



# Byron Shire Council



## Agenda

### Ordinary (Planning) Meeting

Thursday, 15 October 2020

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

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

Mark Arnold  
General Manager

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## CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

### Disclosure and participation in meetings

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

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

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

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

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

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## RECORDING OF VOTING ON PLANNING MATTERS

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

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

# BYRON SHIRE COUNCIL

## ORDINARY (PLANNING) MEETING

### **BUSINESS OF ORDINARY (PLANNING) MEETING**

#### **1. PUBLIC ACCESS**

#### **2. APOLOGIES**

#### **3. REQUESTS FOR LEAVE OF ABSENCE**

#### **4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY**

#### **5. TABLING OF PECUNIARY INTEREST RETURNS (CL 4.9 CODE OF CONDUCT FOR COUNCILLORS)**

#### **6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS**

6.1 Ordinary (Planning) Meeting held on 17 September 2020

#### **7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS**

#### **8. MAYORAL MINUTE**

#### **9. NOTICES OF MOTION**

Nil

#### **10. PETITIONS**

#### **11. SUBMISSIONS AND GRANTS**

#### **12. DELEGATES' REPORTS**

#### **13. STAFF REPORTS**

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

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# BYRON SHIRE COUNCIL

## ORDINARY (PLANNING) MEETING

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

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

**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.1**      **PLANNING - S4.55 Development Application to modify Additional On-Site Car Parking Development Application 10.2017.474.2 Multi Dwelling Housing Consisting of Twenty Five (25) 1 Bedrooms - 70 - 90 Station Street Mullumbimby**

**Directorate:** Sustainable Environment and Economy  
**Report Author:** Ivan Holland, Planner  
**File No:** I2020/1434

**Proposal:**

<b>Section 4.55 Application No:</b>	10.2017.474.3			
<b>Proposed modification:</b>	S4.55 for Additional On-Site Car Parking			
<b>Original Development:</b>	Multi Dwelling Housing Consisting of Twenty Five (25) 1 Bedroom Dwellings (Under the Provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009): Infill Affordable Housing			
<b>Type of modification sought:</b>				
<b>Property description:</b>	LOT: 1 DP: 1227659			
	88 Station Street MULLUMBIMBY			
<b>Parcel No/s:</b>	269278			
<b>Applicant:</b>	Agcorp Constructions Pty Ltd			
<b>Owner:</b>	North Coast Community Housing			
<b>Zoning:</b>	B4 Mixed Use			
<b>S4.55 Date received:</b>	11 December 2019			
<b>Original DA determination date:</b>	22/2/2018			
<b>Integrated Development:</b>	No			
<b>Public notification or exhibition:</b>	<ul style="list-style-type: none"> <li>– Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications</li> <li>– Exhibition period: 9/1/20 to 22/1/20</li> <li>– Submissions received: six (6) in opposition</li> </ul>			
<b>Planning Review Committee:</b>	13/8/2020			
<b>Delegation to determination:</b>	Council			
<b>Key issue:</b>	<ul style="list-style-type: none"> <li>• Protection and preservation of mature fig tree.</li> </ul>			

This development application has been assessed and is reported to Council in accordance with Council's management of Conflicts of Interest for Development Matters.

**Summary:**

This application seeks approval to modify development consent 10.2017.474.2 to provide additional on-site car parking at the southern end of the site, adjacent to the existing, mature fig tree. Seventeen (17) car parking spaces are now proposed (Note: the original DA approved nine car parking spaces) in the communal parking area and the driveway has been relocated further north to facilitate the additional car parking spaces. Permeable pavement has been proposed for the car parking and sections of the driveway within the tree protection zone of the fig tree. Construction of 'carport style' roofs over some of the car parking spaces and deleting the requirement to provide a share car is also proposed.

Other minor consequential amendments proposed are:

- Minor modification to paths (along the street front/west of building A and B);
- Changes to the entry stairs at the rear/east of Building E;
- Minor relocation of the 'Utility' building and inclusion of relocated cycle parking; and
- A reduction in the area of communal open space.

The application appropriately addresses the relevant constraints applying to the site, raises no planning issues and is recommended for approval subject to amended conditions.

**NOTE TO COUNCILLORS:**






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

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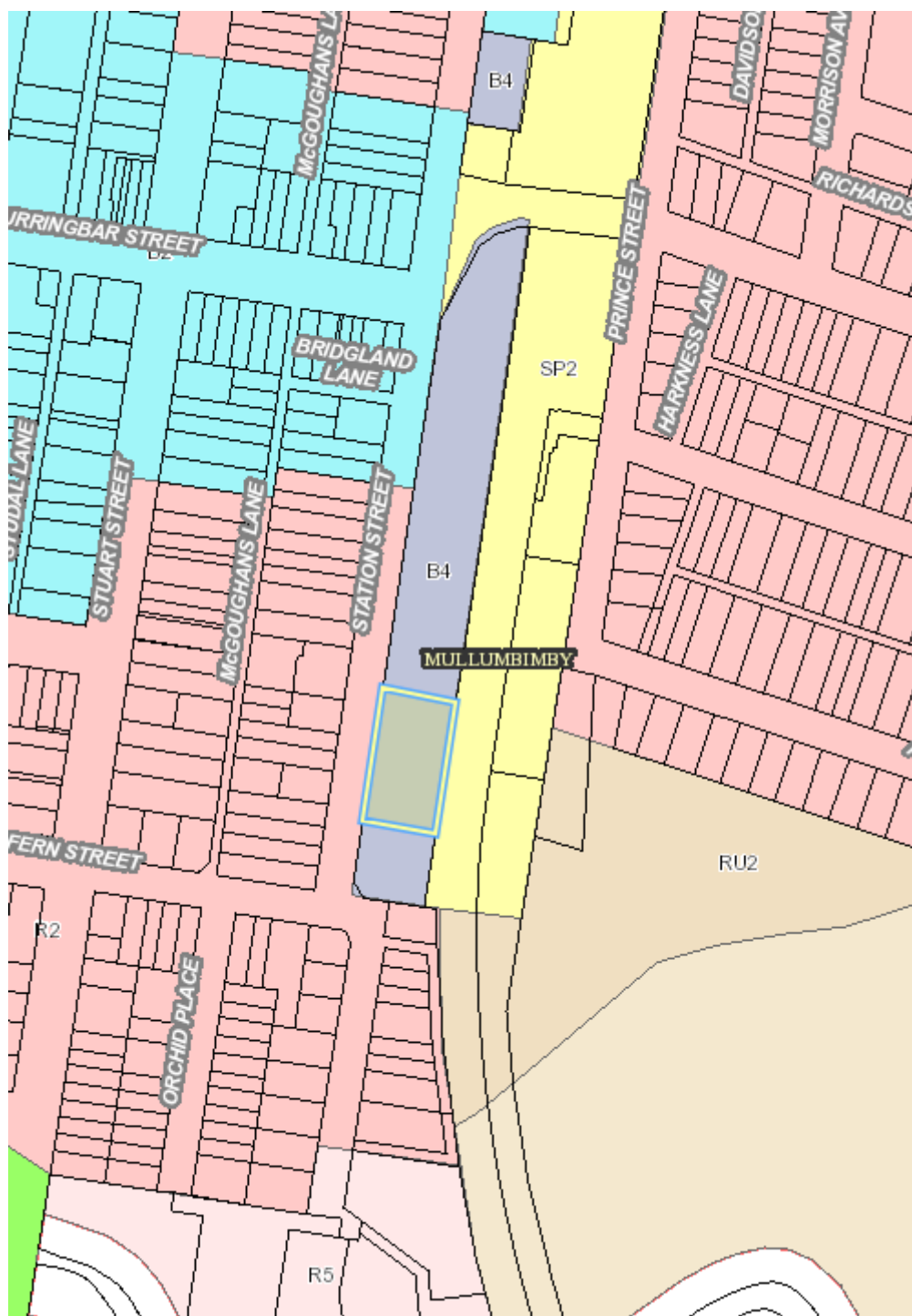
**RECOMMENDATION:**

**That, pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, Application No. 10.2017.474.3 for Additional On-Site Car Parking, be approved by modifying Development consent number 10.2017.474.2 as per the amended conditions in attachment 5 (E2020/78259).**

**Attachments:**

- 1 Current Consent - DA 10.2017.474.2, E2018/60675 
- 2 DA 10.2017.474.3 amended plans-annotated, E2020/78267 
- 3 DA 10.2017.474.3 revised arborist report, E2020/77968 
- 4 DA 10.2017.474.3 revised SWMP Rev. B, E2020/78163 
- 5 DA 10.2017.474.3 recommended condition changes, E2020/78259 
- 6 Confidential - DA10.2017.474.3 submissions received, E2020/78752





Subject property and land zoning under LEP 2014.

## 1. INTRODUCTION

### 1.1. History/Background

From development assessment report for original DA (10.2017.474.1):

*The subject site is a 16,082m<sup>2</sup> parcel of land that is owned by Byron Shire Council. It contains the Byron Shire Council administration building, chambers, car park and Mullumbimby Community Pre-School. Following an independent assessment of a development application, Development Consent 10.2014.404.1 was issued on 30 October 2014 for the subdivision of the subject site into 6 lots as follows:*

- *Proposed Lot 1 - 11,030.5m<sup>2</sup> parcel of land comprising the existing Council administration building, chambers, library, pocket park, car parking areas, and ancillary landscaped land at the northern portion of the site.*
- *Proposed Lots 2, Lot 3, Lot 4, & Lot 5 – Four (4) x 804.4m<sup>2</sup> lots within the currently undeveloped area between the existing car park and pre-school.*
- *Proposed Lot 6 - 1837.4m<sup>2</sup> lot containing the existing Mullumbimby Pre-school and associated outdoor areas at the southern portion of the site.*

*The application has been amended under the provisions of Section 96 of the Environmental Planning and Assessment Act 1979, on two occasions. The modification applications were:*

- *10.2014.404.2 -This modification application incorporated the following amendments:*
  - *to remove the requirement for a 1.2m wide footpath for the full property frontage.*
  - *to remove the requirement for kerb and gutter for the full property frontage.*

*This application was granted consent on 27 August 2015.*

- *10.2014.404.3 -This modification application sought approval to stage the development, and make changes to infrastructure provision. The application was approved on 22 September 2017 and stages the development as follows:*
  - *Stage 1 creates 2 lots, which would be further subdivided in Stages 2 & 3. The intention of Stage 1 is to create a serviced 'development lot' (i.e. Lot 1), which can then be sold.*
  - *Stage 2 - creation of a new lot containing the existing pre-school, separating that site from the remainder of the property.*
  - *Stage 3 involves the remainder of the approved development, being the creation of the four lots nominated as Lots 2-5 on the originally approved plan. If the proposed affordable housing development proceeds, this stage would not occur.*

*In 2015, Byron Shire Council resolved to sell proposed Lot 1 to North Coast Community Housing (NCCH) at an independently verified market value, for the purpose of an affordable housing project. It is this proposed lot that is subject of the current proposal.*

*Subdivision work for Stage 1 has commenced however the subdivision certificate has not yet been issued.*

*Past applications recorded over the subject site relate to the Byron Shire Council administration building and the child care centre. Other than the subdivision mentioned above, there are no other relevant historical applications relating the vacant portion of land known as proposed Lot 1.*



From development assessment report for first modification (DA 10.2017.474.2):

*DA10.2017.474.1 – Approved 22/2/18*

- 5 The first modification application (DA 10.2017.474.2) sought approval to amend the conditions in relation to S94 Contributions and Water and Sewer Headworks Charges due to the development providing affordable housing and the applicant being a charitable organisation. The original consent was issued with contributions based on a standard residential formula.
- 10 Council requested further information from the applicant on 4/3/20 which was further clarified by email on 12 March 2020. Council received amended plans on 7/4/20 and a request to delete the requirement for a share car from the approved development on 8/4/20. Council provided preliminary comments on the amended plans and the applicant responded with further amended plans and information on 28/4/20. Council provided preliminary feedback on the further amended plans on 30/4/20. Further updated plans were provided on 4/5/20 and on 7/5/20. Council provided preliminary feedback on the further amended plans on 12/5/20. The applicant provided a letter from the arborist on 27/7/20 and then the full arborist report on 25/8/20 with amended plans on 26/8/20. Following comments from Council on 2/9/20, final plans and an updated arborist report was provided on 21/9/20.

## **1.2. Description of the proposed development**

This application seeks approval to modify development consent 10.2017.474.2 under S4.55 to provide Additional On-Site Car Parking.

In particular:

- Minor modification to paths (along the street front/west of building A and B, );
- Changes to the entry stairs at the rear/east of Building E;
- Minor relocation of the 'Utility' building and inclusion of relocated cycle parking;
- Seventeen (17) car parking spaces in the communal parking area and construction of 'carport style' roofs over all car parking spaces. (Note: the original DA approved 9 car parking spaces in the communal outdoor parking area, which includes the share car parking space);
- Delete the requirement for a share car (see condition 9);
- Relocation of the driveway further to the north and into the tree protection zone of the mature fig tree; and
- A reduction in size of the communal open space and encroachment into the tree protection zone of the mature fig tree at the southwest corner of the site.

## **1.3. Description of the site**

From development assessment report for original DA (10.2017.474.1):

*Land is legally described as LOT: 10 DP: 850902  
 Property address is 70-90 Station Street, Mullumbimby.  
 Land is zoned: B4 Mixed Use  
 Land area is: 16090 m2  
 Property is constrained by: Flood Liable Land  
 Acid Sulfate Soils Class 4  
 Mullumbimby Heritage Conservation Area*

*As described above, development consent has been issued for the subdivision of the site into six lots. The lots have not yet been created and therefore the development application is lodged over the parent parcel i.e. Lot 10 DP 850902. All building work associated with the proposal would occur over proposed Lot 1. If approved, work on the proposal would not be able to commence until such time as the subdivision for Stage 1 is registered.*

*Proposed Lot 1 is a vacant, relatively flat piece of land which has a proposed area of 3244m<sup>2</sup>. It does not contain any vegetation of significance other than the large fig tree which is located within the road reserve at the front of the site. The adjoining land comprises:*

- 5                     • North - Proposed Lot 3 containing the Byron Shire Council administration building, chambers and car park. The car park is located immediately adjacent to the site of the proposed development.
- South - Proposed Lot 2 containing the Mullumbimby Community Pre-school.
- 10                   • East - The dis-used North Coast railway line. Further to the east, on the opposite side of the railway reserve is residential and rural land.

*The location of the subject site is shown on Figure 1, and Figure 2 illustrates the approved subdivision and staging layout.*



**Figure 1 - Location**

15                   The site was inspected on 26 February 2020

## **2. SECTION 4.15 – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES**

20                   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.

**2.1. State/Regional Planning Policies, Instruments, EPA Regulations 2000**

	Agree or No (add comments as required)
Proposed amendments raise no issues under the relevant SEPPs, Policies or clauses of the EPA Regulations 2000	<p>Yes</p> <p><u>SEPP (Affordable Rental Housing) 2009</u> – The proposed changes to car parking will result in a reduced landscaped area and deep soil zone and changes to the street front façade. The total landscaped area initially proposed was 1180m<sup>2</sup>, which will be reduced to 1130m<sup>2</sup> by this application. This equates to ~34% of the site. The total area of deep soil zones initially proposed was 840m<sup>2</sup> or 26% of the total site area. This application states that the modification will result in a total deep soil zone area of 920m<sup>2</sup> however some of the identified deep soil zone does not appear to meet all the relevant criteria. A total of 14 car parking spaces were initially proposed (excluding the 5 tandem spaces) in combination with a share car for residents of the development. This application will result in a total of 25 car parking spaces with only 10 being required for the development. As the application is made by a social housing provider, failure to meet landscaping, deep soil or car parking requirements cannot be used as grounds for refusal of the application (c.14 - SEPP (Affordable Rental Housing) 2009).</p> <p><u>SEPP (Infrastructure) 2007</u> – The development is adjacent to a rail corridor however (i) as the rail corridor is not currently' and may never be' utilised for train services, and (ii) the proposed changes are relatively minor and largely relate to the opposite side of the site from the rail corridor, the relevant provisions are not triggered by the this proposal (c.85, 86 and 87). Further, John Holland Rail was notified of the original DA and their comments were incorporated into the assessment of this application.</p> <p><u>SEPP (Coastal Management) 2018</u> – The property is located within the mapped coastal environment area however the proposed modifications are unlikely to cause an adverse impact on any of the listed matters for consideration (clause 13).</p>

**2.2. Byron Local Environmental Plan 2014**

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	Agree or No (add comments as required)
Proposed amendments raise no issues under the LEP	<p>Agree</p> <p>Updated elevations have been provided that include the proposed carport structures. These structures are unlikely to have a more than minor impact on the presentation of the building. However, it is important that these structures are consistent with previous heritage considerations/recommendation provided on the original DA (Clause 5.10) and as such should incorporate "...design cues from an 'industrial vernacular' of railway and light industrial factories" and "traditional uncoloured metal and timber detailing".</p> <p>Previous heritage advice also stated that the impact of Building E would be "considerably softened by retention of the mature tree"</p>

	further enforcing the importance of retaining and protecting the fig tree in the southwest corner of the property.
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**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**

- 5 No draft EPIs were identified that affect the proposal.

**2.4. Development Control Plans**

	<b>Agree or No (Add comments as required)</b>
Proposed amendments do not generate any additional issues that have not been previously considered	<p>No - see below</p> <p>Alterations to car parking and stormwater management have been considered by Council's Engineer and are considered acceptable subject to recommended conditions. Measures to protect the fig tree have been provided by the applicant's arborist and have been included in recommended conditions. The proposed carports were modified to remove all carports from the street front setback and minimise footings with the tree protection zone of the fig tree.</p>

**10 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**

	<b>Agree or No (Add comments as required)</b>
Proposed amendments do not generate any impacts that have not been previously considered.	<p>No - see below</p> <p>Alterations to car parking and stormwater management will require work within the tree protection zone of the mature fig tree. Measures to protect the fig tree have been provided by the applicant's arborist and have been included in recommended conditions.</p>

**2.6. The suitability of the site for the development**

	<b>Agree or No. (Add comments as required)</b>
Proposed amendments do not affect the Sites Suitability.	Agree

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

	<b>Agree or No. (Add comments as required)</b>
No Submissions were received.	<p>No - see below</p> <p>Six (6) submissions were received in opposition to the application. Key issue raised in the submissions was protection and preservation of the mature fig tree. As noted above, the applicant provided an arborist report and the suggested measures to protect the fig tree have been included in recommended conditions.</p> <p>Other key issues raised in submissions were:</p> <ul style="list-style-type: none"> <li>• The potential impact of exhaust fumes on children at the</li> </ul>

	<b>Agree or No. (Add comments as required)</b>
	<p>adjoining childcare centre. A 2.1m high fence and a vegetation screen are proposed along the shared boundary with the childcare centre.</p> <ul style="list-style-type: none"> <li>• Insufficient landscaped area. Landscaping requirements are discussed above under SEPP (Affordable Rental Housing) 2009.</li> <li>• Stormwater management. Amended plans were provided that removed car parking from the overland flow swale. Proposed stormwater management has been considered by Council's Engineer and is considered acceptable subject to recommended conditions</li> <li>• Providing for cycling. Updated plans have been provided that detail cycle parking.</li> <li>• Character of the development. The proposed carports were modified to remove all carports from the street front setback. Otherwise, this application does not propose changes to the fundamental built form of the development.</li> </ul>

### **3.7 Public interest**

Proposed amendments are unlikely to prejudice or compromise the public interest.

