolidated with the larger property holding.

30 Construction of the bypass roundabout is planned for completion in late 2020 and it is likely to be in operation before construction of the subject development.



Site Locality



No.137 Jonson St



No. 139 Jonson St



Existing dwelling No. 3 Browning St



Existing dwellings No. 137 and No. 139 Jonson Street from Ruskin Lane

5



Existing buildings and shop top apartments on western side of Jonson Street



Location of proposed by-pass road looking from site to west



Dwelling No. 5 Browning St (approved as B&B)



Corner of Ruskin Lane looking south



No 5 Browning Street including solar panels

5



Ruskin Lane



Ruskin Lane



Existing dwelling to the north



Ruskin Lane looking to Browning Street



Browning Street looking to Ruskin Lane

5 **2. SUMMARY OF REFERRALS**

Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
Building Surveyor	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to conditions.
Contributions Officer	The proposed development is mixed use and s7.12 levy or s7.11 contributions may apply. The contributions plan requires that whichever the greater amount is to be applied. The estimated cost of works is \$19,340,326. The s7.12 levy would equate to 1% of that, which is \$193,403. The S7.11 levy, calculated based on the residential component of the development, will be \$254,240.11. This larger amount is therefore imposed by consent condition.
Local Traffic Committee	The proposal includes a number of regulatory and advisory traffic signs associated with the access off Ruskin Lane. The signs were considered and endorsed at the Local Traffic Committee meeting of 12 May 2020.
Roads & Maritime Services	RMS has provided a response highlighting the traffic issues to be considered. See discussion below.

RMS advice to Council suggests that *Council should be satisfied that:*

- *The impacts of through and turning traffic have been adequately addressed. Westbound right-turning traffic into Ruskin Lane will have an impact on through traffic due to the kerbside parking on the southern side of Browning Street. This will have an impact on the safety and efficiency of the regional road.*

5 Note: A median is proposed to be placed in the centreline of Browning Street to prevent the right-turn movement referred to above.

- *Adequate parking is being provided for staff, customers and residents.*
- *Service vehicles should enter and leave the site in a forward manner. The loading dock will be able to be utilised by the proposed retail, commercial and residential uses. Garbage and waste collection services have been safely and adequately catered for.*
- *Adequate consideration should be given to connectivity for public transport facilities and active transport modes such as walking and cycling. Traffic exiting Ruskin Lane will have to give-way to pedestrians.*
- *Regulatory signs and devices will require the endorsement of the Local Traffic Committee prior to Council approval.*

20 The proposed road works at Ruskin Lane are clear of the extent of works for the bypass. The traffic study is adequate to demonstrate that the proposal will have limited impact on the functionality of the bypass, with Ruskin Lane should be left in left out only and a central median extended from pedestrian refuge in the bypass roundabout.

3. SECTION 4.14 – BUSH FIRE PRONE LAND

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

The site is not bush fire prone land.

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

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

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 44 - Koala Habitat Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The subject site has an area less than 1ha. The development control provisions of this SEPP therefore do not apply. [Note: On 1 March 2020, this SEPP was repealed and replaced by SEPP (Koala Habitat Protection) 2019. The savings provisions of the new SEPP provide, however, that a development application made, but not finally determined, before the commencement of the new Policy must be determined as if this Policy had not commenced]		
State Environmental Planning Policy No 55 - Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Clause 7 of the policy requires the consent authority to consider whether the land is contaminated. A Stage 1 Preliminary Contamination Assessment, prepared by ENV Solutions dated June 2019 (updating their previous report of May 2017), demonstrates, based on a review of site history as well as soil sampling across the property, that further investigations in relation to		

	Satisfactory	Unsatisfactory
<p>contamination are not required.</p> <p>The Stage 1 Preliminary Contamination Assessment for the proposed development has been considered and is deemed to satisfy the requirements of clause 7.</p>		
<p>State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: The SEPP applies as the proposal involves more than four (4) shop top dwellings in a three (3) storey building.</p> <p>Clause 28 of SEPP 65 requires that, in determining an application to which the SEPP applies, Council must consider the Design Quality Principles contained in Schedule 1 of that Policy, as well as consistency with <i>Apartment Design Guide</i> (Dept Planning & Environment, 2015).</p> <p>Assessment of the proposed development in relation to the principles and the Guide is contained at Attachment 2.</p> <p>The Guide is primarily applicable to residential development, although there are some areas where guidance is provided for mixed-use situations such as this, where shop-top housing is proposed within a commercial zone.</p> <p>If the apartments were proposed as tourist use, SEPP 65 would not apply.</p> <p><i>The Apartment Design Guide - Desired future character</i> also provides for developments that will vary from the established character of an area. This is particularly relevant in the context of this site, which proposes a density and mix of uses on the most southern edge of Byron Bay Town Centre that is very different to the existing buildings within and immediately adjoining the site. Other developments on the western side of Jonson Street already approved or under construction including the old butter factory site and the 'Marcato' development have established a precedent for this emerging built form.</p> <p>The proposed development is consistent with the design principles, and is generally consistent with the Apartment Guide, with exceptions addressed below:</p> <ul style="list-style-type: none"> • <u>Section 3D Communal open space</u> <p><i>Objective:</i> provide open space to enhance residential amenity and opportunities for landscaping.</p> <p><i>Criteria:</i> communal open space should have an area of at least 25% of the site. there should be at least 50% direct sunlight to open space for a minimum of 2hrs between 9am & 3pm mid-winter.</p> <p><i>Inconsistency:</i> central courtyard area only 14% of the site area. only 22% of courtyard receives the required amount of direct sun.</p> <p><i>Justification:</i> The design guide indicates that, where developments are unable to achieve the design criteria, they should:</p> <ul style="list-style-type: none"> - <i>provide communal spaces elsewhere such as a landscaped roof top terrace or a common room;</i> - <i>provide larger balconies or increased private open space for apartments;</i> - <i>demonstrate good proximity to public open space and facilities and/ or provide contributions to public open space.</i> <p>The development includes balconies that, in all cases, are larger than suggested by the design guide. The applicant also suggests that the site is located in easy walking distance to a range of open space areas, including main beach and the Byron Bay Rec Grounds.</p> 		

	Satisfactory	Unsatisfactory
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• Section 3E Deep soil zones

Objective: provide deep soil areas to support plant and tree growth, to provide amenity and promote good stormwater management (i.e. infiltration).

Criteria: deep soil areas should equate to 7% of the site area, and have a minimum width of 6m.

Inconsistency: deep soil areas limited to 2.3% of site area and none have the required 6m width.

Justification: The location of the primary deep soil area is along the Ruskin Lane boundary, hard up against the eastern wall of the building, with a width of only 1.5m. This is unlikely to *allow for and support healthy plant and tree growth.*

Existing trees on boundaries are not retained, with limited opportunity to replace except within streetscape.

The guide provides for alternate forms of planting. The application proposes podium planting of all levels, as well as 'green walls' and significant streetscape planting.

The guide provides that *achieving the design criteria may not be possible on some sites including where:*

- *the location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres)*
- *there is 100% site coverage or non-residential uses at ground floor level*

Where a proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved and alternative forms of planting provided such as on structure.

In this case, provisions relating to commercial uses in the B2 zone allow for 100% site coverage, which is typical of a town centre area.

Stormwater management for the development will include on-site detention as well as treatment, to ensure that post-development flows are maintained and that discharge quality meets the required standards.

Alternative forms of planting are proposed, in addition to the podium planting within the central courtyard, including green walls and trellises.



ARTIST'S IMPRESSION - COURTYARD SCREEN

	Satisfactory	Unsatisfactory
<p>It is considered that, notwithstanding the numerical non-conformance, the development as proposed is consistent with the design objectives of this part of the Guide, in that alternate landscape proposals will result in significant podium planting.</p> <ul style="list-style-type: none"> <p><u>Section 3F Visual privacy</u></p> <p><i>Objective:</i> separation to neighbouring sites achieves reasonable levels of visual privacy.</p> <p><i>Criteria:</i> 6m from property boundary to habitable rooms and balconies.</p> <p><i>Inconsistency:</i> northern boundary – 6m to habitable rooms, but 3m to edge of balconies.</p> <p><i>Justification:</i> The adjoining property is also zoned B2 Local Centre, and the existing dwelling on that land is aged. The dwelling on that lot is approx. 3.5m north of the common boundary. It is reasonable to assume that the site would be redeveloped for commercial and/ or mixed uses in future.</p> <p>Landscape planting in the setback will assist in reducing privacy issues.</p> <p><u>Section 4A Solar and daylight access</u></p> <p><i>Objective:</i> optimise the number of apartments receiving sunlight to habitable rooms.</p> <p><i>Criteria:</i> living rooms and private open space of at least 70% of apartments receive a minimum of 3hrs direct sunlight between 9am and 3pm in mid-winter.</p> <p><i>Inconsistency:</i> 36% of apartments comply. 21% receive no direct sunlight between 9am and 3pm mid-winter.</p> <p><i>Justification:</i> The orientation of the site, with three street frontages, on the east, west and south, make it difficult to achieve solar access to all units without significantly altering the design so that units do not face the street frontages.</p> <p>In terms of good design for this prominent corner, it is considered that having the shop top apartments face the street frontages is a good outcome.</p> <p><u>Section 4C Ceiling heights</u></p> <p><i>Objective:</i> ceiling heights provide good natural ventilation and daylight access.</p> <p><i>Criteria:</i> in mixed use areas – 3.3m ground & first floor (to promote future flexibility of use for first floor); 2.7m for residential floors.</p> <p><i>Inconsistency:</i> ground floor – 3.0m; first floor (which is residential) – 2.7m.</p> <p><i>Justification:</i> For ground floor commercial uses, 0.3m discrepancy is minor and will not significantly impact ventilation or sunlight. 3.3m is not considered necessary for first floor, given the location of the property at the southern end of the business zone, and the extent of land zoned for business uses – it is very unlikely that there would be future demand to change first floor to commercial use.</p> 		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: Clause 6 (1) provides that proposed BASIX affected development for which the regulations under the Act require a BASIX certificate to accompany a development application.</p>		

	Satisfactory	Unsatisfactory
<p>The proposal is accompanied by a valid BASIX and NatHers certificate. The SEPP has been addressed and the proposal is considered to comply.</p>		
<p>State Environmental Planning Policy (Coastal Management) 2018</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: The property is not located within the Coastal Zone and is not affected by any mapping under this SEPP.</p>		
<p>State Environmental Planning Policy (Infrastructure) 2007</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: Clauses 101, 102 and 104 of the SEPP are applicable, as the property fronts Jonson Street and Browning Street, which are part of the classified road (MR 454).</p> <ul style="list-style-type: none"> <p>• Clause 101</p> <p>The clause applies to development on land that has a frontage to a classified road. The objectives are to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads. Both Jonson and Browning Streets are part of the classified road network in this area (MR454).</p> <p>The clause requires that a consent authority must not consent to development on such land unless it is satisfied that:</p> <ul style="list-style-type: none"> <p>• <i>where practicable and safe, vehicular access to the land is provided by a road other than the classified road</i></p> <p>This is addressed in more detail in section 4.8 of this report (below). The proposed development is designed to have access from Ruskin Lane, to avoid access directly from the classified roads (Jonson & Browning Street).</p> <p>The assessment below indicates that the access as proposed is both practicable and safe, and the proposal therefore complies with this requirement.</p> <p>• <i>the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:</i></p> <ul style="list-style-type: none"> (i) <i>the design of the vehicular access to the land, or</i> (ii) <i>the emission of smoke or dust from the development, or</i> (iii) <i>the nature, volume or frequency of vehicles using the classified road to gain access to the land</i> <p>The detailed assessment of traffic aspects of the development is outlined in Section 4.8 of this report (below). Restricting access at the intersection of Browning Street and Ruskin Lane to left in / left out is the primary measure that addresses traffic safety and efficiency in this location.</p> <p>• <i>the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.</i></p> <p>An acoustic assessment has been submitted, demonstrating that the residential uses will not be adversely impacted by road noise.</p> <p>• Clause 102</p> <p>Clause 102 provides that the consent authority considers the impact of road noise or vibration on proposed residential accommodation that is adjoining a road with an annual average daily traffic volume of more than 20,000 vehicles. An Environmental Noise Impact Report Environmental Noise Impact Report by CRG Acoustics Pty Ltd, dated 06 November 2019, recommends a number of inclusions to minimise noise impact from the development. The proposed development is considered to be satisfactory with regards to the classified road</p> 		

	Satisfactory	Unsatisfactory
subject to conditions of consent.		
<ul style="list-style-type: none"> Clause 104 of State Environmental Planning Policy (Infrastructure) 2007 Clause 104 requires that Roads and Maritime Services (RMS) is given the opportunity to comment on development that is traffic generating development specified under Schedule 3 of the SEPP. The proposed development is traffic generating development based on the proposed number of motor vehicle trips per hour. The RMS provided written comments in a letter to Council dated 19 December 2019 to assist in making a determination. The proposed development is considered to be satisfactory with regards to traffic generating development, subject to conditions of consent. 		
State Environmental Planning Policy (State and Regional Development) 2011	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The previous application (DA 10.2017.510.1) met the criteria of "regional development", as defined at the time it was lodged. Determination of that application was therefore undertaken by the Northern Joint Regional Planning Panel. Since that time, the threshold for 'general development' has increased from \$20M to \$30M. The current application has an estimated cost of approx. \$19M, and it therefore is not regional development. Council is therefore the determining authority for this application.		

4.2 Byron Local Environmental Plan 2014 (LEP 2014)

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

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

- 10 (a) The proposal is defined as ***mixed use development*** in the LEP dictionary, which means a *building or place comprising 2 or more different land uses*. The individual land uses within the proposed development are defined in the dictionary as:
- Commercial Premises, including
 - Business Premises;
 - Office Premises; and
 - 15 – Retail Premises, including:
 - Food and Drink Premises, being:
 - Restaurant or café;
 - Shop top housing;
 - (b) The land is within the B2 Local Centre according to the Land Zoning Map;
 - 20 (c) All components of the proposed development are permitted with development consent; and
 - (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
<i>To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.</i>	The provision of shops/ commercial uses will serve the needs of people who live and work in Byron Bay Town Centre.
<i>To encourage employment opportunities in accessible locations.</i>	The commercial uses will generate employment.
<i>To maximise public transport patronage and</i>	The site is located on a bus route. Cycling

Zone Objective	Consideration
<i>encourage walking and cycling.</i>	spaces are provided as well as 'end of trip' facilities. The site is located in easy walking distance to the remainder of the town centre.
<i>To encourage vibrant centres by allowing residential and tourist and visitor accommodation above commercial premises.</i>	Consistent.

Clause 2.7 – Demolition requires consent

5 Clause 2.7 requires that demolition of a building may be carried out only with development consent, except where it is demolition of development specified as exempt development under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. The proposal seeks consent for the demolition of all existing structures including four (4) dwelling houses and ancillary structures. This type of demolition is not exempt development. It is permissible with consent under Clause 2.7.

10

Clause 4.3 – Height of buildings

15 Clause 4.3 provides that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The height is measured from existing ground level to the finished level of the roof or parapet.

15

The maximum building height applicable to this part of the town centre is 9.0m. This height limit applies to land on the eastern side of Jonson Street, between Browning Street and Kingsley Street. Elsewhere within the town centre, the majority of land has a maximum height of 11.5m.

20 The proposed building has a maximum height of 9.9m over a relatively small part of the building (see illustrations below), 0.9m above the LEP maximum.

25 The applicants have provided a submission under clause 4.6 of the LEP (see below), arguing that compliance with the 9.0m development standard is unreasonable and unnecessary. The submission is addressed below.

It is considered that the parts of the site over 9.0m can be justified on the basis of the clause 4.6 submission (see below).

30 **Clause 4.4 – Floor space ratio**

Clause 4.4 provides that the maximum floor space ratio (FSR) for a building on any land is not to exceed the FSR shown for the land on the floor space ratio map. The maximum permissible FSR on the site is 1.3:1.

35 FSR is the ratio of the total gross floor area of a building to the total area of the property.

The proposed FSR of 1.425:1 exceeds the maximum and the application includes a request to vary the development standard. It is considered that the variation can be justified on the basis of the clause 4.6 submission (see below).

40

Clause 4.6 – Exceptions to development standards

Where a DA includes a variation to a development standard, an application under clause 4.6 of the LEP is required.

45 Clause 4.6 provides that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard, by

demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

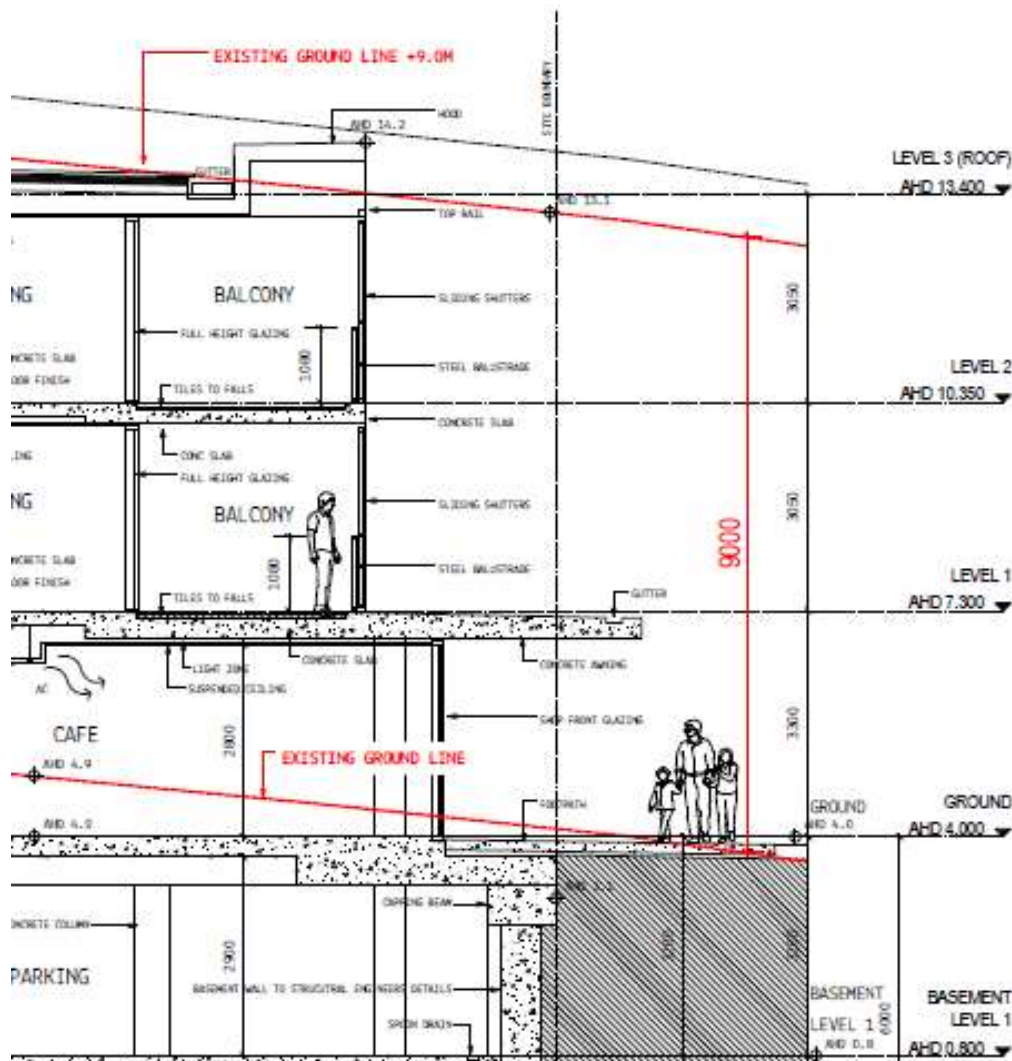
5 The clause 4.6 submission addresses the following variations to development standards:

Height:

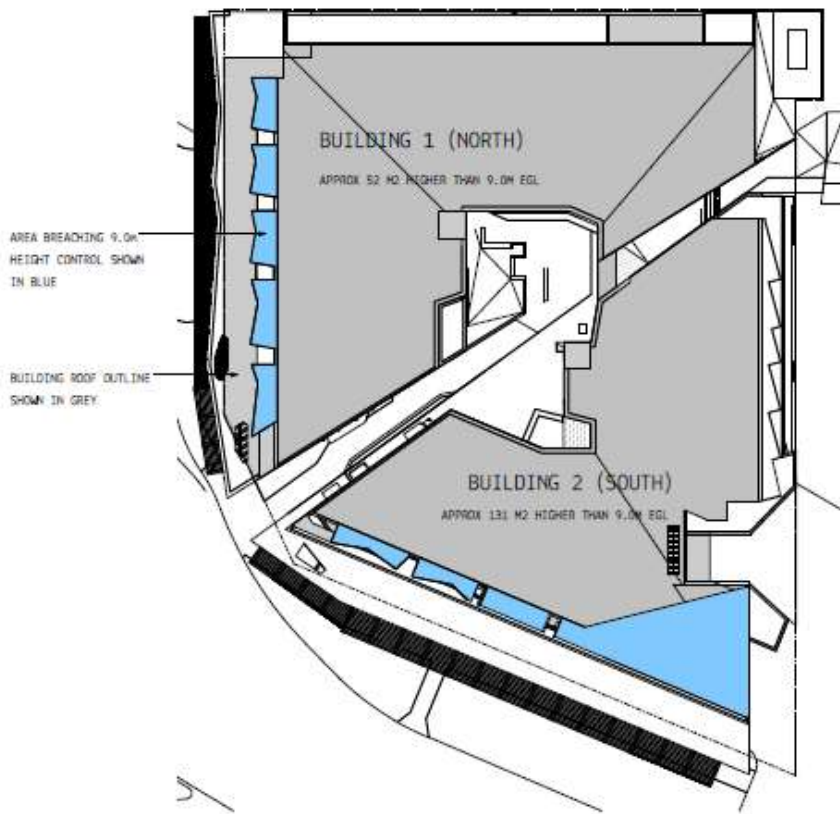
1. Introduction – Summary of Height Exceedance

10 The building presents a maximum height of 9.9m above ground level (existing) for a small portion of the roof line, being 0.9m higher than the prescribed numerical development standard (see below).

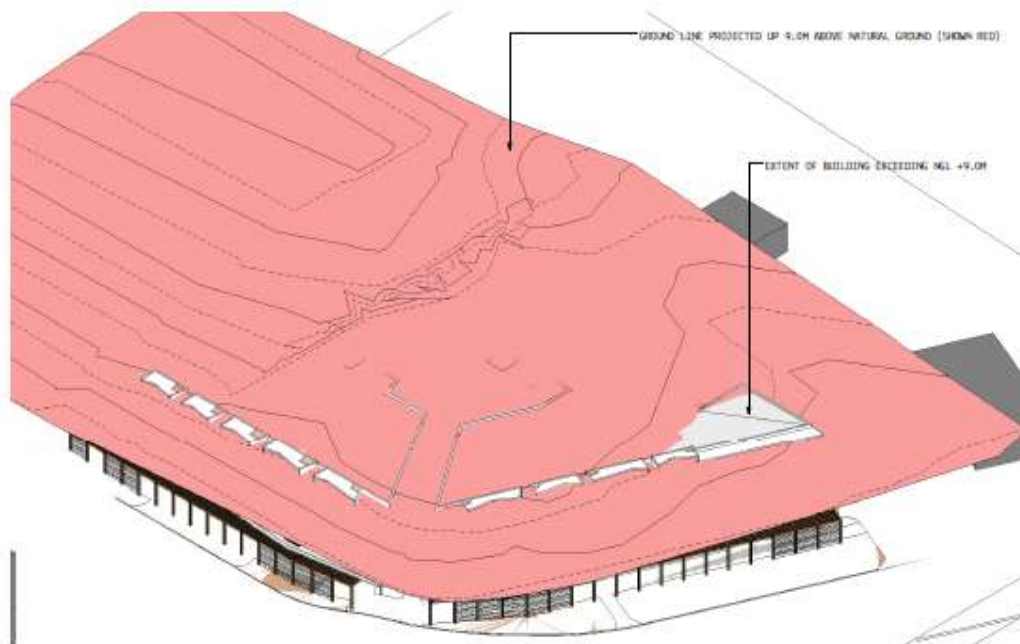
15 Other than the parapet and roof elements shown below, the building otherwise complies with the 9.0m height limit. Given the slope of the land, and excavation proposed at the northern end of the site, there are substantial portions of the building that will be significantly less than 9.0m above *existing* ground level. The illustrations below, extracted from the architectural plan set at Attachment 1, show the nature and extend of exceedance.



20 Section highlighting building height exceedance



Roof plan – parapets exceeding 9.0m limit shown in blue



5 Perspective view – extent of building height exceedance shown – ground line projected up 9.0m above existing ground level (shown red)

2. Clause 4.6 Exception to Development Standards

10 Byron LEP 2014 Clause 4.6 allows the granting of a development consent in the instance that a development would contravene a development standard. However, Council must first be satisfied by a written request from the Applicant, that:

- a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- b) there are sufficient environmental planning grounds to justify contravening the development standard, and
- 5 c) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the development within the zone in which the development is proposed to be carried out.

3. The Development Standard to be varied

10 The Development Standard to be varied is the 9.0m building height, prescribed by the Height of Buildings Map applicable to the site under Clause 4.3 of LEP 2014.

4. Extent of Variation to the Development Standard

15 Approx. 52m² (5.4%) of the roof of Building 1 (total roof area of 950m²) is above the 9.0m standard. Approx. 131m² (15.1%) of the roof of Building 2 (total roof area of 862m²) is above the 9.0m standard.

5. Objective of the Development Standard

The objectives of the development standard, as outlined in subclause 4.3(1), are:

- 20 a) *to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,*
- b) *to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,*
- 25 c) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.*

6. Objective of the Zone

The objectives of the B2 Local Centre zone have been addressed in the section above.

30 **7. Assessment – specific questions to be addressed under LEP Clause 4.6:**

(a) Clause 4.6(3)(a) – Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

As shown in the extracts above, the bulk of the height exceedance comes primarily from the parapets at the roof edges (shown below).

