



Byron Shire Council



Agenda

Ordinary (Planning) Meeting
Thursday, 19 November 2020

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

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

Mark Arnold
General Manager

CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

Disclosure and participation in meetings

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

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

Non-pecuniary Interests - Must be disclosed in meetings.

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

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

RECORDING OF VOTING ON PLANNING MATTERS

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

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

BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING

BUSINESS OF ORDINARY (PLANNING) MEETING

1. PUBLIC ACCESS
2. APOLOGIES
3. REQUESTS FOR LEAVE OF ABSENCE
4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY
5. TABLING OF PECUNIARY INTEREST RETURNS (CL 4.9 CODE OF CONDUCT FOR COUNCILLORS)
6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS
 - 6.1 Ordinary (Planning) Meeting held on 15 October 2020
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ORDINARY (PLANNING) MEETING

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14. QUESTIONS WITH NOTICE

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

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

MAYORAL MINUTE

5 **Mayoral Minute No. 8.1 Use of public spaces for busking and other activities**
File No: I2020/1759

I move that Council end the current suspension on the use of public spaces for busking or other activity within the definition, including: tarot cards and palm readers, fortune readers, or the display or demonstration of items, particularly multiples of items, with an implication that they are available for sale or otherwise in exchange for money from 14 December 2020.

Background Notes:

10 At the Council Meeting of 26 March 2020, as part of Council's response to the COVID pandemic Council resolved 20-124 inter alia:

15 *...b) Establishes a 3 month ban on the use of public spaces for busking or other activity within the definition, including: tarot cards and palm readers, fortune readers, or the display or demonstration of items, particularly multiples of items, with an implication that they are available for sale or otherwise in exchange for money.*

This suspension was due to expire 30 July 2020.

20 At the time however, there had been an increase in COVID cases across NSW, and there were community concerns over the potential spread of COVID into the Byron Shire by people visiting and congregating in public places. The public health orders then restricted outdoor gatherings to no more than 20 in a public place.

25 At the request of the NSW Police, Council resolved to further extend the suspension on the use of public spaces for busking until the public health order restrictions changed. Council resolved at the extra ordinary meeting 30 July 2020 (20-360):

30 *That Council in relation to the implemented response to COVID-19, extend the current suspension on the use of public spaces for busking or other activity within the definition, including: tarot cards and palm readers, fortune readers, or the display or demonstration of items, particularly multiples of items, with an implication that they are available for sale or otherwise in exchange for money until 31 January 2021.*

35 This extended suspension was put in place to assist the Police in keeping outdoor gathering numbers restricted and social distancing requirements met in Byron Shire.

40 Since July: state borders have started to reopen; various iterations of public health orders have been put in place to relax gatherings; and COVID case numbers have not been an issue for Byron Shire as a result. Byron Shire like most other local areas is now moving into a recovery phase for business and community post COVID. Events and activations of spaces and places is one way to do this. In recognition of the role that buskers and other space activators can play in bringing vibrancy to towns and villages, a lifting of the current suspension is proposed from mid December.

45 Buskers and associated space activators will need to have a current permit issued by Council, COVID Safe practices such as maintaining physical distancing, managing crowds in line with NSW Health restrictions observed if they seek to resume activity from this date.

Signed: Cr Simon Richardson

PETITIONS

Petition No. 10.1 Against The Kollektiv's proposal for Bayside Development in Bayside Brunswick Heads

5

Directorate: Sustainable Environment and Economy
Report Author: Shannon Burt, Director Sustainable Environment and Economy
File No: I2020/1734

10

Council is in receipt of a petition containing 100 signatures which seeks:

15

We, the residents of Bayside and Brunswick Heads have serious concerns about the proposed development. A boarding house seems completely incompatible and out of character with Bayside without the infrastructure, jobs or public transport to support it."

Comments from Director Sustainable Environment and Economy:

20

At the time of writing this response, a development application had been uploaded into the Planning Portal (PAN-44324) for 94 Kingsford Drive, Brunswick Heads. The development is described as: "a mixed use development comprising a general store/cafe, cafe, co-working space, 8 shop top houses and a boarding house containing 39 rooms, including a manager's room and communal laundry and common room".

25

The matters raised in the petition will be considered in the staff assessment report which will be presented to Council at a future meeting for determination.

RECOMMENDATION:

1. **That the petition regarding Against The Kollektiv's proposal for Bayside Development in Bayside Brunswick Heads be noted.**
2. **That the petition be referred to the Director Sustainable Environment and Economy.**

30

Attachments:

- 1 Confidential - Petition Letter with 100 Signatures Against Proposed Development in Bayside Brunswick Heads, S2020/9269

STAFF REPORTS - GENERAL MANAGER

Report No. 13.1 Rent relief for business and not-for-profit organisations eligible for JobKeeper

5 **Directorate:** General Manager
Report Author: Paula Telford, Leasing and Licensing Coordinator
File No: I2020/1639

10 **Summary:**

15 Ongoing COVID-19 national and domestic border closures or restrictive movement coupled with other Coronavirus restrictions continues to have a significant impact on Council’s commercial and not-for-profit tenants.

Tenants that remain eligible for the Australian Government’s JobKeeper Scheme have requested extended rent relief from Council to coincide with the remaining term of JobKeeper.

20 This report proposes an extended rent relief programme to tenants of Council that demonstrate eligibility for JobKeeper at a rate determined by the General Manager for the remaining term of the JobKeeper Scheme.

RECOMMENDATION:

25 **That Council delegate to the General Manager the authority to negotiate and enter into arrangements with JobKeeper eligible businesses and not-for-profit organisations identified in this report relating to rental payments due after 31 October 2020 until 28 March 2021.**

Attachments:

- 1 Confidential - In confidence - eligibility for JobKeeper, E2020/84832
- 2 Confidential - In confidence - eligibility for JobKeeper, E2020/85183
- 30 3 Confidential - In confidence - eligibility for JobKeeper, E2020/85576
- 4 Confidential - In confidence - eligibility for JobKeeper, E2020/85676
- 5 Confidential - In confidence - eligibility for JobKeeper, E2020/85876
- 6 Confidential - In confidence - eligibility for JobKeeper, E2020/85887
- 7 Confidential - In confidence - eligibility for JobKeeper, E2020/85976
- 35 8 Confidential - In confidence - eligibility for JobKeeper, E2020/85980
- 9 Confidential - In confidence - eligibility for JobKeeper, E2020/86130
- 10 10 Confidential - In confidence - eligibility for JobKeeper, E2020/86337
- 11 11 Confidential - In confidence - eligibility for JobKeeper, E2020/86341
- 40 12 Confidential - In confidence - rent payable by JobKeeper eligible organisations, E2020/86394

REPORT

Council resolved (**20-258**) at its 28 May 2020 meeting:

- 5 1. *That Council waive all rent and licence fees to business affected and identified in the report from 15 March to 30 June 2020.*
2. *That the General Manager is delegated to negotiate and enter into arrangements with affected businesses on the payments due after 30 June until 31 October 202.*

10 In accordance with the above resolution the General Manager negotiated and entered into rent relief arrangements with many of the identified businesses for the period up to 31 October 2020. Rent relief was provided at a rate of a 50% rent waiver with the remaining 50% of rent deferred for the term of the lease or licence.

15 Council has received requests from a number of identified businesses for extended rent relief beyond 31 October 2020. Extended rent relief is requested to support business significantly impacted by ongoing COVID-19 national and domestic border closures or restrictive movements.

20 JobKeeper extended:

The Australian Government extended its JobKeeper Scheme to eligible businesses and not-for-profit organisations to 28 March 2021 in response to ongoing COVID-19 pandemic closures and restrictions. The aim of the Scheme is to provide temporary assistance those businesses and not-for-profit organisations significantly impacted by the Coronavirus.

Eligibility for extended JobKeeper requires a business or not-for-profit organisation with an aggregated turnover of \$1 billion or less to demonstrate at least a 30 percent decline in actual GST turnover during the period 28 September 2020 to 3 January 2021. Eligibility must be re-tested for the remaining period 4 January to 28 March 2021.

The NSW Government also extended its COVID-19 rental moratorium measures to 26 March 2021 requiring landlords to negotiate reductions in rent in good faith with impacted tenants. Tenants not affected by COVID-19 restrictions are expected to continue to pay all rents and charges in full. Only tenancies governed by the *Retail Leases Act 1994* (NSW) are subject to the NSW rental moratorium.

Council wrote to identified businesses and not-for-profit organisations requesting that the tenant put in writing its request for extended rent relief. Tenants were advised that any request must include evidence from the Australian Taxation Office that the business or not-for-profit organisation remains eligible for the JobKeeper Scheme.

Submissions for extended rent relief:

45 Council received the following submissions from identified businesses and not-for-profit organisations for extended rent relief including:

- 50 1. Surfing Byron Bay Pty Ltd t/as Lets Go Surfing (confidential attachment 1) continues to experience a 50% decline in turnover and has demonstrated eligibility for extended JobKeeper.
2. Australia Skydive Pty Ltd (confidential attachment 2) lessee of a premises at the Tyagarah Airfield, continues to experience a significant decline in turnover due to COVID-19 restrictions and border closures and has demonstrated edibility for extended JobKeeper

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STAFF REPORTS - GENERAL MANAGER

13.1

3. Golden Breed Corporation Pty Ltd (confidential attachment 3) lessee of 10 Lawson Street Byron Bay continues to experience a decline in actual GST turnover of more than 30% due to COVID-19 restrictions and has demonstrated eligibility for extended JobKeeper.
- 5 4. Byron Stand Up Paddle (confidential attachment 4) continues to experience a greater than 50% decline in turn due to COVID-19 and has demonstrated eligibility for extended JobKeeper
- 10 5. Fishheads @ Byron Bay Pty Ltd (confidential attachment 5) lessee of café and Byron Bay swimming pool complex continues to suffer significant downturn in café trade due to COVID-19 and has demonstrated eligibility for extended JobKeeper.
- 15 6. Byron Bay Style Surfing School Pty Ltd (confidential attachment 6) continues to experience a downturn in business as demonstrated by actual sales number. The company remains on JobKeeper and currently awaits its statement from the Australian Taxation Office showing extended JobKeeper eligibility.
- 20 7. Cape Byron Kayaks (confidential attachment 7) continues to suffer a downturn in turnover exceeding 30% and had demonstrated eligibility for extended JobKeeper.
- 25 8. Byron Bay Surf School Pty Ltd (confidential attachment 8) continues to experience a significant decline in turnover and is eligible for JobKeeper. The company is awaiting its statement from the Australian Taxation Office showing extended JobKeeper eligibility.
- 30 9. Black Dog Surfing Pty Ltd (confidential attachment 9) remains eligible for JobKeeper. The company is awaiting its statement from the Australian Taxation Office showing extended JobKeeper eligibility.
- 35 10. Go Sea Kayak Byron Bay Pty Ltd (confidential attachment 10) remains eligible for JobKeeper. The company is awaiting its statement from the Australian Taxation Office showing extended JobKeeper eligibility.
11. Soul Surf Pty Ltd (confidential attachment 11) remains eligible for JobKeeper. The company is awaiting its statement from the Australian Taxation Office showing extended JobKeeper eligibility.