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### **4. DEVELOPER CONTRIBUTIONS/ WATER AND SEWER CHARGES**

	<b>Agree or No. (Add comments as required)</b>
There is no nexus to levy additional contributions.	Agree

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.2

**Report No. 13.2** **PLANNING - Development Application 10.2020.100.1 Tourist and Visitor Accommodation Comprising Six (6) Cabins at 533 Bangalow Road Talofa**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Ben Grant, Planner

**File No:** I2020/1439

### Proposal:

<b>DA No:</b>	10.2020.100.1		
<b>Proposal description:</b>	Tourist and Visitor Accommodation Comprising Six (6) Cabins		
<b>Property description:</b>	LOT: 10 DP: 1197480		
	533 Bangalow Road TALOFA		
<b>Parcel No/s:</b>	267397		
<b>Applicant:</b>	Planners North		
<b>Owner:</b>	Talofa Palms Pty Ltd		
<b>Zoning:</b>	RU2 Rural Landscape; 1(a) (General Rural Zone)		
<b>Date received:</b>	27 February 2020		
<b>Integrated / Designated Development:</b>	<input checked="" type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input type="checkbox"/> Not applicable
<b>Concurrence required</b>	No		
<b>Public notification or exhibition:</b>	<ul style="list-style-type: none"> <li>– Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications</li> <li>– Exhibition period: 19/3/20 to 1/4/20</li> <li>– Submissions received: Three (3)</li> <li>– Submissions acknowledged: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</li> </ul>		
<b>Variation request</b>	Not applicable		
<b>Delegation to determine</b>	Council		
<b>Issues:</b>	<ul style="list-style-type: none"> <li>• Individual car parking for each cabin rather than centralised parking</li> <li>• Cabins located on a south facing slope</li> <li>• Impact on rural/scenic character</li> </ul>		

### Summary:

- 15 This development application seeks consent for six (6) tourist and visitor accommodation cabins plus new driveway, infrastructure and landscaping at 533 Bangalow Road, Talofa. The application also includes a vegetation management plan involving ecological restoration of the Byron Creek riparian corridor which runs through the centre of the property.
- 20 The site is a 42 hectare property located 5km south-west of Byron Bay, situated in a rural area characterised by grazing land, stands of bushland, plantations and rural dwellings on lots with varying size and area.

The application originally proposed eight (8) cabins, however the proposal was subsequently amended and reduced in scale to six cabins. Additional information relating to landscaping, visual impact assessment and environmental restoration were also supplied.

- 5 The main issue for consideration in this assessment is the potential impact of the development on the rural/scenic character of the area plus two minor variations to DCP 2014 relating to car parking design and the south facing aspect of the land.

- 10 For reasons explained further in the body of this report, the development is considered to be a reasonable response to the characteristics of the site and will not have a substantially adverse impact on rural character. The two DCP variations are generally of a minor nature and are considered to be well founded in the circumstances.

- 15 As a compensating measure for energy efficiency, the Applicant has opted into BASIX and will be providing 2kW solar PV energy systems for each cabin, along with insulation and ceiling fans (for thermal comfort) and rainwater harvesting and storage. In addition, the use of individual car parking rather than centralised is considered to be acceptable due to the site topography and the need to provide vehicular access to the cabins for emergency vehicles and disabled persons. Offering parking adjacent to each cabin in this context is considered reasonable and will not increase the visual or environmental impact of the development.

- 25 In terms of environmental outcomes, the overall effect of the development is likely to be positive if the restoration of Byron Creek is undertaken in accordance with the submitted vegetation management plan. The project will involve establishing a 3.5 hectare bush regeneration zone along the riparian corridor, plus 2145 new rainforest trees along with weeding and ongoing management for a period of five (5) years.

- 30 The development application was publicly notified and advertised for a period of 14 days between 19 March and 1 April 2020 and Council received 3 objections. Submissions focused mostly on the scale of the development, questions over the relationship with agriculture, and the potential impacts on rural character (it should be noted that at the time of advertising, eight cabins were proposed).

- 35 It is considered that these issues have been appropriately addressed through the provision of additional information, amendments to the design, and the imposition of conditions of consent.

- 40 The development is otherwise consistent with the relevant environmental planning instruments and development control plans applying to the land and is recommended for approval subject to conditions of consent.

#### NOTE TO COUNCILLORS:

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









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#### RECOMMENDATION:

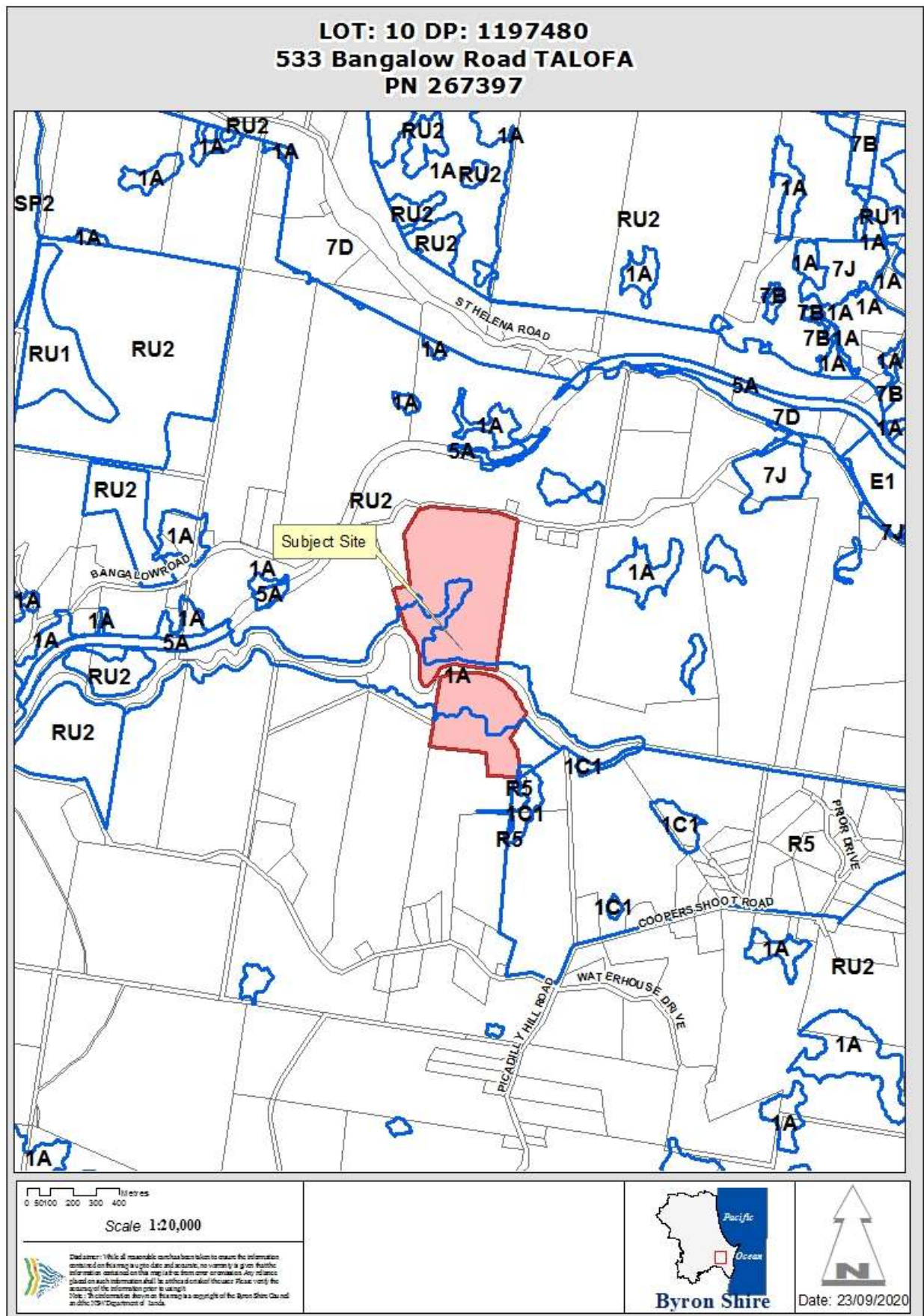
**That, pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application 10.2020.100.1 for Tourist and Visitor Accommodation Comprising Six (6) Cabins, be granted subject to the conditions of consent in Attachment 1 (E2020/77028).**



**Attachments:**

- |    |   |   |
|----|---|---|
| 1  | Attachment 1 - 10.2020.100.1 Recommended Conditions, E2020/77028              |  |
| 2  | Attachment 2 – 10.2020.100.1 Architectural and Landscaping Plans, E2020/77030 |  |
| 5  | 3 Attachment 3 – 10.2020.100.1 Engineering Plans, E2020/77031                 |  |
| 4  | Attachment 4 – 10.2020.100.1 SWMMP and Bin Storage Plan, E2020/77032          |  |
| 5  | Attachment 5 – 10.2020.100.1 Visual Impact Assessment, E2020/77033            |  |
| 6  | Attachment 6 – 10.2020.100.1 VMP & Restoration Plans, E2020/77034             |  |
| 7  | Attachment 7 - 10.2020.100.1 - Powerline Diversion Plan, E2020/77037          |  |
| 10 | 8 Attachment 8 10.2020.100.1 Submissions Redacted, E2020/77044                |  |

REPORT



## 1. INTRODUCTION

### 1.1. History/Background

#### Previous determinations

A search of Council records identified the following determinations for the property:

- DA 10.2012.569.1, for a rural boundary adjustment, granted consent on 28 February 2013.
- DA 10.2013.124.1, for a two-lot rural subdivision, granted consent on 17 June 2013.

#### Site history

The subject site was originally part of a larger rural holding used for dairying from the early 1900's until the late 1980's, following which the land was primarily used for beef cattle grazing. The farm was subdivided in 2013 to create the subject property. A Canary Island Palm plantation has been established on the southern end of the property.

#### Relocation of farm house

Council is currently considering development application 10.2020.99.1 which seeks consent to relocate the existing farm house further away from Bangalow Road, along with alterations and additions. The new location of the house has been identified on the plans submitted with the subject application.

The land owner has indicated a preference to construct the holiday cabins before the dwelling relocation although this is not mandatory given there is no conflict between the two proposals.

### 1.2. Amendments

Council received amended plans on 29 July 2020 reducing the number of cabins from eight to six. An amended vegetation management plan, visual impact assessment, site waste management plan and powerline relocation plan were also provided.

### 1.3. Description of the proposed development

This application seeks development consent to construct six tourist and visitor accommodation cabins, along with a new driveway, infrastructure and landscaping. A vegetation management plan involving ecological restoration of the Byron Creek riparian corridor is also proposed.

The proposed cabins are located on an elevated part of the site near the existing farm house, offering southerly views over the surrounding countryside. Each building is single storey and will have two bedrooms, bathroom, living room, kitchenette, external deck and plunge pool.

In detail, the following is proposed:

#### (a) Tourist and visitor accommodation cabins

- (i) Six cabins (including one adaptable cabin), each with an area of 60m<sup>2</sup>.
- (ii) Each cabin has two bedrooms, living room, bathroom, kitchenette, plunge pool and outdoor deck.

(b) Access and parking

- (i) New driveway crossover connecting to Bangalow Road.
- (ii) New sealed internal access road, ranging in width from 3.5m to 6m.
- (iii) Removal of existing driveway located in front of the farm shed.
- (iv) Provision of 12 guest car parking spaces.
- (v) Installation of roof water infiltration trenches and localised road drainage pipework to manage driveway table runoff.

(c) Landscaping and ecological restoration works

- (i) Landscaping around the cabins and car parking areas for privacy and amenity.
- (ii) Vegetation Management Plan for the restoration and enhancement of the rainforest areas occurring in drainage gullies and the riparian corridor of Byron Creek.

(d) Services and infrastructure

- (i) New on-site waste water management system to cater for the development.
- (ii) Static water supply tanks for firefighting.
- (iii) Rainwater tanks to supply potable water for each cabin.
- (iv) Relocate overhead powerlines to Bangalow Road to provide suitable clearance from the development.