35



Parapets – Jonson Street frontage



Parapets – Browning Street frontage

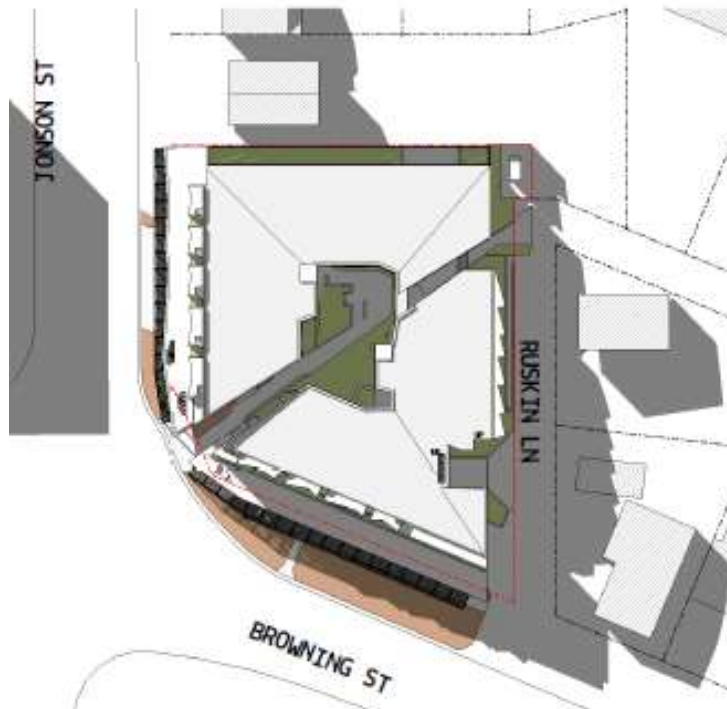
5 The parapets are a key part of the buildings design; part of the articulation of the buildings that break up its bulk. Whilst they could be lowered to achieve compliance, that would likely result in the loss of the angled elements across the top, resulting in a far more ‘boxy’ look.

10 The applicant’s submission argues that strict compliance with the development standard is unnecessary and unreasonable because:

- *there will be no loss of amenity or excessive or unreasonable shadowing of the open space areas on adjoining lands or on adjoining public domain*

The height exceedance on the Jonson Street frontage does not contribute at all to shadowing from the building.

15 The height exceedance along Browning Street does contribute, with the maximum shadowing – i.e. 3pm mid-winter – shown below:



Given that the height exceedance is less than 1m and over a relatively small area, lowering the building roof elements to comply with the 9.0m limit would have very little impact on the extent of shadow.

- 5 The proposed development will alter the existing amenity of the immediate area, particularly in relation to the two existing properties immediately to the east. The current amenity, however, is related to single storey dwellings on the subject site, which is inconsistent with the zoning of the land.
- 10 The location of the height exceedances, as shown above, has little to no impact on the change to existing amenity. In terms of a relationship with the two adjoining dwellings, a building compliant with the maximum height would have the same impact.
- 15 The impact is further mitigated by existing vegetation and fencing along the Ruskin Lane boundary of the two adjoining lots, as shown below.



Ruskin Lane looking south – development site on right; adjoining lots to the left



Ruskin Lane looking north – development site on left; adjoining lots to the right

- 5 • *the development is compatible and consistent with the height, scale, size, character, bulk, mass and use of buildings to the west*
While the subject site is not directly adjacent to the buildings referred to, those existing structures provide a context to development at the southern end of Jonson Street, which is more consistent with the zone objectives than the buildings directly adjoining to the north.

10



Development on western side of Jonson Street, directly opposite site

15

Approved plans of the building shown, which was approved under BLEP1988, indicate that it has a maximum height of 13.5m.

The maximum allowable building height on the western side of Jonson Street is currently 11.5m from existing ground to the highest point. Under the previous LEP/

DCP provisions, height was controlled differently, with maximums set from existing ground to the ceiling of the first floor and another maximum for the ceiling of the highest level.

5 Other existing buildings located behind the RSL, which were previously part of the NORCO factory, have maximum heights similar to the building shown above.

10 Existing buildings on the eastern side of Jonson Street in this locality are all residential in nature, with a maximum of two storeys. Given the nature of the type and age of buildings on this eastern side, it is reasonable to assume that redevelopment will occur in the short to medium timeframe to provide buildings and uses more consistent with the commercial zoning, which are expected to be larger structures.

15 **(b) Clause 4.6(3) (b) – Are there sufficient environmental planning grounds to justify contravening the development standard?**

The environmental planning grounds are:

- The development meets the objectives of the B2 Local Centre zone.
- The height exceedance comes from a small building element only. The majority of the building complies. The elements that exceed the 9.0m limit – i.e. parapets and a small section of roof – are an important design element associated with articulation of the building façade. If the parapets were reduced by 0.9m (or less in some areas) to comply with the height limit, it would result in a more ‘boxy’ look to the facades but otherwise make no difference to the scale of the building or its impacts on neighbours.
- The relatively minor exceedance does not result in any significant amenity of shadowing impacts on adjoining properties.

30 **(c) Clause 4.6(4) (a) (ii) – Is the proposed development in the public interest? Is it consistent with the objectives of the standard and the zone as set out above?**

The objectives of the standard are:

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

35 This is somewhat of an anomaly, in that cl 4.6 would have no work to do in allowing flexibility to the application of the maximum building height standard if this objective meant that the maximum height always had to be met.

b) *to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,*

40 The building will be of a height appropriate to this location, given the existing development to the west and the anticipated future development to the north. Development to the east is located on land zoned residential (R2 Low Density Residential). The amenity of that adjoining development is addressed by the 9.0m height limit in this part of the B2 zone, whereas 11.5m applies elsewhere.

45 As outlined above, the exceedance of this 9.0m limit is minor in terms of the numerical exceedance (i.e. 0.9m) and the area of roof that is above the limit.

c) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.*

50 This is addressed above. The design minimises such impacts. It is also noted that the two properties located immediately to the east are both used for tourism

accommodation and it would therefore be expected that there would be periods where both properties are not occupied.

5 The proposal and associated request to vary a development standard is considered to meet subclause (3) of clause 4.6, and therefore the request to vary a development standard is supported in this case.

Floor Space Ratio:

10 **1. Introduction – Summary of FSR Exceedance**

A maximum floor space ratio of 1.3:1 applies to the subject site under BLEP 2014. This ratio applies to the whole of the B2 Local Centre zone within the Byron Town Centre.

15 The proposed FSR of 1.42:1 exceeds the maximum.

15 **2. Clause 4.6 Exceptions to Development Standards**

LEP 2014 Clause 4.6 allows the granting of development consent in the instance that a development would contravene a development standard. However, Council must first be satisfied by a written request from the Applicant, that:

- 20 a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- b) there are sufficient environmental planning grounds to justify contravening the development standard, and
- 25 c) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the development within the zone in which the development is proposed to be carried out.

3. The Development Standard to be varied

30 The Development Standard to be varied is the 1.3:1 maximum floor space ratio, prescribed by the Floor Space Ratio Map applicable to the site, under Clause 4.4 of LEP 2014.

4. Extent of Variation to the Development Standard

35 Given that the site area is 2,835.9m², the specified floor space ratio of 1.3:1 would allow a maximum floor space of 3,686.7m². The proposed development has a total floor space of 4,042.2m², which equates to a 9.6% variation.

In terms of floor area, the exceedance is 355.5m².

5. Objective of the Development Standard

40 The objectives of the development standard, as outlined in subclause 4.4(1) are:

- a) *to ensure that new buildings are appropriate in relation to the character, amenity and environment of the locality;*
- b) *to enable a diversity of housing types by encouraging low scale medium density housing in suitable locations;*
- 45 c) *to provide floor space in the business and industrial zones adequate for the foreseeable future;*
- d) *to regulate density of development and generation of vehicular and pedestrian traffic;*
- e) *to set out maximum floor space ratios for dual occupancy in certain areas.*

50 **6. Objective of the Zone**

The objectives of the B2 Local Centre zone have been addressed in the section above.

7. **Assessment – specific questions to be addressed under LEP Clause 4.6:**

(a) **Clause 4.6(3) (a) – Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

The applicant’s submission argues that strict compliance with the development standard is unnecessary and unreasonable because:

- *The development reflects the character of existing commercial and accommodation buildings in Jonson Street and will define the southern edge of the Byron Bay town centre, consistent with the streetscape and character strategy of the Byron Bay Masterplan.*

Within the Masterplan, the strategy for this location is: “*Incrementally transform Jonson Street South into a mixed use district that supports medium density living and local business. By achieving this outcome a greater population of residents and workers can be located within walking distance of the town centre core.*”

This Masterplan strategy is consistent with the objectives of the B2 zone. In providing a mix of retail, commercial and residential uses, the proposed development is consistent with both the existing zoning and the Masterplan strategy for the locality.

- *a diversity of housing types is provided, directly consistent with the objective of the development standard.*
- *Exceeding the floor space ratio does not substantially contribute to the buildings’ height, scale, bulk or density. The proposed development is compatible in height, scale and bulk to those on lands to the west.*

Existing buildings to the west are consistent with the B2 Local Centre zoning of the locality and indicate the likely future development of the area as older residential buildings are replaced.

The size and scale of the proposed building is consistent with those to the west, and generally consistent with what could reasonably be expected in the future.

- *The DA is consistent with the strategic directions of the draft Planning Proposal 26.2017.6.1 (Byron Bay Town Centre Planning Control Review)*

See further detail in Section 4.3 below. This Planning Proposal has been subject of public consultation. In part, it proposes to remove floor space ratio as a development standard applicable to the town centre.

Consideration of public submissions in response to this proposal is continuing and Council has not yet made a decision on proceeding with it.

Whilst final recommendations have not yet been prepared, it is likely that such recommendations will include changes to the floor space ratio standard, either to remove it or to increase it to 1.5:1 where design excellence can be demonstrated.

(b) **Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?**

See above. The environmental planning grounds are:

- The development meets the objectives of the B2 Local Centre zone.
- The floor space exceedance is minor and does not significantly contribute to the bulk of the buildings.
- The relatively minor exceedance does not result in any significant amenity impacts on adjoining properties.

(c) **Clause 4.6(4)(a) (ii) – Is the proposed development in the public interest? Is it consistent with the objectives of the standard and the zone as set out above?**

The objectives of the standard are:

- a) *to ensure that new buildings are appropriate in relation to the character, amenity and environment of the locality;*

5 See above. The proposed buildings are consistent with the character of existing development on the western side of Jonson Street, which reflect the type and scale of development that is reasonably expected in the B2 zone in the future.

- b) *to enable a diversity of housing types by encouraging low scale medium density housing in suitable locations;*

10 The development contributes to the provision of diverse rental accommodation, within walking distance to the Byron Bay town centre.

- c) *to provide floor space in the business and industrial zones adequate for the foreseeable future;*

15 Council's recently adopted Business and Industrial Lands Strategy concludes that there is sufficient zoned land within the town centre to cater for the anticipated business demands into the future, if developed in accordance with current planning provisions.

The ground floor component of the development contributes to achieving this goal.

- d) *to regulate density of development and generation of vehicular and pedestrian traffic;*

20 The exceedance of floor space ratio does not result in any significant impact on the traffic generation of the development as a whole.

- e) *to set out maximum floor space ratios for dual occupancy in certain areas.*

Not relevant to current application.

25 The proposal and associated request to vary a development standard is considered to meet subclause (3) of clause 4.6, and therefore the request to vary a development standard is supported in this case.

Clause 5.6 – Architectural roof features

30 The parapets described above could be considered as architectural roof features, in that their form is designed to add variety to what would otherwise be straight rectangular roof features.

Considered in this way, clause 5.6 allows a building to exceed the maximum height limit if that exceedance is due to the architectural features.

35 In this case, there are other minor roof elements that exceed the 9.0m height limit (see diagrams above), so justification for the exceedance does not rely on this clause.

Clause 5.10 – Heritage Conservation

40 Part 5 of this clause specifies that, in relation to development of land within the vicinity of heritage items, Council can require an assessment of the extent to which the development would affect the heritage significance of the items.

45 The site is located in the vicinity of two heritage items – the old NORCO factory on the west side of Jonson Street, and an older dwelling on the southern side of Browning Street, used as a wellness facility known as Jasmin House. The applicant concludes that the proposed development will not diminish the heritage significance of these items given the distance between the site and the items, particularly given the separation by busy roads.

50 In relation to the NORCO building, contemporary development has been approved and constructed on the Jonson Street frontage, providing a visual separation between the subject site and the remaining heritage buildings.

Clause 6.1 of Byron Local Environmental Plan 2014 - Acid sulfate soils

This clause provides that, where applicable, development consent must not be granted for the carrying out of works unless an acid sulfate soils management plan (ASSMP) has been prepared in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.

5 An ASSMP prepared by ENV Solutions P/L dated June 2019 provides that Actual Acid Sulfate Soils and Potential Acid Sulfate Soils can be adequately managed.

Clause 6.2 of Byron Local Environmental Plan 2014 – Earthworks

10 Clause 6.2(3) requires the consent authority to consider the effects of the proposed development on the environment and surrounding area as a result of any proposed earthworks. The earthworks associated with the proposed development are significant.

The proposal comprises Integrated Development as approval is required under the Water Management Act 2000. The development application was referred to WaterNSW and General Terms of Approval (GTA's) were issued on 3 April 2020. A condition limits any excavations or dewatering to be in accordance with the GTA's. The impacts of the proposal can be addressed through appropriate conditions of consent.

15

Clause 6.6 of Byron Local Environmental Plan 2014 - Essential services

20 Clause 6.6 requires the consent authority to be satisfied that essential services are available for the proposed development. Council officers are satisfied that the site is fully serviced and meets the requirements of clause 6.6. It is noted that the electrical power lines will be relocated underground as proposed. The timing and location of these works are addressed by condition of development consent.

25

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

30 Planning Proposal 26.2017.6.1 was publically exhibited in September 2019. It proposes the following amendments to Byron LEP 2014 as they relate to the Byron Bay town centre:

- *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.*
- 35 *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 [NOTE: the Proposal also maintains the current 9.0m building height controls applicable to the subject site]*
- 40 *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.*
- 45 *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.*
- 50 *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).

5 Consideration of submissions made to the exhibition is continuing and, at the time of drafting of this report, the outcome is not certain.

It is likely, however, that staff recommendations will include:

10 • Create the B3 Commercial Zone and apply it to the whole of the area currently zoned B2 Local Centre – this would include the subject site; but has no direct implications for the permissibility of the proposed development.

• Implement the new clause relating to design excellence. In this regard, Council has resolved to establish a Design Excellence Panel, made up of suitably qualified design professionals, to advise both Council and applicants on design issues for the town centre.

15 One of the matters being considered in association with the design excellence panel is whether incentives based around floor space ratio might be used to encourage applicants to seek and use their advice.

A floor space ratio of, for example, 1.5:1 might be applicable to those applications, where 1:1 might apply in other circumstances.

20 Assessment of that proposal, and final recommendations in that regard, has not yet concluded.

In investigating FSR as part of the Planning Proposal, it was noted that such a control did not previously apply to the town centre, or other business zones, under Byron LEP 1988. When the State Government introduced the Standard Template LEP across the State, an FSR clause was included.

30 In translating the previous LEP 1988 provisions to a new LEP (which eventually became LEP 2014), Council staff recommended an FSR of 1.5:1 be applied to the town centre and other business zones.

The justification for that was based on extrapolation of the previous 0.5:1 FSR applicable for low scale residential development, and applying that over the three (3) storeys allowed in the town centre (0.5:1 per storey; hence 1.5:1).

35 It appears that the 1.5:1 was reduced to 1.3:1 during debate on the draft LEP on the floor of Council.

40 Overall, while the proposal is consistent with the proposed planning controls, there is currently insufficient certainty for them to be the sole basis for variations sought.

4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

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

50 Many part of the proposed development are subject to provisions within State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65) and only parts of the DCP that do not repeat or contradict that SEPP have been taken into consideration in the assessment of the subject development application.

The proposed development complies with all relevant sections of the DCP 2014 (in some cases subject to conditions and/or to the satisfaction of other assessing officers), including requirements in relation to car parking, public art, street landscaping.

Part A Preliminary**A13.4 Community Consultation Prior to Development Application Lodgement**

5 Pre-consultation is required for *community significant development*, the definition of which includes residential accommodation resulting in 10 or more dwellings.

10 Pre-consultation was undertaken by the proponents in accordance with the DCP requirements, and included letterbox drops, personal neighbour contact, site sign, emails to community stakeholders, the establishment of a project-specific website, and three public community information sessions.

A report on the pre-consultation was submitted with the application, outlining the process and the results.

Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access**B4.2.1 Traffic Impact**

15 A Traffic Impact Study, prepared by Planit Consulting, dated October 2019, has been provided in support of the development application.

Key traffic management proposals include:

- 20
- Ruskin Lane widened to 2 lanes near the intersection of Browning Street;
 - Movements restricted to left-in/ left-out only at the intersection of Ruskin Lane and Browning Street (by way of a median in Browning Street); and
 - Access into the carpark access also restricted to left-in/ left-out (through a combination of signage and layout/ orientation).
- 25

The assessment report estimates net traffic volumes generated by the completed development to be:

- 30
- 163 trips per hour in AM peak;
 - 117 trips per hour in PM peak; and
 - 976 vehicle trips per day.

The report also contains an assessment of the suitability of using Jonson Street to access the development, rather than Browning Street, and notes:

- 35
- there is insufficient space for the access at the Jonson Street location as it would impact on the proposed new road alignment and pedestrian median for the bypass;
 - exiting traffic would interfere with efficient operation of the bypass roundabout;
 - the access would create safety concerns due to close proximity to a high use pedestrian refuge (to be constructed at the bypass roundabout);
- 40
- Council's DCP 2014, Chapter B4.2.6 states "...rear lane or secondary street access to the basement car park is preferred to minimise amenity impacts to streetscape and remove pedestrian conflicts"; and
 - access from the lane rather than from a high traffic/ high pedestrian street is safer.

45 With the bypass roundabout completed, and the bypass operational, traffic arriving at the site from the north can come either via Jonson Street or the bypass. Once through the roundabout, that traffic can 'slip-off' to the left into Ruskin Lane and the property access, with minimal disruption to traffic flows.

50 If the access were in Jonson Street, a similar left-in from Jonson Street could be used to minimise traffic disruption for vehicles travelling south-bound on Jonson. However, traffic using the bypass would need to turn north into Jonson Street and then cross oncoming south-bound traffic to enter

into the site. With the proximity of the intersection, that movement has the potential to impact on efficient traffic flow on the roundabout.

5 A centre median could be used to prevent that cross-flow movement, but that would move traffic northward to turn at Ruskin Street, still needing to cross oncoming traffic.

10 The left in / left out restrictions will be sufficient to manage potential traffic impacts on Browning Street. Access location, design and signage will prevent significant traffic volumes within Ruskin Lane north of the access ramp.

A report has been provided by opponents of the development, reviewing the traffic assessment provided in support of the applicant. That review was prepared by a qualified traffic consultant and is critical of a number of matters in the applicant's report.

15 The review report has been assessed by Council's Development Engineer, who concludes that, on balance of all issues, the traffic management measures proposed by the applicant will successfully manage potential traffic impacts associated with the development.

D4.2.2 Car Parking

20 The car parking requirements for this development are:

Component	Floor Area/ No. of bedrooms	Required Rate	Spaces
Shop-top housing	2 x 1 bedroom units	1 space per unit	2.0
	20 x 2 bedroom units	1 space per unit	20.0
	2 x 3 bedroom units	2 spaces per unit	4.0
	4 x 4 bedroom units	2 spaces per unit	8.0
Visitor parking	28 dwellings	1 space per 4 dwellings	7.0
Sub Total			41.0
Commercial premises	789.4m ²	1 space per 20m ²	39.5
Retail premises	614.0m ²	1 space per 20m ²	30.7
Café	120.0m ²	1 space per 20m ²	6.0
Manager's office	20m ²	1 space per 20m ²	1.0
Showers, lockers, end of trip facilities	47m ²	1 space per 20m ²	2.4
Sub Total			79.6
TOTAL			120.6

25 A total of 125 spaces are proposed, within 2 levels of basement parking. This includes 6 disabled spaces. 14 motorcycles spaces are also proposed within the basement levels. Bicycle parking racks are proposed within the ground level courtyard area, adjacent to the café.

Chapter B5 Providing for Cycling

30 *Development applications must demonstrate that all potential modes of transport have been addressed in assessing the requirements for transport and access to and from the proposed development. The assessment must address the potential for cycling as a means of transport to and from the site and the resultant need for the provision of facilities for cycling and cyclists at the site.*

Cycleways planned as part of the Byron Bypass and Council's adopted bike plan will build on existing cycleways in this location such that dedicated cycle paths will pass the subject site, connecting north and south.

5 25 bicycle parks are proposed as part of the development, with 10 at ground level and 15 provided within basement level 1. Within the basement, charging facilities will be available for electric bikes. At ground level, the dedicated bike parking is within a space directly next to the manager's office and includes showers/ change rooms.

10 An additional public bike rack is located at ground level adjacent to the café.

Chapter B8 Waste Minimisation and Management

15 The application includes a Site Waste Minimisation and Management Plan in accordance with the requirements of this chapter. It includes details of demolition and construction materials that demonstrate reuse and recycling of materials as appropriate.

20 In relation to operational waste management, the proposal includes a dedicated waste storage area at ground level, to contain bins for residents and for the commercial operations. Waste chutes, incorporating separate compartments for the three waste streams, are located on each residential level.

25 The loading bay has been designed to provide for a medium rigid waste vehicle (MRV) to collect from within the bay. At this time, however, SOLO waste contractors do not have MRV vehicles, and use a Heavy Rigid Vehicle (HRV), which is a larger truck.

30 A HRV will be able to turn into and out of the loading bay, but will not be able to load bins within that bay. As such, the site manager will be responsible for taking the bins to Ruskin Lane, where the HRV will empty the bins and then manoeuvre using the loading bay to leave the site in a forward direction.

35 The developer would enter into a contract with Solo or other existing waste collection authority, which would specify collection arrangements. The application indicates that waste collection would occur on a maximum of three days, i.e. one day for each of the three waster streams, and it would also be possible to have more than one collection combined into one day.

An on-site manager will have responsibility for managing collection activities and wash-out of bins/ skips.

Chapter B9 Landscaping

B9.7 Commercial and Retail Development

For stand-alone large scale retail or commercial development, a minimum 10% of the site area must be dedicated to landscaping.

45 The landscape plans indicate only 66m² of deep planting within the boundary; which is only 2.3% of the site. Other landscaping is proposed as podium planting within the central courtyard (89m²), along the northern boundary (140m²), and "green roof planting" (94m²).

50 This provides a total of 364m² of landscaping, which equates to approx. 13% of the site area. Additional vertical planting is proposed on green walls and trellises within the central courtyard.

Chapter D1 Residential Accommodation in Urban Zones

D1.10 Shop Top Housing

D1.10.1 Density Control

1. *The density of the dwelling component of the development must not be greater than one (1) dwelling per 150 square metres of site area where no floor space ratio restriction applies under Byron LEP 2014.*

This provision is not applicable as a 1.3:1 FSR applies (see above).

5

2. *A minimum of 25% of the floor space of the entire development, not including car parking, must be set aside for commercial/ retail purposes. All ground floor space fronting the street must be devoted to retail premises and/or business premises.*

Complies. 38.4% of the total floor space is commercial and the ground floor frontage is devoted to retail/ commercial.

10

D1.10.2 Accessibility

Each dwelling must have direct access from the main street frontage of the premises (or side street where located on a corner). This may be by means of a separate, isolated passage or stairway connecting to the street frontage, which would allow unrestricted access to the dwelling without the need to pass through any associated retail premises or business premises.

15

Complies. Access to dwellings is by way of the central courtyard (lifts and stairwell).

D1.10.3 Private Open Space

The provisions of Part 4E of the SEPP 65 Apartment Guide take precedence over the DCP in this regard. The proposal complies with the requirements of that Guide (see Attachment 2).

20

D1.10.4 Sound Proofing

The provisions of Part 4H of the SEPP 65 Apartment Guide take precedence over the DCP in this regard. The proposal complies with the requirements of that Guide (see Attachment 2).

25

D1.10.5 Clothes Drying Area

Dwellings without private open space at ground level must provide internal laundry facilities in each unit and must provide either a clothes drying area on site, or a space for a clothes dryer in each unit.

30

Complies. All units have laundry facilities that include space for a dryer.

D1.10.6 Site Facilities

The provisions of the SEPP 65 Apartment Guide take precedence over the DCP in regard to facilities such as storage and mailboxes etc. The proposal complies with the requirements of that Guide (see Attachment 2).

35

Chapter D4 Commercial and Retail Development

D4.2.11 Building Forms (south eastern end of Jonson Street)

40

1. Setbacks are as follows:
 - (a) *A general setback of two and half (2.5) metres to the road frontage to apply;*
 - (b) *Setbacks down to a zero building line will be considered for a maximum of 60% of the street frontage where by the remainder of the development to be set back a minimum of four and half (4.5) metres from the street boundary;*
 - (c) *Upper levels to be set back a minimum of four and half (4.5) metres from the road frontage to assist with vertically articulating the development;*
 - (d) *Alfresco/ outdoor dining permissible within the front setback, but footpath dining on the road reserve will not be approved;*
 - (e) *Where buildings are set back from the road frontage, the setback areas to be appropriately landscaped with locally indigenous plants including grasses and groundcovers to the area. Plans for development to include a landscape plan prepared in*

45

50

accordance with Chapter B9 Landscaping showing how the area set back from the street will be appropriately landscaped.

Proposal does not comply

The ground floor level has a zero setback for the whole of both street frontages.

5 Upper levels are set back 2.35m from the Jonson Street frontage, 3.0m from the Browning Street frontage, and 1.4m from the Ruskin Lane frontage.

The DCP controls pre-date the Town Centre Masterplan and have not been updated since adoption of that Plan. [Note: This part of the DCP is likely to be deleted upon adoption of a new DCP chapter for the Byron town centre, which is proposed as part of the current planning controls review]

10

Chapter D8 Public Art

This Chapter applies to commercial and/ or tourism developments that have an estimated cost of \$1M or more.

15 The total estimated cost of the development is approx. \$19,340,00, which includes a commercial component as well as a residential component (shop top housing). The applicants have provided a break-down of estimated development costs, indicating that the commercial component accounts for approx. \$7.5M, which is 38.8% of the total.

20 In accordance with Section D8.2.1, applications are required to include the provision of public art to the value of at least 2.5% of the development costs up to \$2M, and 1% of further development costs exceeding \$2M, or where development costs exceed \$5 million, to a value no less than \$80,000.

25 In this case, the applicants argue that, as the commercial components of the development amount to 38.8% of the total development costs, the value of the public art should be 38.8% of \$80,000, or \$31,040.

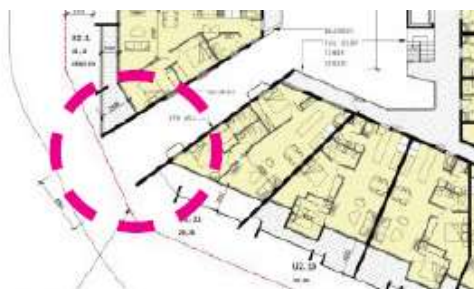
30 The applicants have submitted a preliminary public art plan committing to art to the value of \$32,000.

35 The preliminary plan suggests that murals or the like would be placed on the large walls located at the entry to the pedestrian courtyard, as shown on the illustrations below. This location is at the prominent entrance to the site, directly adjacent to the new bypass roundabout, and will therefore be very visible.

The preliminary plan has been considered by Council’s Public Art Panel, who have provided comments to assist in determining appropriate art treatments for the development.