This report recommends that Council delegate to the General Manager the authority to enter into arrangements with JobKeeper eligible businesses and not-for-profit organisations as detailed in confidential attachment 12, relating to rental payments due after 31 October 2020 until 28 March 2021.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.2	Provide essential services and reliable infrastructure which meet an acceptable community standard	1.2.6	Optimise Council's property portfolio (SP)	1.2.6.8	Manage leases and contracts at Tyagarah Airfield

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STAFF REPORTS - GENERAL MANAGER

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CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.2	Provide essential services and reliable infrastructure which meet an acceptable community standard	1.2.4	Provide active and passive recreational Community space that is accessible and inclusive for all (SP)	1.2.4.3	Deliver Stage 1 of a Public Open Space Accessibility Program

Legal/Statutory/Policy Considerations

Nil

5

Financial Considerations

The quantum of rent relief waived to businesses and not-for-profit tenants of Council is summarised below:

10

Consultation and Engagement

Nil

Report No. 13.2 **Amendments to Code of Meeting Practice**
Directorate: General Manager
Report Author: Ralph James, Legal Counsel
File No: I2020/1702

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Summary:

10 This report discusses and recommends changes to clauses of Council Code of Meeting Practice relating to Public Access and the participation therein by “a person/organisation”.

It also seeks to clarify the number of speeches/submissions/questions available to “a person/organisation”.

15 The report also discusses and recommends the reintroduction into the Code of Meeting Practice of provisions relating to meetings of the Planning Review Committee.

RECOMMENDATION:

That Council endorse the amendments to the Code of Meeting Practice and place it, as amended, on public exhibition for a period of 28 days and that:

- a) **should no submissions be received the amended Code of Meeting Practice be adopted, or**
- b) **should any submissions be received those submissions be reported to Council at its first meeting in 2021.**

20

Attachments:

- 1 Draft Amended Code of Meeting Practice, E2020/86844 

25

REPORT

A draft amended Code Meeting practice, incorporating all of the amendments referred to in this report (noted in red), is attachment 1.

5

Public Access

Clauses 4.7, 4.11 and 4.13 of Council's Code of Meeting Practice (Code) permit speeches, submissions and questions by "a person/organisation".

10

The interpretation of who is a person, what is an organisation and the number of speeches, submissions and questions by either or both "a person/organisation" has become confusing and in some instances, contentious.

15

Legal persons can be either human beings or corporations. "Legal person" includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

20

A natural person is an individual human being, as opposed to a legal person.

When allowing speeches, submissions and questions from an organisation it was Council's intention that the organisation would be a community organisation. It is sought to make that abundantly clear.

25

The interpretation of the words "a person/organisation is permitted one speech (clause 4.7), one submission (clause 4.11) and one question (clause 4.13)" is also causing confusion.

30

Council's intention was that "a person/organisation" meant that the speech, submission or question could be from either of a person or an organisation - but not both. If Council had intended otherwise the wording would have been "a person and an organisation."

35

Also requiring clarification is the interpretation of clause 4.7 "A person/organisation is permitted one speech in favour of or against items on the Agenda." Council interprets this to mean any one item within the total of items, i.e, the items are plural, not the speeches. Otherwise it could be interpreted as one speech on every item- the speeches being plural.

40

For the avoidance of doubt it is proposed to amend clause 4.7 to read "A person/organisation is permitted one speech in favour of or against one item on the Agenda."

45

That wording would still permit a person to make one speech in favour of or against one item on the Agenda, and that person, if representing a community organisation, would also be permitted one speech in favour of or against one item on the Agenda. The wording would allow a natural person to make one speech in favour of or against one item on the agenda whilst representing a legal person but it would not allow a natural person to make a speech in favour of or against one item on the agenda and also make a speech in favour of or against one item on the agenda on behalf of a legal person.

50

It is recommended that clause 4.7 be amended to read:

A natural person/community organisation is permitted one speech in favour of or against one item on the Agenda. For avoidance of doubt a natural person is permitted to make one speech in favour of or against one item on the agenda. If that natural person also represents a community organisation that natural person is permitted to make one speech in favour of or against one item on the agenda on behalf of the community organisation, in addition to the speech they make on their own behalf.

55

It is recommended that clause 4.11 be amended to read:

5 *A natural person/community organisation is permitted to register one submission per meeting on matters that are not on the Agenda. For avoidance of doubt, if that natural person also represents a community organisation that natural person is permitted to register one submission per meeting in addition to the submission they register on their own behalf.*

It is recommended that clause 4.13 be amended to read:

10 *A natural person/community organisation is permitted to ask one question per meeting. For avoidance of doubt, if that natural person also represents a community organisation that natural person is permitted to ask one question in addition to the question they ask on their own behalf.*

15 There would need to be a consequential amendment to clause 4.6 so that it reads “*Natural persons/community organisations wanting to speak in favour of or against time on the Agenda will be listed for Public Access in the same order the items appear on the Agenda.*”

20 Planning Review Panel.

Amendments made to the Local Government Act 1993 (LGA) in August 2016 by the *Local Government Amendment (Governance and Planning) Act 2016* provided for a model code of meeting practice (Model Meeting Code) to be prescribed by the Regulation.

25 The Model Meeting Code was prescribed under the *Local Government (General) Regulation 2005* (the Regulation) and the then existing meetings provisions of the Regulation were repealed.

Council adopted its Code of Meeting Practice which included the provisions of the Model Meeting Code on 13 May 2019 (Resolution 19-103).

30 The pre Model Meeting Code version of Council’s Code of Meeting Practice was adopted on 11 June 2014 and was subsequently amended on 27 August 2015 (Amendment to Schedules A (order of business) and B (Special Purpose Committees)) and on 23 August 2016 (correction to clause 19.3 and on 21 June 2018 (amendment to clause 22 and Schedule A).

35 The pre Model Meeting Code version of Council’s Code of Meeting Practice included provisions relating to meetings of the Planning Review Committee.

40 The Model Meeting Code provides that it applies to all meetings of Council and Committees of Council of which all the members are Councillors. All Councillors are members of the Planning Review Committee. Accordingly, when Council’s Code of Meeting Practice was drafted to incorporate the provisions of the Model Meeting Code the meeting practice of the Planning Review Committee was omitted as it was considered superfluous.

45 The Director Sustainable Environment and Economy has recently advised that, in her view, the Planning Review Committee would be assisted in the management of its meetings if those meetings could be conducted in accordance with a meeting practice specifically designed for the Planning Review Committee.

50 That would not mean that Council’s Code of Meeting Practice would not apply. There would still be work for it to do beyond the ambit of the meeting practice of the Planning Review Committee i.e. rules of debate, conflicts of interest and keeping order.

55 The provisions relating to meetings of the Planning Review Committee would be inserted into the Code of Meeting Practice as clause 20A.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.2	Create a culture of trust with the community by being open, genuine and transparent	5.2.4	Support Councillors to carry out their civic duties	5.2.4.2	Deliver Council meeting secretariat – including agenda preparation, minutes and council resolutions monitoring

5

Legal/Statutory/Policy Considerations

10 The Model Meeting Code was prescribed under the *Local Government (General) Regulation 2005* (the Regulation). Council adopted its [Code of Meeting Practice](#) which included the provisions of the Model Meeting Code on 13 May 2019 (Resolution 19-103)

Financial issues

15 Not applicable.

Consultation and Engagement

The *Code of Meeting Practice* will be placed on public exhibition for a period of 28 days inviting submissions from members of the public.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.3 PLANNING - Development Application 10.2019.444.1 Dwelling house and swimming pool at 37 Byron Street, New Brighton

5 **Directorate:** Sustainable Environment and Economy
Report Author: Greg Smith, Team Leader Planning Services
File No: I2020/1233

10 **Proposal:**

DA No:	10.2019.444.1		
Proposal description:	Dwelling House and Swimming Pool		
Property description:	LOT: 3 DP: 869207		
	37 Byron Street NEW BRIGHTON		
Parcel No/s:	215660		
Applicant:	Ms K Radmacher		
Owner:	Ms K Radmacher		
Zoning:	RU2 Rural Landscape / 1(d) (Investigation Zone)		
Date received:	2 September 2019		
Delegations	Council		
Public notification or exhibition:	<ul style="list-style-type: none"> - Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications - Exhibition period: 19/9/2019 – 18/10/2019, 19/12/2019 – 31/1/2020, 23/7/2020 – 5/8/2020 - Submissions received: 6 		
Variation request	<input type="checkbox"/> Clause 4.6	<input type="checkbox"/> SEPP 1	<input checked="" type="checkbox"/> Not applicable
Issues:	<ul style="list-style-type: none"> • Bush fire prone land • Biodiversity values (BDAR) • Coastal Wetlands, • Flood liable land 		

Summary:

15 This application seeks approval for a large single storey dwelling house and swimming pool at 37 Byron Street, New Brighton. The dwelling includes 6 bedrooms with ensuites, living / dining / kitchen space and an adjacent smaller kitchen, gym, study, utility rooms and garaging for up to 5 vehicles. The dwelling is best described as comprising a number of circles linked by the main

20 entrance, dining and living rooms. The proposal sits on one of three large coastal lots north of the New Brighton Soccer fields. The dwelling is partly elevated to satisfy flood requirements for the area and is to be predominantly constructed on concrete piers supporting a concrete slab. Other building materials include concrete blockwork, tiled roof, aluminium framed windows

25 The dwelling has been carefully sited within the cleared areas of the property avoiding areas of coastal wetland and to minimise the need for any clearing to satisfy bushfire requirements. Access to the site is provided by way of a sealed road however the property will rely upon onsite effluent disposal by way of a tertiary aerated waste water treatment system.

30 The subject dwelling is satisfactory in terms of Council’s planning controls and the subject site is considered suitable for the proposed development. The application is recommended for approval subject to conditions of consent.