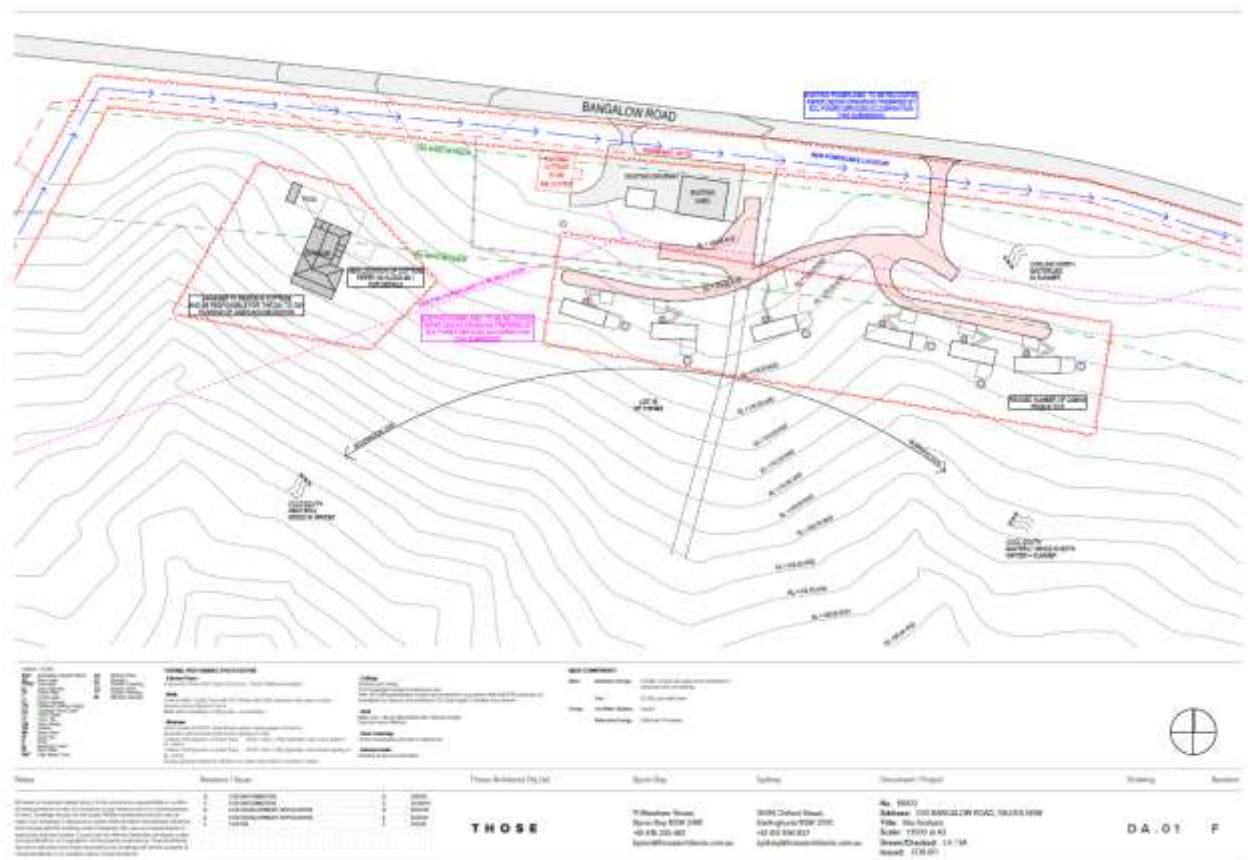


**Figure 1:** Architect's impression south elevation.

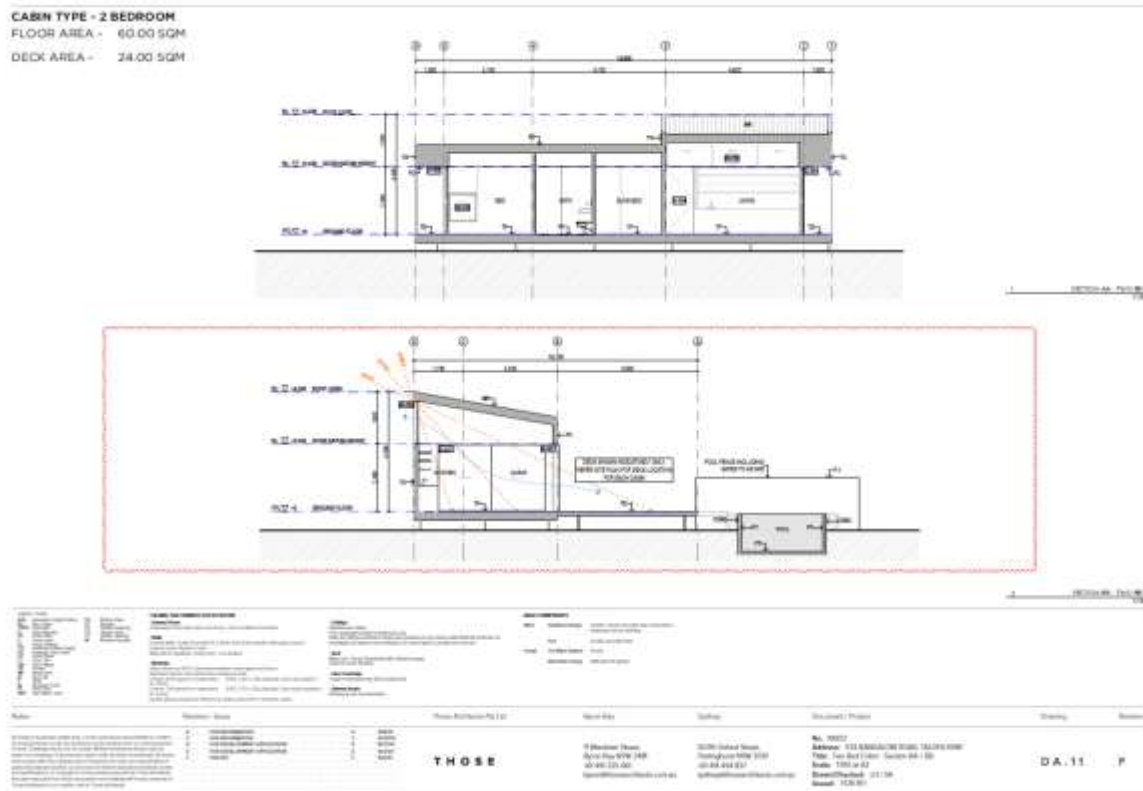




**Figure 2:** Architect's impression north elevation.

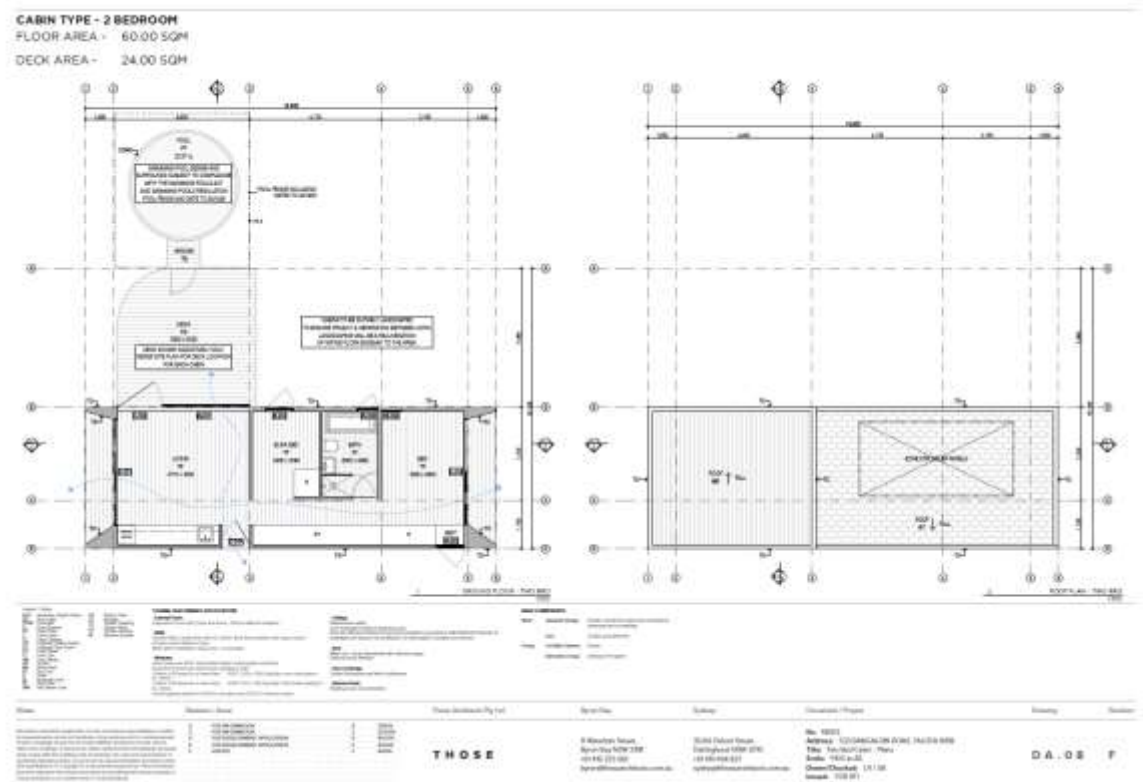


**Figure 3:** Site plan showing the development layout.



**Figure 4:** Cabin section.

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**Figure 5:** Cabin floor plan.

**1.4. Description of the site**

A site inspection was carried out on 15 April 2020.

- 5 The site is a 42 hectare property located 5km south-west of Byron Bay, situated in a rural area characterised by grazing land, stands of bushland, small scale agriculture and rural dwellings on lots with varying size and area. The property has a 321m frontage to Bangalow Road and is bisected by Byron Creek.
- 10 The land is cleared of vegetation apart from two isolated patches of mixed subtropical rainforest and camphor near Byron Creek. A Canary Island Palm plantation has been established on the southern portion of the property, while the northern portion comprises cleared paddocks used for grazing cattle.
- 15 Existing development comprises a small timber cottage and two farm sheds located at the top of the ridgeline near Bangalow Road. The land is otherwise undeveloped save for a small horse yard.



20 **Figure 6:** Aerial image of the site.





**Figure 7:** Entrance to the property from Bangalow Road.



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**Figure 8:** View south from the proposed development site over surrounding countryside.



**Figure 9:** View west towards the nearest dwelling at 549 Bangalow Road.



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**Figure 10:** Existing dwelling to be repositioned and altered via DA 10.2020.99.1.

**2. SUMMARY OF REFERRALS**

Referral	Comments/Issues
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
Development Contributions Officer	S7.12 levy will apply to the development.
Natural Resource Planner	No objections subject to minor amendments to the VMP.
Rural Fire Service	A Bush Fire Safety Authority has been issued by the RFS. The development is capable of complying with the relevant conditions.
Essential Energy	No objections subject to powerlines being relocated in accordance with Essential Energy's requirements (refer to <b>Attachment 7</b> ). See further discussion of issues in Section 4.1 - Infrastructure SEPP.

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

**3. SECTION 4.46 INTEGRATED DEVELOPMENT**

Tourist and visitor accommodation is defined as a type of "special fire protection purpose" and requires a Bush Fire Safety Authority (BFSA) under s. 100B of the *Rural Fires Act 1997*.

General Terms of Approval were issued by the RFS on 26 May 2020. Refer to the recommended conditions in **Attachment 1**. The proposed development is capable of complying with the conditions of the BFSA without any significant change to the design or adverse impacts on the environment. No clearing of vegetation is required to establish the asset protection zones around the development.

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

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

**4.1 State Environmental Planning Instruments****State Environmental Planning Policy (Koala Habitat Protection) 2019**

The development application was accepted by Council on 27 February, prior to the commencement of the Koala Habitat Protection SEPP on 1 March 2020.

Transitional provisions in the SEPP provide that a development application made, but not finally determined, before the commencement of the Policy must be determined as if the Policy had not commenced. As such, the application is to be assessed under the former planning provisions applying through SEPP 44.

**State Environmental Planning Policy No 44—Koala Habitat Protection**

SEPP 44 requires Council to consider whether the land is a potential or core koala habitat. If the land is identified as core habitat, consent cannot be granted unless there is a plan of management prepared for the site in accordance with Part 3 of the SEPP.

This site is generally free of vegetation aside from patches of mixed subtropical rainforest and camphor laurel in the gullies and riparian corridor of Byron Creek. Less than 15% of the species in the upper and lower strata consist of Koala food trees.



On this basis, the land is not considered to be potential or core koala habitat as defined under SEPP 44. Consent is able to be granted without the requirement for a plan of management.

## 5 **State Environmental Planning Policy No 55—Remediation of Land**

A preliminary site investigation indicates the site was used for dairying from the early 1900's until the late 1980's, following which the land was primarily used for beef cattle grazing. Analysis of soil samples reveal that contaminant levels are well below the Health Investigation Levels for residential uses with access to soils.

Land in the vicinity of the proposed development is demonstrated to be free from significant contamination and is suitable for the proposed use in its current state.

## 15 **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

The applicant has provided a multi-dwelling BASIX certificate detailing energy efficient measures including photovoltaic panels, centralised rainwater storage, energy efficient fixtures and insulation. The relevant commitments for energy, water and thermal comfort have been shown on the DA plans.

## **State Environmental Planning Policy (Infrastructure) 2007**

The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the development application. The relevant clauses have been addressed below:

### **Clause 45 Determination of development applications—other development**

The application is subject to clause 45 of the Infrastructure SEPP, as the proposed cabins and swimming pools are located within 30m of a structure supporting overhead powerlines.

To address concerns over safety and amenity, the applicant is proposing to relocate the powerlines traversing the site into the Bangalow Road reserve, about 35m north of the current alignment. Essential Energy's comments in reply state that the development is considered satisfactory based on the powerlines being relocated. A condition is recommended that requires the powerlines to be relocated prior to the issue of a construction certificate.

## **4.1 Byron Local Environmental Plan 2014 (LEP 2014)**

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

Part 1	<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"/> 1.6  <input checked="" type="checkbox"/> 1.7  <input checked="" type="checkbox"/> 1.8  <input checked="" type="checkbox"/> 1.8A  <input checked="" type="checkbox"/> 1.9  <input checked="" type="checkbox"/> 1.9A
Part 2	<input checked="" type="checkbox"/> 2.1  <input checked="" type="checkbox"/> 2.2   <input checked="" type="checkbox"/> 2.3   <input checked="" type="checkbox"/> Land Use Table   <input checked="" type="checkbox"/> 2.4   <input checked="" type="checkbox"/> 2.5   <input checked="" type="checkbox"/> 2.6   <input checked="" type="checkbox"/> 2.7   <input checked="" type="checkbox"/> 2.8
Part 4	<input checked="" type="checkbox"/> 4.3
Part 6	<input checked="" type="checkbox"/> 6.1  <input checked="" type="checkbox"/> 6.2  <input checked="" type="checkbox"/> 6.5  <input checked="" type="checkbox"/> 6.6  <input checked="" type="checkbox"/> 6.8

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

- (a) The proposed development is defined in the LEP 2014 Dictionary as *Tourist and Visitor Accommodation*;
- (b) The land is within the RU2 Rural Landscape / PART DM Deferred Matter 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:

<b>Zone Objective RU2 Rural Landscape zone</b>	<b>Consideration</b>
<ul style="list-style-type: none"> <li>To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.</li> <li>To maintain the rural landscape character of the land.</li> <li>To provide for a range of compatible land uses, including extensive agriculture.</li> <li>To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality.</li> <li>To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.</li> </ul>	<p>The proposal will reduce the available land for primary production by ~ 2.5% (1 ha).</p> <p>The proposed cabins and dwelling are clustered near to Bangalow Road, minimising the development footprint and reducing the loss of viable agricultural land within the site.</p> <p>The proposal is unlikely to generate land use conflict due to its low scale and substantial buffers from adjoining farms and residences.</p> <p>In terms of visual impact, the proposed development is set below the northern ridgeline and will be screened by vegetation amongst cabins and along Bangalow Road.</p> <p>The application proposes environmental restoration of the Byron Creek riparian corridor under a Vegetation Management Plan consistent with the objective for environmental conservation. The VMP proposes 3.5 hectares of bush regeneration along with 2125 new rainforest trees in 4 largely contiguous regeneration areas.</p>

<b>Part 4 – Principal Development Standards</b>	<b>Compliance</b>	<b>Comment</b>
4.3 Height of Buildings	Yes	A maximum height of 9m is permitted. A height of 4.7m is proposed.

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<b>Part 6 – Local Provisions</b>	<b>Compliance</b>	<b>Comment</b>
6.2 Earthworks	Yes	<p>The proposed cabins are lightweight structures on pier footings requiring minimal earthworks. Some cut and fill will be required for the internal access road and car parking areas, although the effect on drainage patterns or soil stability in the area will be negligible.</p> <p>A condition is recommended for the car parking area and access road to be suitably landscaped and screened, along with sediment and erosion controls to be implemented and maintained during the construction phase.</p>
Clause 6.5 Drinking water catchments	Yes	The site drains to Byron Creek which feeds into the Wilsons Creek regional drinking water catchment. The development and associated wastewater system will be located over 400m

		from the Creek and will not have an adverse impact on the quality or quantity of water entering the drinking water storage.
Clause 6.6 Essential services	Yes	The site is capable of being serviced by reticulated electricity and telecommunications. Potable water is able to be supplied via rainwater storage and the land is capable of accommodating effluent disposal through an on-site waste water management system. The proposed vehicular access offers safe and efficient access to and from the site.
Clause 6.8 Rural and nature-based tourism development	Yes	<p>Having regard to the provisions of clause 6.8. the proposed development is considered to be acceptable for the following reasons:</p> <ul style="list-style-type: none"> <li>• The proposed development is relatively small scale and low impact, and is capable of being generally managed and operated by the principal owner living on the property.</li> <li>• The site has adequate vehicular access to and from a road, taking into account the scale of the development.</li> <li>• The development is complementary to the environmental attributes of the land and surrounds.</li> <li>• The cabins are clustered around the existing dwelling near to Bangalow Road, minimising loss of agricultural land and providing adequate buffers to neighbouring farms and residences.</li> <li>• In terms of visual impact, the development will sit below the northern ridgeline and will not be clearly visible in views to the site from public places and neighbouring's residences. Appropriate conditions for landscaping will help to screen the development and further minimise visual impact.</li> <li>• The property has a lawful dwelling, and</li> <li>• The development does not propose caretakers or managers residence or more than one bed and breakfast accommodation.</li> </ul>

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

- 5 Most of the site is zoned RU2 Rural Landscape under Byron Local Environmental Plan 2014. A strip of land corresponding to the riparian corridor of Byron Creek is a "deferred matter" in LEP terms, and as such remains zoned 1(a) General Rural Zone under Byron Local Environmental Plan 1988.

The entirety of the development will be contained wholly within the RU2 zone. The provisions of LEP 1988 are therefore not a relevant matter for consideration in this assessment.

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

There are no proposed instruments with any relevance to the subject application.

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

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

Part A	<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"/> B6  <input checked="" type="checkbox"/> B8  <input checked="" type="checkbox"/> B9  <input checked="" type="checkbox"/> B10  <input checked="" type="checkbox"/> B12  <input checked="" type="checkbox"/> B13  <input checked="" type="checkbox"/> B14
Part C Chapters:	<input checked="" type="checkbox"/> C3  <input checked="" type="checkbox"/> C4
Part D Chapters	<input checked="" type="checkbox"/> D2  <input checked="" type="checkbox"/> D3

These checked Parts/Chapters have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The proposed development complies with all sections of these Parts/Chapters (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to certain prescriptive measures which are considered further (having regard to the DCP 2014 Section A1 Dual Path Assessment) as follows:

Chapter B3 Services	Compliance	Comment
<u>B3.2.1 Provision of Services</u> <u>Water supply</u>	Yes	Each cabin has a rain water tank to provide potable water for guests. The Applicant has also indicated that a centralised water tank can be provided near the farm shed to provide backup supply.  A condition is recommended that requires a quality assurance program for drinking water to be supplied to NSW Health prior to occupation of the development.
<u>B3.2.2 On-site Sewage Management</u>	Yes	The application proposes tertiary wastewater treatment via AWTs system.
<u>B3.2.4 Sedimentation and Erosion Control Measures</u>	Condition	The site adjoins a waterway and is located within a drinking water catchment. A sediment and erosion control plan is therefore required in accordance with B3.2.4.  Condition recommended.



<b>Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access</b>	<b>Compliance</b>	<b>Comment</b>
<u>B4.2.1 Traffic Impact</u>	Yes	<p>The application included a traffic impact statement estimating that the development would generate 2.5 trips per day per bedroom, which results in a total of 30 trips per day for a 12 bedroom facility. This is equivalent to the traffic generated by approximately 5 dwellings.</p> <p>A traffic count undertaken for Bangalow Road found a peak of 277 vehicles per hour, for an estimated Annual Average Daily Traffic Volume of 2520 vehicles per day. Hence, the proposed development would be likely to cause an increase in traffic on Bangalow Road in the range of about 1% over current volumes.</p> <p>Council's Development Engineer endorsed the findings of the traffic assessment and concluded that the development would not have a significant impact on the local road network.</p>
<u>B4.2.3 Vehicle Access and Manoeuvring Areas</u>	Yes	<p>Driveways and internal access roads comply AS 2890 and the Northern Rivers Local Government Development &amp; Design Manual. The development is also capable of complying with RFS requirements for emergency vehicle access.</p>
<u>B4.2.5 Car Parking Requirements</u>	Yes	<p>12 car parking spaces are required based on a rate of 1 space per bedroom.</p> <p>12 car parking spaces are proposed (two per cabin).</p>

<b>Chapter B6 Buffers and Minimising Land Use Conflict</b>	<b>Compliance</b>	<b>Comment</b>
<u>B6.2.3 Planning Principles to Minimise Land use conflict</u>	Yes	<p>The proposed development is located near to Bangalow Road and has adequate buffers from adjoining farmland and residences.</p> <p>The development is unlikely to cause conflict with surrounding agricultural uses or sterilise neighbouring land from future agricultural development.</p>
<u>B6.2.4 Buffers</u>	Yes	<p>Table B6.1 specifies a buffer distance for rural tourist accommodation of 50m for grazing land. Distances to forestry &amp; plantations are subject to a site specific determination.</p> <p>The development has a separation from neighbouring grazing land of 180m and is located over 500m from the nearby Canary Palm</p>

		<p>planation, satisfying the requirements of B6.2.4.</p> <p>The development has been designed to avoid land use conflict and satisfies the Objectives and Performance Criteria of B6.2.3.</p>
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<b>Chapter B8 Waste Minimisation and Management</b>	<b>Compliance</b>	<b>Comment</b>
B8.3 General Development Criteria	Yes	<p>A Site Waste Minimisation and Management Plan has been provided in accordance with Chapter 8.</p> <p>The site is serviced by Council garbage collection adequate to cater for the development.</p> <p>Garbage bins will be stored in an appropriate deigned enclosure and screened from public view.</p>

<b>Chapter B9 Landscaping</b>	<b>Compliance</b>	<b>Comment</b>
<p>B9.3.1 General Landscape Design Principles</p> <p>B9.6.1 Landscaping of Tourist and Visitor Accommodation</p>	Condition	<p>A satisfactory landscaping plan has been provided in accordance with Chapter B9.</p> <p>The landscape design features native rainforest species planted between cabins and internal roads, plus screen plantings near the access to Bangalow Road.</p> <p>While this meets the requirements of the DCP, further improvements are recommended through additional plantings near Bangalow Road to help further screen the development from publicly accessible locations.</p>

<b>Chapter B13 Access and Mobility</b>	<b>Compliance</b>	<b>Comment</b>
B13.2 Development Controls	Yes	The development includes one adaptable cabin with disabled access and facilities.

<b>Chapter B14 Excavation and Fill</b>	<b>Compliance</b>	<b>Comment</b>
B14.2 Excavation and Fill in all Zones	Yes	Excavation and fill will be less than 1m in depth across the site. Batters adjoining internal roads and driveways will be appropriately landscaped.