40 The DCP states: “Where development costs exceed \$5 million, the provision of public art may be negotiated at a value no less than \$80,000”.

45 In this case, the commercial component of the development has an estimated cost in excess of \$5M. The value of the public art should, therefore, be no less that \$80,000. A condition of consent is recommended in this regard.





4.5 Any Planning Agreement or Draft Planning Agreement?

5

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

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

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

Clause	<i>This control is applicable to the proposal:</i>	<i>I have considered this control as it relates to the proposal:</i>	<i>If this control is applicable, does the proposal comply?</i>
97A	Y	Y	Y

4.7 Any Coastal Zone Management Plan?

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

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

Traffic/ Access:

10 The traffic impact assessment submitted in support of the application includes an assessment of the suitability of access to the development off Jonson Street. The figure below, taken from that assessment, indicates where such access would be located (shown in red), given the approved roundabout works that will occur at the Jonson/ Browning Streets intersection.



15

The traffic assessment notes the following:

- 5 • *There is insufficient space for the access at the Jonson St access location as it would impact on the proposed new road alignment and pedestrian median for the Byron Bay Bypass which is currently under construction. The driveway access shown in red in Figure 4 is in accordance with AS2890.2 (0.3m minimum offset from adjacent property, 1.5m minimum splays and 14m minimum driveway width);*
- 10 • *Jonson St access location creates safety concerns with its close proximity to a high use pedestrian crossing median;*
- 15 • *BSC's DCP Chapter 4 states that laneway access to basement carparks is preferred over street access;*
- 20 • *Byron Shire Council has a pedestrian/cycle friendly emphasis as per council's adopted masterplan. Utilising an existing lane access instead of creating a new access point across a high use pedestrian/cycle path is a safer and better outcome for the community;*
- *Vehicles exiting in close proximity to the roundabout which would cause issues during peak AM and PM hours with vehicles exiting the development having to enter mid queue for the roundabout travelling south. This would interrupt the traffic flow of the roundabout and result in a worse performance of the roundabout; and*
- *Council currently utilise the street frontage on Jonson St for paid parking, it is estimated that Council would lose 7 paid parking spaces if the Jonson St access was constructed.*

The proposed left in / left out restrictions will be sufficient to manage potential traffic impacts on Browning Street. Access location, design and signage will prevent significant traffic volumes within Ruskin Lane north of the access ramp.

25 A report has been provided by opponents of the development, reviewing the traffic assessment provided in support of the applicant. That review was prepared by a qualified traffic consultant and is critical of a number of matters in the applicant's report.

30 The review report has been assessed by Council's Development Engineer, who concludes that, on balance of all issues, the traffic management measures proposed by the applicant will successfully manage potential traffic impacts associated with the development.

Construction Impacts

35 Construction of the proposed building will involve significant excavation for the two levels of basement car parking. That excavation is likely to intercept groundwater, and temporary dewatering will be required.

40 A dewatering management plan has been prepared to guide the excavation, dealing with collection, treatment and disposal of water during the works. This plan has been reviewed by Council staff and by WaterNSW, who have issued conditions that would be applied to an approval under the Water Management Act 200.

45 The management plan provides an appropriate basis for avoiding/ mitigating impacts associated with excavation.

50 Subsequent construction of the remainder of the building will cause temporary disturbance in the neighbourhood. This is managed by standard restrictions on construction times and conditions requiring both environmental and noise management plans prior to construction.

4.9 The suitability of the site for the development

The site is zoned B2 Local Centre and is within the Byron Town Centre. Mixed use development is a permissible and preferred use of land in that zone. The Town Centre Masterplan outlines a

recommended strategy for this part of the town centre to transform from its current low scale residential character to provide for mixed use development precisely like the proposed.

5 This is the first application for redevelopment in this small town block. As such, it will significantly alter the existing character of this end of Jonson Street. However, the change of character is consistent with the zoning of the land and the adopted strategy for the locality.

10 The site is also adjacent to residentially zoned land, and there is therefore an additional tension between the nature and scale of commercial mixed use development and existing single storey residences.

15 Notwithstanding that tension, the site is suitable for the mixed-use development as proposed given the desired future context and the planning provisions in place, which include provisions that allow justifiable flexibility.

4.10 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited from 2 January 2020 to 29 January 2020.

20 There were **64** submissions made on the development application:

- 40 For
- 24 Against

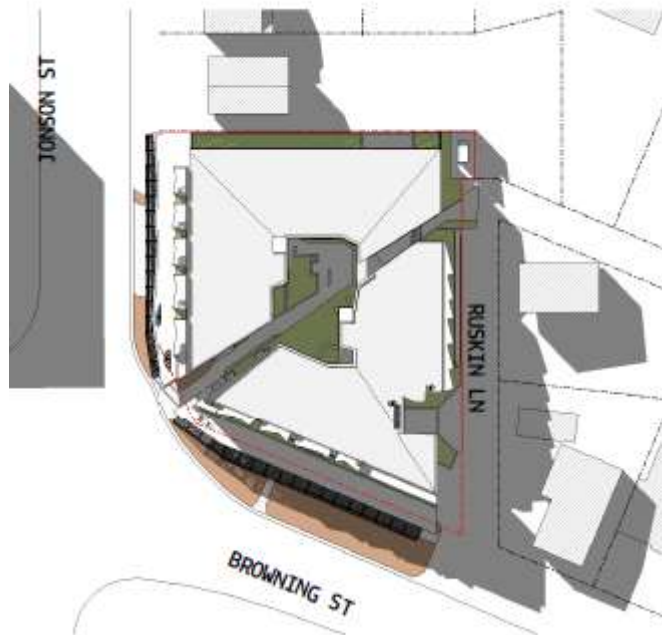
25 Issues raised in submissions are addressed below:

Issue	Comment
Support:	
<i>Byron Bay has an embarrassing deficiency when it comes to offering a range of dwelling types. We rely too much on single detached dwellings in greenfield suburban subdivision, which is both environmentally and socially unsustainable by comparison</i>	The application proposes that all apartments will be for residential, rather than tourism, use. Background studies undertaken for the draft Residential Strategy indicate that, in 2016, separate houses were the most common housing type in the Shire (77%), with medium density dwellings being only 44% of housing stock. In 2016, 3 bedroom dwellings were the most common, accounting for 38.5% of all private dwellings. The proposed dwelling mix will add to housing diversity in Byron Bay.
<i>Density in in the form of apartment housing is a key component to having a vibrant, active, walkable town centre that is not 100% reliant on externally generated car trips to access the town's goods and services</i>	The site is located in easy walking distance to the core town centre, and it is reasonable to expect that residents would walk to service many shopping and recreational needs.
<i>Southern Jonson St is a key element in the success of the Byron Masterplan. This development will help activate and put focus on this end of the town centre</i>	The objective of the Master Plan is addressed above. Currently, this southern end of Jonson Street, at least on its eastern side, is characterised by older dwellings, which is not consistent with the Masterplan vision for this area.
<i>The development will compliment the new southern entry of the Byron Bypass, which will in turn help take</i>	With completion of the bypass, the site will be more strategically important as a 'gateway' to the town centre.

<p><i>pressure off the northern end of town</i></p>	
<p><i>The design presents very well to Jonson and Browning Streets and the internal courtyard space and openness of the design will create a vibrant and enjoyable space to work and live for the residents and tenants. (The proposal provides) new quality architecture in the town that remains consistent with the existing building scale and also the Town Centre Masterplan intent</i></p>	<p>The central courtyard is a key feature of the design. It provides an interesting visual focal point off the roundabout and also provides a vibrant, attractive and useful space for the residents and users of the site.</p> <p>It also provides a 'light well' for the development and supports natural ventilation of residential units.</p>
<p>Objection:</p>	
<p><i>Significant increase in traffic on Ruskin Lane, which:</i></p> <ul style="list-style-type: none"> • <i>does not have sufficient capacity (restricted sealed width);</i> • <i>will impact on amenity and safety of properties that rely on lane for access.</i> 	<p>Traffic impacts are addressed above.</p> <p>The layout and design will restrict impacts within Ruskin Lane to the southern end, directly adjacent to the entrance. The design restricts left turns out of the basement ramp, so that all vehicles will turn right, avoiding traffic onto Ruskin Lane.</p> <p>Signage is proposed at the Tennyson Street end of the lane advising that access to the basement car park is not available from that entrance. This will be supported by the design of the ramp, which will prevent cars from turning into it when travelling south on Ruskin Lane.</p> <p>This will prevent amenity impacts for the majority of properties along Ruskin Lane, certainly for those properties on the narrow east/west section from Tennyson Street.</p>
<p><i>Significant traffic impacts more generally, including:</i></p> <ul style="list-style-type: none"> • <i>development traffic will cause problems on the new roundabout</i> • <i>impacts on safety of pedestrians/cyclists on Browning Street</i> • <i>need for convex mirror highlights safety risks</i> 	<p>See traffic assessment above.</p> <p>The convex mirror is recommended in the applicants' traffic report, to address pedestrian safety. There is a tall timber fence along the Ruskin Lane corner of the adjoining property, and the Browning Street footpath is currently hard up to the properties frontages.</p> <p>As a result, it is difficult for drivers leaving Ruskin Lane to see pedestrians moving westward along the footpath. The convex mirror is suggested so that pedestrians are able to see vehicles in Ruskin Lane.</p> <p>As an alternative, it is suggested that any consent be conditioned requiring the developer to adjust the location of the footpath, moving it further away from the adjoining property's frontage. This will provide adequate vision for drivers and pedestrians.</p>
<p><i>Significant amenity impacts on residential properties to the east of Ruskin Lane – noise, overshadowing, traffic</i></p> <p><i>Overshadowing of residential gardens to the east and associated loss of privacy</i></p> <p><i>Significant impacts on</i></p>	<p>Shadow diagrams submitted with the applications show the worst case – i.e. 3pm mid-winter – as shown below: Both adjoining lots to the east contain substantial tall vegetation along their Ruskin Lane boundaries (see below), which would currently shadow the western parts of their properties in the afternoons.</p> <p>The existing vegetation also acts to protect the privacy of the adjoining dwellings. In addition, privacy screens are proposed on all external balconies, to minimise the</p>

accommodation businesses being carried out

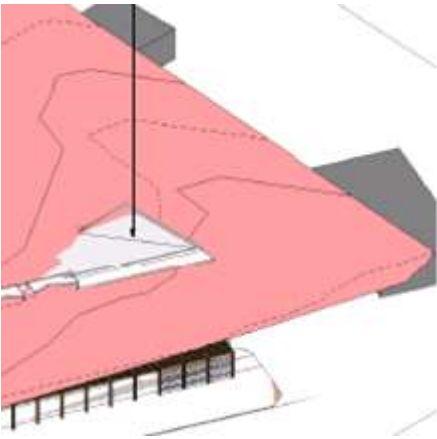
opportunities for residents to look down into neighbours properties.



Noise impacts and Neighbourhood character

A noise impact assessment has been provided, concluding that the uses associated with the completed development will not generate noise in excess of 'acceptable' standards. The report includes a recommendation for construction of a 1.8m high acoustic fence along the Ruskin Lane boundary of the adjoining property (at cnr Ruskin Lane & Browning St). The owner of that property has provided written consent for such a fence.

The development will change the existing character and amenity. However, a change to character/ amenity is to be

	<p>expected given the business zoning of the subject land. Ruskin Lane provides the boundary between the business zone and residential zone, and it is reasonable to expect that land within the business zones would be developed to its potential, based on the planning controls in place.</p> <p>The proposed development exceeds the maximum height limit at points noted above, at the roof/parapet edges. In relation to impacts on adjoining properties, the exceedance on the southern roof edge is the only part of the building that has any potential impact in terms of increased shadow.</p> <p>The extent of that exceedance is shown below:</p>  <p>Given the direction of mid-winter shadow (see above), the 'additional' shadow associated with the height exceedance is very minor.</p>
<p><i>Development is out of context with this location – which is characterised by small scale historic buildings</i></p>	<p>The context of the development is discussed above. Given the zoning of the land, the development should be considered against the anticipated and desired future character, rather than the existing character, which does not reflect the commercial zoning.</p>
<p><i>Scale and design inconsistent with Byron Bay – suggest it should have a “small town village feel”</i></p>	<p>Neither the current planning controls nor the recommendations of the Town Centre Masterplan envisage a “village character” for Byron Bay.</p>
<p><i>Non-compliance with development standards/ policies cannot be justified – over-development of the site.</i></p>	<p>Non-compliances are addressed in this report.</p>

4.11 Public interest

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

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

Section 64 levies will be payable.

5.2 Section 7.11 Contributions

The proposed development is mixed use and s7.12 levy or s7.11 contributions may apply. The contributions plan requires that whichever the greater amount is to be applied.

The estimated cost of works is \$19,340,326. The s7.12 levy would equate to 1% of that, which is \$193,403.

The S7.11 levy, calculated based on the residential component of the development, will be \$254,240.11.

This larger amount is therefore imposed by consent condition.

6. CONCLUSION

The proposed development will result in a significant change to the existing character of the southern end of Jonson Street. This is, however, consistent with the B2 Local Centre zoning of the property and the recommendations of the Byron Bay Town Centre Masterplan.

With construction of the bypass, a new roundabout at the intersection of Jonson and Browning Streets will be a southern gateway into the town centre, and the location, design and scale of the proposed building is an appropriate response to that future context.

The building will alter the existing amenity for the residential land to the east, particularly the two single-story dwellings on the eastern side of Ruskin Lane, which are used for tourism accommodation. The change to that amenity is what can be reasonably expected given the zoning of the land. The building will not significantly overshadow the adjoining properties and the combination of privacy screens on the buildings external balconies and the existing vegetation and fencing protects the privacy of neighbours.

Significant objection has been received regarding traffic impacts, primarily concerned with additional traffic on Ruskin Lane. The development will generate approx. 976 vehicle trips per day, but this additional traffic will be restricted to the short section of Ruskin Lane between the proposed basement access ramp and Browning Street. A combination of signage and orientation prevents traffic from using the remainder of Ruskin Lane to access the basement parking.

A concrete median in the centreline of Browning Street will prevent right-turns in or out of the lane, which will avoid impacts for traffic moving through the roundabout.

The building has a minor exceedance of maximum height, with the western and southern roof edges exceeding the 9.0m limit. The majority of the building is under the 9.0m maximum. The building height does not result in significant issues of overshadowing or privacy, and can be supported in this case.

The building exceeds the 1.3:1 floor space ratio, with a proposed FSR of around 1.4:1. The exceedance is minor and does not add to the size or bulk of the building.

There are also some inconsistencies with the SEPP 65 Apartment Design Guide criteria, most notably in the quantum of deep soil zone available for landscaping. That criterion is primarily applicable to a full residential building, and the Guide provides for flexibility where the residential apartments are part of a mixed-use development where commercial uses make up a ground floor.

In this case, significant podium landscape planting is proposed, mostly within the central courtyard, which is a positive feature of the development. Green walls, roof planting and street trees are all proposed.

The proposed development is permissible in the zone and will establish the future character of this part of Jonson Street in a way that is consistent with the adopted Town centre Masterplan.

- 5 The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development. The application is recommended for approval subject to conditions of consent.

Report No. 13.9 PLANNING - DA10.2019.517.1 Mixed Use Development Stage 4 of Habitat

Directorate: Sustainable Environment and Economy
Report Author: Rob Van Iersel, Major Projects Planner
File No: I2020/523

5

Proposal:

10

DA No: 10.2019.517.1
Proposal description: Mixed Use Development (Stage 4 Habitat)
Property description: Part Lots 1 & 12 DP 271119
 2 Gallagher Street BYRON BAY
Parcel No/s: 270081
Applicant: Planners North
Owner: Community Association DP 271119 & Bayshore Development Pty Ltd
Zoning: B4 Mixed Use
Date received: 1 October 2019
Integrated / Designated Development: Integrated Designated Not applicable
Concurrence required No
Public notification or exhibition:
 – Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
 – Exhibition period: 24/10/19 to 6/11/19
 – Submissions received: 1
Planning Review Committee: Not applicable
Variation request Clause 4.6 SEPP 1 Not applicable
Delegation to determine Council
Issues:
 • Clause 4.6 Submission – Building Height

Summary:

15

This development application seeks approval for a mixed-use development, which will be Stage 4 of Habitat. The proposal involves the construction of three individual buildings, connected by covered walkways, on a flat cleared part of the site, located between the existing commercial precinct at Habitat and the recently constructed pocket living apartments at the western end of that site. The development site is bounded by internal private roads within Habitat.

20

Two of the buildings are three (3) storeys in height, with retail tenancies at ground level and business/ office tenancies above. The third building is two (2) stories in height with a café in one part of the ground level, and a recreation facility (indoor) in the remaining part. The upper level contains further tenancies for recreation facilities (indoor).

25

Individual uses are not yet known, but the recreation facilities tenancies could include things such as bathhouse; martial arts studio; dance studio; massage/ wellness; allied health treatment rooms; sauna/ steam room; yoga studios and the like. Most of the internal spaces in all buildings are designed to be flexible, with an ability to combine individual components for larger spaces if required.

30

5 A new car parking area, containing 37 spaces, is proposed on the southern part of the site, with entry from Gallagher Street (western end) and exit onto Fullerton Lane. Additional parking is available within existing car park areas within Habitat. A cumulative assessment of car parking demonstrates that, with the addition of the proposed 37 spaces that are provided by this Stage 4 development, sufficient car parking is available for all existing uses at Habitat. In addition to spaces provided in accordance with previous development consent, and in accordance with Byron DCP 2014, Habitat now has 5 car share vehicles located on site, with all residents and tenants provided with membership to that service.

10 The three storey buildings exceed the 9.0m maximum building height applicable to the site. The application therefore includes a clause 4.6 submission arguing that, in the circumstances, compliance with that height standard is unnecessary. The height exceedance does not result in any overshadowing, overlooking or privacy issues. The buildings have been appropriately setback from neighbouring buildings within Habitat, and have no impact for any adjoining development outside of Habitat. The clause 4.6 submission is considered to be well-founded and the additional building height is considered acceptable in the circumstances.

20 A noise impact assessment has been undertaken in relation to the café and anticipated recreational uses and demonstrates that these uses are unlikely to result in unacceptable noise impacts for people living either external to Habitat or within the development.

The proposed development is consistent with relevant statutory and policy requirements, and the application is recommended for approval is recommended.



25 NOTE TO COUNCILLORS:

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

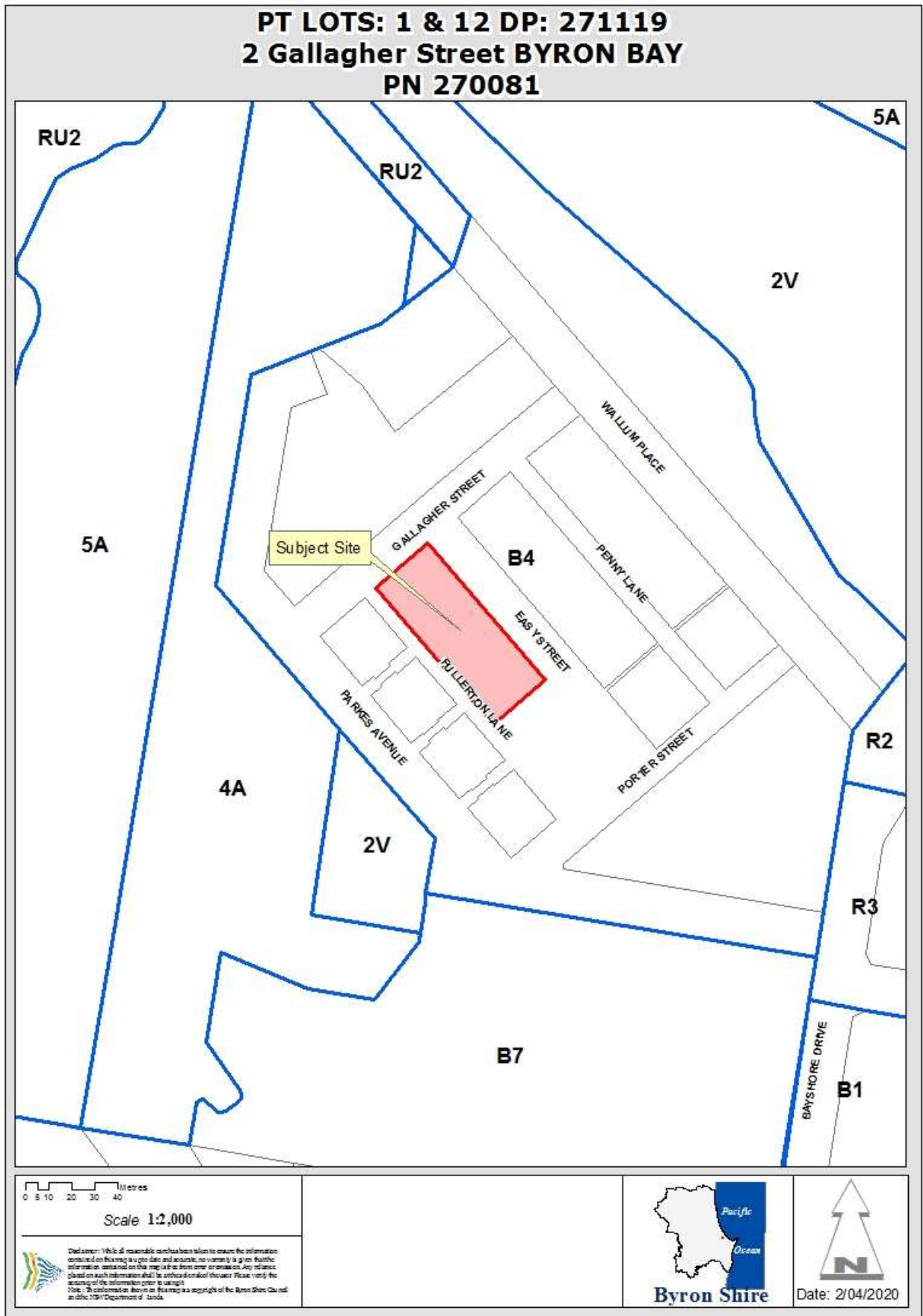
RECOMMENDATION:

That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.517.1 for a mixed use development, be granted consent subject to the conditions of approval in Attachment 2 (E2020/24920).

35 **Attachments:**

- 1 Updated Plans for Habitat Stage 4 10.2019.517.1, S2020/331 
- 2 Recommended Conditions of Consent 10.2019.517.1, E2020/24920 
- 3 Confidential - Submission Habitat Stage 4 10.2019.517.1, E2020/24924

40



Assessment:

1. INTRODUCTION

5 1.1. History/Background

The property has an extensive history of approvals, the key approvals ones being:

DA 10.2005.705.1	Stockpiling of 15,000m ³ of landfill over an area of 12,500m ² at a height of approximately 1.5m	Deferred Commencement 25/09/2006
	Deferred commencement consent conditions satisfied	12/06/2008
DA 10.2007.177.1	Environmental enhancement work	Approved 04/01/2008
DA 10.2008.360.1	Mixed use development comprising 82 residential dwellings, plus commercial, retail and creative industrial units, with the provision of fill, roadworks, carparking, landscaping, water, sewer, drainage and communication services	Deferred Commencement 06/01/2009
CC 11.2008.360.1	Bulk earthworks	Approved 06/01/2009
DA 10.2009.12.1	Community title subdivision of approved mixed use development	Approved 09/12/2009
	Consent surrendered 12/11/2014	
DA 10.2011.162.1	Mixed-use development comprising 67 residential dwellings, commercial, retail, live/work and creative industry units, with the provision of road works, car parking, landscaping, water, sewer, drainage and communication services, plus subdivision of the site under a Community Scheme	Approved (JRPP) 24/02/2012
DA 10.2015.353.1	Stage 1 - Mixed use development comprising 28 Residential dwellings, plus commercial and retail units, recreation facilities, associated infrastructure and subdivision	Approved 04/02/2016
DA 10.2017.4.1	Live/work buildings - Residential flat building and light industry (creative industries)	Approved 10/05/2017
DA 10.2017.628.1	Sixty (60) Pocket Living Apartments and Subdivision to create One (1) Additional Community Title Lot	Approved (JRPP) 26/07/2018

1.2. Description of the proposed development

10 This application seeks approval for a mixed-use development, which will be Stage 4 of Habitat. The proposal involves the construction of a number of individual buildings, connected by roof and covered walkways, containing a mix of retail, offices, recreation facilities and a café.

15 The buildings are described further below. The summary of proposed land uses is:

Land Use	Floor Area (m²)
Retail	448
Café	102
Recreation facility (indoor)	613
Office/ business	898
Amenities	74

The development includes the following buildings, detailed in the architectural plan set at Attachment 1:

- 5 • S4-A: A three-storey building containing flexible retail spaces at ground level, with two levels of business/ office space above. Each level is designed to include flexible internal partitioning, to allow various configurations dependant on tenants' needs.
 This building contains:
 - 178.37m² retail at ground level;
 - 178.69m² business/ office at each of the upper 2 floors.
- 10 • S4-B: A similarly designed three-storey building with ground floor retail and business/ office above; including:
 - 269.93m² retail;
 - 270.41m² business / office on each of the 2 upper levels.
- 15 • S4-C: A two-storey building, with two parts at ground level separated by a walkway. The northern part contains restaurant/café area at ground level, capable of being divided into two separate tenancies, one of 34.57m² and another of 67.53m². An outdoor dining terrace is proposed on the northern side of the café, within the Easy Street road reserve (private road).
 20 The café is proposed to operate from 7am to 7pm, with a seating capacity of 50 people (internal and external).
 The southern part contains 208.14m² recreation facility (indoor) space, with flexible internal panelling that could allow separate tenancies.
 25 The upper floor of this building contains recreation facility (indoor) spaces over the two ground floor components, with a total floor space of 405.29m², also including flexible internal panelling that could allow separate tenancies.
 The individual tenancies are expected to include uses such as bathhouse; martial arts studio; dance studio; massage/ wellness; allied health treatment rooms; sauna/ steam room; yoga studios and the like.
 30 The proposed hours of operation for all tenants are 7am to 7pm, and the facility has a capacity of 100 people.
- A central 'core' building, containing a lift well and toilet facilities for each building level.
- 35 Recycling/garbage storage is proposed at ground level, under the stair well adjacent to Fullerton Lane (southern frontage).

40 A new car parking area, containing 37 spaces, is proposed on the southern part of the site, with entry from Gallagher Street (western end) and exit onto Fullerton Lane. Three (3) existing car spaces in Gallagher Street are proposed to be converted to two (2) loading bays. A further six (6) spaces in Easy Street (north side) are proposed to be converted to provide three (3) loading bays. 19 bicycle spaces are also proposed, adding to the existing bike storage room located immediately east of the development site.