NOTE TO COUNCILLORS:



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

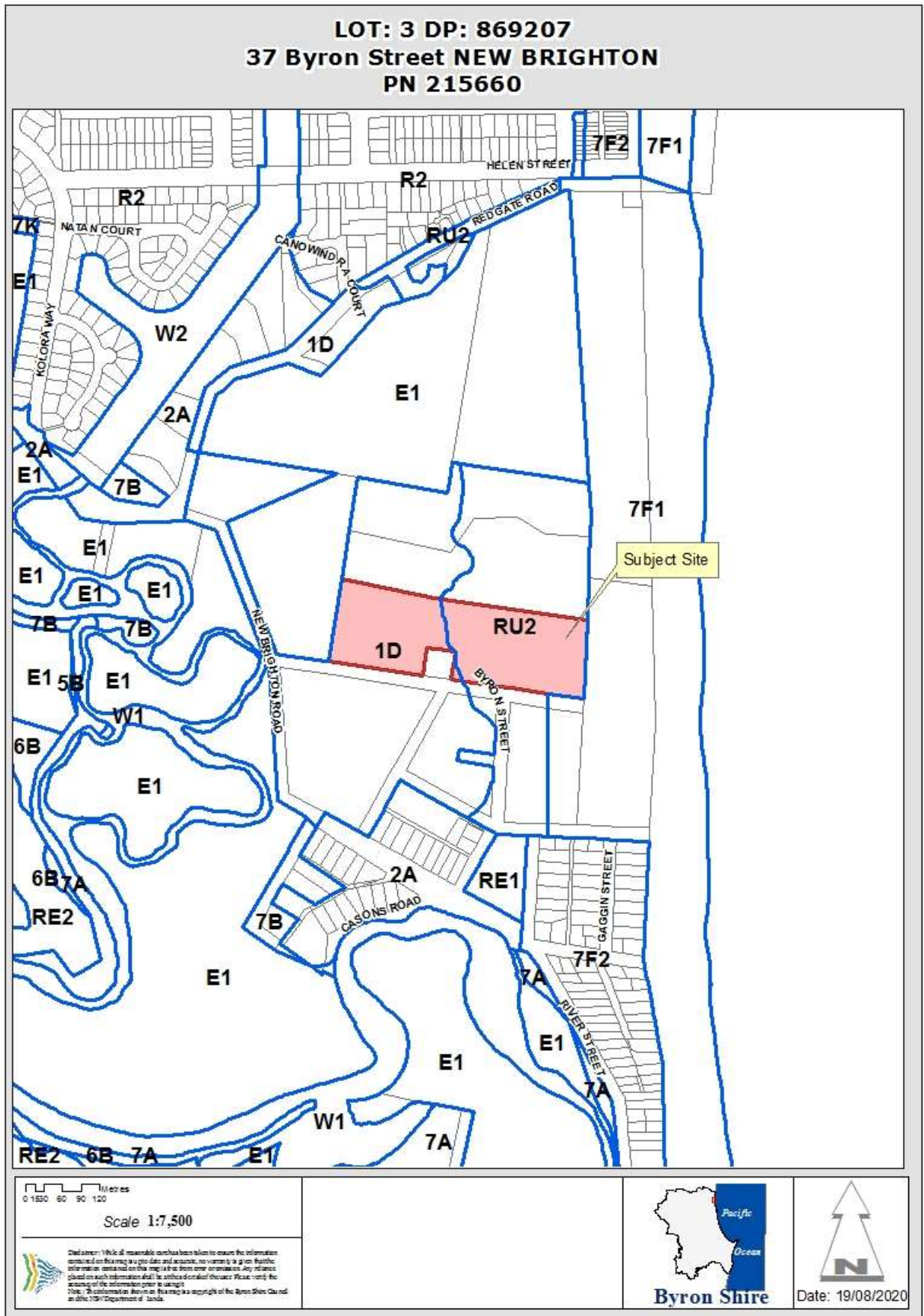
10

RECOMMENDATION:

That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.444.1 for Dwelling House and Swimming Pool, be granted consent subject to the conditions of approval in Attachment 3 (E2020/85548).

Attachments:

- 15
- 1 10.2020.444.1 - Plans, E2020/87088 
 - 2 Confidential - 10.2019.444.1 - Submissions, E2020/87075
 - 3 10.2019.444.1 - Recommended Conditions, E2020/85548 



REPORT

1. INTRODUCTION

5 1.1. History/Background

DA 10.2008.190.1 for a farm shed was refused on 17/6/2008.

10 DA 10.2017.483.1 for a dwelling house was approved on 8/2/2018. An extract of the approved site plan is shown below:



15 1.2. Description of the proposed development

20 This application seeks approval for a large single storey dwelling house and an ancillary swimming pool. The dwelling includes 6 bedrooms with ensuites, living / dining / kitchen space and an adjacent smaller kitchen, gym, study, utility rooms and garaging for up to 5 vehicles. The dwelling is best described as comprising a number of circles linked by the central main entrance, dining and living areas

The development has been positioned so that it avoids encroachment into the mapped Coastal Wetlands areas of the site. The proposed plans are included as **Attachment 1** to this Report.

5

1.3. Description of the site

Land is legally described as	LOT: 3 DP: 869207	
Property address is	37 Byron Street NEW BRIGHTON	
Land is zoned:	Part RU2 Rural Landscape under Byron LEP 2014 and part 1(d) (Investigation Zone) under Byron LEP 1988. <u>Note:</u> The proposed development is located entirely within the part of the site that is zoned RU2 under Byron Local Environmental Plan 2014, and on this basis no further consideration of the provisions of the 1(d) Zone or Byron Local Environmental Plan 1988 is required.	
Land area is:	5.204 hectares	
Property is constrained by:	<ul style="list-style-type: none"> • Bush fire prone land • Endangered Ecological Communities • Biodiversity values (BDAR) • Coastal Wetlands, Coastal Wetlands Buffer, Coastal Environment Area, Coastal Use Area • Koala development application mapping • Flood liable land • Coastal erosion – Precinct 3 • Acid sulfate soils – Classes 3 and 5 • 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? – The conditions of consent require a VMP.	<input checked="" type="checkbox"/> Yes <input 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

Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to conditions.
Natural Resource Planner	No objections subject to conditions.
Department of Primary Industries – Office of Water / NRAR	<p>Integrated Development</p> <p>The applicant originally sought consent as integrated development DA in terms of the Water Management Act 2000. The application was referred to DPI - The Natural Resources Access Regulator (NRAR) who advised that for the purposes of the Water Management Act 2000 (WM Act), General Terms of Approval and/or a Controlled Activity Approval the development is exempt. The regulator provided no specific comments or conditions to Council. On this basis, the development has not been assessed as being for</p>

Referral	Issue
	integrated development.

Natural Resource Planner

5 Council’s Natural Resource Planner originally raised concerns with the proposed development in terms of its potential impacts on the wetland. The applicant originally sought consent to fill the site through the creation of borrow pits on the site, generating issues relating to Acid sulfate soils, ground water impacts and there proximity to the mapped wetland areas on the property. The application was amended with the subject borrow pits removed and the dwelling now to be constructed on piers. Conditions of consent are recommended to require a vegetation management plan for the site to ensuring ongoing improvements to the health of the adjacent wetland in the western half of the site post development.

Development Engineer (on Coastal Erosion)

15 The site is mapped as Coastal Erosion – Precinct 3, and it is recommended conditions of development consent to apply in relation the consent lapsing the dwelling be demolished in the event of coastal erosion affecting the dwelling.

ET Engineer

20 Whilst the DA is supported by a proposal for on-site sewage management system, the applicant expressed a preference to connect to the sewerage system. The location of the sewerage system is shown in the Council map extract below.



25 The site does not have an entitlement to connect to the sewer. Should Council wish to support a sewer connection, conditions would need to be imposed for the construction of a private pump station and the payment of the relevant headworks charges.

The site has an entitlement to connect to the reticulated water system.

Environmental Health Officer

5 Council's Environmental Health Consultant reviewed the proposal against the relevant legislation and the Best Practice Guidelines and concurs with the finding that, subject to conditions which have been included in the conditions (including in relation to groundwater, noise, sewer and on site
10 sewage management), the proposal will not have a significant impact in relation to environmental health considerations.

Groundwater

15 Groundwater quality results provided indicate exceedances in Groundwater Investigation Level (GIL) for fresh, marine based on the Australian and New Zealand Guidelines for Fresh and Marine Water Quality (August 2018) in relation to aluminium and arsenic, while arsenic was in compliance with the National Medical Research Council (NHMRC) (2011) Drinking
20 Water Guidelines.

20 Groundwater quality results show a lower pH (5.28 – 5.54) than the recommended range (for discharge pH 6.5 to 8.5). The pH conditions reflect the acidic natural environment.

25 The current design has removed all excavations that were previously below the groundwater table. The only below ground level excavation proposed is the swimming pool that will now be installed at 1.60m AHD. This is located at 0.55 m above the maximum groundwater level recorded at site. Footings for the swimming pool will be installed at 1.30m AHD, 0.25m
30 above the maximum groundwater level recorded at site.

30 Given the changes in design to avoid any contact with groundwater (and resultant dewatering) any risk associated with groundwater as part of the proposed development is likely to be mitigated.

Conditions of consent are recommended to confirm that any penetration of the groundwater / level not is permitted to avoid dewatering.

35 Construction noise

Given the scale of the development and the considerable construction period it is recommended that a Noise Management Plan be prepared as part of an overall Construction Environmental Management Plan for the proposed development.

40 Potential connection to reticulated sewer

45 Greg Alderson & Associates, on behalf of the applicant, have contacted Council regarding connection to sewer for the site. An email from Council to the applicant's consultant dated 5 March 2019 advised that Council does not permit rural dwellings to connect to its water and/or sewer systems.

50 In this regard the neighbouring allotment has permission to connect to Council sewer under DA 10.2007.813.1 as stage 2 of that development. Wherever possible it is preferable for development to be afforded a connection to reticulated sewer rather than onsite sewerage management. As sewer connection is available next to the subject site, therefore, it is preferred that Council allow connection to sewer for this property, seeing that the neighbouring allotment was permitted to connect.

On site Sewage Management

55 In lieu of a sewer connection, effluent will need to be disposed of onsite. The applicant proposed a tertiary system with sub surface irrigation area of some 500 m². This is partly supported with the

disposal area to be by way of a Wisconsin mound system which will take up an area of approximately 220m². Conditions of consent to apply.

3. SECTION 4.14 – BUSH FIRE PRONE LAND

5 Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document ‘Planning for Bush Fire Protection 2006’. The site is bush fire prone land. The development application is accompanied by a Report by Melanie Jackson (an RFS recognised qualified bush fire risk assessment consultant) of Bushfire Risk dated 5/7/2020 which does not recommend any alternate solutions. Conditions are included in the Recommendation of this Report requiring that the development must comply with the requirements of that Report.