<b>Chapter C1 Non-Indigenous Heritage</b>	<b>Compliance</b>	<b>Comment</b>
C1.5.1 New Development in the Vicinity of a Heritage Item	Yes	<p>The adjoining property at 549 Bangalow Road contains a locally listed heritage item (I177) known as “Byron Bay House” (formerly Ingleside).</p> <p>The proposed cabins are located approximately 330m from the Heritage Item and will not be close enough to influence the visual and aesthetic characteristics of the building or the historical setting of the property.</p>

<b>Chapter C3 Visually Prominent Sites, Visually Prominent Development and View Sharing</b>	<b>Compliance</b>	<b>Comment</b>
C3.2.1 Visual Impact Assessment	Yes	<p>The application includes a visual impact assessment in accordance with C3.2.1. Refer to <b>Attachment 5</b>.</p> <p>As demonstrated in the montages, there is limited visibility of the cabins travelling east on Bangalow Road and views to the site from adjoining properties to the south are obtained at significant distance. The single storey cabins will be partially visible to motorists travelling west along Bangalow Road, however, the structures are set below the northern ridgeline and will be screened by vegetation as part of the proposed landscape design.</p> <p>Overall, the development is considered to be compatible with surrounding rural landscape and satisfies the Objectives and Performance Criteria of Part C3.2.1.</p> <p>Notwithstanding, additional measures to further minimise the visual impact are recommended, including the use of non-reflective building materials and additional landscaping.</p>

<b>Chapter C4 Development in the Drinking Water Catchment</b>	<b>Compliance</b>	<b>Comment</b>
C4.2.4 Water Sensitive Urban Design	Yes	<p>The proposal will not significantly modify the natural landform or increase stormwater runoff, particulate matter or pollutants entering Byron Creek.</p> <p>Stormwater is to be directed to infiltration trenches and sewage effluent will be treated to a</p>

		high standard by the proposed AWTS system, located approx. 450m from the creek line.  Environmental restoration in the drainage gullies and riparian corridor will also improve soil stability and reduce erosion.
C4.2.5 Development involving new roads and driveways	Yes	Roads and driveways will not cause undue disturbance of soils or require removal of vegetation.

<b>Chapter D3 Tourist Accommodation</b>	<b>Compliance</b>	<b>Comment</b>
D3.2.1 Location and Siting	Yes	The proposed cabins have adequate buffers from adjoining land and are sited clear of environmentally sensitive vegetation and features of the land.
D3.2.3 Character and Design in Rural Zones	No*	<p><b>Centralised parking</b></p> <p>There is one proposed variation to the relevant best practice guidelines of the Byron Rural Settlement Strategy 1998 (the BRSS), which is called up by Performance Criteria D3.2.3 (3):</p> <p><i>BRSS Section 7.2: Holiday Cabins - Guidelines</i></p> <p>5. <i>All weather 'centralised' car parking must be provided on-site at the rate of at least 1 car space per holiday cabin. The paving of car-parking areas is not encouraged (except where roads need to be on more steeply sloping lands), rather these areas should be either grass-covered or topped with gavel to an all-weather standard to ameliorate stormwater runoff.</i></p> <p>Individual parking for each cabin is proposed rather than centralised parking, which departs from the above guideline. <b>Refer to DCP 2014 Issues Section.</b></p> <p><b>Other matters</b></p> <p><u>South facing slope</u></p> <p>In relation to aspect and orientation, the BRSS guidelines generally require rural tourism development to be sited on land with a northerly or easterly aspect. Southerly and westerly aspects are permissible, but only in circumstances where the Applicant is able to demonstrate other compensating arrangements</p>

		<p>to maximise solar energy collection and minimise energy use. Part 7.2 (7)(c) of the BRSS provides:</p> <p><i>“All cabins are located on land having either a North, Northwest, Northeast or East aspect or a slope of less than or equal to two degrees (2°) unless it can be demonstrated that other compensating arrangements will maximise solar energy collection and minimise energy use”.</i></p> <p>The development site has a south facing aspect, however, the proposed cabins are located on a high part of the site to take advantage of views and breezes and therefore have relatively good access to sunlight year round. The Applicant has opted to comply with the energy efficiency requirements of BASIX which includes 2kW solar photovoltaic energy systems for each cabin along with insulation and ceiling fans (for thermal comfort) and rainwater harvesting and storage.</p> <p>Given the sites relatively good solar access and adoption of compensating measures for energy efficiency, the proposal is considered to satisfy the requirements of the BRSS guidelines for aspect and orientation.</p> <p><u>Clustering of development</u></p> <p>In relation to clustering, the development extends over a total distance of 135m with an average separation distance between all buildings of 79m.</p> <p>Such an arrangement satisfies the clustering provisions in the BRSS guidelines, which requires cabins to be located 80m apart on average and no more than 160m at the most.</p> <p>Part 7.2 (7)(d) of the BRSS provides:</p> <p><i>“All holiday cabins are to be arranged in a ‘cluster pattern’ unless a dispersed arrangement can be clearly demonstrated to be an ecologically superior solution. In the context of rural tourist facilities, a ‘cluster’ is defined as a group of three (3) or more cabins located an average of 80m apart and not more than 160m apart from each other with adequate screening between cabins (i.e. to ensure privacy) and with the layout of the developments in the cluster having regard to the physical characteristics of the land and the need to provide access to the cabins for the provision of accident or fire emergency and other services such as</i></p>
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		<p><i>sewerage disposal system, water supply and electricity”.</i></p> <p><b>Environmental repair and enhancement</b></p> <p>Part 8.2 (1) of the BRSS guidelines requires that dwelling houses and holiday cabins in rural areas must contribute to environmental repair and enhancement as follows:</p> <p><i>“Planting of 900 native plants per dwelling-house or holiday cabin. (Thus a development comprising six (6) holiday cabins or dwelling houses would require no fewer than 5400 plantings)”.</i></p> <p>Under this guideline, 5400 plantings are required for the subject development.</p> <p>The Applicant has supplied a vegetation management plan that proposes 2145 new plantings plus 3.5 hectares of bush regeneration and weeding along the Byron Creek riparian corridor. The environmental enhancement works are deemed to be equivalent to 900 trees per cabin and therefore satisfy the requirements of the BRSS guidelines.</p> <p>See D3.3.4 for further explanation.</p>
D3.3.4 Rural Tourist Accommodation and Farm Stay Accommodation	No*	<p><b>South facing slope</b></p> <p>In relation to aspect and orientation, a similar control to BRSS guideline 7.2 (7)(c) is Prescribed under Part D3.3.4, but without the flexibility of allowing alternative solutions for solar collection and energy use.</p> <p><i>Prescriptive Measure D3.3.4 (2)(h)</i></p> <p>(iii) <i>all rural tourist accommodation is to be located on land having either a North, Northwest,/Northeast or Easterly aspect to maximise solar energy collection and minimise energy use;</i></p> <p>The proposed cabins are located on a south facing slope, which departs from the Prescriptive Measure. <b>Refer to DCP 2014 Issues Section.</b></p> <p><b>Vegetation Management Plan</b></p> <p>Prescriptive Measure 3 requires a vegetation management plan to be provided detailing where 900 local native trees per cabin are to be planted as environmental repair and enhancement for</p>

		<p>development.</p> <p>Equivalent ecological restoration may also be provided (in lieu of 900 trees) in certain circumstances as follows:</p> <p><i>“Equivalent ecological restoration may be provided where existing native vegetation occurs on site. It is preferred that remnant vegetation on site is restored to a local native plant community type before additional planting is undertaken. Weed control should prioritise invasive species and weeds of national significance (WONS)”.</i></p> <p>The application proposes a 3.5 hectare bush regeneration zone along the Byron Creek riparian corridor, weeding program and four restoration areas containing 2145 new rainforest trees.</p> <p>Council’s natural resource planner noted that the bush regeneration zone was equivalent to 5600 plantings, and along with the 2145 new rainforest trees and weeding program, was equivalent to the environmental benefit provided by 900 trees per cabin.</p> <p>On this basis, it is considered that the VMP will satisfy the environmental repair and enhancement requirements in accordance with Prescriptive Measure D3.3.4 (3) and the BRSS guidelines.</p>
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#### **4.4A Development Control Plan 2014 – Issues**

##### **Chapter D3 Part D3.2.3 Character and Design in Rural Zones**

The proposal has been designed with individual car parking for each cabin, which departs from the Byron Rural Settlement Strategy 1998 Best Practice Guidelines: Part 7.2, Guideline 5:

##### **Byron Rural Settlement Strategy, Part 7.2 Holiday Cabins - Guidelines**

5. *All weather centralised car parking must be provided on-site at a rate of at least 1 car space per holiday cabin. The paving of car-parking areas is not encouraged (except where roads need to be on more steeply sloping lands), rather these areas should be either grass-covered or topped with gravel to an all-weather standard to ameliorate stormwater runoff.*

The proposal must therefore be assessed against the Objectives and Performance Criteria of D3.2.3:

##### **Objectives**

1. *To ensure that tourist accommodation in Rural Zones is compatible with the surrounding landscape and with the character and amenity of development in the locality.*
2. *To implement the relevant Aims, Guiding Principles and provisions of the Byron Rural Settlement Strategy 1998.*



**Performance Criteria**

1. *Tourist accommodation development in Zones RU1 and RU2 must be compatible in character and amenity with the surrounding rural and natural landscape, and with development in the locality.*
- 5      2. *The provisions of Chapter D2 Residential Accommodation and Ancillary Development in Rural Zones apply to all tourist accommodation development in zones RU1 and RU2 in the same way they apply to residential accommodation in Rural Zones.*
- 10     3. *All development to which this Chapter applies in Rural Zones must be low scale consistent with the relevant Aims, Guiding Principles, Best Practice Guidelines and Performance Standards contained in the Byron Rural Settlement Strategy 1998 ('the Strategy') as follows:*
  - a) *The Strategy's relevant aims are:*
    - 15        i) *To ensure that ecological, social and economic considerations are successfully integrated into the decision-making process for all future rural settlement in Byron Shire.*
    - ii) *.....*
    - iii) *To ensure future rural settlement is directly linked to the repair, enhancement and protection of the natural environment, thereby increasing the Shire's natural capital.*
    - 20        b) *The Strategy's relevant Guiding Principles are:*
      - 25            i) *overriding principle -- all new rural settlement must meet the needs of Byron's residents today while conserving the Shire's ecosystems, agricultural viability, lifestyles, heritage and culture for the benefit of future generations;*
      - 30            ii) *sustainability -- development meets the needs of today without compromising the ability of future generations (long timeframes) to meet their own needs and enjoy a quality life resulting from clean air, water and soils;*
      - iii) *planning -- Shire wide planning identifies potential rural settlement areas integrated with catchment-based (geographical, water and social) planning;*
      - iv) *consultation -- there is full community consultation and participation with the local community prior to decision-making, and support for participatory settlement planning;*
      - 35            v) *environment -- existing habitat areas are identified, protected and enhanced, environmental repair is undertaken and corridors of native vegetation linking habitat areas are provided;*
      - vi) *water quality -- natural watercourses and the riparian lands, wetlands and groundwater systems are protected from sources of pollution and the water quality is maintained and improved;*
      - 40            vii) *identity -- Byron Shire's unique image, diverse lifestyle and local character are maintained;*
      - viii) *facilities -- adequate community facilities to meet the needs of rural settlement areas are provided; and*
      - 45            ix) *land use -- existing and potential agricultural and horticultural land uses and extractive resources on site are protected; and off-site, on adjacent and nearby areas, their land uses and resources are not adversely impacted by rural settlement.*

- c) *The relevant Best Practice guidelines are contained in Chapter 7 of the Strategy.*
- d) *The relevant Performance Standards are contained in Chapter 8 of the Strategy.*

**Assessment**

- 5 The overarching objective of D3.2.3 is to ensure that tourist accommodation is compatible with the rural character and amenity of the area and to implement the aims and guiding principles of the Byron Rural Settlement Strategy 1998 (BRSS).
- 10 In terms of planning objectives, the aim of BRSS Section 7.2 is to ensure that holiday cabins are provided “in harmony with the rural and natural environment”. The provision of centralised car parking can, in some circumstances, help to achieve that aim by minimising the visual and environmental disturbance caused by internal roads and car parking areas on the landscape.
- 15 In this particular instance, it is considered that the proposed car parking design is able to meet the Objectives of D3.2.3 and the Aims of the BRSS guidelines for the following reasons:
- The layout and design of the internal roads and car parking areas generally follows the contours of the slope and will not significantly detract from the surrounding rural environment, subject to the use of permeable surface treatments and appropriate use of landscaping.
  - Internal roads need to be in proximity to each cabin to allow access for emergency vehicles such as fire fighting trucks or ambulances. If strict compliance were enforced, the Applicant would need to dedicate an additional area for centralised guest car parking which is unlikely to result in a superior outcome in terms of visual or environmental outcomes.
  - There is a need to provide vehicular access and disabled parking in close proximity to the adaptable cabin. Due to the site topography, a centralised car parking area would likely need to be located on a flatter part of the site near to Bangalow Road and this would make access for disabled persons more difficult than the current proposal.

**Chapter D3 Part D3.3.4 Rural Tourist Accommodation and Farm Stay Accommodation**

- 35 Parts D3.3.4, Prescriptive Measure 2 (h)(ii) provides that rural tourist accommodation is to be located on land having a north, north-west, north-east or easterly aspect.

**Prescriptive Measure D3.3.4 (2)(h)(ii)**

- 40 *“All rural tourist accommodation is to be located on land having either a North, Northwest, Northeast or Easterly aspect to maximise solar energy collection and minimise energy use”.*

- 45 The Application seeks approval for cabins on a south facing slope, and is therefore not strictly consistent with those provisions. An assessment against the Performance Criteria and Objectives of D3.3.4 is required.

**Objectives**

- 1. *To ensure that rural tourist accommodation does not detract from the rural and natural character of its locality.*
- 2. *To ensure that rural tourist accommodation does not adversely affect the conduct and productivity of agricultural operations on the site or nearby lands.*

3. *To facilitate and support the establishment of low scale farm tourism as a secondary business to primary production, where farm stay accommodation is proposed.*

**Performance Criteria**

1. *The development must be located and operated so that it does not:*
  - 5 a) *adversely affect the conduct and productivity of agricultural operations on the site;*
  - b) *create potential for conflict with adjoining land uses;*
  - c) *disrupt environmental enhancement projects on the land; and*
  - d) *impact on the ecological or environmental values of the land; and*
  - 10 e) *conflict with buffer requirements pursuant to Chapter B6 Buffers and Minimising Land Use Conflict.*
2. *Rural tourist accommodation must be designed and located to be compatible with the surrounding rural and natural landscape. Where new buildings are proposed to be constructed for the purpose of rural tourist accommodation such buildings are to be clustered and located in proximity to the primary dwelling house on the lot.*
- 15 3. *The development is to be low scale and designed and located to be compatible with the surrounding rural environment and of minimal environmental impact.*
4. *Car parking for guests must be provided in accordance with Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access.*
- 20 5. *Provision of recycling and waste management facilities must be in accordance with Chapter B8 Waste Minimisation and Management.*
6. *The development must observe the road and boundary setback requirements specified in Chapter D2 Residential Accommodation and Ancillary Development in Rural Zones (D2.2.2) and the character and visual impact requirements (D2.2.3).*
- 25 7. *Rural tourist accommodation to be suitably sited in accordance with the requirements of Chapter C3 Visually Prominent Sites, Visually Prominent Development & View Sharing.*
8. *Environmental reparations are required as a part of any Rural Tourist Development. Such repairs are to be focused on the expansion of wildlife corridors, repairing and reconnecting vegetation remnants and enhancing riparian areas and habitat for threatened species and endangered plant communities.*
- 30

**Assessment**

- 35 There are no specific Objectives or Performance Criteria under D3.3.4 relating to aspect, solar access or energy efficiency. Criteria dealing with rural character and low scale development having minimal environmental impact are considered relevant.

40 As noted elsewhere in this report, the proposed development is located on an elevated site with relatively good access to sunlight year round and the Applicant has opted into energy saving measures through BASIX including solar PV energy systems for each cabin. The site also has a pleasant outlook offering a high level of amenity for users.

45 On balance, the proposal is considered to be consistent with the relevant Performance Criteria and Objectives of D3.3.4, being a low scale development with minimal impact on the surrounding environment (Criteria 3) that does not detract from the rural and natural character of the locality (Objective 1).

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

The development is wholly within the RU2 Rural Landscape zone under Byron LEP 2014. The provisions of DCP 2010 are therefore not a relevant matter for consideration in this assessment.

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

There are no planning agreements or draft planning agreements associated with the application.

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

Clause 92 Additional matters that consent authority must consider

There are no additional matters under the Regulations that require further consideration. Conditions relating to *AS 2601—the demolition of structures* are not required for the subject application as no demolition is proposed.

**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?
<b>Natural environment</b>	<p><u>Impacts on vegetation and biodiversity</u></p> <p>The proposal will not have a significantly adverse impact on the natural environment or biodiversity. The overall effect on the environment is likely to be positive if the restoration of Byron Creek is undertaken in accordance with the submitted vegetation management plan.</p> <p>The project will involve establishing a 3.5 hectare bush regeneration zone along the riparian corridor, plus 2145 new rainforest trees in 4 additional restoration areas along with weeding and ongoing management.</p> <p><u>Clearing entitlements under other legislation</u></p> <p>No clearing is required to establish asset protection zones around the development. In addition, there is no significant vegetation within 50m of the proposed development that would be affected by the 10/50 Clearing Code.</p> <p>However, to ensure the environmental enhancement program cannot be unduly affected by clearing allowances under other legislation, a condition is recommended that 'switches off' Part 5A of the Local Land Services Act and the RFS 10/50 Clearing Code. This will prevent future clearing for agriculture without the prior approval of Council or the native vegetation panel.</p>
<b>Built environment</b>	<p><u>Character, locating, siting, scale and external appearance</u></p> <p>The design, siting and character of the development is considered to be low scale and generally compatible with the characteristics of the surrounding environment. The cabins are single storey buildings of 60m<sup>2</sup>, set below the ridgeline and incorporating non-reflective earth toned materials and colours, interspersed with landscaping.</p> <p><u>Hazards</u></p> <p>The site is identified as bushfire prone land but is otherwise unaffected by natural or man made hazards. The only other issue relates to overhead</p>

	<p>powerlines however these are to be relocated towards Bangalow Road, well clear of the development site.</p> <p>The proposed development is capable of meeting RFS bushfire safety requirements which includes the preparation of a bushfire emergency management and evacuation plan.</p> <p><u>Relationship to development in the locality</u></p> <p>Development in the Talofa area consists of farms, dwellings used for rural living and a small number of rural tourist facilities.</p> <p>The amended proposal (6 cabins) is similar in scale and design to other tourist facilities in the area and has been appropriately sited and designed to minimise the potential for land use conflict with adjoining agricultural uses.</p> <p>Concerns were raised in submissions over cumulative impacts (e.g. traffic, over development, visual impact), although this is not considered to be sufficient grounds for refusal in the circumstances. The site is located in a different viewing catchment to the adjacent tourist facility at 460 Bangalow Road and the estimated traffic generation is approximately 1% over current volumes and well within the capacity of the road network. It is considered that the development is unlikely to have a significant cumulative effect that would result in unacceptable impacts on the natural or built environments.</p> <p><u>Impacts on the existing and likely future amenity of the locality</u></p> <p>The development has substantial buffers to neighbouring dwellings and properties such that there is unlikely to be any significant impact on existing and likely future amenity of the area. Conditions are recommended preventing the use of lighting in the evening aside from that reasonably required for safety and use of the development.</p> <p>In terms of privacy, the proposed cabins are oriented in a southerly direction, away from neighbouring residences. The development layout offers reasonable internal privacy for users without unduly causing overlooking or privacy issue for neighbours. The nearest dwellings are 330m and 360m to the east and west respectively.</p>
<b>Social Environment</b>	No. The proposal will not have a significant social impact on the locality.
<b>Economic impact</b>	The development is likely to provide a minor short term economic benefit by providing employment in the construction sector and contributing to the local tourism sector in the longer term.