Artist's perspective – view from Easy Street to junction between S4B & S4C (showing outdoor dining)



5

Artist's perspective – view from existing recreation facilities to Building S4C (showing outdoor dining)



Artist's perspective – view from Easy Street to junction between S4A & S4B



5 Artist's perspective – view from Gallagher Street to S4A (existing live/work buildings in far right)

Additional landscaping is proposed within Easy Street (northern frontage of development site), together with two timber entry decks that cross the existing drainage swale within that street. A 60m² timber terrace/deck is also proposed within the Easy Street, outside of restaurant. Further landscaping is proposed on the Gallagher Street and Fullerton Lane frontages and within the site.

The proposed development incorporates a variety of sustainability measures/ principles, including:

- Sub-tropical design – includes large eaves, good building orientation, cross-ventilation, insulation, covered walkways and large, protected openings.

- Locally indigenous landscaping;
- Water sensitive urban design – use of swales and bioretention;
- Green waste – utilisation of ‘subpod’ composting systems throughout the development;
- 5 • Water conservation – recycled water, purchased from Council’s nearby treatment plant, used for toilets and landscape irrigation;
- On-site stormwater detention – stormwater is to be captured and released slowly to the wetland areas around the Habitat site, which is particularly advantageous to the acid frog habitat in this area;
- 10 • Solar – Habitat has an Embedded Energy Network, whereby electricity generated by the solar network is distributed through the site for use in peak periods. Stage 4 will include a further 50kW system;
- Lighting – low energy fittings and LED lighting used throughout;
- Two electric car charging stations will be incorporated in the car park;
- 15 • Dedicated bike storage to promote cycle use.

1.3. Description of the site

A site inspection was carried out on 7 November 2019.

Land is legally described as	Part Lots 1 & 12 DP: 271119 Note: The various ‘parts’ of Habitat are within a registered Community Plan (i.e. community title). Lot 1 is the Community Lot, containing internal private roads, car parks, and recreation areas. Lot 12 contains the remaining undeveloped cleared sites within Habitat (which will be Stages 4 & 5).
Property address is	2 Gallagher Street BYRON BAY
Land is zoned:	B4 Mixed Use
Land area is:	2,403.4m ² – this is the area of the “development site”, being Part Lot 12.
Property is constrained by:	Acid Sulfate Soils Class 3

20 Habitat is a mixed use development, purpose-built to accommodate a variety of commercial, retail and residential uses. To date, three (3) stages have been constructed. The commercial precinct at the eastern (Bayshore Drive) frontage of the site contains a number of retail and office spaces, a restaurant/ café, and shared office facilities.

25 Two live/work precincts are located west of the commercial precinct, containing individual units that provide for office/ commercial space at ground level with a combination of one and two bedroom residences above and behind. A central recreation space has also been constructed, including a pool and play area, with associated amenities. A residential precinct, containing 60 one-bedroom units, is on the western end of the Habitat property.

30 The site that is subject of this application is part of Lot 12 DP 271119, which contains part of the cleared area within Habitat yet to be developed. It is bounded by Easy Street (north-east), Fullerton Lane (south-west), Gallagher Street (north) and the completed recreational precinct (south).

5 The roads within Habitat, including those surrounding the subject site, are private roads within the Community Lot, which is Lot 1 DP 271119. Use of these private roads are governed by the property's Community Management Statement, which allows "bona fide members of the public" to use the roads. The roads are managed by the Community Association. The Stage 4 development site is cleared and generally flat, with a very slight north-south fall.



Stage 4 Development Site – between Easy Street and Fullerton Lane



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Photo 1: Stage 4 Development Site – looking north from Fullerton Lane (live/work units on left)



Photo 2: Stage 4 development Site looking south-west from Easy Street (Pocket-living apartments at rear)



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Photo 3: Easy Street drainage swale (looking east) with Stage 4 development site on right

2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions. Potential for generation of noise from café and recreational facilities was identified as key issue. See below.
Development Engineer	No objections subject to conditions. Car parking assessment has taken into account the existing on-site parking and the parking required in association with previous development approvals. See below.
S64 / Systems Planning Officer	No objections subject to conditions.
S7.11 / Contributions Officer	No contributions are payable, as contributions were levied on previous applications for the site based on residential yield. The subject application does not have any residential components.

Issues:

5

Noise: A detailed noise impact assessment was undertaken, concentrating on the operation of the proposed café and activities anticipated within the proposed recreation facilities (indoor). The noise report assessed the cumulative anticipated noise, i.e. associated with the existing Habitat uses (including Barrio restaurant) and noise sources associated with the land uses proposed in this application. Noise predictions were provided for a number of external properties, located on the eastern side of Bayshore Drive, as well as a number of residential properties within Habitat.

10

A distinction is made between the residential amenity expected external to Habitat, which in acoustic terms is described as *residential receiver*, and the amenity of residences within Habitat, which is described as *commercial interface receivers*. It is reasonable to expect that the amenity in Sunrise residential area would be quieter than that within the mixed-use Habitat development. The adopted noise level criteria reflect this, with a 5dB difference between the receiver types.

15

The noise modelling undertaken assumed that all noise sources were operating simultaneously. The results indicated that noise levels are predicted to be within the relevant criteria for all receivers.

20

Car Parking: There are approx. 310 existing car parking spaces spread throughout the Habitat development, provided in association with previous development consents. This includes 53 spaces in excess of the previous DA requirements. The development generates a need for 74 car parking spaces, in accordance with the standards in Byron DCP 2014.

25

The application proposes an additional car parking area located on the Stage 4 development site, which will contain 37 parking spaces. The remaining Stage 4 requirement will be met by utilisation of the 'extra' existing spaces.

30

In addition, Habitat has a corporate subscription with an existing car share operator, with a van and two (2) hybrid vehicles located on site. Through the corporate subscription, everyone who lives or works at Habitat has free access to these vehicles, only needing to pay per kilometre usage.

35

3. SECTION 4.14 – BUSH FIRE PRONE LAND

Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document Planning for Bush Fire Protection 2006. The site of the proposed development (i.e. part Lot 1 & part Lot 12), is not bush fire prone land.

40

EFFECT OF 10/50 RULE ON SIGNIFICANT VEGETATION

5 The 10/50 exemption to clear vegetation cannot be exercised on this parcel of land, as the wider Habitat property is identified as being directly adjacent to an identified Coastal Wetland area.

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

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

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 44 - Koala Habitat Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The development site has an area less than 1ha. The development control provisions of the SEPP therefore do not apply. In any case, there is no mature vegetation on the development site. <i>[Note: This SEPP has been repealed and replaced by SEPP (Koala Habitat Protection) 2019. The savings provisions of the new SEPP, however, provide that it does not apply to an application lodged prior to its commencement. SEPP 44 remains applicable in this case.]</i>		
State Environmental Planning Policy No 55 - Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The potential for site contamination was considered in detail in previous stages of the development. No further assessment is considered to be warranted.		
State Environmental Planning Policy (Coastal Management 2018)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The eastern fringe of Lot 1 is mapped as being within proximity to a Coastal Wetland (Note: the development site is remote from this mapped area). The proposed development will not result in any direct or indirect impacts on the nearby wetland.		

15

4.2 Byron Local Environmental Plan 2014 (LEP 2014)

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

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

- (a) The land uses within the proposed development are defined in the LEP 2014 Dictionary as:
- Commercial Premises, including:
 - Business Premises;
 - Office Premises; and
 - Retail Premises, including:
 - Food and Drink Premises, being:
 - Restaurant or café; and
 - Recreational Facility (Indoor)
- (b) The land is within the B4 Mixed Use according to the Land Zoning Map;
- (c) All components of the proposed development are permissible with consent; and

25

30

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

Zone Objective	Consideration
<p><i>To provide a mixture of compatible land uses.</i></p> <p><i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i></p>	<p>The uses proposed in this application continue and expand on the commercial activities existing at the site.</p> <p>The new commercial buildings have been located on the northern part of the development site to maximise separation from the live/work units existing on the opposite side of Fullerton Lane. Perimeter car parking and location of the car park will minimise potential visual, overlooking and overshadowing impacts.</p> <p>Bike parking is provided for the development, in addition to that already provided on the site, to maximise the potential for cycling. The site is also located in close proximity to the solar train platform, allowing patrons/ workers to travel from the town centre to the site.</p> <p>Car share vehicle are available on site to all tenants.</p>

The following LEP provisions are relevant:

5 **Clause 4.3 height of buildings:**
 The Height of Buildings Map sets a maximum building height of 9m for the locality. Buildings S4-A & S4-B will exceed this height, proposed at a maximum height of approx. 10m.

10 The application includes a submission under Clause 4.6 of the LEP seeking approval for the contravention of this standard. This is addressed in detail below.

Clause 4.4 Floor space ratio:
 The Floor Space Ratio Map sets an FSR of 0.9:1 for this property.

15 The development site has a total area of 2,403.4m². The proposed development has a total gross floor area of 2,162.1m², resulting in an FSR of 0.9:1.

20 **Clause 4.6 Exceptions to development standards:**
 The clause provides a mechanism for the approval of a development application where the development would contravene a development standard.

25 In this case, the development contravenes the 9.0m maximum building height development standard. The applicant has submitted a written request to justify the contravention of this standard.

The Development Standard to be varied
 The Building Height development standard is outlined at clause 4.3 of Byron LEP 2015. The clause references the *Height of Buildings Map*, which, in relation to the subject land, specifies a maximum height of 9.0m.

30 For the purpose of that clause, *building height* is defined as *the vertical distance from ground level (existing) to the highest point of the building.*

Extent of Variation to the Development Standard

Buildings S4-A and S4-B contravene the 9.0m development standard, with details shown in the table below:

Ref. Point*	Existing Ground Level (AHD)	Proposed Height Level (AHD)	Proposed Height (m)	Maximum (m)	Variation (m)	Variation (%)
Building S4-A						
A	5.83	15.8	9.97	9.0	0.97	10.78
B	5.97	15.8	9.83	9.0	0.83	9.22
C	5.85	15.8	9.95	9.0	0.95	10.55
D	5.75	15.8	10.05	9.0	1.05	11.67
Building S4-B						
E	6.03	15.8	9.77	9.0	0.77	8.56
F	6.11	15.8	9.69	9.0	0.68	7.67
G	5.96	15.8	9.84	9.0	0.84	9.33
H	5.91	15.8	9.89	9.0	0.89	9.88
Building S4-C						
I	6.11	12.33	6.22	9.0	No variation	0
J	6.10	12.33	6.23	9.0	No variation	0
K	5.67	14.44	8.77	9.0	No variation	0
L	5.70	14.44	8.74	9.0	No variation	0
Main amenities building						
M	5.83	15.8	9.97	9.0	0.97	10.78
N	5.87	15.8	9.93	9.0	0.93	10.33
O	5.81	15.8	9.99	9.0	0.99	11.00
P	5.80	15.8	10.00	9.0	1.00	11.11

5 * The reference points are the external corners of each building – See Plan DA210 Rev 02

The maximum contravention of the 9.0m height standard is just over 1m, or approx. 11.7%.

Objective of the Development Standard

10 The objectives of the building height development standard are:

- a) to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,
- b) to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,
- 15 c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.

Objective of the Zone

The objectives of the B4 Mixed Use Zone are:

- 20 1. To provide a mixture of compatible land uses.
- 2. To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

Assessment

Where a development relies on clause 4.6 in relation to a development standard, Council cannot grant consent unless it has considered the applicant's cl 4.6 request and is satisfied that it has adequately demonstrated that:

- 5
- compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
 - there are sufficient environmental planning grounds to justify contravening the standard; and
 - the proposed development will be in the public interest because it is consistent with the objectives for development within the zone and of the standard in question.
- 10

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The contravention of the standard arises from buildings A & B being three storeys, rather than two.

15

The applicant's cl 4.6 submission argues that, in the context of the Habitat development, compliance with the 9.0m maximum building height standard is unnecessary primarily because the development is consistent with the height of adjacent buildings and achieves the objectives of both the standard and the B4 zone.

20

Existing buildings within Habitat are all two storey. However, the two-storey pocket living apartments, located on the opposite side of Gallagher Street, are the same height to the peak of the roof as proposed Buildings A & B. The units within the upper floor of the pocket living buildings contain mezzanine bedrooms. Visually, therefore, proposed buildings A & B will be consistent with the nearby pocket living buildings.

25

Although higher than the live/ work buildings on the opposite side of Fullerton Lane, the siting of the proposed buildings toward Easy Street, with the car parking and two-storey elements toward Fullerton Lane minimises any potential for impacts.

30

Given the above, the buildings' height will not result in any material loss of urban character or amenity in this locality.

Are there sufficient environmental planning grounds to justify contravening the development standard?

35

The height exceedance does not result in impacts on any view corridors, nor does it result in any overshadowing, overlooking or privacy issues.

40

The environmental planning grounds that justify contravention of the development standard are outlined above, associated with a combination of positive impacts for local character and an absence of any impacts associated with overlooking or overshadowing of neighbouring development.

Is the proposed development in the public interest? Is it consistent with the objectives of the standard and the zone as set out above?

45

In relation to the objectives of the building height standard:

- 50
- the height of the proposed buildings complements the streetscape and built form within the Habitat development. As outlined above, the height is the same as the pocket living buildings to the north, and the siting and design of the buildings minimises any impacts on the lower live/ work buildings; and
 - the application demonstrates that the proposed development will not result in overshadowing or overlooking and there will not be any associated privacy impacts.

In the context of the Habitat development, the current proposal is also consistent with the objectives of the zone by providing additional compatible land uses in an accessible location.

- 5 Overall, it is considered that the variation to the building height standard is justified in the circumstances and the clause 4.6 request is supported.

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

10

None applicable.

4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

- 15 **Chapter E5** of the DCP specifically applies to development at the Habitat site.

Concurrent with this Development Application, the applicants submitted a request to amend this Chapter of the DCP, to be consistent with the development currently proposed. This was considered at the Planning meeting of 12 December 2019, where Council resolved (**19-692**):

- 20 1. *That Council proceed to exhibit the draft DCP 2014 Chapter E5 amendment as shown in Attachment 1 (E2019/84596) for a period of 28 days.*
2. *That the exhibition documents reference the associated Development Application and provide a synopsis of what is sought in that DA*
- 25 3. *That following exhibition, Council receive a further report detailing submissions made. Should there be no submissions as of the close of the exhibition period, that Council adopt the amended Chapter and give notice of its decision in accordance with the Environmental Planning and Assessment Regulation.*

- 30 The proposed DCP amendment was exhibited for public comment from 15 January to 14 February 2020. No submissions were received. In accordance with part 3 of the Council resolution, therefore, the amended Chapter is adopted and therefore applicable.

The development application therefore complies with the provisions of this Chapter of the DCP.

35 **Chapter B4 Traffic and Car Parking**

The car parking requirements outlined in Chapter E5 take precedence over the standards in Chapter B4.

- 40 The car parking provided for the proposed development complies with the required standards, as discussed above.

In addition, car share vehicles are in place at Habitat and are available for use by all tenants and residents. Previous research indicates that each car share vehicle, when used regularly, is equivalent to approx. 5 – 10 private vehicles.

45

Chapter D8 Public Art

- 50 A condition of consent is recommended requiring the provision of public art in accordance with the requirements of this Chapter, to a minimum value of \$25,000. The applicants have indicated that planning is underway for a substantial art installation that would address the requirements of the this stage, the previous stage (pocket living apartments) and the remaining future stage of development at Habitat.

4.5 Any Planning Agreement or Draft Planning Agreement?

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

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

5

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

4.7 Any Coastal Zone Management Plan?

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

10

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

Impact on:	Likely significant impact/s?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	Proposal will generate economic impacts during the construction phase with associated multiplier effects through the local economy. Additional housing and commercial floor space will be provided.
Construction impacts	Minor impacts likely during the construction phase. Standard conditions of consent recommended to control construction activities including hours of work, builders waste, sedimentation and erosion control measures, and construction noise.

4.9 The suitability of the site for the development

15

The site is a serviced, unconstrained property within an existing mixed-use precinct, and is suitable for the proposed development. The buildings proposed are of a design and scale that is consistent with the existing Habitat buildings and the land uses will add to the commercial and recreational opportunities and activities at this site.

20

4.10 Submissions made in accordance with this Act or the regulations

The development application was exhibited for public comment from 24/10/19 to 6/11/19.

- 5 There was one (1) submission made on the development application, expressing concern at the inclusion of an additional restaurant/ café with an outdoor dining terrace, primarily associated with noise issues (Attachment 3). The submission suggests that Council not approve this component of the application, or, in the alternative, apply strict conditions to limit patron noise. The submission requests that, if Council are to approve the café, strict conditions of approval be applied, governing opening hours, patron numbers and prohibiting weddings or similar events.

15 As detailed above, a Noise Impact Assessment was undertaken to support this application. That assessment examined the potential for noise impact associated with all uses – i.e. existing and proposed – operating simultaneously.

Based on the noise measurements and modelling, the assessment report concludes that none of the Stage 4 uses, including the café and/ or recreational facilities will generate intrusive or offensive noise for residents located within Habitat and external to Habitat.

20 Given that, it is considered that the café hours proposed – 7am to 7pm – are reasonable, and a condition of approval is recommended that would apply these hours to all uses. It is not considered necessary to set a limit on patron numbers for the café.

4.11 Public interest

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

5. DEVELOPER CONTRIBUTIONS

30

5.1 Water & Sewer Levies

Section 64 levies will be payable.

5.2 Section 7.11 Contributions

35

Section 7.11 Contributions will be payable.

6. CONCLUSION

40

The DA proposes Mixed Use Development (Stage 4 Habitat). 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.

45

Report No. 13.10 **PLANNING - 24.2020.15.1 Habitat Stage 5 DCP Amendment; Chapter E5 Certain Locations in Byron Bay and Ewingsdale**

Directorate: Sustainable Environment and Economy

Report Author: Kristie Hughes, Planner

5 **File No:** I2020/611

Summary:

10 Council has received an application from Planners North on behalf of Bayshore Development Pty Ltd seeking to amend Chapter E5 of Byron Development Control Plan 2014 (DCP 2014). The application has been lodged concurrently with Development Application 10.2020.87.1, which proposes a Mixed Use Development with basement car parking, forming Stage 5 of the Habitat development.

15 The key amendments to the current DCP chapter are:

- Amend Precinct 1A from 'tiered living' to 'mixed use' which entails commercial premises, hotel or motel accommodation, serviced apartments, high technology industry, function centre, information and education facility, medical centre, recreation facility (indoor), and food and drink premises.
- Various wording changes relating to Precinct 1A to reflect the mixed use development proposed within Development Application 10.2020.87.1.

25 A 'marked up' copy of the draft DCP chapter showing the proposed changes is appended to this report as Attachment 1. The received application including the 'Statement of Environmental Effects and DCP Modification Request Habitat Stage 5' is appended as Attachment 2.

30 Development Application 10.2020.87.1 has recently completed exhibition, with submissions received consisting of 2 objections and 24 letters of support.

While assessment of that application is continuing, it is recommended that the draft DCP amendment proceed to exhibition, with the intention that the DCP amendment and the Development Application can then be determined concurrently.

35 Note that due to the estimated cost of the proposed development, the Northern Regional Planning Panel will be the consent authority for the DA.

NOTE TO COUNCILLORS:




40 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.

45

RECOMMENDATION:

1. **That Council proceed to exhibit the draft DCP 2014 Chapter E5 amendment as shown in Attachment 1 (E2020/31046) for a period of 28 days.**
2. **That following exhibition, Council receive a further report detailing submissions made. Should there be no submissions as of the close of the exhibition period, that Council adopt the amended Chapter and give notice of its decision in accordance with the Environmental Planning and Assessment Regulation, subject to and concurrent with any approval of development application 10.2020.87.1.**

Attachments:

- 5
- 1 24.2020.15.1 Draft Byron Shire DCP 2014 Chapter E5 Certain Locations in Byron Bay and Ewingsdale for Habitat Stage 5, E2020/31046 
 - 2 DA 10.2020.87.1 - STAGE 5 STATEMENT OF ENVIRONMENTAL EFFECTS, E2020/13968 
 - 3 Form of Special Disclosure of Pecuniary Interest, E2012/2815 

10

REPORT

Council has received an application from Planners North (the Applicant) on behalf of Bayshore Development Pty Ltd seeking to amend Chapter E5 of Byron Development Control Plan 2014 (DCP 2014), relating to the Development Application 10.2020.87.1 – Mixed Use Development (Habitat Stage 5). Details of this request are presented below.

Subject Site

The subject site is described as Lot 1 & Lot 12 DP 271119 and known as Habitat. It is located immediately northwest of the Byron Arts and Industry Estate.

Chapter E5 of Byron DCP 2014 contains a range of controls and guidelines relating to the development of the site. The controls are precinct-based, with the existing Habitat Precinct Plan shown below in Figure 1.

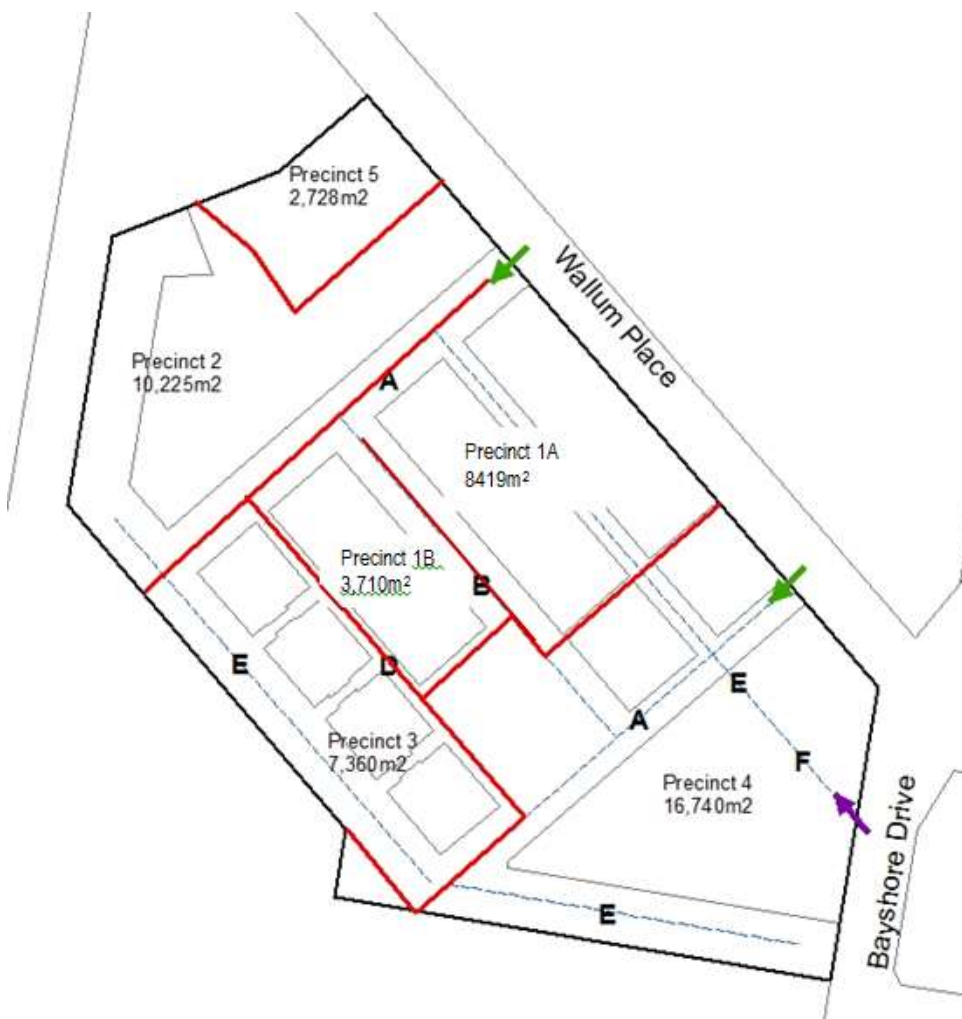


Figure 1 Map E5.3 Habitat Precinct Plan

Background

The site originally received development approval in 2008 (DA 10.2008.360) for a mixed use development comprising residential dwellings, commercial, retail and creative industrial units. Chapter E5 was originally drafted at that time to facilitate the anticipated development.

Development has been approved and constructed within Precincts 2, 3 and 4 as shown above. A current development application – 10.2020.87.1 – proposes an increase in mixed use development, replacing ‘tiered living’ with ‘mixed use’ within Precinct 1A.

5 Due to the development being implemented in stages, changes have been made to the original site plan and design concept as Habitat has evolved into a successful mixed use development supporting residential, commercial and industrial purposes. Therefore, several amendments to the DCP have been made across these stages of development.

10 Stage 1: DA 10.2015.353.1 provided for the mixed-use development comprising residential dwellings, commercial and retail units, recreational facilities, associated infrastructure and subdivision – located within Precinct 4.

15 Stage 2: involved the building of a residential flat building associated with associated light industry, approved pursuant to DA 10.2017.4.1. This development application provided for two additional live/work buildings extending on the two buildings approved at stage 1 – located within Precinct 3.

20 Stage 3: DA 10.2017.628 60 ‘pocket living’ apartments; currently under construction within Precinct 2.

25 Stage 4: DA 10.2019.517.1 Amended the Habitat Precinct Plan, dividing Precinct 1 into two precincts 1A and 1B. Land uses allocated to the precincts were ‘tiered living’ (1A) and ‘mixed use’ (1B) *[Note: an assessment report on this DA is on the agenda for this Planning Meeting, recommending conditional approval]*

Summary of Proposed Changes

30 The proposal relates to the proposed stage 5, as outlined in Development Application 10.2020.87.1. The application to amend Chapter E5 of the DCP has been made concurrently with that DA.

35 Under the proposed amendments, the land use, ‘tiered living’ is replaced with ‘mixed use’ for the whole of Precinct 1A. The built gross floor area within the precinct has been increased by approximately 700m² to 6,716m².

The following DCP amendments are proposed:

- Update to the Habitat Precinct Plan description of land use Precinct 1A, from tiered living to mixed use (Section E5.5.3.4);
- Update land use descriptions within Table E5.1 to reflect precinct land use change and current development proposal;
- Update Table E5.2 amending minimum setbacks for external property boundary and external roads;
- Update to Table E5.3 to set out the appropriate parking requirements for Precinct 1A; and
- Update to Map E5.3 – Habitat Precinct Plan adding indicative service access from internal carpark to Precinct 4

50 In accordance with the Environmental Planning and Assessment Regulation 2000 and Byron Community Participation Plan, the proposed DCP amendment is required to be publicly advertised for a minimum of 28 days.

Development Application 10.2020.87.1 has recently been exhibited, submissions received included 2 objections and 24 letters of support. While assessment of that application is continuing, it is recommended that the draft DCP amendment proceed to exhibition, with the intention that the DCP amendment and the Development Application can then be determined concurrently.

As the Habitat development has evolved in stages over time, the intended land uses of the precincts have changed. It is important to note that while Stage 5 involves the conversion of Precinct 1A from tiered living to more commercial uses, housing allocation has increased in other areas of the Habitat development. Such as Precinct 2, originally envisaged as light industrial, is now under construction with 60 'pocket living' apartments.