EFFECT OF 10/50 RULE ON SIGNIFICANT VEGETATION

15 A condition is recommended requiring that all native vegetation that the 10/50 Vegetation Clearing Code of Practice would otherwise authorise to be removed, destroyed or pruned must be retained for conservation purposes.

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

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

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy (Koala Habitat Protection) 2019	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The western half of the property was mapped as a Koala Development Application area on the SEPP (Koala Habitat Protection) 2019 mapping, until the mapping and the SEPP were recently amended with approximately 60% of the site is mapped as potential koala habitat (coastal swamp forests). Council’s Natural Resource Planner raises no objection to the proposal on the basis of koala habitat protection, with the development located in the eastern cleared part of the property away from koala habitat. It is considered the development is likely to have a low to no impact on Koalas or koala habitat.		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Whilst the Contaminated Land Assessment was limited in site history, notably the discovery of the former nursery in the western half of the site, from the information provided that the surface soils are in compliance with the Health Investigation Levels (<i>HIL-A</i>) for residential use with gardens and therefore suitable for the proposed development.		
With respect to the occurrence of arsenic and aluminium as noted previously arsenic complies with the NHMRC (2011) drinking water guidelines and falls outside the GIL (ANZECC 2018) while aluminium exceeds the GIL (2018) and drinking water guidelines.		
Nevertheless, given the changes in design to avoid contact with groundwater and resultant dewatering any risk associated with groundwater as part of the proposed development ought to be mitigated. Conditions are recommended accordingly.		
<u>State Environmental Planning Policy (Coastal Management) 2018</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

	Satisfactory	Unsatisfactory
<p>Consideration: The site includes areas mapped under the Coastal Management SEPP as Coastal Wetlands, Coastal Wetlands Buffer, Coastal Environment Area and Coastal Use Area.</p> <p>Council's Natural Resource Planner is satisfied that the proposed development will not encroach into the Coastal Wetland mapped parts of the site. Council's Natural Resource Planner is also satisfied that the proposal will not cause significant impacts as a result of being within the Buffer area of the Coastal Wetlands, given the incorporation of a Wisconsin mound into the design (occupying an approximate area of 220m²) provided fill is not sourced from the subject site.</p> <p>In relation to the Coastal Environment Area the proposal is unlikely to cause a significant impact in relation to:</p> <ul style="list-style-type: none"> (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment, (b) coastal environmental values and natural coastal processes, (c) the water quality of the marine estate (within the meaning of the <u>Marine Estate Management Act 2014</u>), (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms, (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability, (f) Aboriginal cultural heritage, practices and places, and (g) the use of the surf zone. <p>In relation to the Coastal Use Area the proposal is unlikely to cause a significant impact in relation to:</p> <ul style="list-style-type: none"> (i) existing access to and along the foreshore, beach, headland or rock platform for members of the public, (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores, (iii) the visual amenity and scenic qualities of the coast, (iv) Aboriginal cultural heritage, practices and places, and (v) cultural and built environment heritage. <p>The development is designed, sited and will be managed to minimise adverse impacts as referred to above. The proposal is acceptable having regard to the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.</p>		
State Environmental Planning Policy (Infrastructure) 2007	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: The development is satisfactory having regard to the provisions of the Infrastructure SEPP.</p>		

4.2 Byron Local Environmental Plan 2014 (LEP 2014)

- In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:
- 5 (a) The proposed development is defined in the LEP 2014 Dictionary as a dwelling house (with an ancillary swimming pool);
 - (b) The proposed development is located within the RU2 Rural Landscape according to the Land Zoning Map;
 - 10 (c) The proposed development is permitted with consent in the RU2 Zone, noting also that the site has a dwelling entitlement in accordance with clause 4.2A of LEP 2014; and
 - (d) Regard is had for the RU2 Zone Objectives as follows:

Zone Objective	Consideration
<i>To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.</i>	The site is not currently used for sustainable primary industry production purposes, but options could be explored by the owner at some future stage (noting that the site has already been approved for a dwelling).
<i>To maintain the rural landscape character of the land.</i>	The proposal is a positive contribution to the particular rural landscape character of the land.
<i>To provide for a range of compatible land uses, including extensive agriculture.</i>	The proposal is a compatible land use in the prevailing context.
<i>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.</i>	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 are not proposed or prevented by this DA.
<i>To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.</i>	The proposal will not have a significant impact on any publicly accessible scenic landscapes and the proposal appropriately minimises impacts on the scenic quality of the locality.

Clause 4.3 Height of Building

The submitted elevations show the 9m maximum building height development standard. The maximum height of the building does not exceed the depicted 9m maximum at any point.

5

Clause 6.1 Acid Sulfate Soils – Classes 3 and 5

The site is identified by Council’s GIS as containing Class 3 Acid Sulfate Soils: *Works beyond 1 metre below the natural ground surface, works by which the water table is likely to be lowered beyond 1 metre below the natural ground surface.* The proposal is likely to disturb acid sulfate soils. A number of reports have been prepared in support of a development application.

10

The current design has removed all excavations that were previously below the groundwater table. The only below ground level excavation proposed is the swimming pool that will now be installed at 1.60m AHD. This is located at 0.55 m above the maximum groundwater level recorded at site. Footings for the swimming pool will be installed at 1.30m AHD, 0.25m above the maximum groundwater level recorded at site.

15

Under the proposed development, soil excavations are to take place within a localised part of the site, for strip footings, service trenches and the swimming pool. Disturbance is expected to be limited to depths of up to 1m below existing ground level (BEGL). Since it has been established that acid sulfate soils do not occur in the soil layers to 1.5m BEGL corresponding acid sulphate soil management for the subject development as planned is not necessary.

20

25

Clause 6.2 Earthworks

As discussed above, earthworks are proposed in relation to footings and installation of services etc. Conditions of consent to apply.

30

Clause 6.3 Flood liable land

The subject dwelling is to be sited and elevated on piers, Minor filling is proposed on site. Flood studies and modelling submitted with the application demonstrate that there will be no to minimal flood impacts offsite as a result due to the size of the property.

35

Clause 6.6 Essential services

The site is able to be connected to the reticulated water and electricity supply systems. Stormwater to be disposed of onsite as is effluent. It is considered services can be provided to the property to enable the dwelling to be constructed.

5

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

Parts of the site are potentially to be within the E2 Environmental Conservation Zone under the E Zone Review. The proposal itself however is not within the potential E2 Zone part of the site.

10

4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

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

15

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 is demonstrated to meet the relevant Objectives of all relevant Parts/Chapters (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

20

Chapter B4 Traffic Planning, vehicle parking, Circulation, and access

The proposal has access to a sealed road. Car parking is provided on site for up to 5 vehicles.

25

Chapter B7 Mosquitos and Biting Midge

The property is highly likely to be affected by mosquitos and biting midge. Standard conditions to apply in relation to fly screens to help minimise the impacts of these insects.

30

Chapter C2 Areas affected by Flood

The proposed dwelling house is to be set at compliant height above the flood level for the area at RL 3.61m AHD. The applicant has submitted various flood reports and modelling to demonstrate that minor filling for the development can be accommodated on the land without adversely impacting upon surrounding development.

35

Chapter D2 Residential accommodation and Ancillary development in Rural Areas

The proposed development satisfies the general setback, car parking and servicing requirements under the DCP. In terms of visual impacts, the dwelling although sizeable in area will be difficult to see from the urban areas of New Brighton due to surrounding vegetation, whilst the structure itself is well setback behind the dunes and is unlikely to be visible from the beach.

40

Chapter E9 Ocean Shores, New Brighton and South Golden Beach

The subject property sits outside of the mapped areas identified under the DCP.

45

4.5 Any Planning Agreement or Draft Planning Agreement?

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

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

The proposed development raises no issues against the relevant regulations.

50

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

Impact on:	Likely significant impact/s?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality. Conditions of consent to apply in relation to hours of work, sedimentation and erosion control measures, construction noise, builders waste and the like.
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.

4.8 The suitability of the site for the development

The property is serviced with water, power and telecommunications, and access is available via sealed road and driveway. Sewer could be extended to the site; however effluent is to be disposed of onsite. The property is affected by flood, coastal erosion and bushfire and these hazards can be appropriately managed without having a detrimental impact upon the built or natural environment. Although the Part J Provisions under DCP 2010 do not apply to the site, standard conditions of consent to apply in relation to the consent lapsing in the event coastal erosion threatens the property. The site is considered suitable for the proposed development.

4.9 Submissions made in accordance with this Act or the regulations

The DA was publicly exhibited on 3 occasions, the first being associated with the originally submitted plans and the subsequent two associated with amended plans.

There were a total of 6 submissions made on the development application, being 1 from Crown Lands and 5 from members of the public. These are included as confidential **Attachment 3** to this Report.

The **Crown Lands submission** as an adjoining land owner offers no objections to the proposed development as no impact to Crown land has been identified. Crown Lands asked Council to ensure that the applicant does not undertake any activity on the Crown land or use the Crown land for any purpose associated with the development. The development may not:

- encroach upon the Crown land,
- remove any vegetation from the Crown land,
- stockpile materials, equipment or machinery on the Crown land,
- use the Crown land for access purposes,
- direct stormwater discharges to the Crown land, or
- use the Crown land as an Asset Protection Zone.

A condition is recommended accordingly.

2 submissions are in support of the proposed development. One of these advises as follows:

The residence will have minimal negative influence on the following key considerations:

- *The surrounding Nature Reserve is substantially buffeted by the setbacks and vegetative screenings – existing and proposed;*

- The selected location is logical, as it provides optimum privacy whilst impacting on minimal flora and fauna;
- Vision lines (internal and external) are respectful of privacy for occupants, neighbours;
- Flooding impacts will be below measurable parameters on site and to neighbours (based on specific engineering I had undertaken in 1992);
- Solar alignment is logical for the local climate;
- Design and materials are world class;
- Location of residence will be in balance with the existing services and infrastructure.

10 **The remaining three submissions raised the following issues**

- Protect access to the neighbouring property (Lot 1 DP 536652) which is via Byron Street and an unnamed street which is adjacent to the lots.

15 Comment: The subject neighbouring property is Lot 1 DP 536652 shown in the extract from the Site Plan for the proposed development below. There is an existing generally north-south access crossing the subject site, also shown in the extract. The proposed development is to be carried out entirely on the eastern side of that access, whereas the neighbouring Lot 1 is entirely to the west of that access. The proposal will not change any existing access arrangements in relation to the

20 neighbouring Lot 1.