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

- 5 The site attributes are generally conducive to the development having regard to slope, hazards, vegetation, services, views, amenity, land use conflict and visual impact. The site is considered to be generally suitable for the development subject to appropriate conditions of consent.

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

- 10 The development application was publicly exhibited for a period of 14 days in accordance with the provisions of Byron DCP 2014. Council received three (3) submissions objecting to the application.

Concerns from surrounding land owners mostly focus on the scale of the development, and the associated impacts on rural and scenic character. It should be noted that at the time of advertising, eight cabins were proposed.

- 5 Issues raised in the submissions are summarised and discussed below.

Summary of Issues	Comment
<b>Scale and density of development</b>	
The development is not “small scale” in the context of its locality and property size.	The development has been reduced to six (6) cabins and is now considered to meet the definition of ‘small scale’ under LEP 2014. The development is capable of being generally managed by the owner of the property and will have minimal visual and environmental impact.
The scale and location of the development is not low scale and is not compatible with the surrounding landscape and character being generally broad pasture, interspersed with vegetation patches and a few well, spaced dwellings and accommodation.	See above.
The application does not demonstrate how the proposed development will be managed and operated by the principal owner living on the property (“without requiring additional ‘outside staff’ - BRSS, 1988) to establish that the development is “small-scale”.	<p>Clause 6.8 of Byron LEP 2014 defines small scale as meaning:</p> <p><b><i>small scale means a scale that is small enough to be generally managed and operated by the principal owner living on the property.</i></b></p> <p>The term “generally” implies that most, but not all of the maintenance and operation of the facility will be handled by the principle owner living on the property. It is reasonable to expect that some services such as cleaning or linen could be handled by external providers.</p> <p>I note that DCP’s (and the BRSS by reference) cannot impose a standard or definition that is more onerous or inconsistent with a higher order planning instrument such as an LEP or SEPP. The meaning of “small scale” therefore must be taken from LEP 2014, rather than from the BRSS.</p>
Eight cottages are proposed which in combination with the existing cottage makes nine (9) residential buildings for the property, which exceeds the maximum allowable of six (6), further demonstrating the adverse character and visual impact of the development.	See above. The total number of buildings on the property will be nine (9), comprising six cabins, one house, and two sheds. In the context of a 42 hectare property, the proposal is not considered to be an overdevelopment of the site and is similar to other properties in the Talofa area.
This is a significant departure from the concept of “small scale, owner operated”, and opens the door to 10 or even 12 cabin developments.	The application has been reduced to 6 cabins and generally complies with the relevant planning controls. Approval of the application would be unlikely to set an undesirable precedent allowing 10 or 12 cabin developments in the future.

<b>Summary of Issues</b>	<b>Comment</b>
<b>Character and visual impact</b>	
The development will have a detrimental impact on the scenic amenity and rural landscape character of the locality.	A visual impact assessment has been provided demonstrating that the proposal is unlikely to have a significant impact on the character of the area. Refer to <b>Attachment 5</b> .
The cumulative impacts of this development in combination with existing residential buildings and a recently established adjacent tourist facility will result in the locality having the appearance of a subdivision rather than the beautiful rolling countryside enjoyed at present.	Noted. However, the adjacent tourist facility at 460 Bangalow Road is located on the opposite side of the ridge (in a different view shed) and is screened behind mature vegetation. Therefore, the cumulative visual effect is likely to be minimal.
Significant adverse effect on the rural character of the locality when consideration of cumulative impacts is taken into account.  Approval of this development will result in 19 residential buildings within a 60 metre setback from Bangalow Road along a 500m stretch of the road.  Whereas, the stretch of road 500m further west and east has two (2) and one (1) residential buildings respectively within the 60m road setback.	See above.
The proposed development is not designed to be compatible with the surrounding rural and natural landscape.	The number of cabins has been reduced to six and additional landscaping proposed. The proposal is on balance considered to be compatible with the surrounding landscape.
The amount of sealed road encompassing the driveway access for the eight cottages, 11 new car parking spaces, pathway around each cottage, fire tank access, as well as the tanks themselves will form a considerable scar on the landscape.	Conditions area recommended for the access roads and parking bays to be appropriately landscaped to screen and soften the appearance of these works on the landscape.
<b>Zone objectives – relationship with primary production</b>	
The application does not adequately demonstrate how the proposal will be consistent with objectives of the RU2 zone, in particular: <ul style="list-style-type: none"> <li>No details provided on how the development will encourage sustainable primary industry production.</li> <li>The application has not demonstrated that the proposed development will maintain the rural landscape character of the land.</li> <li>Eight cottages on a 40 hectare property is not small scale in the context of the locality.</li> </ul>	The proposed development will be associated with an environmental conservation project to regenerate the Byron Creek riparian corridor. Existing and potential future agricultural uses of the land, including the palm plantation and cattle grazing will not be prejudiced by the proposal.
It is not adequately demonstrated how the development will complement and enhance primary production on the property.	See above.



Summary of Issues	Comment
<b>Water supply</b>	
<p>The recent drought saw many rural homes experiencing delays of 6 weeks waiting for water deliveries. This development only relies on rainwater, yet each cottage has a flush toilet, shower and a kitchenette and a plunge pool. The RFS also need 10,000L dedicated for fire fighting purposes. This is not sustainable.</p>	<p>Noted. As climactic conditions become more variable there will be an increased probability of dry periods and droughts.</p> <p>The applicant has indicated that a centralised water tank will be available as a back-up supply for the proposed cabins, which is considered to be a reasonable solution in the circumstances.</p>
<p>Proposed Water Tanks would appear to be inadequate. Having lived in this exact vicinity for the past 20 years, the changing climate is such that for the past 5 years we now have extended periods of minimal rainfall.</p> <p>Given these proposed cabins also have individual swimming pools, and the property also proposed to continue to run cattle, the proposed water tank requirements appear grossly inadequate to satisfy all the water needs that will be required to adequately ensure there is an adequate water supply at all times.</p>	<p>See above.</p>
<b>Vegetation</b>	
<p>Recent drought highlights the vulnerability of rural properties with nearby vegetation. Planting 900 trees per cottage sounds excellent but when a drought puts a deep ground cover of fallen leaves this is a danger. From experience, it's easy to plant and weed once, but to maintain all the plants and keep the weeds at bay is another.</p>	<p>Noted. The proposed VMP includes a weed removal program and has a 5 year management timeline.</p>
<b>Rural and nature based tourism objectives – LEP 2014 clause 6.8</b>	
<p>The proposal is not consistent with the objectives and requirements of clause 6.8 of LEP 2014 – rural and nature based tourism, as eight cottages on a 40 hectare property:</p> <ul style="list-style-type: none"> <li>• Is not small scale or low impact in the context of the locality,</li> <li>• Will adversely impact on scenic values of the land and amenity, and</li> <li>• Is not complementary to the rural or environmental attributes of the land.</li> </ul>	<p>Noted. The application has been reduced in scale to six cabins and is consistent with other similar rural tourism developments in the area.</p>
<b>Landscaping</b>	
<p>Landscaping plan not provided.</p>	<p>Noted. A landscaping concept plan has since been provided illustrating plantings along internal roads and driveways and between cabins. Conditions are recommended to provide further plantings to screen the development from publicly accessible locations and neighbouring properties.</p>

<b>Summary of Issues</b>	<b>Comment</b>
<b>Visual impact</b>	
The proposed vegetation management plans, whilst extensive, do not appear to show any significant vegetation to protect the “visual integrity of the existing rural landscape”. Under this proposal, travelling along Bangalow Road from Hayters Hill towards Bangalow, the visual outlook will be of a “small urban subdivision”, located in a rural environment, and inconsistent with the planning controls.	Noted. Additional information regarding landscaping has been supplied, although additional plantings are considered necessary to screen the development from Bangalow Road.
<b>Disabled access</b>	
The proposal fails to adequately address the requirements of Disabled people. There appears to be no reference to accessible parking, and the relevant requirements for hard surfaces and slope levels across the site.	Amended plans have been prepared including provision of disabled facilities in one of the cabins.
<b>Traffic</b>	
The development will increase the volume of traffic onto Bangalow Road.	Noted. The development is estimated to result in approximately 1% increase in traffic on Bangalow Road over current volumes. Council’s Development Engineer has assessed the development as low impact. Bangalow Road is a sealed two way road in reasonable condition and there are good lines of sight to and from the proposed access point for the new development.
<b>Driveway access and road setbacks</b>	
The proposed driveway access at 3.5m in width appears to be inconsistent with council requirements that this be 4m	Noted. The main driveway access is 6m wide, which satisfies Council and RFS requirements. Internal roads could easily be widened by an additional 500mm to achieve 4m clearance as per RFS conditions.
The additional proposed access will result in a total of three road accesses within 100 metres for the one property also contributing to the adverse visual impact and large-scale of the development.	Amended plans have been supplied reducing the number of driveway from three to two.
The cottage located between the “existing cottage” and shed on the site plan does not meet the minimum road setback for classified roads and should not be approved.	Noted. This cabin has since been removed from the plans. A consolidated arrangement of 6 cabins is now proposed with each building complying with the 15m road boundary setback requirement specified in Part D2.2.2.

#### **4.10 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**

- 5 The site is not connected to reticulated water or sewer services. Accordingly, there is no nexus to charge water and sewer levies under the Water Management Act.

**5.2 Section 7.11 Contributions**

- 10 The proposal is for tourist accommodation and is therefore subject to a section 7.12 levy.

**6. CONCLUSION**

- 15 The proposed development is a satisfactory response to the site's constraints and the applicable planning controls that apply to the land. Potential visual and environmental impacts have been addressed through a reduction in the scale of the development, appropriate landscaping, materials and a vegetation management plan to restore the Byron Creek riparian corridor.

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

**7. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED**

- 25 *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.*

<b>Statement of Reasons</b>	
	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.

<b>How community views were addressed</b>	
	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.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.3

**Report No. 13.3** **PLANNING - Development Application 10.2020.272.1 Use of Converted Farm Shed as Dwelling 2 of Detached Dual Occupancy at 530 Lismore Road, Binna Burra**

**Directorate:** Sustainable Environment and Economy

5 **Report Author:** Jordan Vickers, Planner

**File No:** I2020/1445

### 10 **Proposal:**

<b>DA No:</b>	10.2020.272.1		
<b>Proposal description:</b>	Use of Converted Farm Shed as Dwelling 2 of Detached Dual Occupancy		
<b>Property description:</b>	LOT: 100 DP: 1209712		
	530 Lismore Road BINNA BURRA		
<b>Parcel No/s:</b>	267763		
<b>Applicant:</b>	Newton Denny Chapelle		
<b>Owner:</b>	Mrs L James & Stoneridge Pastures Pty Ltd		
<b>Zoning:</b>	RU1 Primary Production / PART RU2 Rural Landscape / PART 1A General Rural zone Byron LEP 1988		
<b>Date received:</b>	17 June 2020		
<b>Integrated / Designated Development:</b>	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input checked="" type="checkbox"/> Not applicable
<b>Concurrence required</b>	No		
<b>Public notification or exhibition:</b>	<ul style="list-style-type: none"> <li>– Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications</li> <li>– Exhibition period: 2/7/20 to 22/7/20</li> <li>– No Submissions were received</li> </ul>		
<b>Planning Review Committee:</b>	Not applicable		
<b>Variation request</b>	Clause 4.6		
<b>Issues:</b>	<ul style="list-style-type: none"> <li>- Located 173m from existing dwelling (exceeds the 100m maximum separation distance between dwellings – variation sought to the development standard)</li> </ul>		

### **Summary:**

15 Development Consent is sought for the use of an already converted Farm Shed as Dwelling 2 of a Dual Occupancy (detached) on rural land at Binna Burra. The converted farm shed is located 173m from the existing dwelling on the same lot. This exceeds the maximum 100m separation distance between dual occupancy dwellings permitted under the Byron LEP 2014.

20 A Clause 4.6 variation has been lodged to vary the 100m development standard.

Strict compliance with the 100m development standard is considered unreasonable and unnecessary in the circumstances.

The proposed dwelling already exists (approved as a shed); there is no need for additional vegetation clearing, excavation/fill and installation of infrastructure (OSMS, driveway, stormwater etc.). The two dwellings will be located on the same lot.

- 5 In consideration of granting a variation to the development standard, the ongoing use of the shed as a dwelling is not inconsistent with the objectives of the RU2 Zone or the objectives of Clause 4.2D of the BLEP2014.

- 10 If Council were to require strict compliance with the development standard, the landowner would have to decommission the unauthorised dwelling back to a shed, and construct a new second dwelling 73m closer to the existing dwelling to achieve the same end.

- 15 This scenario would be inconsistent with the compliance and enforcement principles under the Enforcement Policy. In particular proportionality: ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the breach; making cost-effective decisions about enforcement action; taking action to address harm and deter future unauthorised activity.

- 20 The application is recommended for approval subject to the conditions listed in the recommendation. This recommendation accords with Pathway 1 under the draft Unauthorised Dwelling Policy (**20-283 & 20-471**) in so far as the land has a dwelling entitlement and contains unauthorised residential accommodation – and development consent may be sought and granted.



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

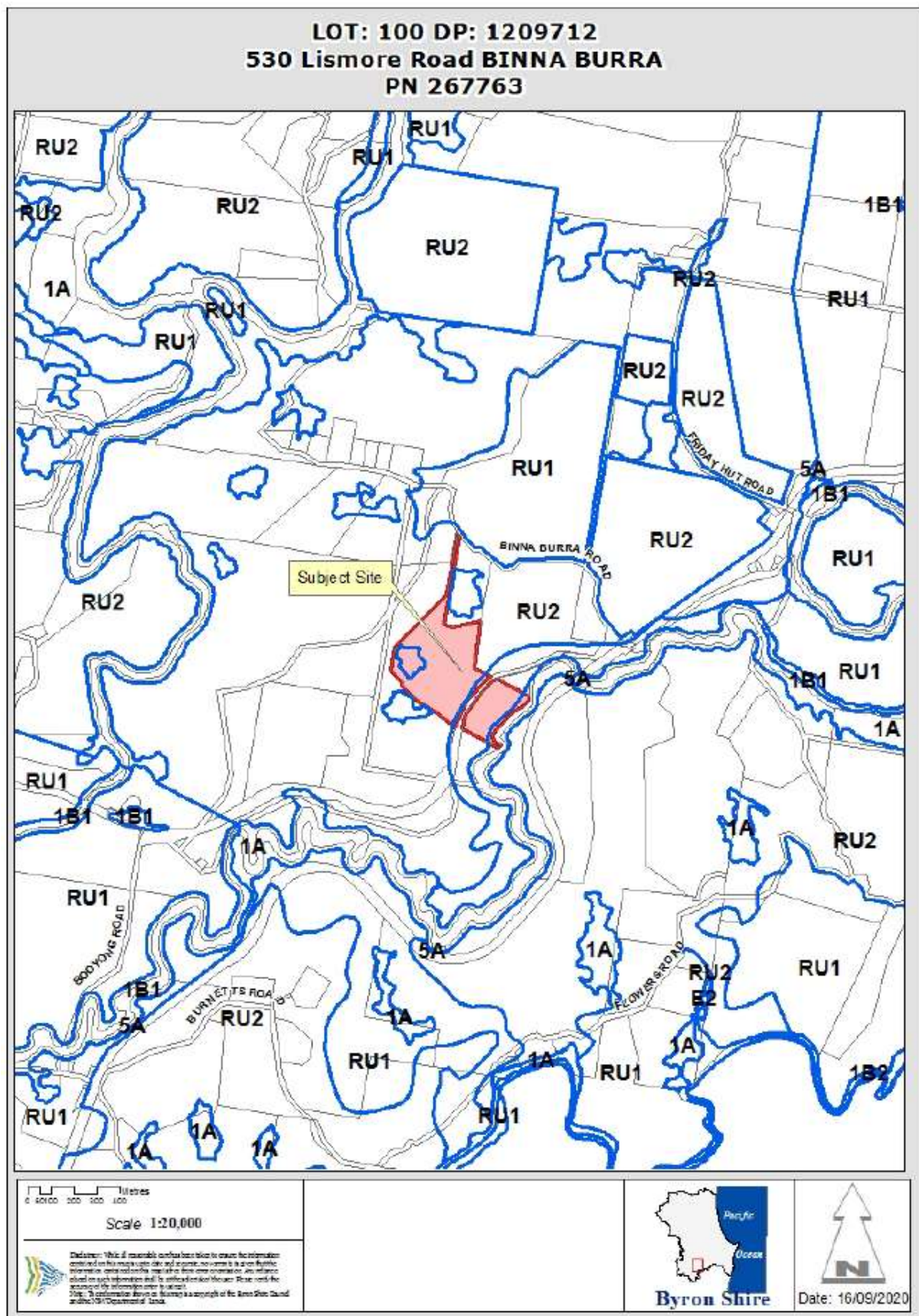
### RECOMMENDATION:

**That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.272.1 for Use of Converted Farm Shed as Dwelling 2 of Detached Dual Occupancy, be granted consent subject to the conditions of approval in Attachment 2 (#E2020/73903).**

### Attachments:

- 35 1 Plans DA10.2020.272.1, E2020/73903 
- 2 Recommended Conditions of Consent DA 10.2020.272.1, E2020/73931 

REPORT





**Assessment:**

**1. INTRODUCTION**

**5 1.1. History/Background**

A search of Council's records reveals the following site history:

DA no.	Description	Outcome
5.1997.462.1	Subdivision – Boundary adjustment	Approved - 12/11/1997
5.1998.001.1	Dwelling – rural – relocate dwelling	Approved - 02/03/1998
6.1998.2002.1	Relocated Dwelling	Finalised - 12/12/2001
16.2000.4037.1	CDC – Carport	Approved - 26/10/2000
10.2008.120.1	DA – Farm Shed	Approved - 23/05/2008
10.2008.120.2	S96 – Rotate farm shed	Approved – 30/06/2008
16.2008.89.1	Alterations & Additions to Existing Dwelling	Approved - 23/05/2008
16.2008.89.2	S96 modification to kitchen & laundry	Approved - 30/06/2008
10.2019.440.1	Shed	Approved – 16/10/2019