Proceeding with the exhibition of this proposed DCP amendment will give further opportunity for public comment and enable a more holistic assessment of the development application to be presented to Council and the Northern Regional Planning Panel.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

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

Legal/Statutory/Policy Considerations

This proposal seeks to amend the DCP 2014. All relevant policy implications have been discussed above. The proposed amendment will be exhibited as per the statutory requirements.

Financial Considerations

This is an Applicant funded DCP amendment, all costs will be borne by the applicant.

Consultation and Engagement

It is recommended that the DCP be exhibited for a minimum of 28 days as per legislative requirements.

Report No. 13.11 **PLANNING - Place Planning Collective Charter and Nominations**
Directorate: Sustainable Environment and Economy
Report Author: Andrew FitzGibbon, Place Liaison Officer
File No: I2020/548

5

Summary:

10 The Place Planning Collective held its first meeting on 16 March 2020 and is continuing to meet via online conferencing in order to progress place planning priorities.

Council endorsement is now sought for the Place Planning Collective Charter, which has been developed by the group (Attachment 1). Key aspects of the charter are:

- 15 • **Purpose:** The Collective will collaborate with Council and contribute co-ordinated, community-led governance to Council's place planning decision-making. Specifically, the Collective will prioritise projects identified by communities within existing and future place plans in Byron Shire, and make recommendations to Council for their implementation.
- 20 • **Authority:** Council will collaborate with the Place Planning Collective in prioritising place planning projects and will incorporate the Collective's advice and recommendations into Council decisions to the maximum extent possible.
- **Media:** Members of the Collective must not discuss sensitive, confidential or political matters with the media. Confidentiality agreements to be signed by each member.

25 The Mullumbimby and Bangalow Place Plans have previously been adopted by Council, and a number of priority actions and initiatives have commenced or are in the planning stage. The draft Arts and Industry Estate Precinct Plan has also been adopted for public exhibition purposes, and the exhibition will take place from 29 April to 26 May. This is supported by further work that has been undertaken in relation to Lot 12 Bayshore Drive and the proposed one-way traffic trial for Centennial Circuit.

30

The Place Planning Collective will not 're-visit' the actions and initiatives already underway, but instead concentrate on assisting the remaining priority projects to move forward.

35 Council is also requested to nominate up to three (3) Councillors to be members of the Place Planning Collective. At a minimum, this would require participation in (approximately) monthly 2hr meetings.

NOTE TO COUNCILLORS:


40 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.

45

RECOMMENDATION:

1. **That Council endorse the Place Planning Collective Charter as per Attachment 1 (E2020/31059).**
2. **That Council nominate up to three Councillors to be members of the Place Planning Collective as follows:_____.**

Attachments:

- 1 Place Planning Collective Charter - May 2020, E2020/31059 

5

REPORT

5 In September 2019, Council resolved to establish a Place Planning Cluster Group (now known as the “Place Planning Collective”) to manage the implementation of the Mullumbimby, Bangalow, and Byron Arts and Industry Estate Place Plans (**Res 19-451**).

10 In December 2019, Council nominated seven (7) members who had formally expressed their interest to sit on the collective (**Res 19-690**). These members were joined by five (5) randomly selected community members from the citizens lottery database to form the Collective.

15 The Place Planning Collective held an establishment workshop on 16 March 2020, to provide a context for the members and establish operational parameters for how they will work together. Following that workshop, staff will arrange online conferencing meetings to progress the discussion of Place Plan priorities.

20 At the workshop, the members contributed to a draft Place Planning Collective charter, which guides the future working of the group (as per Attachment 1). Key aspects of the charter are:

- **Purpose:** The Place Planning Collective exists to enable and facilitate community recommendations and priorities as detailed in the place plans for Bangalow, Mullumbimby, Byron Arts and Industry Estate, and future place plans developed in Byron Shire.
- **Authority:** Council will look to the Place Planning Collective for advice and innovation and incorporate the Collective’s recommendations into decisions to the maximum extent possible..
- **Media:** Members of the Collective must not discuss sensitive, confidential or political matters with the media. Confidentiality agreements to be signed by each member.

25 The Mullumbimby and Bangalow Plans have previously been adopted by Council, and a number of priority actions and initiatives have commenced or are in the planning stage. The draft Arts and Industry Estate Precinct Plan has also been adopted for public exhibition purposes, and the exhibition will commence shortly, supported by further work that has been undertaken in relation to Lot 12 Bayshore Drive and the proposed one-way traffic trial for Centennial Circuit.

30 The Collective includes members located across the Shire, which will be important in providing a ‘Shire-wide lens’ when formulating recommendations for individual towns and villages.

35 In the initial ‘set-up’ phase of the Collective, Council staff will assist the members in coming up to speed on the adopted Plans, assisted by members of the Collective with previous involvement. Staff will also bring members up to speed on Council’s budget process and alternative funding options such as grants and/or community partnerships.

40 Importantly, the Collective will not re-visit actions and initiatives that have already commenced, although input may be sought, if and where appropriate, in relation to continuation and finalisation of those projects.

45 Moving forward with implementation of the adopted plans, particularly in light of the current COVID situation, will require careful consideration of the future projects nominated in each plan to provide recommendations that can realistically be achieved within defined budgets. The Collective will need to identify where Council and the community can achieve the ‘best bang for the buck’.

50 This approach is consistent with Council’s previous community collaboration initiatives such as the Citizen’s Jury.

Council is also requested to nominate up to three (3) Councillors to be members of the Place Planning Collective. At a minimum, this would require participation in (approximately) monthly 2hr meetings.

Note that Councillors who are not members of the Place Planning Collective would still be able to attend meetings at their discretion with prior notice provided to the group.

5 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	4.1.2	Ensure consistency of place-based projects with community Place Plans through embedding a governance framework that includes planning, implementation and ongoing management	4.1.2.1	Facilitate Guidance Groups

Legal/Statutory/Policy Considerations

10 Nil

Financial Considerations

15 Nil

Consultation and Engagement

20 One of the expectations of the members is that they would consult with their communities as work progresses.

Report No. 13.12 PLANNING - Update on Resolution 19-266 - Review of DCP 2014 and the introduction of the Low Rise Medium Density Code**Directorate:** Sustainable Environment and Economy**Report Author:** Natalie Hancock, Senior Planner**File No:** I2020/549**Summary:**

On 6 April 2018 a Low Rise Medium Density Housing Code (SEPP Exempt and Complying Development Codes) 2008 (the Code) was introduced in NSW to facilitate the development of low rise medium density housing. The state government granted Byron Shire a deferral of the introduction of the Code until 1 July 2020 to allow Council to progress with its strategic planning initiatives and demonstrate how they intend to meet their local housing needs.

In readiness for the Code, on 20 June 2019 Council resolved (**Res 19-266**) to proceed with a planning proposal to amend clause 4.1E of Byron Shire LEP 2014, by inserting minimum lot size standards for 'manor houses' and 'multi dwelling housing (terraces)'. Council considered this planning proposal at the 20 February 2020 meeting and it is now with the Department of Planning, Industry & Environment requesting they finalise the plan. Council also agreed, as part of Res 19-266, to:

- initiate a review of Byron Shire Development Control Plan 2014 (DCP) as it relates to low rise medium density housing, and prepare a draft amendment to strengthen DCP 2014 where necessary and include references to 'manor house' and 'multi dwelling housing (terraces)' development; and
- receive a further report to consider the proposed DCP amendments before proceeding to public exhibition.

The DCP review has commenced with an appraisal of DCP provisions as they relate to the state government's supporting *Low Rise Medium Density Design Guides* for complying development (Code assessable) and development applications (non-Code assessable).

The purpose of this report is to update Council on the review process. It recommends that Council commence with a DCP 2014 amendment to insert a new Chapter containing residential locality narratives and that these be based on the exhibited draft Residential Strategy narratives. It further recommends that the DCP include cross referencing between the new Chapter, Design Verification Statements and existing DCP provisions in Chapter D1, under D 1.4.3 Siting, Design and Character (secondary dwellings), D1.5.2 Character (dual occupancy and semi-detached dwellings) and D1.6 multi-dwelling housing, residential flat buildings and attached dwellings).

Design Verification Statements are required under both Design Guides. They confirm that a certifying authority (such as Council or private certifier) has assessed the proposed development and is satisfied that it meets design criteria at the local, neighbourhood and site scale.

The report also notes that for certain design criteria further discussion is required with the Department of Planning, Industry and Environment as to how standards are to be interpreted.

Due to the Code's 1 July 2020 introduction date, it is recommended that Council proceed with the proposed amendments to Byron DCP 2014 as set out in this report.

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.

5

RECOMMENDATION:

1. That Council endorse an amendment to Byron Shire DCP 2014, to:
 - a) include *Residential Locality Narratives (Attachment 1 E2020/29897)*; and
 - b) cross reference Chapter D1, Residential Accommodation in Urban, Village and Special Purpose Zones with *Residential Locality Narratives* and Design Verification Statements.
2. That Council request staff to proceed with preparation and public exhibition of the Byron DCP 2014 amendments proposed in this report.
3. That Council receive a further report for consideration of submissions following the statutory public exhibition period.
4. That Council agree that should there be no submissions as of the close of the statutory public exhibition period, adopt the Byron Shire DCP 2014 amendments as exhibited and give public notice of this decision in accordance with the Environmental Planning and Assessment Regulation 2000.
5. That Council note that for certain design criteria further discussion is required with the Department of Planning, Industry and Environment as to how standards are to be interpreted.

Attachments:

- 1 Draft Residential Strategy Narratives updated, E2020/29897 
- 10 2 Special Disclosure of Pecuniary Interest Annexure, E2012/2815 

REPORT

Background

5 On 6 April 2018 a Low Rise Medium Density Housing Code (SEPP Exempt and Complying Development Codes) 2008 (the Code) was introduced in NSW to facilitate the development of low rise medium density housing. The State government granted Byron Shire a deferral of the introduction of the Code until 1 July 2020 to allow Council to progress with its strategic planning initiatives and demonstrate how they intend to meet their local housing needs.

10 In readiness for the Code, on 20 June 2019 Council resolved (**Res 19-266**) to proceed with a planning proposal to amend Byron Local Environmental Plan (LEP) 2014 clause 4.1E, by inserting minimum lot size standards for 'manor houses' and 'multi dwelling housing (terraces)'. Council considered this planning proposal at the 20 February 2020 meeting and it is now with the Department of Planning, Industry & Environment requesting they finalise the plan. Council also agreed, as part of Res 19-266, to:

- initiate a review of Byron Shire Development Control Plan 2014 (DCP) as it relates to low rise medium density housing, and prepare a draft amendment to strengthen DCP 2014 where necessary and include references to 'manor house' and 'multi dwelling housing (terraces)' development; and
- receive a further report to consider the proposed DCP amendments before proceeding to public exhibition.

25 The DCP review has commenced with an appraisal of DCP provisions as they relate to the State government's supporting *Low Rise Medium Density Design Guides* for complying development (Code assessable) and for development applications (non-Code assessable). A review of DCP 2010 provisions is not required as the Code does not apply to deferred zones under LEP 1988.

30 The purpose of this report is to update Council on the review process. It recommends that Council commence with a DCP 2014 amendment to insert a new Chapter containing residential locality narratives and that these be based on the exhibited draft Residential Strategy narratives. It further recommends that the DCP include cross reference between the narratives, Design Verification Statements and existing DCP provisions in Chapter D1 under D1.4.3 Siting, Design and Character (secondary dwellings), D1.5.2 Character (dual occupancy and semi-detached dwellings) and D1.6 multi-dwelling housing, residential flat buildings and attached dwellings).

40 Design Verification Statements are required under both Design Guides. They confirm that a certifying authority (such as Council or private certifier) has assessed the proposed development and is satisfied that it meets design criteria at the local, neighbourhood and site scale.

Byron DCP 2014 as it relates to the Code and Low Rise Medium Density Design Guides

45 Effectively the amendment to the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) to include a 'Low Rise Medium Density Housing Code' (the Code) allows for the fast track approval of one and two storey dual occupancies, manor houses and terraces as complying development in the R2 and R3 in Byron Shire as of 1 July 2020. It also introduces definitions for the new housing types (manor houses and terraces), and allows for these housing types to be assessed as either complying development or as a development application by Council where the proposals exceed the controls specified in the Code.

50

The above new uses may be defined as:

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

In introducing the Code, the State government provided two design guides:

1. Low Rise Medium Density Design Guide for Development Applications (DA Design Guide), and
2. Low Rise Medium Density Design Guide for Complying Development (Complying Design Guide).

The *Environmental Planning and Assessment Regulation 2000* (Regulation) requires councils to consider the DA Design Guide when assessing DAs for these new housing types, until such time as local development controls for these new housing types are in place. That said, for development applications, the majority of the design guide criteria refer to the requirements of Council's LEP or the DCP and hence tend to apply only where these two local planning documents are silent.

In contrast, the Complying Design Guide criteria does not in most cases refer to LEP or DCP provisions. It states the design criteria that must be met in order to obtain a complying development certificate under the Code. The design criteria include layout, landscaping, private open space, light, natural ventilation and privacy; a number of these are also a provision in DCP 2014.

In brief, an appraisal of the Complying Design Guide and DCP 2014 found in some instances:

- more comprehensive criteria in the Complying Design Guide
- different standards
- support for DCPs to contain additional information.

An example of each is provided below.

More comprehensive criteria

As an example, the Complying Design Guide articulates architectural form and roof design criteria, providing objectives to achieve a balanced composition of elements, responding to internal layouts and desirable elements in the streetscape. An applicant must describe in a Design Verification Statement how the architectural form reduces the visual bulk and responds and provides a cohesive design response, as well as how the roof treatments are integrated into the building design and positively respond to the street.

In comparison, the DCP 2014 does not include such guidance on this building element and hence for this element the Complying Design Guide may be seen as value adding to development assessment.

Different Standards

Table 1 provides two examples of difference between the Complying Design Guide criteria for complying development and Byron DCP 2014 provisions.

Table 1: Divergent standards

Criteria	Code – Complying Development	DCP 2014 - D1.6 Multi Dwelling Housing, Residential Flat Buildings and Attached Dwellings
<p>Minimum areas for</p> <p>- private open space courtyards</p> <p>- private open space balconies</p>	<p>Terraces</p> <p>The area of principal private open space provided for each dwelling is at least 16m² with a minimum length and width of 3m.</p> <p>Terraces - Each dwelling is orientated front to back, with private open space typically arranged at the rear of the property. This achieves good visual privacy outcomes between dwellings and minimises privacy issues to adjoining neighbouring properties.</p> <p>Manor houses</p> <p>All dwellings have access to principal private open space with a minimum length and width of 3m:</p> <ul style="list-style-type: none"> • 1 bed or studio 8m² • 2+ bed 12m² • dwellings with living area at ground level 16m² <p>Private open space can be obtained by the use of balconies and communal private open space in the rear of the development.</p>	<p>Prescriptive Measures</p> <p>Each dwelling must have access to an individual courtyard at ground level having a minimum area of 30m² and a minimum length and width each of 4 metres, not including any area used exclusively for the circulation or parking of vehicles. The courtyard must be designed to facilitate access to winter sunshine and must be landscaped to Council’s satisfaction.</p> <p>A private open space balcony must have a minimum area of 15m² and a minimum length and width of 2.4 metres. A private open space balcony must be demonstrated to have appropriate orientation and adequate provision for winter sun and summer shade.</p>
<p>Parking</p>	<p>Terraces and Manor houses</p> <p>At least 1 car parking space must be provided for each dwelling</p>	<p>DCP Chapter B4</p> <p>1 space per 1 or 2 bed unit, 2 spaces per 3 or more bed unit, 1 visitor space per 4 dwellings or part thereof.</p>

In some cases the different standards may not be an issue; in others it may lead to outcomes inconsistent with community expectations.

5

The private open space criteria are an example where differences may not be an issue. Whilst the minimum area of private open space under Byron DCP 2014 is different the Complying Design Guide criteria, DCP section D1.6 – *Multi Dwelling Housing, Residential Flat Buildings and Attached Dwellings* states that:

10

Council wishes to encourage variation in medium density housing development by providing simple, flexible controls that are intended to produce more attractive and innovative residential buildings, more imaginative use of outdoor spaces, more privacy and better access to sunlight and shade.

15

To enable this and to facilitate good design an applicant is required to provide a 'Context and Site Analysis Plan'. It is considered in this instance the difference is not significant as both the Complying Design Guide and DCP are seeking similar outcomes such as privacy and solar access and the DCP currently anticipates a need to be flexible when applying standards.

5 In contrast, the difference in car parking standards between the Complying Design Guide and DCP may lead to outcomes not supported by the community. During consultation on the draft Residential Strategy some community members raised issues with the impact of parking on traffic flow, safety and local character and had specifically requested no reduction in the level of on-site parking.

10 For Complying Design Guide criteria that may lead to outcomes inconsistent with local community expectations, staff are continuing to work with the Department of Planning, Industry and Environment to determine how best to apply the standards to address this issue.

15 Support for DCPs to contain additional information

20 Regarding the relationship of the Low Rise Medium Density Design Guides and development control plans and council policies, both the Complying and DA Design Guides states:

A DCP can also contain local strategic planning statements that describe local character and will inform the content of the Design Verification Statement and site analysis required by the Design Criteria.

25 Both Design Guides further state that an applicant is to 'provide a description in the Design Verification Statement how the built form of the development contributes to the character of the local area' and it is to be prepared by a qualified designer or a building designer accredited by the Building Designers Association of Australia. The Design Guides encourage council's to establish the desired future character of an area through consultation.

30 The work on the draft Residential Strategy has provided a good start in the establishment of future residential character for each town and urban village. Staff initially worked with local guidance groups to formulate draft residential character narratives. This was followed by 'Shaping Our Neighbourhoods' discussion with the whole community in May 2019. Understanding the possible implications of the Low Rise Medium Density Housing Code was a key topic for discussion and feedback in relation to these draft narratives. Subsequently, the narratives were refined and exhibited as part of the draft Residential Strategy in August 2019, with Action 18 indicating that they will be advanced for inclusion in the DCP. Attachment 1 is an updated version of the exhibited narratives encompassing feedback from submissions.

35 40 Given the Code's 1 July 2020 commencement in Byron Shire and need for our DCP to articulate local character and context in order to inform any Design Verification Statement after this date, it is recommended the draft Residential Strategy narratives be incorporated in DCP 2014 as a matter of priority.

45 The proposed DCP 2014 amendments to enable this are:

Amendment 1: Addition of a new Chapter – Residential Locality Narratives

50 Below is a suggested lead statement for the new Chapter Residential Locality Narratives introducing the narratives:

55 *This Chapter contains the locality narratives to provide supporting principles for development within the residential areas of our town and urban villages. The statements are place-specific and draw on the unique qualities of each neighbourhood and provide an*

important direction for the development controls and built form guidelines. Each locality statement also includes a figure (for 'figure' examples see attachment 1) showing a tiered approach to possible character change by signalling how new development should respond to the streetscape and the neighbourhood in different parts of a town or village. The localities are divided into pockets based on context including topography, setting, heritage, streetscape, land uses and built form. The statements build on the existing structure, character of the neighbourhoods and important elements that contribute to the existing character. These narratives have been established via the Residential Strategy through consultation with the community and other key stakeholders.

Amendment 2: Cross reference between the Residential Locality Narratives, Design Verification Statements and existing DCP Chapter D1 – Residential Accommodation in Urban, Village and Special Purpose Zones provisions.

With this amendment additional provisions would be inserted into D 1.4.3 Siting, Design and Character (secondary dwellings), D1.5.2 Character (dual occupancy and semi-detached dwellings) and D1.6 multi-dwelling housing, residential flat buildings and attached dwellings) requiring consideration of the narratives as part of development assessment.

As an example of the cross referencing, in D1.6 - multi-dwelling housing, residential flat buildings and attached dwellings (which includes manor houses and terraces) the following would be inserted after the words 'To facilitate good design a Context and Site Analysis Plan will be required as per Part A13.1.1':

To facilitate good design a Design Verification Statement will be required. In demonstrating how the built form of the development contributes to the character of the local area, the statement should articulate how it is consistent with the relevant locality narrative as contained in Chapter ? Residential Locality Narratives.

Next steps

It is strongly recommended that Council proceed to public exhibition with the proposed amendments to the Byron DCP 2014 as set out in this report as a matter of urgency to ensure that local controls can be in place prior to the commencement of the Low Rise Medium Density Code comes in Byron Shire on 1 July 2020.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

The Byron Shire Community Strategic Plan - Our Byron Our Future under Community Objective 4 - **we manage growth and change responsibly** identifies that a community desire for 'controlled development which is congruent with the existing local aesthetics of our towns and villages'. The recommendations of this report are consistent with this object and desire.

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	4.1.3.11	Prepare DCP Character Design Guideline for Low Rise Medium Density Housing Code

Legal/Statutory/Policy Considerations

5 The amendment of development control plans is governed by *Environmental Planning and Assessment Regulation 2000* (Part 3 – Development Control Plans). The amendment process is summarised below:

10 Part 3 of the regulation states that a draft development control plan must be published the Council's website together with the period during which submissions about the draft plan may be made. Council's community participation plan recommends public exhibition for 28 days.

After considering any submissions about the draft development control plan that have been duly made, the Council:

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

20 Council must publish notice of its decision on its website within 28 days after the decision is made. If a notice of a decision not to proceed with a development control plan, it must include the Council's reasons for the decision. If to approve, the development control plan comes into effect on the date that notice of the Council's decision to approve the plan is published on its website, or on a later date specified in the notice.

25 ***Financial Considerations***

As this is a Council initiated DCP amendment, the costs are managed within the existing operational budget.

30 ***Consultation and Engagement***

It is recommended that the amendments proposed in this report be publicly exhibited in accordance with Councils Community Participation Plan for a minimum period of 28 days.

BYRON SHIRE COUNCIL

Report No. 13.13 **PLANNING - DA 10.2019.451.1 Subdivision of Two (2) Lots into Two (2) Lots at 62 and 64 Corkwood Crescent, Suffolk Park**
Directorate: Sustainable Environment and Economy
Report Author: Greg Smith, Team Leader Planning Services
File No: I2020/552

Proposal:

DA No: 10.2019.451.1
Proposal description: Subdivision Two (2) Lots into Two (2) Lots
LOT: 283 DP: 1198641, LOT: 285 DP: 1198641
Property description: 62 Corkwood Crescent SUFFOLK PARK, 64 Corkwood Crescent SUFFOLK PARK
Parcel No/s: 267359, 267361
Applicant: Ardill Payne & Partners
Owner: Mr R F & Mrs N M Kempnich
Zoning: R2 Low Density Residential Zone, 2(a) Residential Zone and 7(d) (Scenic / Escarpment Zone)
Date received: 9 September 2019
Integrated / Designated Development: Integrated Designated Not applicable
Concurrence required Yes – Department of Planning, Industry and Environment
Public notification or exhibition:
– Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
– Exhibition period: 3/10/19 to 16/10/19
– Submissions received: Nil
Variation request Clause 4.6 SEPP 1 Not applicable
Delegation to determine Council
Issues:
• Minimum lot size

Summary:

The DA proposes Subdivision of Two (2) Lots into Two (2) Lots. The proposal essentially transfers 345m² from existing Lot 285 to proposed Lot 2. The majority of this land transfer is zoned R2 Low Density Residential under Byron LEP 2014 with a small portion zoned 7(d) Scenic Escarpment under Byron LEP 1988.

The minimum allotment area development standard under clause 11 of LEP 1988 applicable to the 7(d) Zone is 40 hectares. The DA is supported by a SEPP 1 objection seeking variation of the 40 hectare development standard. Existing and proposed lots all contain areas of land within the 7(d) Zone. Existing lot areas are 1,258m² and 1.983 hectares, and proposed lot areas are 1,603m² and 1.9485 hectares respectively. The Department of Planning, Industry and Environment has granted concurrence to the variation to the lot area development standard. The SEPP 1 objection is well founded, and compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

The subdivision will in effect provide a more useable parcel (proposed Lot 2) of residential land fronting Corkwood Crescent, with the larger parcel which is in effect a battle axe lot, dominated by the sloping and vegetated land backing onto the escarpment to the west up to Coopers Shoot. The

DA 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.

NOTE TO COUNCILLORS:

5

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



10

RECOMMENDATION:

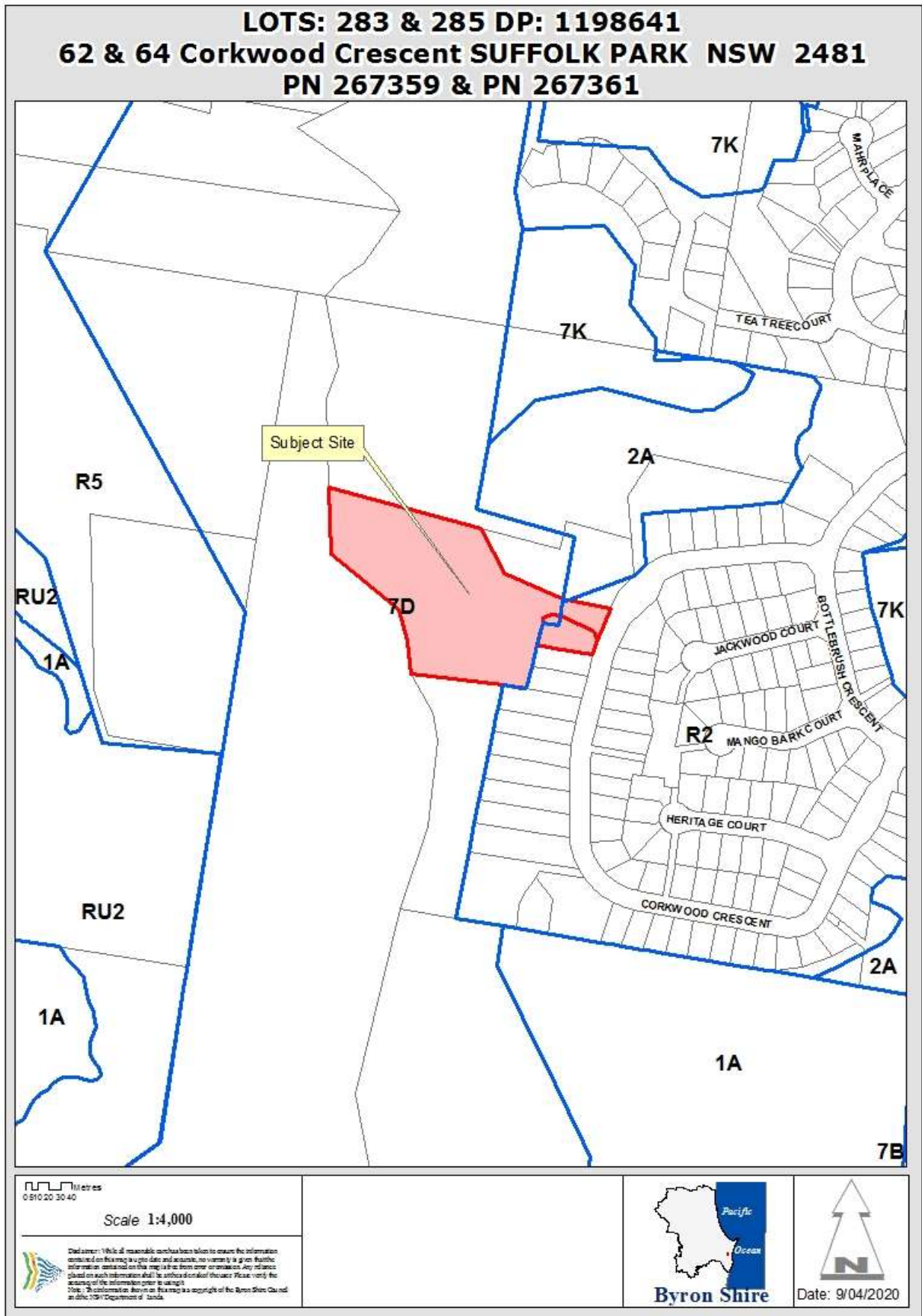
That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.451.1 for Subdivision Two (2) Lots into Two (2) Lots, be granted consent subject to the conditions of approval in Attachment 2 (E2020/26155).