- Filling and Flood impacts

25 Comment: The development was substantially amended through the assessment process removing proposal to construct borrow pits and to fill the site. Minor filling is still required in part for access and for the small effluent disposal area. As discussed above, it is considered the development will have negligible impacts on the flood plain in terms of flood heights or the

30 displacement of flood waters.

- The impact of this development will result in a decrease in the amenity to the neighbouring property.

35 Comment: The submission has not nominated the way/s that the proposal would decrease amenity to the neighbouring property. There is a separation distance of approximately 90m

between the neighbouring Lot 1 and the proposed dwelling house. There is not expected to be any significant privacy impacts, and will be no overshadowing or view impacts. There are no expected significant amenity impacts in relation to the yet to be developed vegetated neighbouring Lot 1.

- 5 • *Access to the neighbouring site through the public roads or in the alternative via No 37 Byron Street to be discussed.*

10 Comment: A meeting is currently being arranged to discuss access to the neighbouring Lot 1 between the owner of the neighbouring Lot 1, Council’s Development Engineer and any other required staff via an existing but unformed road reserve. This is now a matter for the owner of the subject land to this DA to negotiate.

- Vegetation removal and associated works involved with the borrow pit

15 Comment: The DA originally proposed a borrow pit however this has been deleted. The dwelling is to be sited on cleared land with minimal vegetation removal required.

- Traffic impacts on Byron Street, New Brighton

20 Comment: The subject road network is capable of accommodating traffic generated by this dwelling house.

4.10 Public interest

25 The proposed development is unlikely to significantly prejudice or compromise the public interest or create an undesirable precedent, and approval is recommended subject to conditions.

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

Unless the site is to be connected to the sewer, no headworks charges apply.

5.2 Section 7.11 Contributions

35 No Section 7.11 Contributions will be required.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Has a Disclosure Statement been received in relation to this application	No
Have staff received a ‘gift’ from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

40 Provide Disclosure Statement register details here: Not applicable

7. CONCLUSION

45 The application appropriately addresses the relevant constraints applying to the site including flooding, coastal erosion, bushfire and native vegetation. The application is recommended for approval subject to the conditions of consent.

Report No. 13.4 PLANNING - 26.2017.4.1 Lot 22 - Proposed Amendments to the Exhibited Planning Proposal

Directorate: Sustainable Environment and Economy

Report Author: Steve Daniels, Project Officer - Planning Reforms

5 **File No:** I2020/1244

10 **Summary:**

15 The Lot 22 planning proposal relates to Council owned land located at the southern edge of Mullumbimby, described as (part) Lot 22 DP 1073165, 156 Stuart Street, Mullumbimby. A Gateway Determination was issued by the Department of Planning, Industry & Environment on 30 May 2018 (Attachment 1).

20 The planning proposal (Attachment 2) was placed on public exhibition from 31 October 2018 to 12 December 2018 and an independently chaired Public Hearing was held on the 6 February 2019. Following the public exhibition and public hearing, Council received a submissions report on 11 April 2019 and resolved to prepare a further flood study and structure plan for Lot 22 and the adjoining sites identified in the draft Residential Strategy as investigation areas for future housing.

25 This report discusses the draft flood study and recommendations, draft structure plan for Lot 22, and changes required to the planning proposal provisions as a result.

If the planning proposal is supported and the site is ultimately rezoned and reclassified, an amendment to the Lot 22 Plan of Management and preparation of a site specific DCP chapter will also be required.

30 In short:

- 35 • The updated flood study prepared by WMAwater (Attachment 3) explores a range of options to manage flooding and drainage for Lot 22 and the adjoining investigation areas. The natural rehabilitation approach to stormwater management was the highest ranked option in the multi-criteria assessment, which considers non qualitative benefits such as potential for local drainage and water quality improvements, ecology/habitat improvement, long term maintenance cost and the potential for social engagement. As such this option is recommended.
- 40 • The structure plan (Attachment 4) is a high level document designed to inform the planning proposal and preparation of a site specific DCP. **The structure plan is for illustrative purposes only** and provides an example of how diverse housing could be delivered on the flood free development areas. It is not a formal plan for development assessment purposes and should not be viewed as such. It is subject to change pending detailed site investigations at the DA stage, detailed feasibility assessments, consultation with the community and consultation with future housing providers.
- 45 • In response to the flood study recommendations, structure plan and draft Residential Strategy, a number of changes to the exhibited planning proposal are presented in this report. It is recommended that the planning proposal be updated and forwarded to the Department of Planning, Industry & Environment for a Gateway determination.
- 50

55 If a positive Gateway determination is issued, Council staff will prepare a community engagement program that is in addition to the Gateway exhibition requirements.

NOTE TO COUNCILLORS:






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

RECOMMENDATION:**That Council:**

1. **Prepare an amended planning proposal for (part) Lot 22 DP 1073165, 156 Stuart Street, Mullumbimby that reflects changes detailed in Table 2 of this report.**
2. **Forward the amended planning proposal and supporting studies to the Minister for Planning requesting a Gateway determination.**
3. **Place the amended planning proposal, supporting studies and structure plan on public exhibition in accordance with the Gateway determination.**
4. **Carry out a community engagement program in addition to the Gateway exhibition requirements.**
5. **Receive a further report to consider:**
 - a) **The outcome of the public exhibition and community engagement program.**
 - b) **The preparation of an amended Plan of Management for Lot 22.**
 - c) **The preparation of Development Control Plan provisions for Lot 22.**
 - d) **The preparation of a holistic traffic and transport study for the Saltwater Creek Precinct.**

10

Attachments:

- 1 26.2017.4.1 Gateway determination - Stuart Street Mullumbimby PP_2018_BYRON_001_00 (30/5/18) - Lot 22, E2018/46655 
- 15 2 26.2017.4.1 Planning Proposal Lot 22 Mullumbimby (v2 Exhibition version) - pdf of E2018/76218, E2018/76692 
- 3 3 Mullumbimby Land Release Areas - Flood Impact Assessment and SWMP Final_Aug2020, E2020/43608 
- 4 4 26.2017.4.1 Lot 22 Illustrative Structure Plan_Updated 26_10_20, E2020/85789 
- 20 5 26.2017.4.1 Lot 22_Draft Statutory Framework and DCP Discussion_Pdf of E2020/85726, E2020/87627 

REPORT***Background***

5 The Lot 22 planning proposal relates to Council owned land located at the southern edge of Mullumbimby, described as (part) Lot 22 DP 1073165, 156 Stuart Street, Mullumbimby. Lot 22 is an irregular shaped lot that is split by a railway line and has part of its boundary to Saltwater Creek. Lot 22 includes the Mullumbimby community gardens (however this area is not proposed to be rezoned and reclassified) and has a total area of approximately 29.2 hectares.

10 Lot 22 is one of four sites collectively known as the Saltwater Creek Precinct (see Figure 1). These sites are identified in the draft Residential Strategy as investigation areas for future housing, and have been subject to an early implementation initiative that aims to incorporate affordable housing outcomes as a component of any future development.

15



Figure 1: Lot 22 & adjoining sites in the Saltwater Creek Precinct

20 On 23 November 2017 Council considered a planning proposal to rezone and reclassify (part) Lot 22 DP 1073165, 156 Stuart Street, Mullumbimby, for the purpose of permitting residential development with an emphasis on affordable and diverse housing.

25 Following consideration of the 23 November 2017 Council report, Council resolved (17-597) to forward the planning proposal to the NSW Department of Planning and Environment (DPIE) for a Gateway determination and proceed to public exhibition of the planning proposal. A Gateway Determination was issued by the DPIE on 30 May 2018 (Attachment 1).

The planning proposal (Attachment 2) was placed on public exhibition from 31 October 2018 to 12 December 2018 and an independently chaired Public Hearing was held on the 6 February 2019.

The exhibited Lot 22 planning proposal aims to:

- 5 • Rezone part of the land (approximately 22 hectares of 29.2 hectares) from RE1 Public Recreation zone to R1 General Residential zone to permit residential development with an emphasis on affordable and diverse housing, and make further consequential amendments to planning controls for the site.
- 10 • Reclassify part of the land from Community to Operational land.
- 10 • Include local provisions to encourage diverse and affordable housing on this and other key sites to be identified on a map in Byron LEP 2014.

Following the public exhibition and public hearing, Council received a submissions report on 11 April 2019 and resolved (**19-147**) to:

- 15 1. *Prepare a further flood study and a structure plan for Lot 22 DP 1073165 and the three surrounding properties that make up the Mullumbimby Accessible Housing Area.*
- 20 2. *Receive a further report to consider the future of the Planning Proposal for Lot 22 DP 1073165 once the additional studies have been completed.*

The purpose of this report is to provide:

- 25 • Key recommendations of the draft flood study and concept stormwater management plan;
- 25 • An overview of the structure plan developed in response to the flood study recommendations;
- 30 • A detailed overview of proposed changes to the exhibited Planning Proposal provisions;
- 30 • A timeline for preparing an updated Plan of Management for the residual Lot 22 community land; and
- 30 • A timeline for preparing DCP provisions and a traffic and transport study for Lot 22

Draft Flood Study & Concept Stormwater Management Plan

35 In accordance with Res **19-147**, WMAwater was engaged to provide an updated flood study (Attachment 3) to inform the Lot 22 planning proposal and structure plan. Given that Lot 22 is one of four sites in the Saltwater Creek Precinct, the study area encompasses all 4 sites in this precinct (Figure 1), providing a more holistic approach to flood planning and a better understanding of cumulative flood impacts.