**'Farm shed' advertised for private rental**

10

**1.2. Description of the proposed development**

15

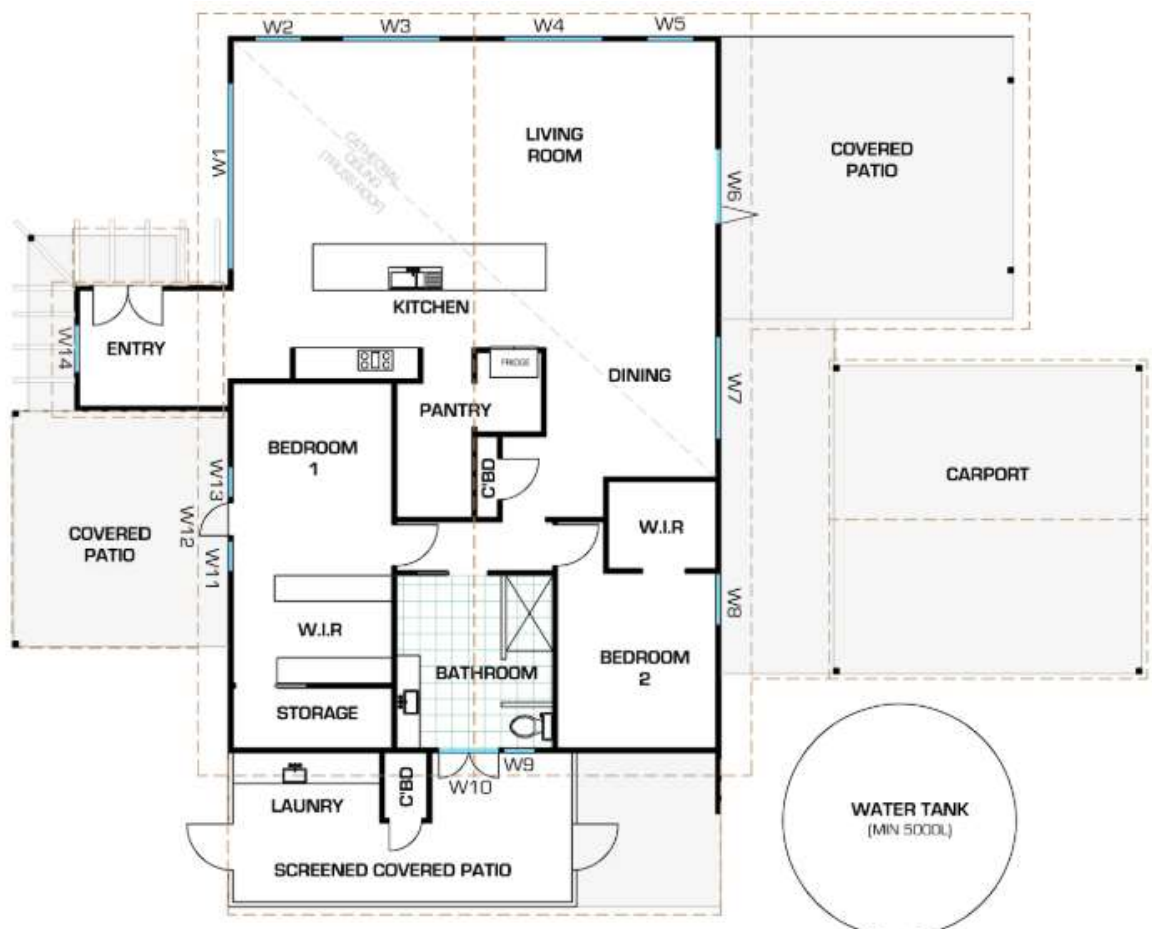
This application seeks approval for use of an already converted Farm Shed as Dwelling 2 of a detached dual occupancy. The proposed dwelling 2 of the Dual occupancy as built, is located 173m from the existing dwelling on the property. The dwelling contains two bedrooms, one bathroom, a double carport and various in/outdoor living areas. Access to the dwelling is granted via the existing vehicle crossover and driveway, no vegetation clearing or excavation is required for the development.

This application is in response to Council's enforcement notification process.



### Description of the site

5 The subject site known as 530 Lismore Road, Binna Burra and legally described as lot 100 on DP1209712 has a total site area of 17.75ha and is located within the RU1 Primary Production and RU2 Rural Landscape zones of the Byron LEP 2014 and 1A General Rural zone of the Byron LEP 1988. The site is currently improved by a single dwelling house, domestic outbuildings and pockets of significant vegetation.



A site inspection was carried out on 1 July 2020.

Land is legally described	LOT: 100 DP: 1209712	
Property address	530 Lismore Road BINNA BURRA	
Land is zoned:	RU1 Primary Production / PART RU2 Rural Landscape / PART 1A General Rural Byron LEP 1988	
Land area is:	17.75ha	
Property is constrained by:	Flood Liable Land, Bushfire prone land, High Environmental Value vegetation	
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

## 2. SUMMARY OF REFERRALS

5

Referral	Issue
Environmental Health Officer*	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
Building Surveyor	No objections subject to conditions.
S94 / Contributions Officer	No objections subject to conditions.

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

### Issues:

#### Development Engineer:

- 10 Consent from Council must be obtained for works within the road reserve pursuant to Section 138 of the Roads Act 1993. Works required are on a classified road and as such concurrence from Roads and Maritime Services (RMS) will be required. Although this triggers Integrated Development in accordance with the EP&A Act 1979, the applicant requested that the proposal not be referred under the subject application, noting that they will refer to RMS when applying for the
- 15 s138 Roads Act approval.. Accordingly, a Condition has been imposed requiring an upgrade to the driveway, with a note advising that concurrence is required from RMS.

## 3. SECTION 4.14 – BUSH FIRE PRONE LAND

- 20 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 (PBP) 2019'. The site is bush fire prone land.

The applicant has provided that, as an APZ of 30m can be provided surrounding the building, the Grassland deeming provisions are applicable. The Planning for Bushfire Protection 2019 document only permits use of the Deeming provisions where the maximum downslope is 15 degrees.


- 25 Council's Geocortex tool indicates that surrounding the development, the aggregate slope is 15-30%, which approximately equates to 9 – 15 degrees (as informed by the PBP 2006 document). Accordingly, the Deeming Provisions are applicable. To accord with the Grassland Deeming Provisions, the proposed dwelling must achieve the following standards which will be imposed as conditions of consent:
- 30 - BAL 12.5;
- Access to comply with Table 5.3b;

- Static water supply of 20,000L;
- Landscaping to comply with provisions of Appendix 4.

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

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

**4.1 State Environmental Planning Instruments**

	<b>Satisfactory</b>	<b>Unsatisfactory</b>
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Based on the available information, the site is considered suitable for residential use in its current state and no further investigation is warranted.		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposal is accompanied by a valid BASIX certificate.		
State Environmental Planning Policy (Infrastructure) 2007	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The shed that has been converted to a dwelling is proximal to existing overhead Essential Energy infrastructure, however referral is not triggered under clause 45 of the Infrastructure SEPP.		
		

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

*Note: while the site is traversed by both the RU1 and RU2 zones, the Dual occupancy dwelling that is the subject of this application is located entirely within the RU2 zone.*

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



- (a) The proposed development is defined in the LEP 2014 Dictionary as Dual Occupancy (detached);
- (b) The land is within the RU1 Primary Production / PART RU2 Rural Landscape / PART 1A General Rural (1988 LEP) according to the Land Zoning Map;
- 5 (c) The proposed development is Permitted with consent; and
- (d) Regard is had for the Zone Objectives as follows:

<b>Zone Objective</b>	<b>Consideration</b>
<ul style="list-style-type: none"> <li>To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.</li> <li>To maintain the rural landscape character of the land.</li> <li>To provide for a range of compatible land uses, including extensive agriculture.</li> <li>To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality.</li> <li>To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.</li> </ul>	<p>The existing shed that has been converted to a dwelling does not compromise the potential use of the land, rural character or impact on neighbouring properties.</p>

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

The provisions of Clause 4.2 state

- (1) *The objectives of this clause are as follows—*
- 15 (a) *to provide alternative accommodation for rural families and workers,*
- (b) *to ensure that development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land,*
- (c) *to set out consent considerations for development of dual occupancies (detached) and secondary dwellings to address matters such as access, siting, land suitability and potential*
- 20 *impacts.*
- (2) *Development consent must not be granted to development for the purpose of a dual occupancy (detached) or secondary dwelling on land in Zone RU1 Primary Production or Zone RU2 Rural Landscape unless the consent authority is satisfied that—*
- 25 (a) *the development will not impair the use of the land for agriculture or rural industries, and*
- (b) *each dwelling will use the same vehicular access to and from a public road, and*
- (c) *any dwellings will be situated within 100 metres of each other, and*
- (d) *the land is physically suitable for the development, and*
- (e) *the land is capable of accommodating the on-site disposal and management of sewage for the development, and*
- 30 (f) *the development will not have an adverse impact on the scenic amenity or character of the rural environment.*

The existing shed that has been converted to a dwelling currently provides residential accommodation for rent. The building being single storey slab on ground is at a scale and built form consistent to that in the surrounding area. In terms of the specific provisions under Subclause 2, the development raises no issues other than non compliance with the 100 metre separation distance from the other dwelling on the property. A variation is sought to this development standard and is discussed below.

**Clause 4.6:**

As per the planning circular *PS 18-003 - Variations to development standards*, the Secretary's concurrence can be assumed where a proposal seeks a variation that is less than 10% of the numerical development standard. In this case, the numerical development standard is clause 4.2D (2) (c), which requires that dual occupancy dwellings are located within 100m of one another. The proposed exceedance of the standard is 73m. Thus, as the proposed variation to the numerical development standard is 73% concurrence cannot be assumed and the application must be determined by Council.

**1. Introduction – Summary of Proposed Development**

The application is for Use of Converted Farm Shed as Dwelling 2 of Detached Dual Occupancy.



The converted farm shed is located 173m from the existing dwelling on the property, being 73m more than the prescribed numerical development standard (see image below).

**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:

- 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.
- 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**

The Development Standard to be varied is the 100m maximum distance between dual occupancy buildings, prescribed by Clause 4.1D(c) of LEP 2014.

**4. Extent of Variation to the Development Standard**

The extent of the variation is 73m, being a variation of 73% to the development standard.

**5. Objective of the Development Standard**

The objectives of the development standard, as outlined in subclause 4.2D are:

- a) to provide alternative accommodation for rural families and workers,
- b) to ensure that development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land,
- c) to set out consent considerations for development of dual occupancies (detached) and secondary dwellings to address matters such as access, siting, land suitability and potential impacts.

**6. Objective of the Zone**

The objectives of the Rural Landscape (RU2) zone are as follows:

- (a) To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- (b) To maintain the rural landscape character of the land.
- (c) To provide for a range of compatible land uses, including extensive agriculture.
- (d) To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality.
- (e) To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.

**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 Clause 4.6 written request submitted by the applicant in support of the DA advises as follows in this regard:

*“The variation to the development standard is considered warranted for the following reasons:*

**a. The proposal complies with the RU2 zone objectives**

*As discussed in the applicant’s statement of environmental effects, the proposal meets the objectives of the RU2 zone in that the proposal will not impair the use of adjoining land for agricultural purposes. Furthermore, cattle grazing will still occur on the site.*

**b. The proposal meets the objectives of Clause 4.2D**

*The proposal will provide alternative accommodation on the allotment that is of a scale and nature that is compatible with the existing development types in the locality. Alternate sites within 100m of the existing dwelling were investigated but were not considered suitable due to the loss of grazing land and the duplication of infrastructure.*

**c. The shed is proposed to be converted to negate the need for location of the dwelling has been chosen to negate the need for grazing land to be lost.**

*In this regard:*

- *Converting the shed will not result in a loss of grazing land;*
- *Converting the shed will not duplicate existing infrastructure;*

- *Converting the shed will not require earthworks to create a level building pad*
- *Converting the shed is an adaptive reuse of existing infrastructure and services.*

5                    *Strict compliance with the 100 metre development standard is considered unnecessary in this instance given the reasons discussed above and within the submitted documentation. Additionally, the proposal will not impair the use of the land for agricultural purposes.”*

Officer comment:

10                    The proposed dwelling already exists (approved as a shed); there is no need for additional vegetation clearing, excavation/fill and installation of infrastructure (OSMS, driveway, stormwater etc.). The two dwellings will be located on the same lot.

15                    In consideration of granting a variation to the development standard, the ongoing use of the shed as a dwelling is not inconsistent with the objectives of the RU2 Zone or the objectives of Clause 4.2D of the BLEP2014.

20                    If Council were to require strict compliance with the development standard, the landowner would have to decommission the unauthorised dwelling back to a shed, and construct a new second dwelling 73m closer to the existing dwelling to achieve the same end.

25                    This scenario would be inconsistent with the compliance and enforcement principles under the Enforcement Policy. In particular proportionality: ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the breach; making cost-effective decisions about enforcement action; taking action to address harm and deter future unauthorised activity.

30                    The variation to the development standard is supported in this case.

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

35                    The Clause 4.6 written request submitted in support of the DA advises as follows in this regard:

40                    *“As demonstrated above and within the SEE submitted to Council, there is sufficient environmental planning grounds to justify the breach of the development standard.”*

Officer comment:

35                    An excerpt from Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 notes that:

40                    *“The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.”*

45                    The extent of the variation sought is 73m. Based on the staff assessment above, it is considered that there are sufficient environmental planning grounds to justify the contravention of the standard.

***(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?***

45                    Regarding the objectives of the standard and the zone, the Clause 4.6 written request submitted in support of the DA advises as follows:

*“The variation to the development standard is considered warranted for the following reasons:*



**a. The proposal complies with the RU2 zone objectives**

As discussed within the statement of environmental effects, the proposal meets the objectives of the RU2 zone in that the proposal will not impair the use of adjoining land for agricultural purposes. Furthermore, cattle grazing will still occur on the site.

**b. The proposal meets the objectives of Clause 4.2D**

The proposal will provide alternative accommodation on the allotment that is of a scale and nature that is compatible with the existing development in the locality. Alternate sites within 100m of the existing dwelling were investigated but were not considered suitable due to the loss of grazing land and the duplication of infrastructure.

Officer comment:

The proposal is consistent with the objectives of the development standard and zone as it:

- maintains the rural landscape character of the land;
- provides alternate residential accommodation in the locality;
- is of a scale and nature that does not adversely impact the primary production potential and environmental capabilities of the land.

No submissions were received to the proposal.

The recommendation to support the variation accords with Pathway 1 under the draft Unauthorised Dwelling Policy (20-283 & 20-471) in so far as the land has a dwelling entitlement and contains unauthorised residential accommodation – and development consent may be sought and granted. This satisfies the public interest in this case.

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

The proposal raises no other issues under the LEP.

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

Part of the site is within the 1A General Rural zone. That part of the land the subject of this application is within RU2 zone of LEP 2014. The proposal raises no issues that require assessment against BLEP 1988.

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

There are none.

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

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

Part A	<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"/> B6  <input checked="" type="checkbox"/> B8
Part C Chapters:	<input checked="" type="checkbox"/> C3
Part D Chapters	<input checked="" type="checkbox"/> D2

**Chapter D2.5.2 – Character and Siting of Dwellings**

Prescriptive Measure 2 prescribes (in accordance with LEP clause 4.2D (2)(b)) that Dual occupancy (detached) dwellings are no more than 100m apart at closest point. The development presents a separation distance of 173m between the Dual occupancy dwellings. A variation to this development control has been considered above under the clause 4.6 variation discussions above.

The proposed development raises no other issues under the DCP 2014.

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

Byron DCP 2010 does not apply in this case.

**Environmental Planning & Assessment Regulation 2000 Considerations**

No issues under the Regulations require consideration.

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

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

Council Policies applicable to the proposed development have been considered through the assessment of this application with relevant conditions imposed where necessary.

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

<b>Issue</b>	<b>Comment</b>
<b>Services</b> - Water/ Sewer/ Stormwater - Ph/ power - Access	- The site is connected to power and telecommunications infrastructure and has adequate water supply in accordance with the DCP. - The building is connected to an approved On-site Sewage Management (OSMS) system which Council's Environmental Health Officer has confirmed is suitable for the development. - Access is granted via a lawful vehicle crossover at Lismore Road.
<b>Onsite Effluent Disposal</b>	- The building is connected to an approved On-site Sewage Management (OSMS) system which Council's Environmental Health Officer has confirmed is suitable for the development
<b>Hazards</b> - Bushfire	- The site is bushfire prone land and the Grassland Deeming Provisions can apply.
<b>Land Use conflicts</b>	- No land use conflicts have been identified.

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

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

**4.8 Public interest**

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**

No Section 64 levies will be required.

**5.2 Section 7.11 Contributions**

Section 7.11 Contributions will be payable.

**6. CONCLUSION**

The application seeks consent for the Use of Converted Farm Shed as Dwelling 2 of Detached Dual Occupancy. The proposed development is satisfactory having regard to the relevant planning controls applicable to the site. The proposal raises no new issues in terms of environmental impacts. The application is recommended for approval subject to the conditions of consent.

**Report No. 13.4      PLANNING - Report of the 17 September 2020 Planning Review Committee**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Chris Larkin, Manager Sustainable Development  
Noreen Scott, EA Sustainable Environment and Economy

**File No:** I2020/1457

**Summary:**

This report provides the outcome of the Planning Review Committee (PRC) held on 17 September 2020.

**NOTE TO COUNCILLORS:**

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

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**RECOMMENDATION:**

**That Council endorses the outcomes of the Planning Review Committee meeting held on 17 September 2020.**

**REPORT**

The Planning Review Committee meeting was held on 17 September 2020. The Meeting commenced at 4:15pm and concluded at 4:45pm.