Attachments:

15

- 1 Proposed Plans - 10.2019.451.1, E2020/26167 
- 2 Recommended conditions of approval - 10.2019.451.1, E2020/26155 

20



REPORT

Assessment:

5 1. INTRODUCTION

1.1. History/Background

The DA advises as follows in relation to site improvements:

No. 62 Corkwood Crescent is a developed residential Lot, 1258m² in land area. It currently contains a two storey dwelling and swimming pool.

10 No. 64 Corkwood Crescent is 1.983ha property and has development consent for a dual occupancy development and swimming pool.

1.2. Description of the proposed development

15 This application seeks approval for Torrens Title subdivision of two lots into two lots. The proposal is to essentially transfer 345m² of land from No. 64 Corkwood Crescent to the adjoining No. 62 Corkwood Crescent. The areas of existing and related proposed lots after subdivision are as follows:

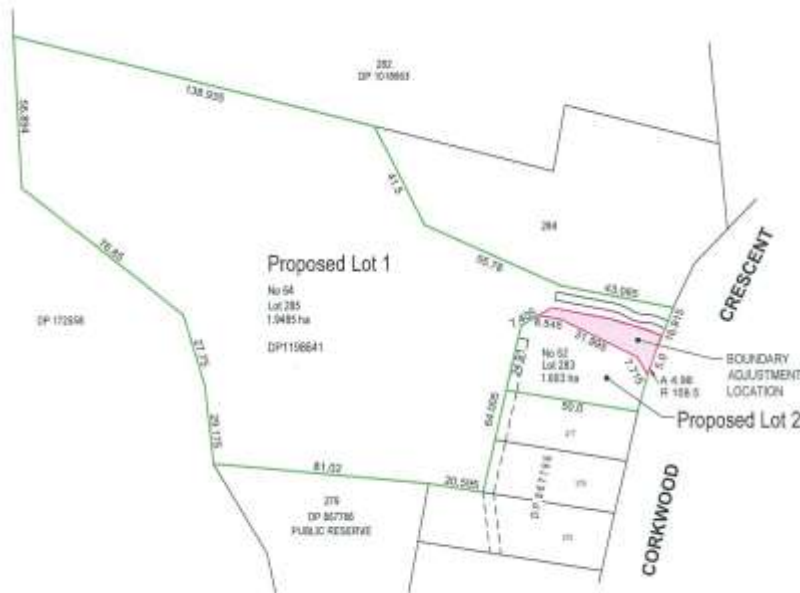
Existing		Proposed	
Lot 283 (No. 62)	(1258m ²) 0.1258ha	Lot 2	(1603m ²) 0.1603ha
Lot 285 (No. 64)	1.9830ha	Lot 1	1.9485ha
TOTAL	2.1088ha		2.1088ha

20



The area of land to be transferred is adjacent to the driveway which accesses the larger parcel to the west. This will increase the size of the residential allotment facing Corkwood Crescent by 345

m2 at the expense of the lifestyle hinterland allotment to the west which backs onto the escarpment leading up to Coopers Shoot.



5

1.3. Description of the site

10 A site inspection was carried out on 2 October 2019.

Land is legally described as	LOT: 283 DP: 1198641, LOT: 285 DP: 1198641	
Property address is	62 Corkwood Crescent SUFFOLK PARK, 64 Corkwood Crescent SUFFOLK PARK	
Land is zoned:	Existing Lot 283 and the related proposed Lot 2 are within the R2 Low Density Residential Zone under LEP 2014 and 7(d) (Scenic / Escarpment Zone) under LEP 1988. Existing Lot 285 and the related proposed Lot 1 are within the R2 Low Density Residential Zone under LEP 2014 and the 2(a) Residential Zone and 7(d) (Scenic / Escarpment Zone) under LEP 1988.	
Land area is:	2.1088 hectares total	
Property is constrained by:	<ul style="list-style-type: none"> Bush fire prone land High Environmental Value Vegetation, but not in the location of the land transfer part of the site, and no further consideration of this site constraint is required. 	
	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 location of the proposed development?	<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



Location of land to be transferred

5 2. SUMMARY OF REFERRALS

Referral	Issue
Development Engineer	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to conditions.
S94 / Contributions Officer	No objections, no conditions.
Rural Fire Service	No objections, subject to General Terms of Approval and Bush Fire Safety Authority granted.
Department of Planning, Industry & Environment	No objections, no conditions, concurrence granted for the SEPP 1 variation. See discussion below.

10 3. SECTION 100B – Rural Fires Act 1997

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 and as such approval from the RFS is required under Section 100B of the Rural Fires Act 1997. The development application was referred to the NSW Rural Fire Service, which provided a bushfire safety authority with integrated conditions. This included in the list of recommended conditions of consent.

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

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

25 4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 1—Development Standards	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The DA is supported by a SEPP 1 objection which are discussed in detail below in relation to clause 11 of LEP 1988. The proposal was also forwarded to the NSW Department of Planning, Industry and Environment as concurrence is required for the SEPP 1 variation. The Department advises that the Secretary’s concurrence is granted to vary the 40 hectare minimum lot size development standard (discussed		

	Satisfactory	Unsatisfactory
<p>further below) on the basis of the following:</p> <p>I refer to your letter of 17 September 2019 requesting the Secretary's concurrence in the above matter.</p> <p>Following consideration of the application, concurrence has been granted to vary the 40 hectare minimum lot size development standard for land in the 7(d) zone (Scenic/Escarpment zone) under the Byron LEP 1988 to enable the boundary adjustment between Lot 283 DP 1198641, 62 Corkwood Crescent, Suffolk Park and Lot 285 DP 1198641, 64 Corkwood Crescent, Suffolk Park.</p> <p>Concurrence was granted in this instance for the following reasons:</p> <ul style="list-style-type: none"> • the proposal will not result in additional lots or opportunities for additional dwellings in the 7(d) zone in which the development standard is being varied and will provide increased opportunities for the improved environmental management of the lands; • both existing lots already contain areas of 7(d) zoned land that are significantly less than the 40 ha minimum lot size; and • there is no public benefit in maintaining the development standard in this instance. 		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The boundary adjustment raises no issues in terms of SEPP 55.		
State Environmental Planning Policy (Infrastructure) 2007	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposal is satisfactory having regard to the relevant considerations under the Infrastructure SEPP.		

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

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

- (a) The proposed development is defined in the Environmental Planning and Assessment Act 1979 as subdivision of land;
- (b) The land is within the R2 Low Density Residential according to the Land Zoning Map;
- (c) The proposed development is permitted with consent; and
- (d) The proposed development is satisfactory having regard to the R2 Low Density Zone Objectives.

Minimum Lot Size

As indicated above, the proposed lots are greater than the 600m² minimum lot size development standard applicable to the land to which LEP 2014 applies.

Clause 6.6 – Essential Services

The subject site has access to all necessary services including power, telecommunications, access, water and sewer. A drainage swale is to be constructed around proposed Lot 2 to manage overland flow of stormwater. Conditions of consent to apply.

The proposed development raises no other issues against the LEP clauses.

4.2B Byron Local Environmental Plan 1988 (LEP 1988)

- 5 The subject site is partly zoned 7(d) Scenic Escarpment under Byron LEP 1988. The following comments are made against the relevant LEP clauses.

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

- 10 (a) The proposed development is defined in the Environmental Planning and Assessment Act 1979 as subdivision of land;
 (b) The land is within the 2(a) and 7(d) Zones according to the map under LEP 1988;
 (c) The proposed development is permitted with consent; and
 (d) The proposed development is consistent with the relevant objectives of the 2(a) and 7(d) Zones.

15

Clause 11 – Subdivision in rural areas for agriculture etc

20 Subclause 11(1) of LEP 1988 states in relation to the 7(d) Zone that the council shall not consent to the subdivision of land for (in this instance) a dwelling-house within the 7(d) Zone unless the area of each of the allotments to be created is not less 40 hectares and, in the opinion of the council, each allotment is of satisfactory shape and has a satisfactory frontage. Each proposed lot is of satisfactory shape and has a satisfactory frontage when a comparison is made of the existing lot characteristics versus the equivalent proposed lot characteristics.

25 However both proposed lots are within the 7(d) Zone and have an area of less than 40 hectares. The area of proposed Lots 1 and 2 are 1.9485 hectares and 1603m² respectively, representing variations to the development standard of 95% and 99.6% respectively. Accordingly, the development application does not meet the 40 hectare minimum lot area requirement and the DA is supported by an objection pursuant to SEPP 1.

30

The Land Environment Court judgment in *Wehbe v Pittwater Council* [2007] identified requirements needed in order to uphold a SEPP 1 objection. These are addressed in the circumstances of this particular case as follows:

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

The 40 hectare minimum lot area requirement is a development standard as defined by section 1.4 of the Environmental Planning and Assessment Act 1979, because it is a provision of an environmental planning instrument in relation to the carrying out of development, being a provision by or under which requirements are specified and standards are fixed in respect of the area of any land.

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

The Applicant submitted a written objection under SEPP 1 (refer to Doc #E2019/66798, being Appendix F of the Statement of Environmental Effects submitted in support of the DA). It is an objection that compliance with the development standard is unreasonable and unnecessary in the circumstances for the following reasons:

50

Strict compliance with the standard having regard to the particular circumstances of the case is considered unreasonable and/or unnecessary due to the fact that:

- the proposal involves a boundary adjustment between 2 existing developed urban lots that are situated in Suffolk Park – no new lots will be created.
- the existing lot 285 subject of the BLEP 1988 provisions is well below 40ha (1.983ha).
 - Proposed Lot 1 will have an area of 1.913m², being a <2% decrease in area. This land exchange will be within the R2 component of the properties, not the 7(d) land.
 - Proposed Lot 2 will have an area of 1603m², being an increase in land area and greater than the minimum lot area for R2 land.
 - no compliant lot can be created.
 - the subdivision will not create a lot that has further subdivision potential under Clause 11(1) of the BLEP 1988 land and thus no new lots or dwelling entitlements will be able to be created in the future.
- approval of the application will not create any outcome that is contrary to the terms of any existing consents in respect of the subject land.
- the boundary adjustment will not increase the likelihood of, or potential for land use conflict as no new dwelling entitlements or new lots will be created – there will not be any material change of the use of the properties which are situated in the Suffolk Park locality.

5 The SEPP 1 objection specifies the grounds of the objection as follows:

It is submitted that there are sufficient environmental planning grounds to justify contravening the minimum lot size development standard, with details of such being provided below.

- (i) The proposed subdivision involves a boundary adjustment between 2 existing lots both of which contain a lawful dwelling house or development consent. No new lots or dwelling entitlements will be created.
- (ii) The existing lot 285 is well below 40ha (1.983ha). Proposed Lot 1 will have an area of 1.948ha (being a less than 2% decrease in area)

and proposed Lot 2 will have an area of 1603m² (being an increase in land area that is already compliant with the R2 minimum Lot size).

- (iii) The proposed subdivision will not create a lot that has further subdivision potential under Clause 11(1) of the BLEP 1988 and thus no new lots or dwelling entitlements will be able to be created in the future.
- (iv) Approval of the application will not create any outcome that is contrary to the terms of any existing consents in respect of the subject land.
- (v) The proposal will not increase the likelihood of, or potential for land use conflict as no new dwelling entitlements or new lots will be created. There will not be any material change of the use of the properties which are situated in the Suffolk Park locality and do not adjoin any productive agricultural lots.

It is submitted that the proposed boundary adjustment:

- is not contrary to the objects of the *EP & A Act 1979* (per Section 1.3)
- is not contrary to the aims of the BLEP 1988 (per Clause 2)
- is permitted with consent in and is consistent with the objectives of the 7(d) zone
- is not contrary to the provisions of Clause 11 of the BLEP 1988
- is not contrary to the best public interest

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

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

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

Clause 11 does not provide any stated objectives. The underlying objective, as suggested by subclause 11(1) and in so far as being of relevance to the proposed development, is considered to be as follows:

- 5 • To ensure that subdivided lots are of sufficient area for the intended purpose of dwelling-houses in the 7(d) zoned areas which are environmentally sensitive locations, particularly in terms of scenic and escarpment constraints and hazards.

10 The development achieves the underlying objective of the development standard because the proposed lots are of sufficient area for the intended purpose of dwelling-houses in the 7(d) zoned areas for the following reasons:

- the existing lot areas are not significantly changed as a result of the proposal;
- 15 • the existing lots already depart significantly from the minimum 40 hectare lot area development standard, and a comparison of the existing variation with the proposed variation as per the table below confirms that the change to the variation as a result of the proposal is not significant;

Existing		Proposed	
Lot 283 (No. 62)	99.69% variation	Lot 2	99.60% variation
Lot 285 (No. 64)	95.04% variation	Lot 1	95.13% variation

- 20 • no new lots or opportunities for additional dwellings are created within the 7(d) zoned part of the site (without prejudicing Council's assessment of any subsequent DA, it is acknowledged that it might be possible for proposed Lot 2 to be further subdivided into 2 lots within the LEP 2014 affected part of the site and containing a minimum of 600m² in accordance with the applicable minimum lot size development standard, with the residue 7(d) zoned land being included only within 1 of those lots);
- 25 • no new dwelling entitlements will be created within the 7(d) zoned part of the site as a result of the proposal;
- 30 • the smaller lot is being marginally increased in size to improve useability, the larger lot is being marginally decreased in size without significant impact on functionality;
- 35 • the proposed lots do not cause any significant conflicts with existing or approved development relating the site;
- the affected land is part of the battle-axe handle access to No. 64 Corkwood Crescent, and the proposal does not affect the location nor usefulness of the constructed driveway and access dimensions to that land;
- 40 • the proposed lots will not have a significant environmental impact because the area affected is not within the sensitive scenic nor hazardous escarpment parts of the site; and
- 45 • there is no public benefit in maintaining the development standard in this instance as confirmed by the Department.

50 Granting of consent to the DA is consistent with the aims of SEPP 1 because it provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in the particular case, be unreasonable, unnecessary and tend to hinder the attainment of the applicable objects of the Environmental Planning and Assessment Act 1979. The Department of Planning, Industry and Environment has granted concurrence to the variation. Compliance with the development standard

is unreasonable and unnecessary in the circumstances of the case and the SEPP 1 objection is well founded. For these reasons it is recommended that the DA be approved notwithstanding the development standard.

5 4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority

There are no draft environmental planning instruments significantly applicable to the proposed transfer of 345m² of land.

10

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

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

15

Chapter D6: Subdivision

The proposed boundary adjustment raises no issues against the DCP. Access and services remain available to both parcels. Standard conditions of consent are to apply in relation to the completion of the subdivision including the submission and approval of a subdivision certificate

20

Chapter E1: Suffolk Park.

The proposal raises no issues against the DCP provisions for Suffolk Park.

25

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

DCP 2010 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP& A Act because its purpose is to provide planning strategies and controls for various types of development permissible in accordance with LEP 1988.

30

Chapter 1 Part B: Subdivision.

Similar to the DCP 2014, standard conditions of consent are proposed to address the subdivision requirements to enable the development to be completed.

35

4.5 Any Planning Agreement or Draft Planning Agreement?

	Yes	No
Is there any applicable planning agreement or draft planning agreement?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consideration: There are no planning agreements or draft planning agreements applicable to the proposed transfer of 345m ² of land.		

40

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

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

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

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

5 4.8 The suitability of the site for the development

The site is serviced, and generally unconstrained in terms of the proposal as submitted and is suitable for the proposed boundary adjustment.

10 4.9 Submissions made in accordance with this Act or the regulations

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

15 4.10 Public interest

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

20 5. DEVELOPER CONTRIBUTIONS

There is no nexus to levy developer contributions.

25 6. CONCLUSION

The DA proposes Subdivision Two (2) Lots into Two (2) Lots. 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 attached approval conditions.

30 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 1988.
The proposed development complies with the provisions of Byron Local Environmental Plan 2014.
The proposed development complies with relevant State Environmental Planning Policies.
The proposed development complies with relevant provisions of Development Control Plan 2014.
The proposed development complies with relevant provisions of Development Control Plan 2010.
The proposed development complies with Environmental Planning & Assessment Regulation 2000 considerations.
The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.

The development application was advertised in accordance with Development Control Plan 2010/2014.

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

How community views were addressed

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

Report No. 13.14 **PLANNING - Report of the 9 April 2020 Planning Review Committee**
Directorate: Sustainable Environment and Economy
Report Author: Chris Larkin, Manager Sustainable Development
File No: I2020/565

5

Summary:

10 This report provides the outcome of the Planning Review Committee (PRC) held on 9 April, 2020. Due to COVID-19, the PRC meeting was held partly via Skype with two Councillors attending in person. Of the five development applications reported to PRC, four are to be reported to Council for determination and one application remains with staff to determine under delegation.

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:

That Council endorse the outcomes of the Planning Review Committee meeting held on 9 April 2020.

25

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.14

REPORT

The Planning Review Committee meeting scheduled for 9 April, 2020, was held via a Skype meeting with Crs Martin and Ndiaye attending in person.

5

Councillors: Crs Martin, Hunter, Hackett, Lyon, Ndiaye

Apologies: Crs Richardson, Coorey, Spooner, Cameron

10 Staff: Chris Larkin (Manager Sustainable Development)

The following development applications were reviewed with the outcome shown in the final column.

DA No.	Applicant	Property Address	Proposal	Exhibition Submissions	Reason/s Outcome
10.2020.110.1	Mr S Gilbert	58 Main Arm Road MULLUMBIMBY	Use of Relocated Dwelling House	Level 1 1 submission	Report to Council Reasons: The validity of the matters raised in the public submissions. The perceived public significance of the application.
1002020.158.1	Land Company Design and Construction Pty Ltd	32 Charlotte Street BANGALOW	Earthworks for change in Levels and Retaining Walls	Level 0 1 submission	Staff Delegation
10.2020.100.1	Planners North	533 Bangalow Road TALOFA	Tourist and Visitor Accommodation Comprising Eight (8) Cabins	Level 2 19/3/20-1/4/20 2 submissions	Report to Council Reason: The validity of the matters raised in the public submissions. The perceived public significance of the application.
10.2020.47.1	Ardill Payne & Partners	1 Cavvanbah Street BYRON BAY	Alterations and Additions to Tourist and Visitor Accommodation including Three (3) Additional	Level 2 13/2/20-26/2/20 3 submissions	Report to Council Reason: The validity of the matters raised in the public

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.14

			Rooms and a Pool Cabana		submissions. The perceived public significance of the application.
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Council determined the following original development application. The Section 4.55 application to modify the development consent is referred to the Planning Review Committee to decide if the modification application can be determined under delegated authority.

5

DA No.	Applicant	Property Address	Proposal	Exhibition/ Submissions	Reason/s Outcome
10.2019.196.2	Ardill Payne & Partners	541 Friday Hut Road POSSUM CREEK	4.55 to Modify Kitchen Design for Building Eight	Level 1 7/4/20-27/4/20	Report to Council Reason: The perceived public significance of the application.

Report No. 13.15 PLANNING - Section 4.55 Application - 10.2019.196.2 - Proposed Modification to amend location of Kitchen and Wet Bar in Building 8 and amend timeframe for Demolition of Buildings 1, 2, 3, 4 and 6 - 541 Friday Hut Road Possum Creek

5 **Directorate:** Sustainable Environment and Economy
Report Author: Dylan Johnstone, Planner
File No: I2020/642

10 **Proposal:**

Section 96 Application No: 10.2019.196.2
Proposed modification: S4.55 to Modify location of Kitchen and Wet Bar in Building 8 and amend timeframe for Demolition of Buildings 1, 2, 3, 4 and 6
Original Development: Use of Existing Buildings as a Detached Dual Occupancy and Demolition / Removal of Five (5) Buildings
Type of modification sought:
Property description: LOT: 3 DP: 252483
 541 Friday Hut Road POSSUM CREEK
Parcel No/s: 26280
Applicant: Ardill Payne & Partners
Owner: Mr S L Bassett & Ms V Polasek
Zoning: RU2 Rural Landscape / PART DM Deferred Matter
S96 Date received: 25 March 2020
Original DA determination date: 21/11/2019
Integrated Development: No
Public notification or exhibition: – Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
 – Exhibition period: 7/4 - 27/4/2020
 – Submissions received: Nil
Planning Review Committee: 09/04/20
Delegation to determination: Council

Issues: • Existing unauthorised structures

Summary:

15 A Deferred Commencement Consent 10.2019.196.1 was granted on 21 November 2019 for Use of Existing Buildings as a Detached Dual Occupancy and Demolition / Removal of Five (5) Buildings.

The site contains eight (8) existing buildings:

- 20 Building 1 – existing dwelling (historical approval)
 Building 2 – existing dwelling (unauthorised)
 Building 3 – existing shed
 Building 4 – existing observatory
 Building 5 – existing dwelling (approved as part of detached Dual Occupancy 10.2019.196.1)
- 25 Building 6 – existing shed/laundry
 Building 7 – existing portico
 Building 8 – existing dwelling (approved as part of detached Dual Occupancy 10.2019.196.1)

Consent conditions of 10.2019.196.1 required the demolition / removal of Buildings 1, 2, 3, 4 and 6.

5 Building 8 comprises two pavilions that are approved as one dwelling forming part of a Dual Occupancy (detached). The approved floor plan for Building 8 included both a kitchen and “wet bar” and appropriate conditions were placed on the consent to ensure that the “wet bar” does not become a second kitchen and to ensure that this building does not become two separate dwellings. The approved lower pavilion included the kitchen for the dwelling while the approved upper pavilion included a wet bar.

10 This S4.55 (1A) application seeks to amend consent conditions to swap the kitchen to the upper pavilion and the wet bar to the lower pavilion and make other minor amendments to the configuration of bedrooms and ensuites. The changes to the layout raise no planning issues and are recommended for approval.

15 The application also seeks to amend the timeframe by which Buildings 1, 2, 3, 4 and 6 are required to be demolished / removed from the site. The reason for changes being sought is to enable the residents to continue to live in Building 1 which is an existing approved dwelling on the property while works are ongoing in the two approved dual occupancy dwelling houses and for building 2 to be used a site office / builders storage.

20 This aspect of the proposal is not supported due to the history of unauthorised building work on the site, and the use of these structures without development consent. Further, there is no demonstrated need for this to occur as alternates exist to accommodate the needs of the residents on site.

25 It is therefore recommended that this S4.55 (1A) application be only part approved subject to modified conditions.

NOTE TO COUNCILLORS:



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

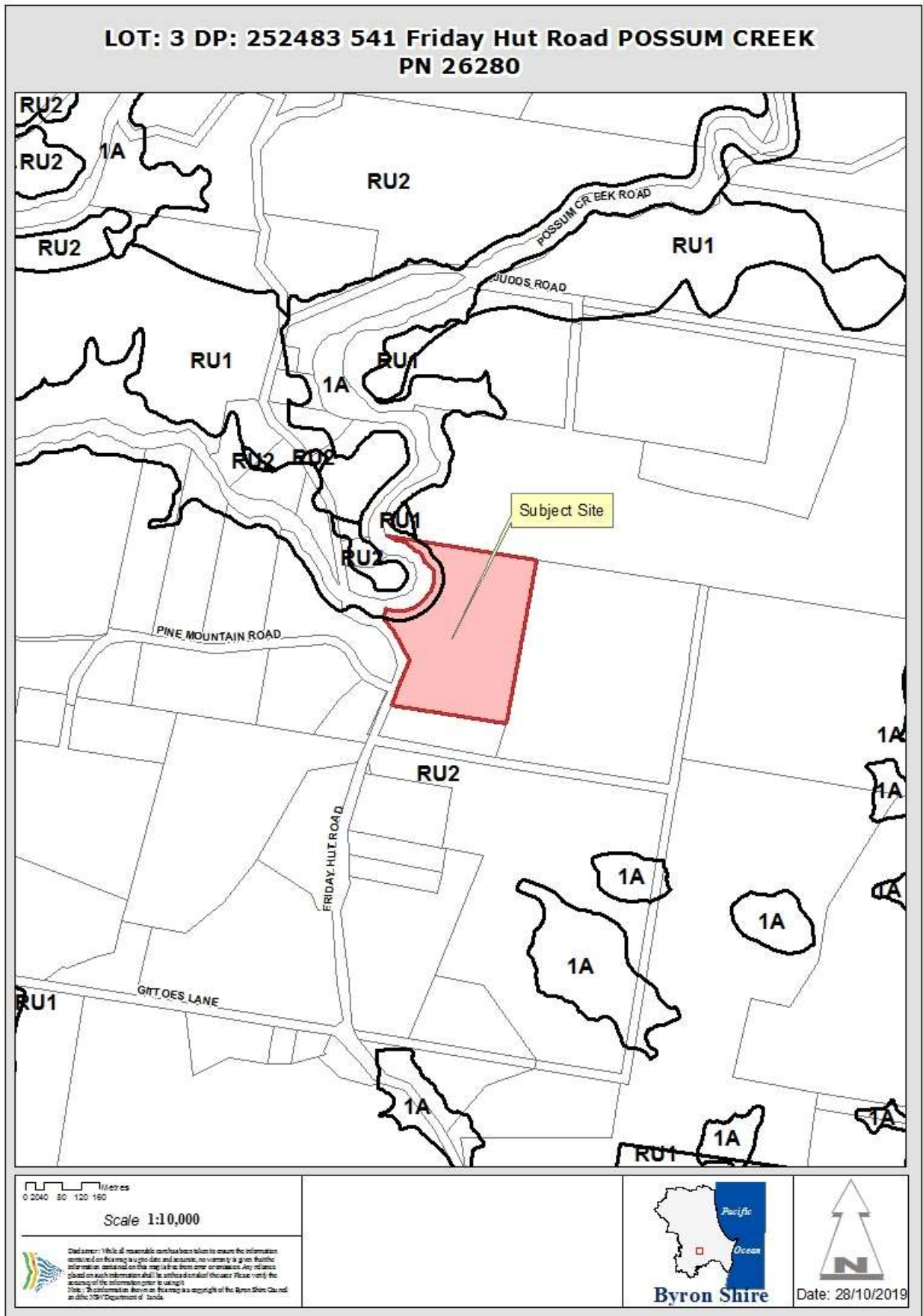
RECOMMENDATION:

That pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, Application No. 10.2019.196.2:

1. **Be part approved to change the location of kitchen and wet bar in Building 8 by modifying Development Consent Number 10.2010.196.1 subject to amended conditions (Attachment 2); and**
2. **Be part refused and not change the timeframe for Demolition of Buildings 1, 2, 3, 4 and 6 by modifying Development Consent Number 10.2010.196.1 as in the circumstances of the case there is no demonstrated need for amendment of Conditions 2 and 5 and it is not the public interest.**

Attachments:

- 40 1 10.2019.196.2 - Proposed Amended Plans, E2020/23504 
- 2 10.2019.196.2 - Proposed Amended Conditions, E2020/30435 



Assessment:

1. INTRODUCTION

5 1.1. History/Background

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

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

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

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

10.2019.196.1 Use of Existing Buildings as a Detached Dual Occupancy and Demolition / Removal of Five (5) Buildings – Deferred Commencement approved 21 November 2019

15 Deferred commencement Conditions 1 (requirement to obtain a Building Information Certificate for Buildings 5 and 8) and 2 (requirement to obtain a Section 68 approval for an on-site sewage management facility) have been satisfied and consent 10.2019.196.1 is now operational.