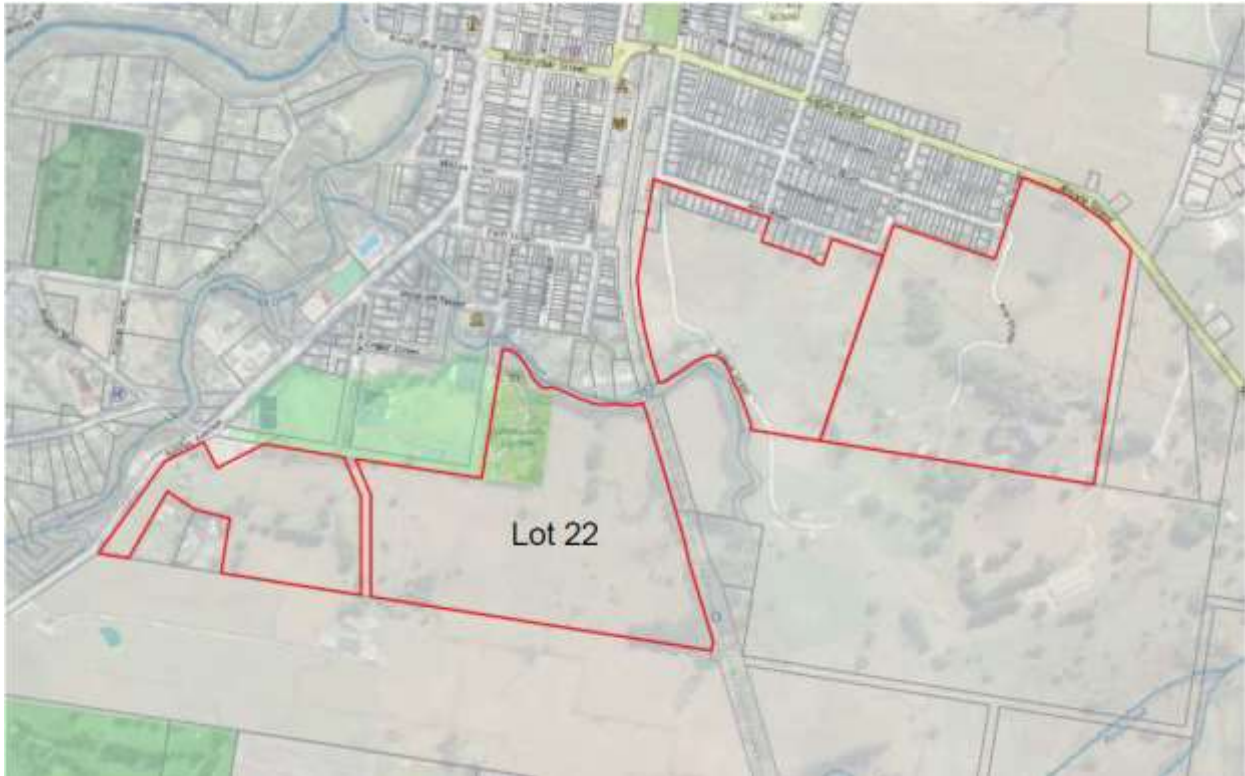


Figure 2: Study Area – Mullumbimby Saltwater Precinct

5 Based on the analysis undertaken, the following findings were obtained with regards to regional flood impacts:

- The sites all have a portion of area which is deemed developable when considering the impact to the regional flood levels and the development controls with regards to flooding on new land release areas;
- 10 • A cut to fill balance may be achievable however its viability is dependent on the soil quality onsite, which is currently unknown;
- Some channel works may be required to achieve the development footprint proposed – these have not been considered in the costing; and
- 15 Some local drainage corridors servicing existing areas may be impacted by the development. Future detailed assessments should ensure that the proposed development does not cause local drainage issues or regional flooding impacts ‘offsite’. The report notes that augmentation of existing drainage corridors may be necessary to improve overall local drainage and overcome any offsite impacts.

20 With regards to stormwater management, two potential management options were reviewed:

1. A traditional engineered option which relies on bio retention and detention basins to treat runoff; and,
2. An alternative approach which aims at improving the existing drainage corridor through a revitalisation process.

25 Based on the assessment undertaken, the natural channel rehabilitation option is identified as the preferred outcome for the development (see Figure 3). While this option is initially more expensive to establish, it will provide greater environmental benefits to the area, has potential for improved drainage and water quality for areas external to the development and also has a greater
30 opportunity for social engagement and amenity. The rehabilitation option is also likely to have a

lower ongoing maintenance and lifecycle costs when compared to engineered solutions, especially with regards to water quality. By contrast, traditional engineered water quality solutions require constant maintenance to ensure function, which often does not occur, resulting in a poor urban design outcome over time.

5 The natural rehabilitation approach was also the highest ranked option in the multi-criteria assessment, which considers non qualitative benefits such as potential for local drainage and water quality improvements, ecology/habitat improvement, long term maintenance cost and the potential for social engagement. As such this option is recommended.

10



Figure 3: Developable Area & Alternative Stormwater Management plan (Recommended Option)

15 It should be noted that each stage of the development process requires further refinements to flood impact modelling and required drainage upgrades. Additional assessments undertaken at the development application stage can draw on a more detailed understanding of the site constraints and proposed development outcome.

20 If the planning proposal proceeds to Gateway, the flood study (Attachment 3) will be appended to the planning proposal. If the Gateway determination permits Council to proceed to public exhibition, the flood study will be placed on exhibition with the planning proposal for community feedback

25 **Proposed Structure Plan**

30 The structure plan (Attachment 4) is a high level document designed to inform the planning proposal and preparation of a site specific DCP. **The structure plan is for illustrative purposes only** (excerpt provided below in Figure 4) and provides an example of how diverse housing could be delivered on the flood free development areas. It is not a formal plan for development

assessment purposes and should not be viewed as such. It is subject to change pending detailed site investigations at the DA stage, detailed feasibility assessments, consultation with the community and consultation with future housing providers.

5 The alternative stormwater management plan (natural channel rehabilitation approach) provides the foundation from which the structure plan has been developed. The structure plan is therefore complimentary in its intention to improve amenity and water quality for areas upstream, restore creek systems as part of the three natural drainage channels, and rehabilitate the wetland area on the site.

10

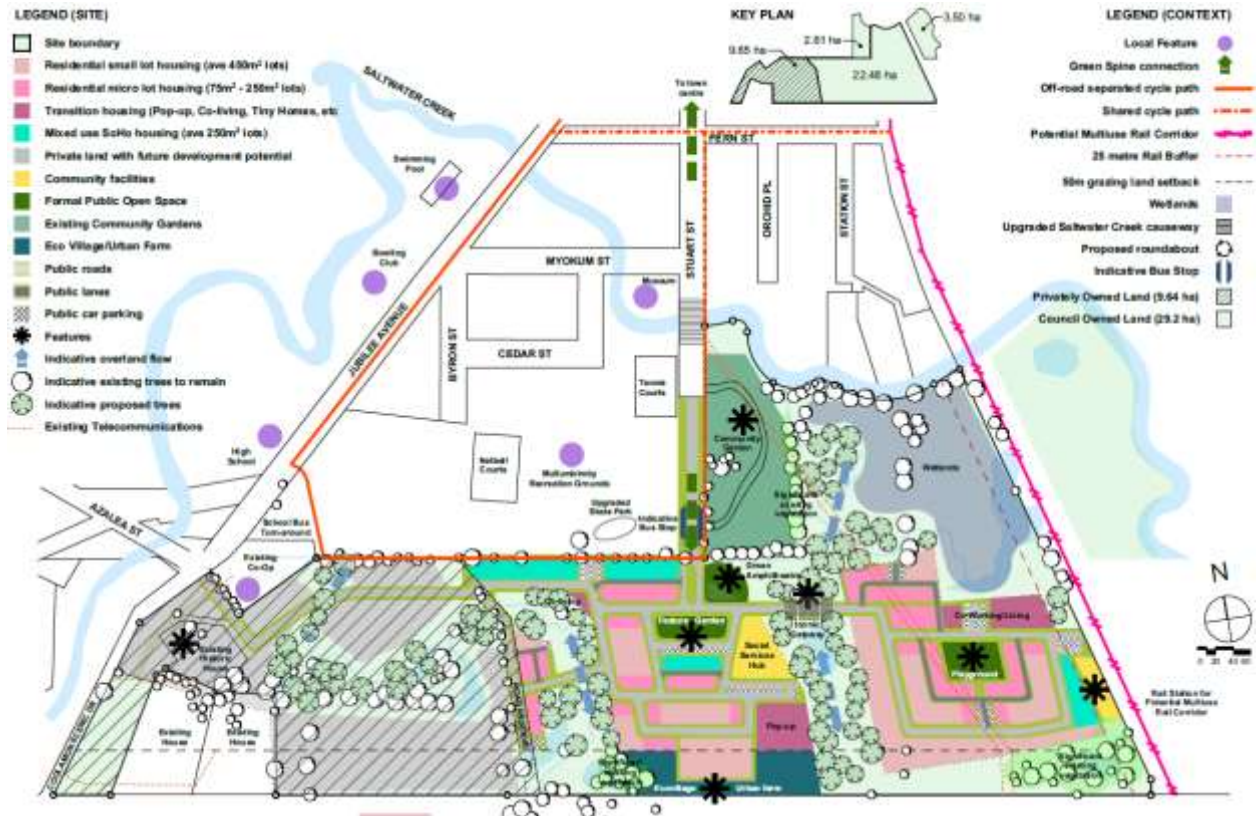


Figure 4: Illustrative Structure Plan – Excerpt taken from Attachment 4
 (NOTE: Privately owned land to the west of Lot 22 is overlaid with diagonal black lines; this land would be subject to a separate planning proposal and rezoning process)

15

Vision for Lot 22

In broad terms, the vision for Lot 22 is to create an innovative housing precinct that stands apart from traditional approaches to suburban housing, while also delivering an accessible housing component that supports the housing needs of the community. This vision aims to provide:

20

- A diversity of dwelling typologies and densities;
- Neighbourhood's set within the green landscape of the recreation grounds, creek corridors and the community gardens.
- A highly connected place with walking and cycle links to the nearby schools, town centre, parks and services.

25

The accessible housing component of Lot 22 seeks to promote opportunities for a mix of people to join (or re-join) the creative and diverse community of Mullumbimby. This would include:

30

- Singles and young people; key workers; low income workers and students; lone parents; first-home buyers; the elderly; welfare recipients; and people transitioning out of homelessness.
- Local Aboriginal people seeking affordable opportunities to live on Country.

5

A Range of Lot Sizes and Dwelling Types

10 By comparison to other investigation areas identified in the Residential Strategy, Lot 22 aims to achieve a higher dwelling density by incorporating a higher percentage of smaller lot sizes within the overall lot size mix. This emphasis on more compact housing typologies reflects the goal of targeting a 30% affordable housing allocation for Lot 22, as opposed to 20% for other sites identified as investigation areas in the Residential Strategy.

15 There are 2 options for how affordable housing could be placed across the site – dispersed throughout the development or concentrated in small pockets. Both options have their merits and will be determined in consultation with the housing provider responsible for construction and ongoing management.

20 This greater emphasis on micro lot housing and small lot housing (delivering 1, 2 & 3 bedroom homes) translates to higher dwelling yields for the site. It is estimated that the development footprint and proposed lot size mix could yield approximately 250 to 350 dwellings. Attachment 3 provides an illustrative picture of potential housing outcomes for the site.

25 Movement & Access

Two vehicle access points are proposed for Lot 22 (and the adjoining privately owned site to the west):

- 30 1. Via Stuart Street to the north; and
2. Via a proposed intersection on Coolamon Scenic Drive to the west (in the vicinity of Azalea Street). An intersection in this location would seek to improve existing choke points in this area which currently struggles to manage bus exchanges, school traffic and vehicles entering and exiting the Mullumbimby Rural Co-Op.