5

Councillors: Crs Richardson, Ndiaye, Martin, Lyon, Hunter

Apologies: Nil

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
10.2020.370.1	Ardill Payne	68 Byron Street BANGALOW	Stage 1 Change of Use of Existing Building from Residential (Dwelling House) to Commercial (Offices/Shops) including Alterations and Additions to Existing Building and Provision of Car Parking  Stage 2 Demolition of Existing Detached Garage Building and Construction of a New Detached Building to be Used for Commercial Purposes and Provision of Car Parking.	Level 2 20/8/20 to 9/9/20  18 submissions against  1 petition with 103 signatures  4 submission support	The number of public submissions.  The perceived public significance of the application  Council
10.2020.138.1	Ardill Payne	8 Kumbellin Glen OCEAN SHORES	Demolition of Existing Dwelling House and Construction of Multi-Dwelling Housing Comprising Seven (7) Dwellings	Level 2 2/4/20 to 22/4/20  11 submissions against	The number of public submissions  Council
10.2019.533.1	Salt Whistle Bay Pty Ltd as trustee for The Point	595 The Pocket Road THE POCKET	Rural Industry - Intensive Plant Agriculture and Agricultural Produce Industry	Level 1 25/10/19 to 7/11/19  4 submissions against	Under Staff Delegated Authority

**Report No. 13.5**      **PLANNING - Development Application 10.2019.180.2 - S4.55 to Modify Condition 8 - 22A Teak Circuit Suffolk Park**  
**Directorate:**      Sustainable Environment and Economy  
**Report Author:**      Rebecca Mercer, Team Leader Planning Services  
**File No:**      I2020/1461

**Proposal:**

<b>Section 4.55 Application No:</b>	10.2019.180.2
<b>Proposed modification:</b>	S4.55(1a) to Modify Condition 8
<b>Original Development:</b>	Dwelling House
<b>Property description:</b>	LOT: 2 SP: 97314 22A Teak Circuit SUFFOLK PARK
<b>Parcel No/s:</b>	269172
<b>Applicant:</b>	Mrs L E Colombo
<b>Owner:</b>	Mr U & Mrs L E Colombo
<b>Zoning:</b>	R2 Low Density Residential
<b>S4.55 Date received:</b>	17 August 2020
<b>Original DA determination date:</b>	24/06/2019
<b>Public notification or exhibition:</b>	<ul style="list-style-type: none"> <li>– Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications</li> <li>– Exhibition period: 26/8 - 8/9/2020</li> <li>– Submissions received: 1</li> </ul>
<b>Delegation to determination:</b>	Council
<b>Issues:</b>	<ul style="list-style-type: none"> <li>• Potential conflicts between 22 &amp; 22A Teak Circuit</li> <li>• Does not meet the Northern Rivers Local Government Development Design &amp; Construction Manuals and Standard Drawings for driveway widths.</li> </ul>

**Summary:**

DA 10.2019.180.1 was approved on 11 July 2019 for a Dwelling House on Lot 2 of Strata Plan 97314, addressed as 22A Teak Circuit, Suffolk Park. 22A Teak Circuit is situated to the rear of 22 Teak Circuit and is accessed by a battle-axe handle. Condition 8 of the consent requires the provision of a new driveway across the road reserve in accordance with a S138 Approval and with a width of 3 metres. This has been issued by Council but the driveway has not been constructed, although the house has been. To construct the driveway a light pole will need to be relocated with all costs borne by the applicant. It is noted the matter was previously discussed by Council by way of Notice of Motion and Council resolving (**20 – 275**) to invite the land owners to lodge a S4.55 application to amend the consent condition.

The application seeks to amend Condition 8 to narrow the driveway across the road reserve to 2.5 metres so that the light pole does not need to be relocated. The driveway will immediately adjoin the driveway at 22 Teak Circuit so that in effect there is a combined driveway width across the road reserve far in excess of the required three metres. The owner of 22 Teak Circuit has not provided a letter of support for this shared arrangement and has objected to the amendments on the

grounds of traffic safety, arguing the light pole should be moved and the driveway constructed to the appropriate width as currently conditioned.

- 5 Having regard to the combined width of the driveway across the road reserve, which is public land not private property; it is considered that the narrower crossover to be constructed does not raise any safety concerns. It is recommended for the reasons outlined in this report that the driveway crossover be reduced to 2.5 meters. The application is recommended for approval.

10 NOTE TO COUNCILLORS:

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

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**RECOMMENDATION:**

**That pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.180.2 to Modify Condition 8, be granted approval subject to the following:**

**Amend Condition 8 to read.**

**8. Consent required for works within the road reserve**

Consent from Council must be obtained for works within the road reserve pursuant to Section 138 of the Roads Act 1993. Three (3) copies of engineering construction plans must accompany the application for consent for works within the road reserve.


Such plans are to be in accordance with Council's current Design & Construction Manuals and are to provide for the following works:

**Driveway (residential areas)**

A nominal 2.5m wide driveway crossover to be provided to 22a Teak Circuit, Suffolk Park and include the following:

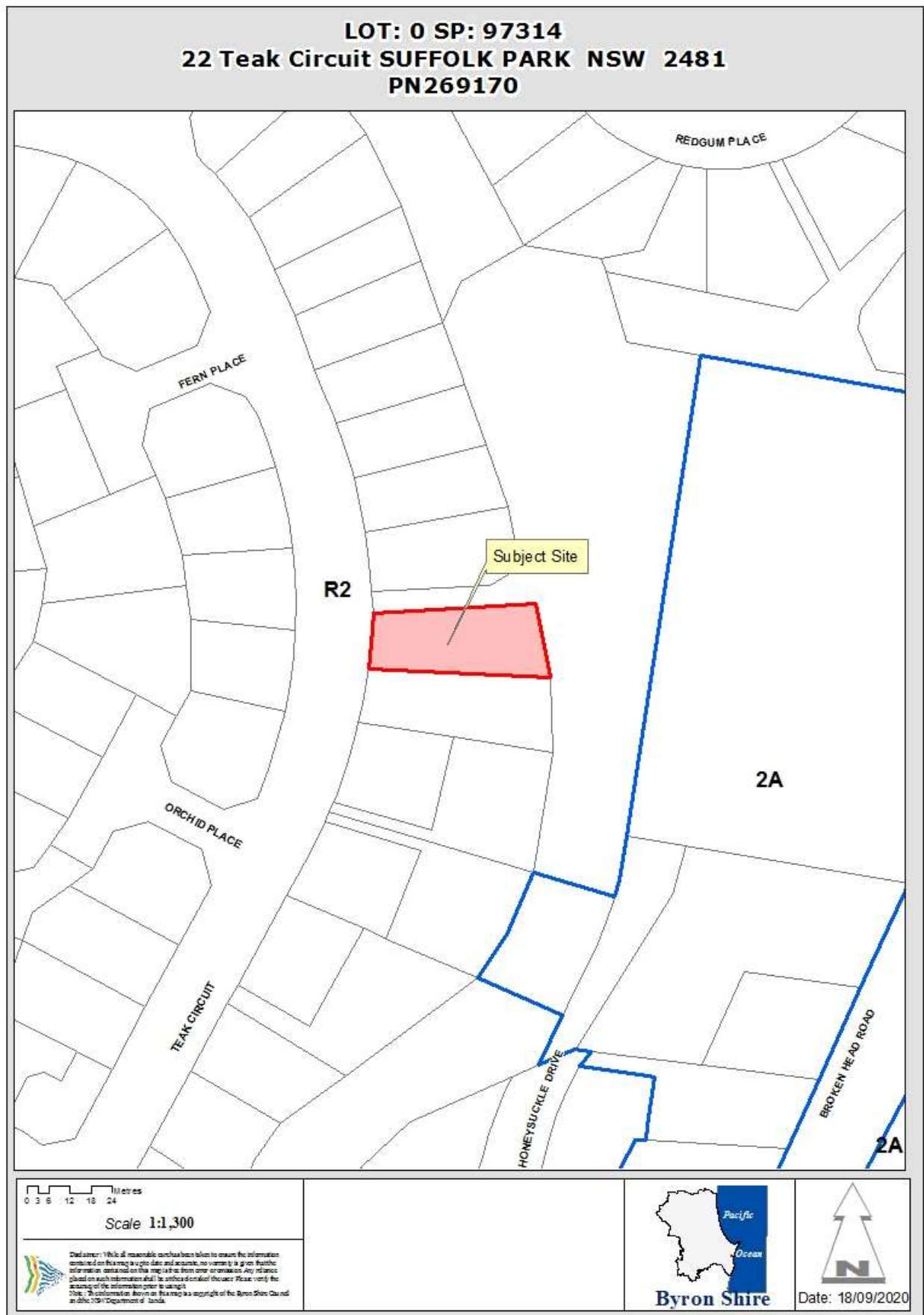
- Provision of 0.3m separation between the existing light pole and the new driveway servicing 22A Teak Circuit; and
- Plans to indicate steel doweling to connect the new driveway with the existing crossover where they join within the road reserve..
- The driveway to comply (other than widths) with the requirements of Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".

**Attachments:**

- 20
- 1 Confidential - Submission, E2020/75476
  - 2 10.2019.180.2 Site photos, E2020/78374 



REPORT



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

A number of previous determinations have been made on the subject site as listed below:

- BA 6.1992.2448.1 for a Dwelling was approved 28 September 1992.
- BA 6.1994.2526.1 for a Pergola was approved 29 August 1994.
- DA 10.2016.772.1 for Stage 1: Two Lot Strata Subdivision, Stage 2: Dwelling House to create Dual Occupancy was approved 26 May 2017.
- DA 10.2016.772.2 for s4.55 to modify dual occupancy dwelling design was withdrawn 17 October 2018.
- DA 10.2016.772.3 for s4.55 to modify dual occupancy dwelling design was withdrawn 13 March 2019.
- DA 10.2019.180.1 dwelling house on vacant strata lot (22a Teak Circuit) - Approved 11 July 2019.

**1.2. Description of the proposed development**

This application seeks approval for a s4.55 to Modify Condition 8 which currently states:

**8. Consent required for works within the road reserve**

Consent from Council must be obtained for works within the road reserve pursuant to Section 138 of the Roads Act 1993. Three (3) copies of engineering construction plans must accompany the application for consent for works within the road reserve.

Such plans are to be in accordance with Council's current Design & Construction Manuals and are to provide for the following works:

**Driveway (residential areas)**

A 3m wide driveway in accordance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".

The existing light pole must be relocated to provide a minimum 0.3m clearance to the edge of the driveway. All cost for the relocation of the light pole must be borne by the applicant and design and construction works must be in accordance with Essential Energy's requirement.

The applicant seeks to narrow the driveway to 2.5 metres to avoid the need to move a light pole. With a 2.5 metre wide driveway – the light pole will be 300 mm from the edge of the crossover. The driveway will adjoin the wider driveway at 22 Teak Circuit which already has a nominal width of 5 metres. (See photo below)

The matter was discussed at a Council meeting on 18 June 2020 by way of a Notice of Motion.

Council resolved as follows:

**NOTICES OF MOTION**

**Notice of Motion No. 9.1**      **Lots 1 and 2, 22 Teak Circuit, Suffolk Park**  
**File No:**                              **I2020/883**

**20-275 Resolved:**

1. That Council note the staff comments in response to the questions raised by the NOM.
2. The landowners be invited to lodge an amendment to the relevant development consent and S138 Approval at their own expense to seek a variation to the current development controls to permit a 2.5m driveway with a 300mm setback to the light pole.  
(Hackett/Richardson)

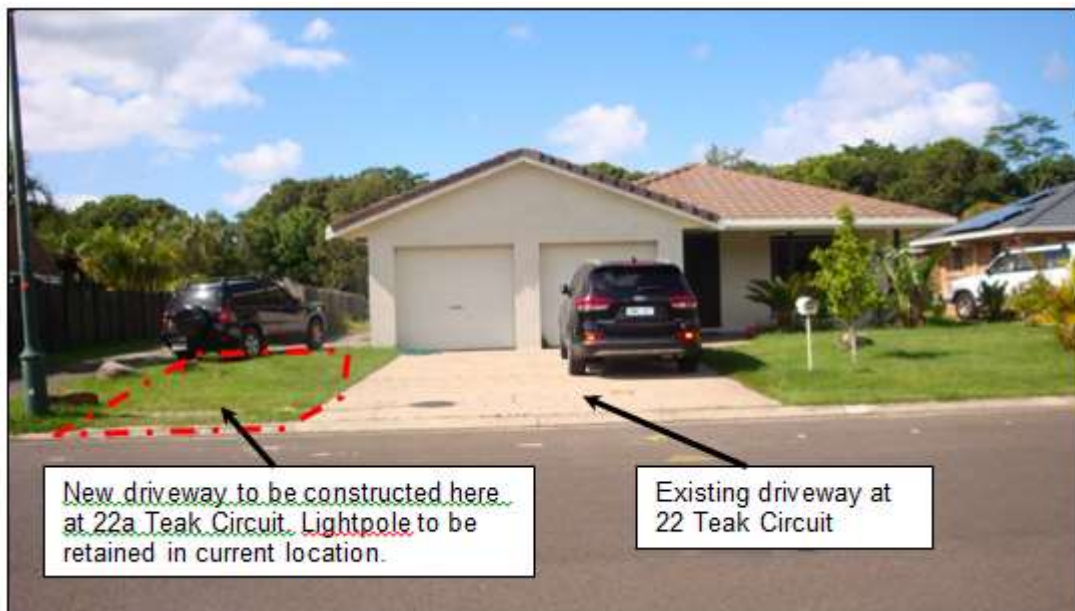
*The motion was put to the vote and declared carried.  
 Cr Hunter was not present for the vote.*

It was discussed that the cost of streetlight relocation otherwise would cost the applicant upwards of \$20,000.

**1.3. Description of the site**

The development assessment report describes the site as:

Land is legally described      LOT: 2 SP: 97314  
 as  
 Property address is              22A Teak Circuit SUFFOLK PARK  
 Land is zoned:                      R2 Low Density Residential  
 Land area is:                      441.1 m2  
 Property is constrained by:      Flood Liable Land, Bushfire prone land, Acid Sulfate Soils Class 3



**Figure 1 - Front of site**



Figure 2 – 22a Teak Circuit (light coloured roof) 22 Teak Circuit (Brown Tile Roof)

- 5 The subject dwelling on 22a Teak Circuit makes up a dual occupancy development with 22 Teak Circuit. The owners of 22a Teak Circuit sought and were granted approval under DA10.2018.180.1 for a dwelling that was different to what was originally approved under DA10.2016.772.1. This approval granted consent for Stage 1: Two Lot Strata Subdivision, Stage 2: Dwelling House to create Dual Occupancy. The driveway was not constructed for 22a Teak circuit when it was subdivided into two strata lots under DA10.2016.772.1.

## 2. SECTION 4.15 – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

- 15 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.

### Section 4.55 of the EPA Act 1979.

- 20 It is considered the development is substantially the same development as originally approved and satisfies the requirements under S4.55 1(a) as a minor amendment to the development consent and will have minimal environmental impact.

#### 2.1. State/Regional Planning Policies, Instruments, EPA Regulations 2000

- 25 Proposed amendments raise no issues under the relevant SEPPs, Policies or clauses of the EPA Regulations 2000.

#### 2.2. Byron Local Environmental Plan 2014

Proposed amendment raises no issues under the LEP.

#### 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

- 30 No draft EPIs affect the proposal.

#### 2.4. Development Control Plans

- 35 Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access



B4.2.3 Vehicle Access and Manoeuvring Areas states *Driveways and manoeuvring areas are to be designed and constructed in accordance with the requirements of the current editions of Australian Standard 2890 and the Northern Rivers Local Government Development & Design Manual.*

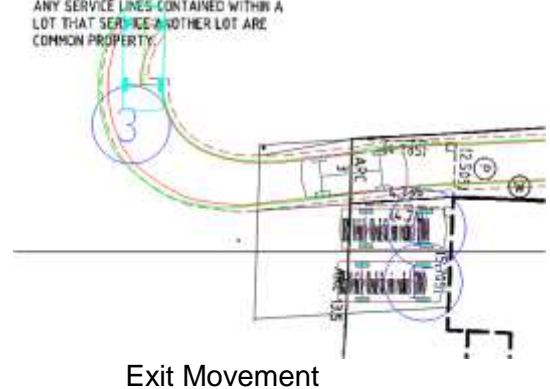
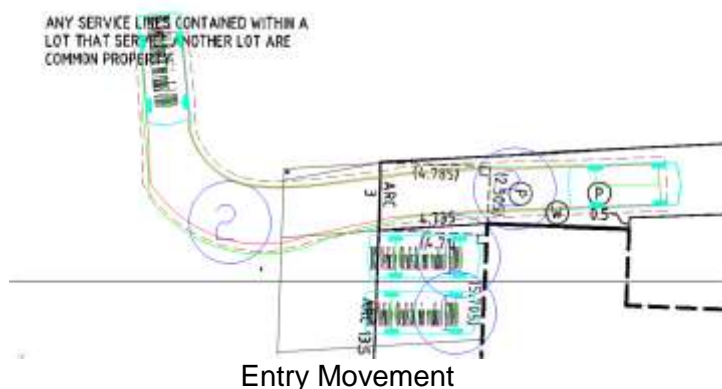
The proposed driveway amendment is strictly not in accordance with NRLG for single dwelling houses.

An assessment of the driveway width has been considered with the retention of the light pole and a further widening of the driveway by only 2.5 metres as follows;

### **Manoeuvring**

In terms of manoeuvring into the property with the retention of the light pole in its current location, vehicles potentially will cross some 700 mm over the driveway crossover in the road reserve in front of 22 Teak Circuit. This is in circumstances where you are entering the property from the north and potentially exiting to the south. In most instances vehicles will approach the site from the south and leave in the same direction which is the more direct route to Broken Head Road and on to Byron Bay and beyond.

### **Manoeuvring Assessment**



### **Maintenance**

In the event that the driveway crossovers are damaged or need maintenance where they join there is the potential for conflict to arise between neighbours as to who should bear the costs of any repairs in the future. However, this is a concrete driveway which are generally hard wearing and provided its constructed to the appropriate width with reinforced steel and suitably "doweled" or joined together during construction, then such repairs are unlikely to be needed for many years. Arrangements would need to be made between neighbours for any repairs in the future and this not something Council needs to dictate.

### **The need to move the light pole**

If the driveway was constructed at the time of the strata subdivision of the land it is likely a shared driveway would have been required by the original developer as currently proposed. It is also likely if Council was requested to not require the light pole to be relocated by the original developer, similar consideration would have been had to the combined driveway width across the road frontage of both lots and that fact this is a dual occupancy development on strata titled lots. In total this combined crossover width will be more than 7 metres wide. It is also noted that the house on 22a Teak circuit has been designed such that vehicles can enter and leave in forward direction. As such residents should have no need to reverse onto Teak Circuit.

It is considered that the proposed driveway width is suitable for the proposed development and a variation to Condition 8 is supported.

## 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

The proposed amendments do not generate any impacts that have not been previously considered.

## 2.6. The suitability of the site for the development

Proposed amendments do not affect the Site Suitability for the development.

## 2.7. Submissions made in accordance with this Act or the regulations

One submission was received objection to the amendment.

Issues	Comments
<ul style="list-style-type: none"> <li>We object to having a driveway be made to be .30 from the lamppost as then it will be crossing over the front of our driveway at 22 teak circuit</li> <li>Driveways are to be square to the road carriageway and not encroach on neighbouring frontages</li> <li>Minimum offset of 0.3m from common property boundaries the current DA amendment proposal will break this rule</li> <li>We want to build a low fence along our border line asap for the safety of our children in our front yard and this will create a hazard for our kids to play in a space with or without a fence whereto proposed driveway amendments don't leave a required gap from our driveway and fence we will be installing</li> </ul>	<p>As discussed above the combined width of the driveway provides a suitable crossover on Council land.</p> <p>Due to the width of the access handle to 22a Teak Circuit, and location of the existing driveway to the existing garage on 22 Teak Circuit, providing a boundary fence down that common boundary between the two lots for either land owner is not considered suitable, and difficult to achieve, and or providing a 0.3 m setback from boundaries for the driveway.</p> <p>It should also be noted that is not what is being amended as the application relates to the driveway crossover of the road reserve, not the driveway locations on private property.</p>

## 2.8. Public interest

Proposed amendments are unlikely to prejudice or compromise the public interest or create an undesirable precedent.