1.2. Description of the proposed development

20 This Section 4.55 (1A) application seeks approval to modify the location of the Kitchen and Wet Bar in Building 8 and amend the timeframe for demolition / removal of Buildings 1, 2, 3, 4 and 6.

Building Eight consists of two pavilions that are approved as one dwelling forming part of a Dual Occupancy (detached).

25 The approved lower pavilion included the kitchen for the dwelling while the approved “upper pavilion” included a wet bar.

30 This application seeks approval to amend the floor plan to swap the kitchen to the upper pavilion and the wet bar to the lower pavilion and make other minor amendments to the configuration of bedrooms and ensuites. No specific reasons are provided within the application; however the upper pavilion appears to be the more substantial of the two structures constructed from masonry and sandstone, while the lower pavilion is more industrial in design in terms of a shed through the use of glass and sheet metal.

35 From a planning perspective changes to the kitchen and wet bar locations raise no issues and Council staff have no objections to amending Conditions 1 and 38 as requested by the applicant to permit the above.

40 The application also seeks to amend the timeframe by which Buildings 1, 2, 3, 4 and 6 are required to be demolished / removed from the site.

The site contains eight (8) existing buildings:

45 Building 1 – existing dwelling (historical approval)

Building 2 – existing dwelling (unauthorised)

Building 3 – existing shed

Building 4 – existing observatory

Building 5 – existing dwelling (approved as part of detached Dual Occupancy 10.2019.196.1)

50 Building 6 – existing shed/laundry

Building 7 – existing portico

Building 8 – existing dwelling (approved as part of detached Dual Occupancy 10.2019.196.1)

Condition 2 of consent 10.2019.196.1 requires demolition / removal of Buildings 1, 2, 3, 4 and 6 within 2 years of the date of issue of the Deferred Commencement consent or prior to issue of a Construction Certificate whichever comes first.

- 5 Condition 5 requires the demolition / removal of these structures prior to issue of a Construction Certificate.

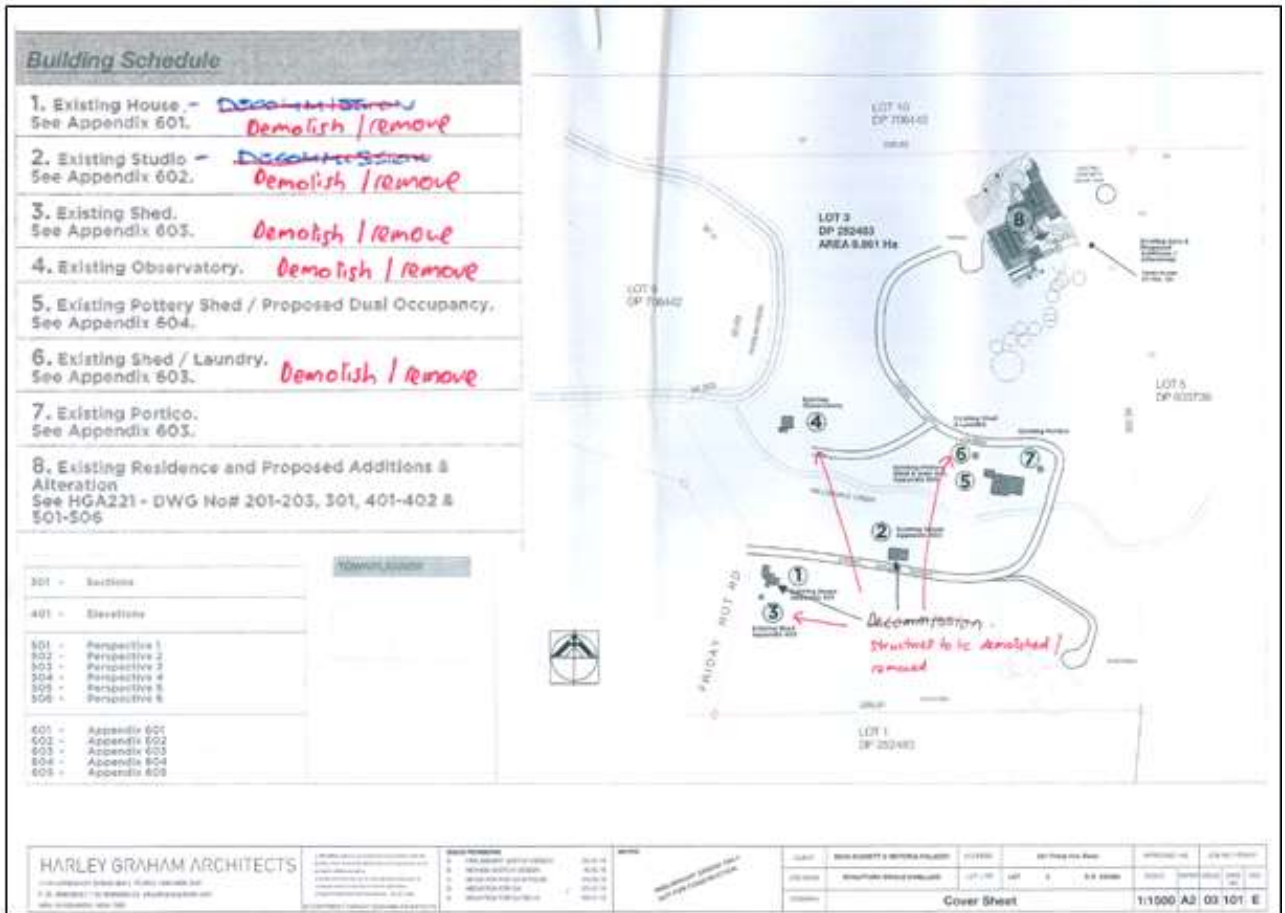


Figure 1: Site Layout Plan and Building Schedule

10 The application seeks to amend Conditions 2 and 5 to enable Buildings 1 and 2 to be used whilst works to Buildings 5 and 8 are under construction. The applicant estimates that the period to complete construction works on Buildings 5 and 8 will take approximately 12-16 months and feels that it would be reasonable for Building 1 to continue to be used as a dwelling during this construction period and to use Building 2 as a site office / builders storage sheds during these works (no habitation is sought for this structure).

15 The applicant proposed that the conditions of 10.2019.196.1 could be modified to require that the structures are demolished prior to the issue of an Occupation Certificate, and argued that this would give Council satisfaction that there would be no more than 2 dwellings located on the property at any time and hence the intent of the consent would continue to be satisfied.

20 Council staff are mindful of past unauthorised use of structures on the site, and seek a definitive timeframe by which these structures are to be removed rather than leaving it open ended.

25 It is not unusual for residents to remain (on site) in their dwellings while construction work such as alterations and additions are being undertaken. It is noted that Building 5 only requires minimal work for it to be finished so that the owners of the property can reside in this dwelling while other work is completed. This has been confirmed by a recent inspection of the building by Council's

Building Certifier assessing an application for a Building Information Certificate. Building 5 appeared to be occupied as a dwelling at the time of this inspection.

5 Given the history of unauthorised building work on the site, the use of these structures without development consent, and the ability for the owners to reside in Dwelling 5 whilst other works are occurring on Dwelling 8 if this becomes untenable; there is no demonstrated need for amendment of Conditions 2 and 5 and as such this aspect of the application is not supported.

2. Description of the site

10

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

3. SUMMARY OF REFERRALS

Referral	Issue
Rural Fire Service S4.14	No objections subject to recommended conditions.

15

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

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

20

4.1. Section 4.55 of the EPA Act 1979

The modifications to the pavilion style house (Building 8) in terms of the kitchen redesign raise no issues in terms of the built form or use of the dwelling house.

25

As outlined above, amendment of Conditions 2 and 5 pertaining to the timing of demolition and removal of other dwellings and cabins on the subject land is not supported. Therefore there remains a two year time frame for the removal of these buildings (or prior to issue of a Construction Certificate whichever comes first) as per the original conditions, starting from 21 November 2019.

30

It is considered the proposed development is substantially the same development and satisfies the provisions contained with Section 4.55 of the EPA Act 1979.

4.2. State/Regional Planning Policies, Instruments, EPA Regulations 2000

35

Proposed amendments raise no issues under the relevant SEPPS, Policies or clauses of the EPA Regulations 2000.

4.3. Byron Local Environmental Plan 2014

40

Proposed amendments raise no issues under the LEP.

4.4. Draft EPI that is or has been placed on public exhibition and details of which have been notified to the consent authority - Issues

45

No draft EPIs affect the proposal.

4.5. Development Control Plans

The proposed amendments do not generate any additional issues that have not been previously considered.

5

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

The proposed amendments do not generate any impacts that have not been previously considered.

10

4.7. The suitability of the site for the development

The proposed amendments to the kitchen arrangements do not affect the sites suitability. The Bushfire conditions have been amended to reflect changes to the use of Building 1 until it is demolished or removed.

15

4.8 Submissions made in accordance with this Act or the regulations

No submissions were received.

20

4.9 Public interest

Proposed amendments to the location of the kitchen and wet bar are unlikely to prejudice or compromise the public interest. However it is considered not in the public interest to provide for an extension of time for the demolition or removal of the other buildings, cabins and dwellings on the land as discussed above.

25

5. DEVELOPER CONTRIBUTIONS/ WATER AND SEWER CHARGES

There is no nexus to levy additional contributions.

30

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No
Provide Disclosure Statement register details here:	Not applicable

35

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.

40

Statement of Reasons – Part Approval only

The proposed modifications were minor and substantially the same as the original development approval with no detrimental environmental impacts.

How community views were addressed

The S4.55 was notified/advertised in accordance with the Byron Community Strategic Plan 2018. No submissions were received.
--

8. CONCLUSION

5 As discussed in the report application 10.2019.196.2 is recommended for part approval and part refusal.

Report No. 13.16 PLANNING - DA 10.2020.110.1 Alterations & Additions to existing dwelling house at 58 Main Arm Road Mullumbimby

Directorate: Sustainable Environment and Economy
Report Author: Rebecca Mercer, Team Leader Planning Services
File No: I2020/651

5

Proposal:

10

DA No: 10.2020.110.1
Proposal description: Use of Relocated Dwelling House
Property description: LOT: 2 DP: 1256643
 58 Main Arm Road MULLUMBIMBY
Parcel No/s: 269923
Applicant: Mr S Gilbert
Owner: Mr S T & Mrs A J Gilbert
Zoning: R2 Low Density Residential
Date received: 3 March 2020
Integrated / Designated Development: Integrated Designated Not applicable
Concurrence required: No
Public notification or exhibition:

- Level 0 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: Not applicable
- Submissions received: 5 in objection, 2 in support
- Submissions acknowledged: Yes No

Planning Review Committee: 9 April 2020
Variation request: Not applicable
Delegation to determine: Council
Issues: The relocated dwelling is not sited in accordance with CDC 16. 2019.108.1 Building height plane encroachment on eastern boundary
 Flood liable land

Summary:

15

The development application is seeking approval for the use of a relocated dwelling house on residential land at 58 Main Arm Road, Mullumbimby. The subject property is zoned R2 Low Density Residential under the Byron LEP 2014. The 119.8m² dwelling house is one-storey, contains 2 bedrooms and an office, and involves a maximum height of 5.6m. An existing 42.3m² shed is currently situated adjacent to the western boundary towards the rear of the site and approximately 1.12 metres from the dwelling house.

20

The relocated dwelling house was originally approved under a Complying Development Certificate (CDC) 16.2019.108.1 with a front setback of 8m and a side setback on the east of 1172mm. However, the dwelling was not sited on the property in accordance with the approved CDC. The

owners of the subject site expressed to Council that they wish to retain the current location of the relocated dwelling house. In this regards the front of the dwelling house is located 6.0 metres from the front boundary. Although compliant with Councils standard setback requirements of 4.5 metres to front boundaries for residential areas, the dwelling could not proceed under the approved CDC.

5

Objections received related to the impact on the eastern neighbour, the main concerns raised relate to proximity to eastern boundary, overshadowing, stormwater and contamination.

10

The relocated dwelling involves an encroachment into the building height plane on the eastern boundary; however the majority of the building height plane encroachment is due to the dwelling house being raised approx. 1m above the natural ground level to comply with flood requirements. Further the dwelling is single storey weatherboard construction and is arguably consistent with the low density character and vernacular of Mullumbimby. The setback to the side boundary satisfies the minimum requirements of 900 mm and the level of overshadowing caused by the dwelling is considered acceptable having regards to the orientation of the lot and the height of the dwelling house. Other matters raised n the objections as discussed in the body of this report have been considered and conditions of consent are recommended to address matters raised in relation to stormwater and contamination.

15

20

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.

25

NOTE TO COUNCILLORS:

30




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

RECOMMENDATION:

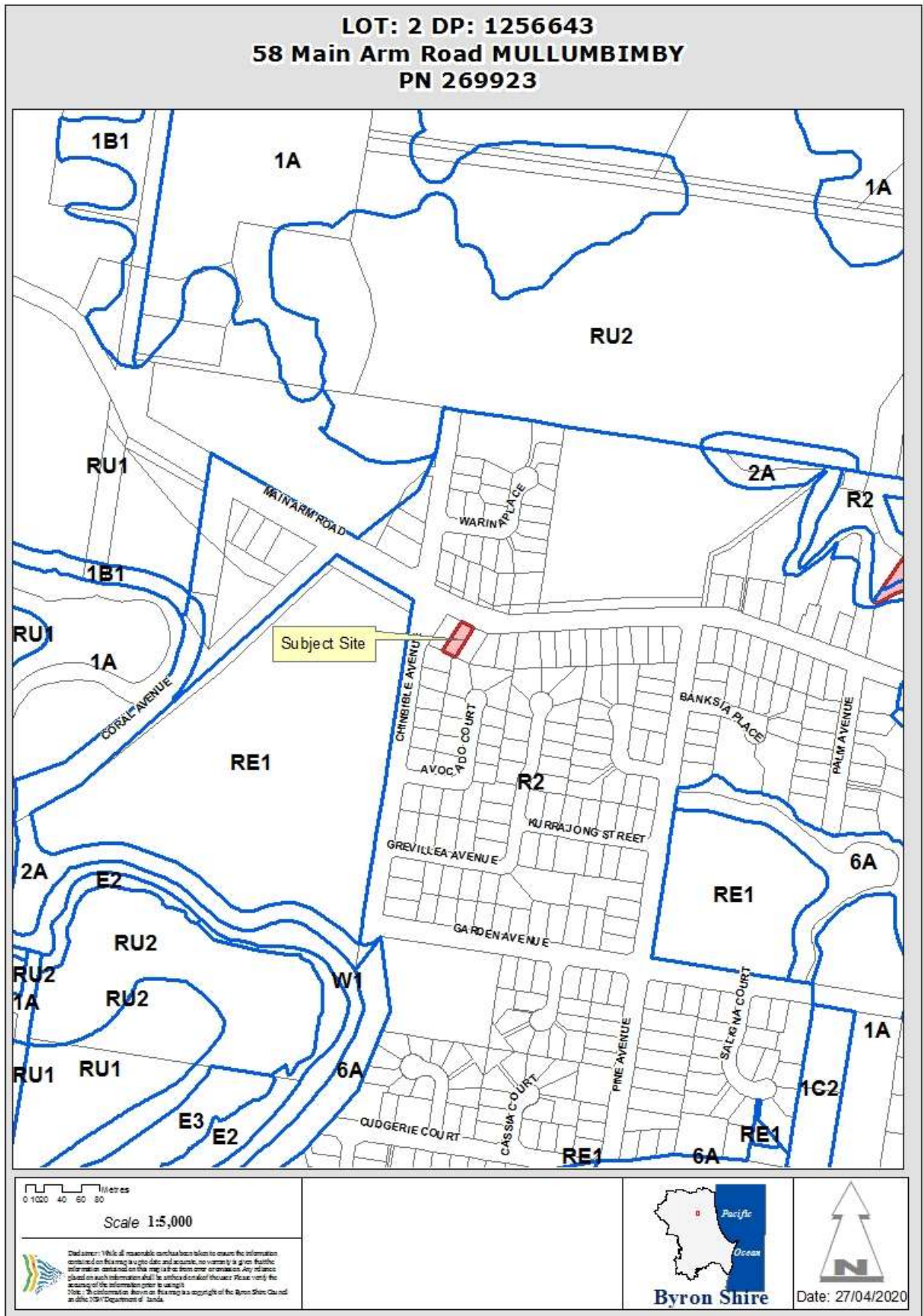
That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.110.1 for Alteration & Additions to existing Dwelling House, be granted consent subject to the conditions of approval listed in Attachment 3 (#E2020/30239).

35

Attachments:

- 1 Amended Plans 10.2020.110.1.1, E2020/30202 
- 2 Shadow Plan 10.2020.110.1.1, E2020/31579 
- 3 Conditons of Consent 10.2020.110.1.1, E2020/30239 
- 4 Confidential - Submissions received 10.2020.110.1, E2020/30187

40



REPORT

Assessment:

5 **1. INTRODUCTION**

10 **1.1. History/Background**

The following previous determinations have been made on the subject site:

- DA 10.2018.513.1 for subdivision two (2) lots was approved on 29 March 2019.
- CDC 16.2019.108.1 for relocated dwelling including alterations and additions to front entry was approved 16 December 2019.

15 The above CDC approved the relocated dwelling house with a front setback of 8m and a side setback on the east of 1172mm. However, the dwelling was later sited on the property not in accordance with the CDC approval, necessitating the need for the DA.

20 **1.2. Description of the proposed development**

This application seeks approval for the Use of Relocated Dwelling House. The dwelling house is already situated on the site on steel posts, however no footings have been poured. The dwelling comprises of 2 bedrooms, 1 bathroom, an office, living room, dining room, kitchen, and laundry. The dwelling has an area of approximately 120m² and the property has an area of 654 m². There is an existing 42.3m² garage/shed located adjacent to the western boundary towards the rear of the site.



EXISTING NORTH-EAST ELEVATION
1:100 @ A3

Figure 1. Plans of the dwelling as it fronts Main Arm Road

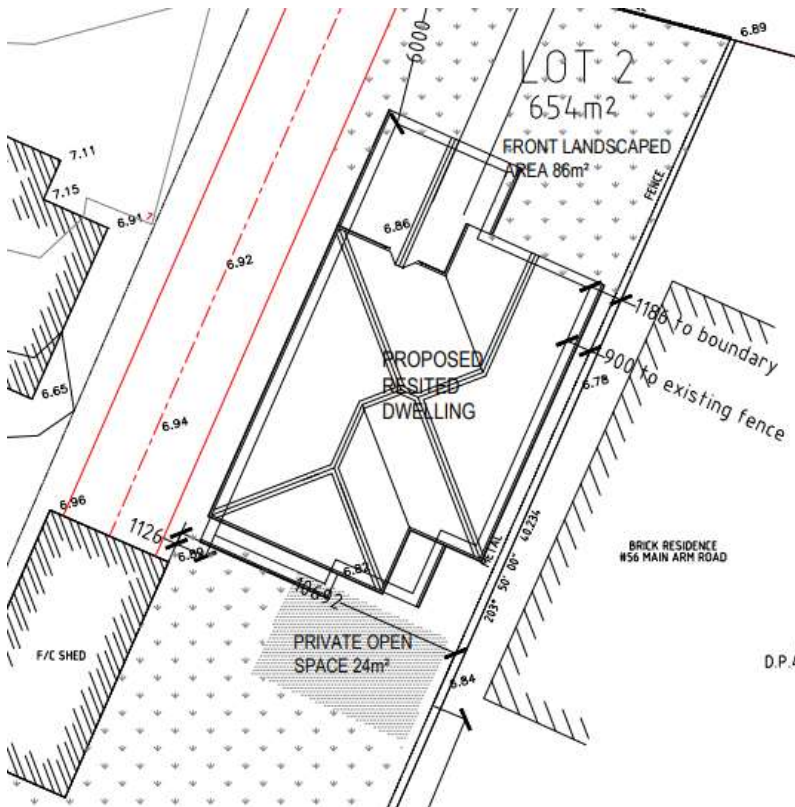
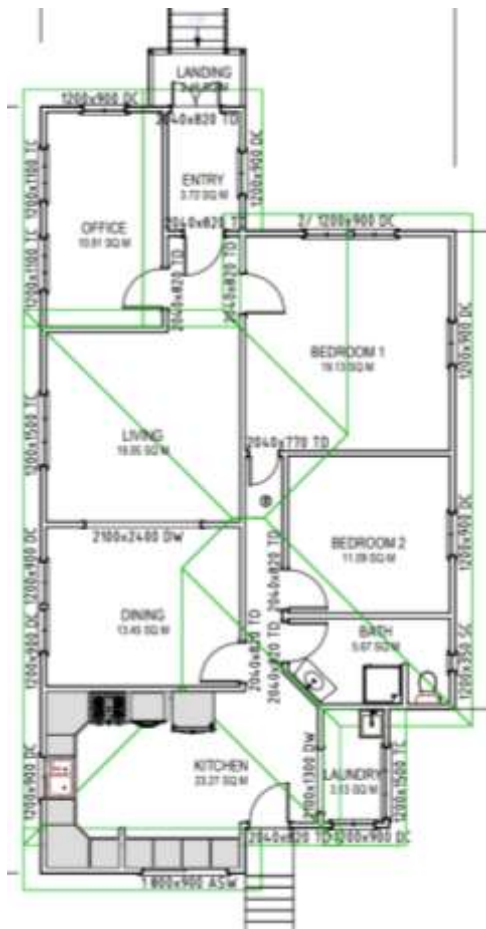


Figure 2 – Proposed site plan



5 Figure 3 – Proposed floor plan

1.3. Description of the site

Land is legally described	LOT: 2 DP: 1256643
Property address	58 Main Arm Road MULLUMBIMBY
Land is zoned:	R2 Low Density Residential
Land area is:	653.9 m ²
Property is constrained by:	Flood Liable Land

5 The subject site is accessed via Main Arm Road and contains minimal vegetation and with an existing shed/garage adjacent to the western boundary towards the rear of the site.



Figure 4 - Relocated dwelling



10 Figure 5 – Proximity of the dwelling to the boundary fence. Fence currently is not located on the boundary and favours neighbour to the east in that regard.

2. SUMMARY OF REFERRALS

Referral	Issue
Building Certifier	No objections subject to conditions
Development Engineer	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 not bush fire prone land.

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

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

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: SEPP 55 was considered as part of DA 10.2018.513.1 for a subdivision. Conditions are recommended for the management of asbestos and/or lead paint involved with the dwelling house.		
State Environmental Planning Policy (Coastal Management) 2018	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The subject site is situated within a ‘coastal environment area’, the proposal is satisfactory having regard to clause 13 of this SEPP.		

4.2 Byron Local Environmental Plan 2014 (LEP 2014)

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

Part 1	<input checked="" type="checkbox"/> 1.1 <input checked="" type="checkbox"/> 1.1AA <input checked="" type="checkbox"/> 1.2 <input checked="" type="checkbox"/> 1.3 <input checked="" type="checkbox"/> 1.4 <input checked="" type="checkbox"/> Dictionary <input checked="" type="checkbox"/> 1.5 <input checked="" type="checkbox"/> 1.6 <input checked="" type="checkbox"/> 1.7 <input checked="" type="checkbox"/> 1.8 <input checked="" type="checkbox"/> 1.9
Part 2	<input checked="" type="checkbox"/> 2.1 <input checked="" type="checkbox"/> 2.2 <input checked="" type="checkbox"/> 2.3 <input checked="" type="checkbox"/> Land Use Table
Part 3	N/A
Part 4	<input checked="" type="checkbox"/> 4.3 <input checked="" type="checkbox"/> 4.4
Part 5	N/A
Part 6	<input checked="" type="checkbox"/> 6.2 <input checked="" type="checkbox"/> 6.3 <input checked="" type="checkbox"/> 6.6

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

- 30 (a) The proposed development is defined in the LEP 2014 Dictionary as Dwelling;
 (b) The land is within the R2 Low Density Residential according to the Land Zoning Map;
 (c) The proposed development is permissible with consent; and
 (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
To provide for the housing needs of the community within a low density residential environment.	The relocated dwelling house is consistent with the surrounding low density residential environment in terms of built form, design, character, setbacks, bulk and scale, and site coverage.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	Not other land uses proposed.

Clause 4.3 Height of Buildings

5 The relocated dwelling involves a maximum height of 5.6m above natural ground level; therefore the development satisfies the 9m building height limit.

Clause 4.4 Floor Space Ratio

10 The subject site has an area of 654m², the relocated dwelling has a floor area of 119.8m², therefore the floor space ratio is 0.248:1. The development is compliant with the required FSR of 0.5:1.

Clause 6.3 Flood Planning

15 The relocated dwelling house has a finished floor level of 7.8m AHD. The flood planning level for the subject site is 7.73 AHD; therefore the development complies with flood requirements.

Clause 6.6 Essential Services

20 The subject site is capable of being connected to water, sewage, electricity, and stormwater. Driveway access is proposed from Main Arm Road, and is capable of complying with Council standards. Appropriate conditions of consent have been recommended.