35 The close proximity of Lot 22 to the town centre and essential services in Mullumbimby makes walking and cycling a viable option for residents making short trips around town. The structure plan aims to promote alternative, healthy transport options over vehicle dependence where possible.

40 The current Gateway determination for the Lot 22 planning proposal did not require a traffic study, and it is understood that there are a number of access options available. However it is noted that the estimated dwelling yield has increased in the time since the current Gateway was issued.

45 A traffic study for Lot 22 and the adjoining Residential Strategy Investigation Area is necessary. It is usual practice to undertake a traffic study at the planning proposal stage where the planning proposal is being progressed by a third party, however in this case, Council is the landowner and has stewardship of the planning proposal. It is considered premature in this particular case to undertake a traffic assessment ahead of more detailed work that would establish the subdivision design, housing yield and concept viability.

50 Additionally, a separate planning proposal is expected to be received for rezoning of the adjoining investigation area to the west. The site to the west will contribute to the overall traffic volume, and the proposed development outcome needs to be understood when considering access options noted above and/or any alternative access routes. Given the need to consider the cumulative impacts of future development in Mullumbimby, it would therefore be logical to undertake a holistic

55

traffic study for all of the Saltwater Creek Precinct investigation area, including Lot 22. It is proposed that a detailed traffic assessment be undertaken prior to the preparation of a site specific DCP for Lot 22.

5 Recreation and Environmental Conservation

The northern half of the site (adjoining the Mullumbimby Community Gardens) sits outside the development footprint and provides an opportunity for passive recreation in a restored natural environment.

10 A buffer area to the south of the site would provide separation from the adjoining farmland as well as opportunities for vegetated recreational areas and urban farming.

15 ***Proposed changes to the exhibited Planning Proposal***

In response to the flood study recommendations, structure plan and the draft Residential Strategy, a number of changes to the exhibited planning proposal are required. It should be noted that an amended Gateway determination, or a new Gateway determination, will be necessary. The planning proposal will be re-exhibited along with the supporting studies and structure plan. All proposed changes to the planning proposal are summarised below in Table 2.

20 LEP Provisions to Support Improved Housing Choice, Diversity and Equity

25 The exhibited planning proposal featured a minimum lot size of 200m² and a 'Diverse Housing' clause that sought to deliver a mix of dwellings at one, two or three plus bedrooms. This approach has since been superseded by provisions in the draft Residential Strategy, Policy 2 - *Improved housing choice, diversity and equity*.

30 The objectives are complimentary to [The North Coast Regional Plan 2036](#), Direction 23: *Increase housing diversity and choice*. Action 23.1 of the Regional Plan (Page 56) requires Councils to:

Encourage housing diversity by delivering 40 per cent of new housing in the form of dual occupancies, apartments, townhouses, villas or dwellings on lots less than 400 square metres, by 2036.

35 To meet the actions in the draft Residential Strategy and the North Coast Regional Plan, new urban areas zoned R1, R2 & R3 require supporting provisions in Byron LEP 2014 that deliver a range of housing typologies and lot sizes.

40 Proposed Statutory Clauses - Lot Size Diversity & Housing Diversity

45 The standard instrument Minimum Lot Size maps typically used in Byron LEP 2014 have limitations when trying to deliver a development outcome that features a targeted mix of varying lot sizes. Specifying the mix of lot sizes on a site via a minimum lot size map is an overly prescriptive approach and lacks the flexibility needed to deliver subdivision outcomes at the DA stage that can respond to site constraints, servicing requirements, market conditions and investment viability – particularly if land is subject to an affordable housing contribution.

50 The proposed statutory framework introduces local clauses 4.1G, 4.1H and 4.1I to Byron LEP 2014. These clauses operate in conjunction with a proposed 'Key Sites Map' that identifies land to which the clauses would apply (in this case Lot 22). The intended effect of these clauses is summarised below in Table 1, and a detailed overview is provided in Attachment 4.

Table 1: Summary of Proposed LEP Statutory Clauses (Attachment 4) - Lot Size Diversity & Housing Diversity

Item #	Proposed Byron LEP 2014 clause	Function of the proposed clause
(A)	Clause 4.1G	Provides a target lot size mix for new urban areas based on draft Residential Strategy — Policy 2 and Table 5. . The updated version of Table 5 is provided in Attachment 4. It outlines a lot size diversity mix for investigation areas zones R2 & R3, and a separate lot size diversity mix for Council owned land zoned R1 (Lot 22).
(B)	Clause 4.1H	Guides the development of appropriate housing typologies for certain lot sizes. This clause is designed to promote greater housing diversity and the efficient use of land.
(C)	Clause 4.1I	Provides necessary flexibility to the proposed LEP provisions to ensure that development concepts can respond to site constraints and investment/ viability considerations. Often these considerations can only be fully determined following detailed site investigations at the DA stage.
(D)	Key Sites Map	Identifies sites that are required to comply with lot size diversity and housing diversity provisions summarised above. Initially, Lot 22 will be the only site identified on the Key Sites Map, however other sites identified as investigation areas in the draft Residential Strategy would be included in the future subject to a planning proposal confirming their suitability for future housing.

Overview of All Proposed Changes to the exhibited Planning Proposal

5 In addition to the lot size and housing diversity framework described above, further changes are necessary in response to the flood study recommendations, specifically the extent of land zoned R1, and a building height provision that factors proposed fill pads. Table 2 below provides a summary of all proposed changes to the exhibited planning proposal.

10

Table 2: Summary of all proposed changes to the exhibited planning proposal

Item #	Previously Exhibited Planning Proposal Provisions	Proposed Changes
(1)	<u>Land Use Zones</u> Rezone approximately 22 hectares of the existing RE1 Public Recreation zone to <i>R1 General Residential</i> . This will be a new zone not previously used in Byron LEP 2014.	The extent of the proposed <i>R1 General Residential</i> zone will be reduced to the southern portion of the site to encompass the developable area identified in the flood study. The balance of the land will remain in its current <i>RE1 Public Recreation</i> zone and

Item #	Previously Exhibited Planning Proposal Provisions	Proposed Changes
	The balance of Lot 22 DP 1073165 will remain in its current RE1 Public Recreation zone and partly as a Deferred Matter under Byron LEP 1988 (see Figure 5 below).	partly as a Deferred Matter under Byron LEP 1988 (see Figure 6 below).
(2)	<p><u>Height of Buildings</u></p> <p>Current Height of Building (9 metres) will be retained.</p>	<p>Retain the 9 metre Height of Building provision and identify the site on a proposed Building Height Allowance Map.</p> <p>Draft clause 4.3A is proposed to ensure that building heights are measured from the flood planning level (this is relevant given that development pads on Lot 22 will be filled to the FPL plus 0.5m freeboard).</p> <p>4.3A Exceptions to height of buildings</p> <p>(1) <i>The objective of this clause is to align building height and flood planning provisions and provide for a consistent point of reference for the measurement of building heights in flood prone areas.</i></p> <p>(2) <i>This clause applies to land identified as “Minimum Level Australian Height Datum (AHD)” on the Building Height Allowance Map.</i></p> <p><i>The maximum height of a building on land to which this clause applies is to be measured from the minimum level AHD permitted for that land on the Building Height Allowance Map.</i></p>
(3)	<p><u>Minimum Lot Size</u></p> <p>A Minimum Lot Size of 200m² is proposed to encourage affordable housing outcomes on the subject land.</p>	<p>Remove the 200m² minimum lot size control from the planning proposal. The site will not feature on the minimum lot size map.</p> <p>This provision is to be replaced by the Lot Size Diversity & Housing Diversity clauses described in Attachment 4 and summarised above in Table 1.</p>
(4)	<p><u>Diverse Housing Clause & Key Sites Map</u></p> <p>Introduce a new diverse housing clause applicable to sites identified on a Key Sites Map.</p> <p><i>4.7 Diverse housing</i></p>	<p>Remove the current diverse housing clause from the planning proposal and replace with the proposed Lot Size Diversity & Housing Diversity clauses described in Attachment 4 and summarised above in Table 1.</p> <p>The Key Sites Map is to be retained; however it will serve to identify land to which</p>

Item #	Previously Exhibited Planning Proposal Provisions	Proposed Changes
	<p><i>Council wants to increase the diversity of dwelling types in new residential areas on land identified on the key sites map.</i></p> <p><i>This clause will apply to residential and mixed use development on land shown on the key sites map as “clause 4.7”. It will apply to a development application where four or more dwellings are proposed.</i></p> <p><i>Residential development on this land should comprise at least 25% one bedroom dwellings and at least 50% two bedroom dwellings with no more than 25% of new residential development being three or more bedrooms.</i></p>	<p>the new Lot Size Diversity & Housing Diversity clauses apply.</p>
(5)	<p><u>Reclassification – Community to Operational</u></p> <p>Reclassify part of Lot 22 DP 1073165 from Community to Operational to reflect the changes to the zone of the land and the prospective change of land use. This will be achieved by listing the subject land in “Part 2 Land classified, or reclassified, as operational land— interests changed” within “Schedule 4 Classification and reclassification of public land”.</p>	<p>The area of land subject to reclassification will be amended to reflect the proposed R1 General Residential zone shown below in Figure 6. The remaining land will retain its Community Land classification.</p>