## 2.9. DEVELOPER CONTRIBUTIONS/ WATER AND SEWER CHARGES

There is no nexus to levy additional contributions.

## 3. CONCLUSION

The proposed amendment to condition 8 is supported having regards to the combined width of the driveway crossover for the dual occupancy development. The application is recommended for approval subject to amended conditions.

**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**

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

**4. 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



**Report No. 13.6**                      **Draft Development Control Plan 2014 Chapter B1 Biodiversity**  
**Directorate:**                      Sustainable Environment and Economy  
**Report Author:**                  Karen Love, Research Officer – Climate Change  
**File No:**                              I2020/1403

5

**Summary:**

10 Council's Development Control Plan (DCP) 2014 Chapter B1 Natural Environment has been  
deferred since 2014 due to the State Environmental Planning Policy SEPP 44 – Koala Habitat  
Protection (SEPP 44) review and its implications regarding the Byron Coast Comprehensive Koala  
Plan of Management (CKPoM). The recent enactment of the new State Environmental Planning  
15 Policy (SEPP) Koala Habitat Protection 2019 resulted in Council resubmitting the CKPoM and given  
the legislative changes (*Biodiversity Conservation Act 2016, Local Land Services Act 2013*) it is  
timely that DCP Chapter B1 be reviewed and redefined (as DCP Chapter B1 Biodiversity).

20 Additional complexities regarding the recent legislation have left planners, developers and the  
wider Byron community unsure and in need of guidance regarding Biodiversity protection. Recent  
state and federal reports conclude that their environmental protections have failed to deliver  
environmental outcomes in administering the law, while the clearing of native vegetation has  
increased. Additionally, the Black Summer bushfire season (2019/2020) saw almost 60% of  
National Parks and State Forests in NSW burnt alongside 35% of NE NSW Rainforest and 54% of  
25 Gondwana World Heritage Rainforest. The result of which is that *koalas are predicted to become  
extinct in NSW before 2050*.

30 Given this, DCP Chapter B1 Biodiversity has been updated to provide clarity to planners,  
developers and community, and provide an immediate, simple and effective path for Biodiversity  
protection within the Shire. This report provides information on the DCP Chapter update, its context  
and further supports Byron Shire's Climate Change mitigation and adaptation actions.

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**RECOMMENDATION:**

1. That Council endorses Development Control Plan Chapter B1 Biodiversity  
(Attachment 1 #E2020/77224) for public exhibition for 28 days.
2. That staff provide a post-exhibition report to Council, including consideration and  
recommendations on submissions received during the exhibition period.
3. That staff update DCP Chapter A9 to include the definitions contained within DCP  
Chapter B1 Biodiversity post public exhibition.

**Attachments:**

35

- 1 DRAFT DCP Chapter B1 Biodiversity, E2020/77224 

## REPORT

**Background**

5 In June 2014 Council resolved to defer Chapter B1 Natural Environment ([Res 14-315](#)) due to the SEPP 44 review. While our Comprehensive Koala Plan of Management (CKPoM) was adopted by Council in 2016 ([Res 16-435](#)), it remained unratified by the Department of Planning and Environment (DPE) due to non-compliance with SEPP 44. Under the new Koala Habitat Protection SEPP 2019 (enacted 1 March 2020) our adopted CKPoM was re-submitted under *clause 17* ([Res 20-090](#)) enabling 'streamlined' ratification despite lack of compliance with the previous SEPP. At the time of writing, the Byron Coast CKPoM is currently being assessed for Department Secretary approval.

15 Since 2014, changes to State legislation regarding land management and environmental protections have added complexity and created uncertainty for planners, local regulators and our community. Repealing the former *Threatened Species Conservation Act 1995*, the *Biodiversity Conservation Act 2016* introduces the Biodiversity Offsets Scheme (BOS) which has resulted in *biodiversity loss within Byron Shire* due to:

- offsetting of biodiversity values outside the Shire, and
- 20 • developers being able to enter into a monetary arrangement rather than seeking 'like for like' offsets, and
- offset requirements based on plant community types that are incorrect for the North Coast of NSW.

25 In addition, repeal of the *Native Vegetation Act 2003*, by the *Local Land Services Act 2013* (LLS Act) has permitted the removal of native vegetation in rural areas under Schedule 5A without regulation. This has resulted in:

- Clearing of koala habitat within our Shire,
- Confusion and uncertainty within our community, and
- 30 • Uncertainty amongst regulators given a large part of the Shire remains in deferred matter.

Note that under the LLS Act the only protection afforded koala habitat is where plantings have been funded by public monies (LLS Act Part 2, 17(2)).

35 Evidence provided in recent independent reviews conducted by the Natural Resources Commission and Audit Office of NSW states that:

- the recent legislative changes to NSW Land Management and Biodiversity Conservation Framework *have failed to achieve environmental outcomes and administer the law*, and
- 40 • land clearing figures have significantly increased (13-fold) since those changes.

In addition, the recent NSW Parliamentary inquiry into koalas and koala habitat in NSW found that:

*'without effective intervention, koalas will become extinct in NSW before 2050'*

45 The interim report on the *Environmental Protection Biodiversity Conservation Act 1999* review states that it too has *failed in application and administration and is 'ineffective'*. It suggests that a fundamental national environmental law reform is required with National Environmental Standards at its foundation.

50 Given the increased complexities regarding biodiversity protection and significant legislative impacts, it is timely that DCP Chapter B1 Biodiversity be developed and administered. Not only to provide clarity across the development application process but also to increase security regarding biodiversity protection within our community. Such protection of biodiversity values also underpins climate adaptation through the retention of carbon (CO<sub>2</sub>) sinks and restoration of natural areas.

55

***Development of DCP Chapter B1 Biodiversity***

Endorsed by the Biodiversity Advisory Committee (BAC) and delivering the first action (Action 1.1) in the newly adopted Byron Shire Biodiversity Conservation Strategy 2020-2030 ([Res 20-332](#)),

- 5 DCP Chapter B1 applies to development requiring determination under the *Environmental Planning and Assessment Act* 1979. It delivers biodiversity planning principles, clear development controls, examples of acceptable solutions and definitions specific to biodiversity, including how to 'avoid and minimise' impacts.
- 10 It further defines 'red flag' areas of significant ecological importance that should be avoided and/or buffered from development through the use of ecological setbacks. In addition, it provides reason for development to 'avoid' red flags, by reducing the requirement for ecological assessment where avoidance is demonstrated.
- 15 Council's Chapter B1 is based on Tweed Shire's DCP A19 Biodiversity and Habitat Management (adopted 2018) which:
- was prepared through funding by the Northern Rivers Catchment Management Authority as a DCP template for other Councils to use,
  - underwent comprehensive legal review,

20 • was well received by the community (11 submissions), and

  - was the 2019 winner of the Innovation in Planning, Policies and Decision Making Award from LGNSW.

25 The preparation of Chapter B1 involved significant collaboration between Tweed Shire planners and Council's internal planners, as well as peer review by five local ecologists and three external planners. The ecological setback table has had endorsement from the BAC and while adopted directly from Tweed's DCP, has had a comparison undertaken across similar LGA's.

30 Chapter B1 aims to ensure that the planning and design of new development maintains or improves ecological values within Byron Shire thereby increasing resilience which supports both biodiversity and climate adaptation. The following objectives detail how this aim will be achieved:

- Identify, retain and restore native vegetation and habitats for native species in patches of a size and configuration that will enable existing plant and animal communities to survive in the long term and support climate adaptation.

35 • Identify and retain *high carbon storage ecosystems, wildlife corridors and refugia*.

- Provide development controls that prevent the degradation or loss of ecological values and or biodiversity.
- Provide guidance on the information required to enable informed decision-making.
- Ensure that construction and operational impacts of development are avoided and or mitigated using current best practice standards.

40 • Provide guidance on acceptable measures to avoid or minimise the impact of proposed development on biodiversity including proposals affected by Part 7 of the *Biodiversity Conservation Act* 2016 and the Koala Habitat Protection SEPP (2019).

- Compensate for unavoidable habitat losses in accordance with applicable legislation, or in the absence of such legislation, contemporary best practice.

45

***Next steps***

- Place DCP Chapter B1 on public exhibition for 28 days and report back to Council with submissions and any amendments.

50

- Update DCP Chapter A9 with the new definitions within DCP Chapter B1 post public exhibition.

## **STRATEGIC CONSIDERATIONS**

5

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

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 3: We protect and enhance our natural environment</b>	<b>3.1</b>	<b>Partner to protect and enhance our biodiversity, ecosystems and ecology</b>	<b>3.1.1</b>	<b>Protect and enhance our natural environment and biodiversity</b>	<b>3.1.1.3</b>	<b>Continue to develop a Biodiversity DCP (Biodiversity Conservation Strategy action)</b>

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

- 10 *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*  
*Environmental Planning and Assessment Act 1979*  
*Environmental Planning and Assessment Regulation 2000*  
*Biodiversity Conservation Act 2016*  
*Biodiversity Conservation Regulations 2017*
- 15 *Coastal Management Act 2016*  
*Fisheries Management Act 1994*  
*Local Land Services Act 2013*  
*Local Land Services Regulation 2014*  
*National Parks and Wildlife Act 1974*
- 20 *Protection of the Environment Administration Act 1991*  
*State Environmental Planning Policy Koala Habitat Protection 2019*  
*State Environmental Planning Policy (Coastal Management) 2018*  
*State Environmental Planning Policy (Vegetation in non-rural areas) 2017*

### ***Financial Considerations***

Funding for this project is provided in the 2020/21 budget.

### ***Consultation and Engagement***

- 30
- Preliminary discussions and on-going collaboration with Tweed Shire Council planners who enabled development of DCP Chapter B1 through the use of their DCP as a template.
  - Development of DCP Chapter B1 and ecological setbacks endorsed by the Biodiversity Advisory Committee.
- 35
- Peer review of DCP Chapter B1 by five local ecologists and local Koala Landcare expert.
  - Peer review of DCP Chapter B1 by internal and strategic planners and open space team leaders including a worked example assessment on a highly constrained site to ensure compatibility.
  - Internal review of DCP Chapter B1 by compliance team.
- 40
- Peer review of DCP Chapter B1 by external planners.

**Report No. 13.7**      **Draft Plan of Management Charlotte Street Park**  
**Directorate:**      Sustainable Environment and Economy  
**Report Author:**      Julia Curry, Sustainability and Emissions Reduction Officer  
**File No:**              I2020/1396

5

**Summary:**

10      A draft Plan of Management (POM) for Charlotte Street Park, Bangalow has been prepared in accordance with requirements of the Local Government Act 1993 (Act) and associated regulations. A request from a community member to start a community garden on this site has prompted this report. A PoM will enable the local community the opportunity to submit expressions of interest for a small community garden on the site.

15

This report seeks Council endorsement to publicly exhibit a POM in accordance with the requirements of the Act, and to undertake a Public Hearing after the completion of the exhibition period.

---

**RECOMMENDATION:**

1.      **That Council endorses the draft Plan of Management for Charlotte Street Park (Attachment 1 #E2020/72966) for public exhibition in accordance with the requirements of the *Local Government Act 1993*; including arrangements for an independently chaired Public Hearing at the completion of the exhibition period.**
2.      **That a post-exhibition report including conclusions and recommendations from the Public Hearing, be presented to Council for consideration, and adoption of a Plan of Management for Charlotte Street Park, Bangalow.**

20

**Attachments:**

- 1      DRAFT Charlotte Street Park Bangalow Plan of Management, E2020/72966 

25



## REPORT

A draft POM has been developed by staff in consultation with the local community of the Meadows Estate area of Bangalow. There is no previous PoM for this site, and it has been developed as a result of local interest in establishing a community garden.



**Figure 1.** Aerial view of 'Charlotte Street Park', Bangalow – Lot 43 DP 1228135.

The *Local Government Act 1993* requires that all public land owned by Council be classified as either community land or operational land. Council must have a POM for all community land. This is to ensure that an endorsed framework guides the operation and development of these community assets. In particular, section 46 1(b), states that “a lease, licence or other estate in respect of community land – may be granted, in accordance with an express authorisation in the plan of management”.

Thus, with significant community support, Council has drafted a POM to expressly authorise a small community garden.

### ***Progress to Date***

#### *June 2019*

- Local resident of the Bangalow Meadows Estate community makes enquiry regarding establishment of a small community garden at 33 Charlotte Street, Bangalow, for local residents' use.

#### *July 2019*

- Identification that there was no PoM for 33 Charlotte Street, Bangalow, and therefore a community garden could not be permitted, under the *Local Government Act 1993*.

*November 2019 – January 2020*

- Council reached out to the local community, by way of a letter to nearby residents, to consult with them regarding future use and development of Charlotte Street Park, particularly for a small community garden.
- Total of 19 responses were received from 24 residents, and they were a mix of positive, neutral and negative. The large majority were very supportive of a garden.
- The Arakwal Corporation was consulted and responded with positive feedback. The feedback indicated that there was strong support for a local community garden, however important and legitimate issues were also raised by residents and these have been incorporated into the PoM.
- Results of community engagement were presented to the Executive Team and the development of a PoM for 33 Charlotte Street, Bangalow was recommended.

*February – September 2020*

- Development of a draft PoM that will expressly authorise a small community garden at the rear of the site.
- Final draft PoM reviewed by Council staff and completed in September 2020.

**Next Steps**

It is recommended that the draft PoM be placed on public exhibition, in accordance with the requirements of the *Local Government Act 1993*; including arrangements for an independently chaired Public Hearing at the completion of the exhibition period.

If the PoM is adopted, following the exhibition period and Public Hearing, Council staff will proceed with an expression of interest for a small community garden at 33 Charlotte Street, Bangalow, in accordance with Council's Community Gardens Policy.

**STRATEGIC CONSIDERATIONS**

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

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 3: We protect and enhance our natural environment</b>	3.2	Strive to become a sustainable community	3.2.1	Work towards Council's zero-emissions target	3.2.1.13	Prepare a Plan of Management for 33 Charlotte, Street Bangalow to enable the express authorisation of a community garden.
<b>Community Objective 3: We protect and enhance our natural environment</b>	3.2	Strive to become a sustainable community	3.2.2	Support community environmental and sustainability projects	3.2.2.3	Support community gardens in accordance with the Policy and Guidelines

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

The Local Government Act and Regulations prescribe the process, and minimum content, for preparing POMs. Relevant sections have been discussed, as required, in the report. Council's Legal Counsel provided advice that the revised template satisfied the statutory requirements for content.



The prescribed process governing development of and consultation on a POM, including the requirement to hold a public hearing for a change in categorisation, must continue to be followed by Council.

**5    *Financial Considerations***

Public Hearing and advertising costs can be funded from existing operational budgets.

***Consultation and Engagement***

- 10    Community consultation occurred with residents and ratepayers of Charlotte Street, Thomas Street, Meadows Close and Robinson Street, Bangalow, via letter in November 2019. The survey results are discussed in the body of this report.

**Report No. 13.8      Notification of Upgrade Works to Mobile Phone Base Station at 8 Acacia Street, Byron Bay****Directorate:** Sustainable Environment and Economy**Report Author:** Shannon Burt, Director Sustainable Environment and Economy**File No:** I2020/1536**Summary:**

Telstra representatives Downer have written to Council to notify of an upgrade to the mobile phone base station at 8 Acacia Street Byron Bay.

The proposal does not require development approval and consultation is being undertaken in accordance with the requirements of Section 7 of the Mobile Phone Base Station Deployment Code 2018.

The purpose of the installation is to install 5G and upgrade 4G technologies at the existing Mobile Phone Base Station.

Feedback on the proposal will be accepted until close of business 15 October 2020.

---

**RECOMMENDATION:****That Council:**

1. **Provides / Does not provide feedback on the proposal to upgrade the mobile phone base station at 8 Acacia Street Byron Bay.**
2. **Subject to 1 above, feedback is to include the following comments: <>**

**Attachments:**

- 1 Notification of upgrade mobile phone base station 8 Acacia Street Byron Bay, E2020/78724 

**REPORT**

Telstra representatives Downer have written to Council to notify of a proposed upgrade to the mobile phone base station at 8 Acacia Street Byron Bay.

The existing site / base station works is considered to be a Low Impact Facility in accordance with the Telecommunications (Low-impact Facilities) Determination 2018 or Exempt Development under the NSW State Environmental Planning Policy (Infrastructure) 2007.

As such the proposed upgrade does not require development approval, and consultation is being undertaken in accordance with the requirements of Section 7 of the Mobile Phone Base Station Deployment Code 2018.

The purpose of the upgrade is to install 5G and upgrade 4G technologies at the existing Mobile Phone Base Station.

Details of the proposed upgrade are in Attachment 1.

Feedback on the proposed upgrade will be accepted until close of business 15 October 2020.

5G technology has been considered at various Council meetings: 27 June 2019, 21 November 2019 and 19 March 2020. The most recent Council resolution 20-109 was in relation to an urgency motion about the need to make a submission to the proposed 5G upgrade to the Dalley Street Mullumbimby mobile phone tower.

**Resolved 20-109:**

1. That Council contact Telstra immediately after the meeting and request that they consider a late submission on behalf of council due to the fact that council had not met since the submission period commenced.
2. That Council does not currently support the proposed upgrade that will facilitate 5G technologies and continues to support a moratorium on the installation of 5G technology infrastructure until the previously requested information is provided, including:
  - a) identification of and commitment by a State or Federal Government body to do a comprehensive review of the cumulative impacts of the 5G technology,
  - b) identification of who holds responsibility for the on-going monitoring of any cumulative impacts,
  - c) commitment from the State Government to review the current planning processes for the installation of small cells and consideration of any possible improvements.

The purpose of this report is to canvass Council opinion on the need to provide feedback on the proposed upgrade to the mobile phone base station, and the content of any submission if made.

**STRATEGIC CONSIDERATIONS**

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

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 4: We manage growth and change responsibly</b>	4.1	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

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

5 The existing site / base station works is considered to be a Low Impact Facility in accordance with the Telecommunications (Low-impact Facilities) Determination 2018 or Exempt Development under the NSW State Environmental Planning Policy (Infrastructure) 2007.

***Financial Considerations***

10 Not relevant to this item.

***Consultation and Engagement***

Public consultation is being undertaken by Downer on behalf of Telstra in accordance with the requirements of Section 7 of the Mobile Phone Base Station Deployment Code C564:2018.