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

25 Not applicable.

4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

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

35

Part A	<input checked="" type="checkbox"/>
Part B Chapters:	<input checked="" type="checkbox"/> B2 <input checked="" type="checkbox"/> B3 <input checked="" type="checkbox"/> B4 <input checked="" type="checkbox"/> B8 <input checked="" type="checkbox"/> B14
Part C Chapters:	<input checked="" type="checkbox"/> C2
Part D Chapters	<input checked="" type="checkbox"/> D1
Part E Chapters	<input checked="" type="checkbox"/> E3

Chapter B3: Services

40 The dwelling house is capable of connecting to water, sewage, electricity, and stormwater (conditions have been recommended). Driveway access is proposed from Main Arm Road, and is capable of complying with Council standards.

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

5 The subject site contains an existing garage adjacent to the western boundary towards the rear of the site. Driveway access is proposed to the garage from Main Arm Road, the driveway will provide enough space for 2 vehicles in a stacked arrangement whilst complying with the front setback. Although stacked parking is not favoured, it is a discernible characteristic within the immediate surrounding area and the Mullumbimby locality, the proposed stacked parking arrangement is considered acceptable in this instance.

10 **Chapter C2: Areas Affected By Flood**

The relocated dwelling house has a finished floor level of 7.8m AHD. The flood planning level for the subject site is 7.73 AHD; therefore the development complies with flood requirements.

15 **Chapter D1: Residential Accommodation in Urban, Village & Special Purpose Zones**

D1.2.1 Building Height Plane

20 The relocated dwelling house encroaches into the building height plane on the eastern boundary (see figure 5 below). It is not considered to adversely impact on the privacy, solar access, or views of the adjoining property to the east. The dwelling will overshadow the neighbouring property during the evening hours however as the structure is one-storey the extent of the shadowing is not considered an unreasonable outcome for an urban residential property.

25 Prescriptive measure 2(a) states: *An exemption from the building height plane may be considered in relation to one or more boundaries in the following circumstances where the floor level is required to be above ground level to comply with Council’s requirements for flood protection.*

30 The majority of the building height plane encroachment is due to the dwelling house being raised approx. 1m above the natural ground level to comply with flood requirements. The solar access impacts resulting from the encroachment are not considered unreasonable having regard to the constraints of the site and the urban residential environment. The dwelling is compliant with the required side setback and is considered compliant with the objectives, performance criteria, and prescriptive measures of the building height plane planning control.



35 Figure 6 – Eastern boundary BHP encroachment



Figure 7 – Proximity of relocated dwelling to neighbouring property

- 5 Similarly the neighbouring dwelling to the east would also breach the building height plane and it is likely it also generates a degree of overshadowing onto the subject property during the morning hours. It is also noted there is a dividing fence in place; however it is located inside the applicants property not on the boundary. The fence provides a degree of residential privacy as expected in residential areas of Byron Shire.

10

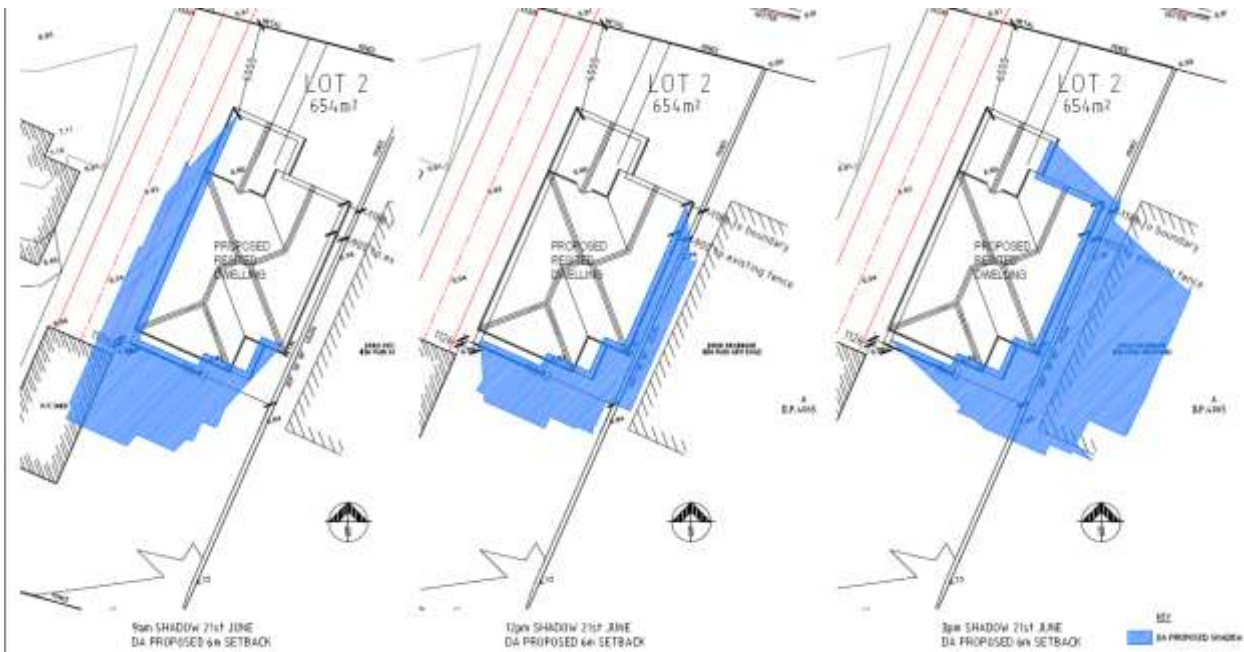


Figure 8 shadow plans for midwinter.

The shadow plans do not indicate the level of overshadowing caused by the dividing fence.

15

D1.2.2 Setbacks from Boundaries

The dwelling complies with Councils setback requirements. It is 1186mm from the eastern side boundary, approx. 6m from the western side boundary, and approx. 16m from the rear boundary, satisfying the required 900mm side and rear setback. It's also set back 6m from the front boundary satisfying the required 4.5m front setback.

20

D1.2.4 Character and Visual Impact

The DA seeks approval for a relocated 1930s Queenslander style dwelling. The development is consistent with the surrounding low density residential environment having regard to built form, character, design, setbacks, bulk and scale, and site coverage. In particular the dwelling is not overbearing having regards to its footprint, height and provision of open space area within the front and rear yards of the property. It is considered the proposal compliments the streetscape and is consistent with existing development within the surrounding neighbourhood. In conclusion the proposal is not out of character with the vernacular for Mullumbimby, and has generates no detrimental visual impacts on he neighbourhood.

Chapter E3 Mullumbimby

The subject site is situated within precinct 4 – West Mullumbimby Residential. Houses within this area are predominately more of a brick and tile construction, however there are also many weatherboard and metal roof dwellings such as the immediate neighbour to the west at 60 Main Arm Road. The relocated 1930s Queenslander style dwelling compliments the established streetscape character of the surrounding Mullumbimby precinct and is also a reflection of development within the older precincts of Mullumbimby. The development is compatible with the low rise character and scale of Mullumbimby and sits comfortably within the urban fabric. The dwelling is consistent with the existing design characteristics, built form, and scale of development within Mullumbimby.

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	No	Not applicable	Not applicable
93	No	Not applicable	Not applicable
94	No	Not applicable	Not applicable
94A	No	Not applicable	Not applicable

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

4.7 Any Coastal Zone Management Plan?

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

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 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	No. The proposal will not have a significantly adverse impact on the built environment of the locality. The dwelling is generally consistent with development within the surrounding area in terms of built form, character, bulk and scale, setbacks, and height. The proposal involves a single dwelling residential development within a low density residential environment.
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.
Construction impact	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.

4.9 The suitability of the site for the development

5 The site is a serviced and relatively unconstrained property and is suitable for the proposed development. The property is situated within flood liable land, however the dwelling house is capable of meeting flood requirements and is conditioned accordingly.

4.10 Submissions made in accordance with this Act or the regulations

10 The development application was publicly exhibited. There were 7 submissions made on the development application, 5 in objection and 2 in support:

Submissions of Objection	
Issues:	Comments:
Too close to eastern neighbour / intrusive / doesn't comply with side setback	The dwelling complies with the 900mm setback control; it is setback 1186mm from the side boundary. The dwelling encroaches into the building height plane on the eastern boundary however; the majority of the building height plane encroachment is due to the dwelling being raised approx. 1m above the natural ground level to comply with flood requirements.
Overshadowing/blocking light	Due to the orientation of the lots the neighbour to the east will experience overshadowing in the afternoon during the winter solstice. The solar access impacts resulting from the encroachment are not considered unreasonable having regard to the constraints of the site and the urban residential environment and it is noted existing fencing on the boundary and landscaping would also create overshadowing at this time of the day.
Reduction in air flow	The dwelling is correctly setback from the side boundary; the two dwellings will be approx. 2.5m apart. The development is not considered to adversely reduce airflow.
Will set a precedent	It is considered the proposal will not create a dangerous precedent with all DA's considered on there merits and the circumstances of the case.
The awnings on the house are on the fence line and are causing stormwater run off	The awnings are within the property boundary and are not on the fence line. It is noted the house is yet to be completed and awaiting approval and main stormwater issues are caused by a lack of guttering on the roof of the house. Once approved gutters will be installed and stormwater managed accordingly. Stormwater conditions are recommended to ensure gutters are

	installed within 6 months of the date of the consent.
Lead paint and asbestos	Conditions are recommended to ensure any asbestos, lead paint, or any other dangerous wastes will be managed appropriately.
Flooding – doesn't comply with the required FPL	The relocated dwelling house has a finished floor level of 7.8m AHD. The flood planning level for the subject site is 7.73 AHD; therefore the development complies with flood requirements.
There is sufficient space between the garage and the dwelling to relocate the dwelling further from the eastern boundary	The dwelling is currently 1126mm from the existing garage. Although there is sufficient space to relocate the dwelling 1m to the west, it can be appreciated the owners wish to have a space between the dwelling and the garage to access the rear yard comfortably.

Submissions of Support

Comments by Submitters:

I would like to give my approval to the house and its position. Neighbour to property at 8 Chinbible Ave Mullumbimby.

I'm writing to inform you that I have no objections to the proposed development on the neighbouring property, 58 Main Arm Rd Mullumbimby. We live at 60 Main Arm Rd. The new home owner, Steve has been very respectful and transparent with us about his plans, and has proved his good intentions, trying his best to please all of the surrounding neighbours. He is a very lovely man and we look forward to having him and his family as our new neighbours.

4.11 Public interest

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

5. DEVELOPER CONTRIBUTIONS

- 10 There is no nexus to levy developer contributions for the dwelling house.

6. CONCLUSION

- 15 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 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 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

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

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

8. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

5

Provide Disclosure Statement register details here: Not applicable

Report No. 13.17 PLANNING - 10.2016.625.2 - S4.55 Minor Modifications to Design and Conditions

Directorate: Sustainable Environment and Economy

Report Author: Luke Munro, Planner

5 **File No:** I2020/657

Proposal:

Section 4.55 10.2016.625.2

Application No:

Proposed modification: S4.55 Minor Modifications to Design and Conditions

Original Development: 10.2016.625.1

Type of modification sought:

Property description: LOT: B DP: 302891

35-37 Burringbar Street MULLUMBIMBY

Parcel No/s: 7150

Applicant: Mr B J Lawless

Owner: The Mullum Triangle Pty Ltd

Zoning: B2 Local Centre

S96 Date received: 21 January 2020

Original DA determination date: 7 August 2017

Integrated Development: No

Public notification or exhibition: – Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
 – Exhibition period: 30/01/20 to 12/2/20
 – No Submissions were received.

Delegation to determination: Council

Issues: • Heritage Conservation Area
 • Flood Prone Land

10 **Summary:**

15 An application has been received to S4.55 Minor Modifications to Design and Conditions to development consent 10.2016.625.1 which approved Alterations and Additions to Existing Commercial Building to create a Recreation Facility (Indoor - Spa) and Food and Drink Premises (Café – Juice Bar) over land at 35-37 Burringbar Street, Mullumbimby.

20 The proposal seeks to make minor modifications to the approved development following further review of the design and detailing for the Construction Certificate application. The changes are considered minor in nature and will retain the character of the building in the conservation area. In this regard changes are recommended in relation to flooding conditions which will ensure the bank

safes are retained, without the need to raise the existing floor level of the building. Changes proposed to the external appearance of the buildings are considered acceptable having regards to the buildings location in the conservation area.

- 5 The proposal is satisfactory having regard to relevant matters for consideration and the development is considered to be substantially the same development as approved. The Section 4.55 application is recommended for approval subject to amended conditions of consent.



NOTE TO COUNCILLORS:

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

RECOMMENDATION:

That pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, Application No. 10.2016.625.2, for S4.55 Minor Modifications to Design and Conditions, be approved by modifying Development consent number 10.2016.625.1 and modified subject to conditions listed in Attachment 2 (E2020/31526).

Attachments:

- 20
- 1 Plans 10.2016.625.2, E2020/30472 
 - 2 Amended Conditions of Consent 10.2016.625.2, E2020/31526 

25

LOT: B DP: 302891 35-37 Burringbar Street MULLUMBIMBY



<p>Scale 1:4,000</p> <p><small>Disclaimer: While all reasonable endeavours have been taken to ensure the information contained in this map is true and accurate, no warranty is given by the Council as to the accuracy of the map or the information contained therein. The Council does not accept any liability for any loss or damage arising from the use of the information contained in this map.</small></p>		<p>Date: 12/07/2017</p>
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Assessment:

1. INTRODUCTION

5 1.1. History/Background

10 The building was originally built in 1928 and opened in 1929 for the English, Scottish and Australia Bank which later became the ANZ Bank. Prior to the opening of the bank at this site the bank operated from 98 Dalley Street, Mullumbimby which was constructed in 1909 after fire destroyed the previous building in 1908. The use of the site as a bank ceased approximately 15-20 years ago.

15 There have been a number of applications relating to the site in recent times which are described below:

Application Number	Proposal	Decision
06.1995.2618.1	Alteration/Addition to Office - reroof	Approved 21.11.1995
10.2002.689.1	Sign	Approved 06.02.2003
10.2008.217.1	Change of Use – Bank to Shop with recreation centre (yoga)	Approved 25.08.2008
10.2009.158.1	Demolition of existing toilet block, new toilet block and verandah	Refused 19.06.2009
10.2010.78.1	New Toilet Block and Carport (including demolition of existing toilet)	Approved 17.05.2010
10.2016.625.1	Alterations and Additions to Existing Commercial Building to Create a Recreation Facility (Indoor - Spa) and Food and Drink Premises (Café – Juice Bar)	Approved 07.08.2017

10.2016.625.1 is the subject of the s4.55 application which approved the development including the following:

Ground Level

- Café (Juice Bar)
- Recreation Facility (Spa) including reception, treatment and exercise areas.

First Floor

- Three (3) treatment rooms each with shower toilet and hand basin including 10.8m² deck.
- Lift
- Large covered roof deck for health and relaxation (approx. 162m²).

Rear Yard

- Two (2) Spa Pools
- Plunge Pool and Lap Pool
- Toilet and Change room facilities
- Plant and Equipment Room
- Covered and enclosed Garbage store
- Covered seating area
- Male and Female Steam Rooms
- Sauna

20

1.2. Description of the proposed development

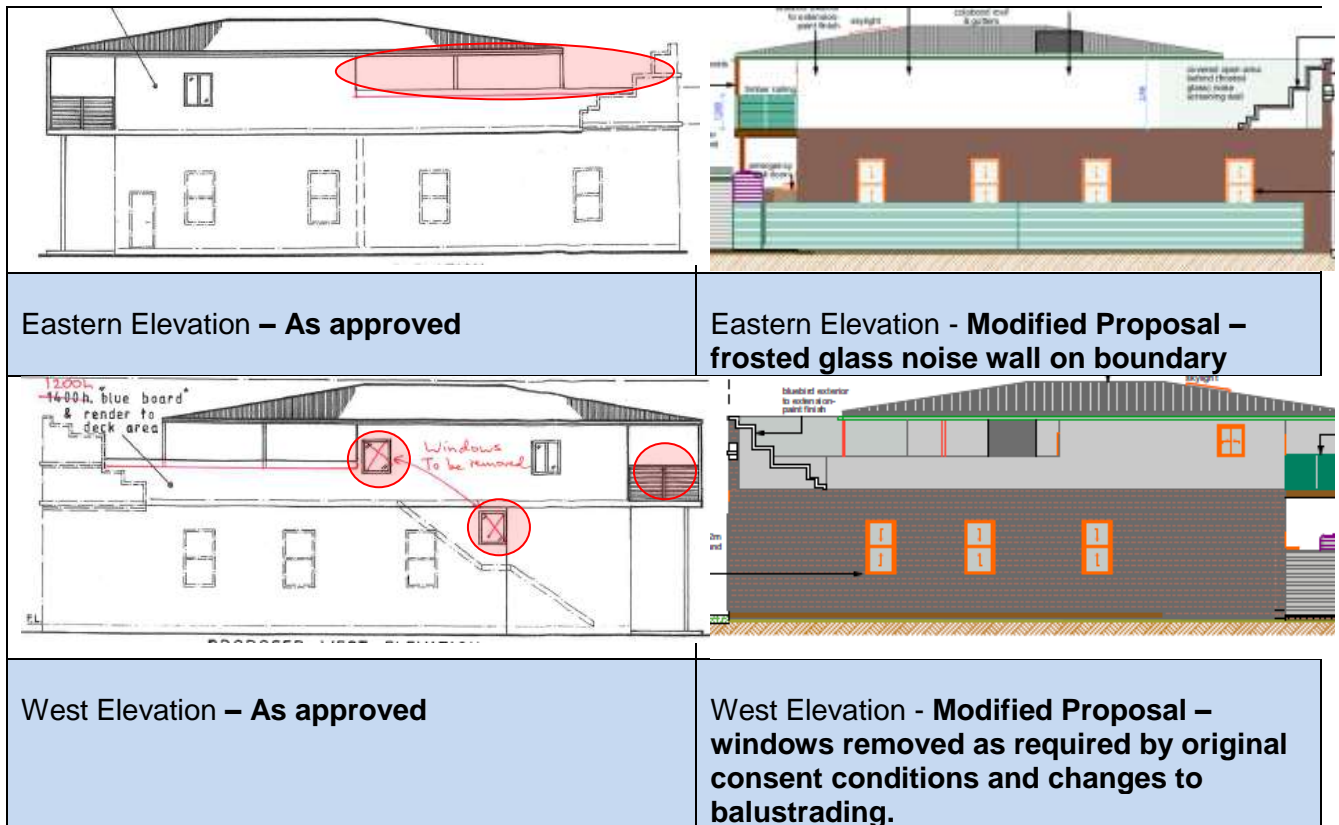
This application seeks approval for a S4.55 Minor Modifications to Design and Conditions. The purpose for the s. 4.55(1A) Application are to make minor modifications to the approved

development following the further design development and detailing prior to a Construction Certificate application (outlined below). In order to enable the modifications minor changes are required to a number of Conditions 1, 10, 26, 60, 61 and 65 to facilitate the proposed modifications.

- 5 The proposed changes are summarised as comprising minor changes to:
- 1) the internal floor level to be retained at the existing floor height;
 - 2) the Burringbar St entrances to the building;
 - 3) the fence and location and design of the side eastern access to the building;
 - 4) deck louvres / railing;
 - 10 5) the layout of the juice bar / café;
 - 6) acoustic screening;
 - 7) the location of the lift and configuration of treatment room #3;
 - 8) configuration of the equipment and garbage storerooms;
 - 9) configuration of the layout of lap, plunge and spa pools; and
 - 15 10) configuration and floor height of the layout of the building containing the sauna and steam rooms.

The changes to the approved plans of the ANZ Bank building are highlighted below:

<p>NORTH ELEVATION - BURRINGBAR STREET</p>	
<p>North Elevation – As approved</p>	<p>North Elevation – Modified Proposal new front floor to facilitate disabled access and lift overrun for access to the upper level</p>
<p>PROPOSED SOUTH ELEVATION</p>	
<p>South Elevation – As approved</p>	<p>South Elevation – Modified Proposal – changes to balustrading on upper level deck and changes to the ground floor openings onto the rear courtyard areas</p>



The main change to the development sought is the amendment of conditions relating to flooding and finished floor heights (Condition10) which currently require the internal floor heights to be raised from the existing floor level to above the adopted flood level in accordance with BDCP 2014 Chapter C2. (5.56m)

1.3. Description of the site

The site was inspected on 4 March 2020

Land is legally described as LOT: B DP: 302891.
 Property address is 35-37 Burringbar Street MULLUMBIMBY
 Land is Zoned: B2 Local Centre
 Land area is: 607 m²

- Property is constrained by:
- Flood Prone Land
 - Acid Sulfate Soils (Class 4)
 - Heritage Conservation Area

The site contains an older style single storey commercial building which was originally built in 1928 and opened in 1929 for the English, Scottish and Australia Bank which later became the ANZ Bank. Prior to the opening of the bank at this site the bank operated from 98 Dalley Street, Mullumbimby which was constructed in 1909 after fire destroyed the previous building in 1908. The use of the site as a bank ceased approximately 15-20 years ago. Currently the building is used as a Shop with the internal floor plan intact which includes several rooms, two (2) bank safes and two (2) bathrooms. The building has a gross floor area of approximately 234m².



35-37 Burringbar Street

The rectangular allotment fronts Burringbar Street to the north and Studal Lane to the west. Commercial developments are situated on the adjacent allotments to the east, north and west.

5 The site is relatively level and vegetation on the site generally consists of lawn at the rear of the building. The site is not identified as being designated bushfire prone land and is identified as being Class 4 potential acid sulfate soils however there are no works proposed 2m below ground level with the deepest pool being the lap pool having a depth of 1.4m. The allotment however is identified as being flood prone land and is burdened by a sewer line adjacent to the rear property boundary.

10 The site is located within the Mullumbimby Heritage Conservation Area and is adjacent to a Heritage Item being Commercial Premises to the east of the site.

15 The proposed modifications to consent 10.2016.625.1 will not significantly alter the external appearance of the development and all proposed modifications are consistent with the outcomes sought in regards to the surrounding Heritage Items and Heritage Conservation Area.

The site is located within the Mullumbimby Heritage Conservation Area and is adjacent to a Heritage Item being Commercial Premises to the east of the site.

20 **2. SECTION 4.15 – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES**

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

25 **Section 4.55 of the EPA Act 1979**

It is considered the proposed development as amended is substantially the same development and satisfies the provisions contained with Section 4.55 of the EPA Act 1979.

30 It is noted that two conditions relating to the Smoke Free Environment Act and the Workplace Health and Safety Act have been updated to correct minor errors in the wording, whilst a further condition and notes are recommended in relation to the food shop fitout for the juice bar component of the development.

2.1. State/Regional Planning Policies, Instruments, EPA Regulations 2000

The proposed modifications do not raise additional issues under relevant SEPPS, Policies or clauses of the EPA Regulations 2000

2.2. Byron Local Environmental Plan 2014**Clause 5.10 - Heritage Conservation**

The proposed modifications will have only minor external changes when viewed from surrounding streets and will not detrimentally impact on the buildings presence within the Mullumbimby Town Centre or Heritage Conservation Precinct.

The proposed modifications to consent 10.2016.625.1 will not significantly alter the external appearance of the development and all proposed modifications are consistent with the outcomes sought in regards to the surrounding Heritage Items and Heritage Conservation Area.

Clause 6.3 Flood Planning

The development will comply with the relevant Flood Planning requirements for the site as discussed below under the DCP provisions.

The proposed modifications do not raise any additional issues under the BLEP 2014.

2.3. Draft EPI that is or has been placed on public exhibition and details of which have been notified to the consent authority - Issues

No draft EPIs affect the proposal.

2.4. Development Control Plans**Chapter C1 – Non Indigenous Heritage**

The subject property is located within a Conservation Area. The proposed modifications will not significantly alter the external appearance of the development and in some instances are aimed at preserving part of the original fabric of the building (as discussed below). The proposed modifications to the southern (rear) elevation of the existing building will retain a greater portion of the original fabric through the use of smaller doorway cut outs in this elevation. It is concluded the proposal is consistent with the heritage requirements under the DCP.

Chapter C2 Areas affected by Flood.

The most significant change to the development sought is the internal finished floor height and proposed amendment of conditions relating to flooding and finished floor heights (Condition 10) which currently require the internal floor heights to be raised from the existing floor level to above the adopted flood level in accordance with BDCP 2014 Chapter C2 – the adopted Flood Planning Level for the site is 5.56m.

Raising the existing floor level would result in loss of one of the historical bank safes and affects the entrance into the site from the Burringbar Street footpath. It is recommended Condition No. 10 be amended to reflect the need for flood compatible materials below the flood planning level.

Under *Chapter 2 – Areas Affected by Flood, C2.3.5 Special Provisions* of the BDCP 2014 existing commercial buildings are not required to comply with the flood planning level (however must comply with C2.3.4 Flood Proofing). Materials used below the flood planning level must be constructed from flood compatible materials.

It is recommended that the flood conditions be amended accordingly.

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

5 Noise

The application seeks to amend the approved hours of operation from Monday to Friday from 7am to 6pm, Saturday, Sunday and Public Holidays 8am to 5pm to extend the hours of operation. Having regards to the sites use and location within the town centre and proximity to two hotels it is recommended the hours be extended 10pm (Monday – Saturday) and to 9pm on Sundays or public holidays.

The proposed amendments do not generate any impacts that have not been previously considered.

15 2.6. The suitability of the site for the development

The site is located within the Mullumbimby Town Centre with the proposed reuse of a existing commercial building and is suitable for the proposed commercial land uses. The proposed amendments do not affect the Sites Suitability.

20 2.7 Submissions made in accordance with this Act or the regulations

The S4.55 application was exhibited between 30 January 2020 to the 12 February 2020 with no submissions received in relation to the proposed modifications.

25 2.8 Public interest

The proposed modifications to consent 10.2016.625.1 will not prejudice or compromise the public interest.

30 2.9 DEVELOPER CONTRIBUTIONS/ WATER AND SEWER CHARGES

The proposed modifications will reduce the size of the Sauna/Steam Room – Ground Floor, Open Air area from 34.96m² to 27.67m² and will reduce the contributions commensurate with the reduction in GFA.

35 3.0 Conclusion

The proposed changes to the plans are minor and satisfy the provisions contained with Section 4.55 of the EPA Act 1979. The application is recommended for approval subject to amended conditions of consent.

STATEMENT OF REASONS

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

S.96	The proposed modifications were minor and substantially the same as the original development approval with no detrimental environmental impacts.
DA	The proposed development will not have a detrimental impact on the heritage character of the precinct or the buildings contained on the site. It is considered consistent with the heritage provisions contained within Clause 5.10 of Local Environmental Plan 2014.
DA	The proposed development will not have a detrimental impact on the heritage character of the precinct or the buildings contained on the site. It is considered consistent with the heritage provisions contained within Development Control Plan 2014.

How community views were addressed	
	The DA was notified/advertised in accordance with Development Control Plan 2014. No submissions were received.