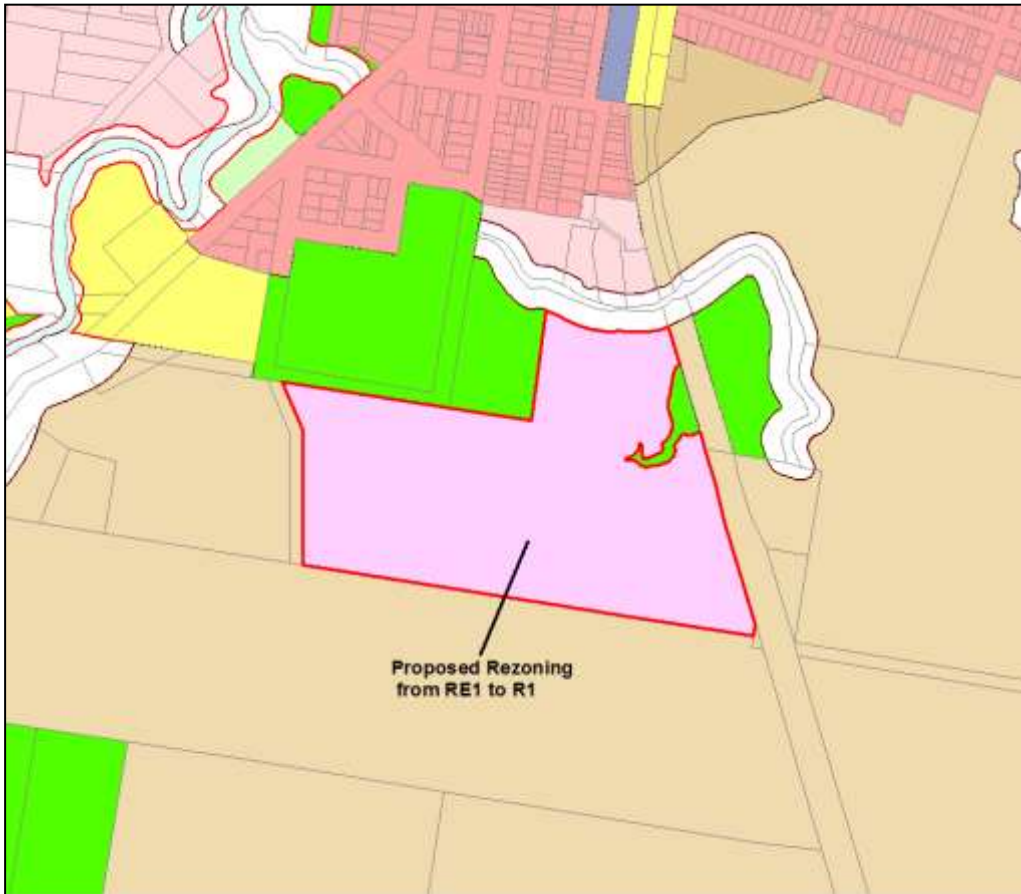


Figure 5 – Previously proposed zone changes under the exhibited planning proposal



5 Figure 6 - Proposed zone changes under an amended planning proposal (indicative only)

Required DCP Provisions

5 The amended planning proposal provides a statutory framework that delivers a mix of lot sizes and housing typologies for the site, this mix includes an allocation of smaller lot sizes that create unique challenges when considering the design and location of buildings. More detailed design considerations are best managed via a DCP in order to provide sufficient flexibility at the DA stage.

10 It is proposed that a site specific DCP for Lot 22 be prepared in concert with the finalisation of the planning proposal. The DCP would be reported to Council and placed on public exhibition ahead of any future DA for the site. Some of the key issues that will need to be addressed are discussed below.

Subdivision & Integrated Development

15 DCP provisions are required to manage the development of housing at smaller lot sizes to ensure that buildings are designed and located in a manner that best aligns with the amenity of housing on adjoining lots. The potential for poor outcomes is greater when working with smaller lot sizes due to the close proximity of buildings.

20 To address this issue, proposed clause 4.1G requires that subdivisions creating lots smaller than 300m² be carried out as part of an integrated development application. This means that the subdivision DA and the building DA are submitted together as an integrated DA. This integrated approach removes the risk of ad-hoc development outcomes in terms of the location of buildings, building design and interface.

25 Managing site constraints at smaller lot sizes

Smaller lot sizes (i.e. less than 600m²) also create challenges when working with site-specific constraints, such as vegetation, slope etc. Such constraints can further limit the potential location of buildings, thus compounding the potential for poor outcomes on small lots.

30 To manage the impact of site constraints, DCP provisions will be necessary to ensure that subdivision applications are accompanied by a Building Envelope Plan to demonstrate that the lot can accommodate a building platform, appropriate access and servicing with minimal site, visual and vegetation impacts.

Infrastructure ConsiderationsWater & Sewer Services

40 Lot 22 is one of a number of sites in Mullumbimby identified as an investigation area for new housing under the Byron Residential Strategy. New housing supply in Mullumbimby will also be generated through infill development in existing urban areas, and through the development of existing (undeveloped) residential zoned land.

45 Therefore, the provision of water and sewer services for lot 22 is part of a broader water security strategy for Mullumbimby. Servicing requirements for these development areas (including lot 22) would be confirmed once the dwelling yield/type is known.

50 A staged delivery program is necessary to ensure that new development in Mullumbimby is supported by necessary infrastructure upgrades. The water supply strategy will investigate supply options to meet the anticipated demand, but will need to be flexible to respond to the actual growth realised. It is expected that required staging of new development will be enforced via corresponding LEP and DCP provisions.

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Traffic & Transport

As noted above, a traffic study for Lot 22 and the adjoining Residential Strategy Investigation Area is necessary. It is usual practice to undertake a traffic study at the planning proposal stage where the planning proposal is being progressed by a third party, however in this case, Council is the landowner and has stewardship of the planning proposal.

A separate planning proposal is expected to be received for rezoning of the adjoining investigation area to the west. The site to the west will contribute to the overall traffic volume, and the proposed development outcome needs to be understood when considering access options. Given the need to consider the cumulative impacts of future development in Mullumbimby, it would therefore be logical to undertake a holistic traffic study for all of the Saltwater Creek Precinct investigation area, including Lot 22. It is proposed that a detailed traffic assessment be undertaken prior to the preparation of a site specific DCP for Lot 22.

Affordable Housing

A key driver behind part of Lot 22 being rezoned for residential purposes is to deliver affordable housing.

There may be a number of options available to Council to secure affordable housing on Lot 22. At this stage the most obvious would appear to be LEP 2014 provisions under a SEPP 70 affordable housing contribution scheme. To do this, a planning proposal to apply the scheme needs to progress in parallel to the zone change, as a scheme can only be applied where there is an upzoning.

That said, staff are currently investigating alternative models for securing affordable housing. This work may identify alternatives more suited to this site and Council objectives. It is expected that findings will be available by the early part of 2021.

Either way, preliminary viability analysis to date indicates that Lot 22 may be able to deliver a higher percentage of affordable housing than other investigation areas in the Shire. This may be further enhanced should Council be able to identify a delivery model to secure project funding at the state level or in partnership with the private or not for profit sectors.

At this point in time given Council has stewardship of this planning proposal process; it is suggested a decision on whether to progress with a SEPP 70 Affordable Housing Contribution Scheme planning proposal be held over until the findings of the alternative model investigations are available.

With all options, the delivery of affordable housing will be influenced by ensuring the affordable housing is most suited to our community's needs, is compatible with Mullumbimby's character, construction costs, market trends and investment funding options.

Required amendment to the Lot 22 Plan of Management

The existing Plan of Management applies to all of the land identified as Lot 22 DP 1073165. The land is Community Land, owned and managed by Byron Shire Council. The plan of management categorises the community land parcel into the following:

- Sportsground
- General Community use

The plan of management will need to be amended to reflect and include only that land proposed to remain classified as community land. Council will also need to consider changes to the categories noted above for that land.

- 5 An updated Plan of Management will be prepared and exhibited following gazettal of the rezoning and reclassification of the land from community to operational. Work will commence of this sooner should council resolve to do so.

Community Engagement and Consultation Program

10 Community engagement and consultation moving forward will build on the extensive consultation that has been undertaken on the planning proposal and also that as part of the residential strategy in relation to housing diversity and choice.

15 A successful Gateway determination issued by the DPIE will require Council to undertake a public exhibition of the planning proposal for a prescribed time period. However, the significant public interest in this proposal, as well the community land classification of the site, warrant Council going above and beyond the Gateway public exhibition requirement including focus groups, drop in sessions, listening posts at the markets and main Street. Zoom webinar/recording will also be developed. Each will need to comply with COVID safe workplace requirements in place at the time.

20 A community engagement program will be prepared and implemented once a positive Gateway Determination is received.

25 ***Summary and Conclusions***

30 The objective of the Lot 22 planning proposal is to determine if the land is suitable for residential development, and to establish the most appropriate zoning and statutory planning controls for the site.

35 The structure plan and flood study attached to this report have been prepared to assist the decision making process at the rezoning stage. The structure plan and flood study would be further refined at the DA stage, and would be subject to further consideration by Council and the community.

Detailed plans at the DA stage will also need to account for feasibility assessments, market analysis and infrastructure delivery.

40 **STRATEGIC CONSIDERATIONS**

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 4: We manage growth and change responsibly	4.2	Support housing diversity in appropriate locations across the Shire	4.2.1	Establish planning mechanisms to support housing that meets the needs of our community	4.2.1.3	Progress future use of Lot 22, Mullumbimby Planning Proposal and Plan of Management

Legal/Statutory/Policy Considerations

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

5

Financial Considerations

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

Report No. 13.5 **PLANNING - Development Application 10.2020.274.1 New dwelling to create dual occupancy (detached) at 590 Booyong Road Booyong**
Directorate: Sustainable Environment and Economy
Report Author: Patricia Docherty, Planner
File No: I2020/1420

Proposal:

Proposal description: New Dwelling to Create Dual Occupancy (Detached)

Property description: LOT: 1 DP: 878972
 590 Booyong Road BOOYONG

Parcel No/s: 222120

Applicant: Dixonbuild Pty Ltd

Owner: Mr B J Towers

Zoning: RU2 Rural Landscape

Date received: 10 June 2020

Integrated / Designated Development: Integrated Designated Not applicable

Concurrence required No

Public notification or exhibition:

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 2/7/20 to 22/7/20
- Submissions received: nil
- Submissions acknowledged: Yes No N/A

Planning Review Committee: Not applicable

Variation request Clause 4.6

Delegation to determine Council

Issues: 4.6 Variation of Development Standards under Clause 4.2D - Distance between dwellings (>100m).

Summary:

The DA proposes a new single storey dwelling to create a dual occupancy (detached) on rural land at Booyong. The proposed dwelling will be approximately 124 metres to the south of the existing dwelling on the site and will share the existing driveway access off Booyong Road. The proposed dwelling comprises four bedrooms and is of a brick veneer design with a colorbond roof.

The proposed dwelling does not comply with the development standard for a minimum of 100 metres distance between dwellings required under Clause 4.2D (2) (c) *Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2*, and a request has been made to vary the development standard under Clause 4.6 of Byron LEP 2014.

Having considered the applicant's written request to vary the development standard, Council can be satisfied that the proposed development is consistent with the relevant objectives of the RU2 zone and development standard:

- 5 (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,
10 (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.

15 Upon review of the applicant's written request it is considered that compliance with the
development standards is unreasonable or unnecessary in the circumstances of the case, having
regards to the cleared nature of the site, the objectives of the RU2 Zone and the level nature of the
site. The additional distance is not likely to impact on surrounding properties and no submissions
were made.

20 The proposed development will not result in any adverse impacts on the character, amenity and
environment of the locality, and the site is considered suitable for the proposed development.

The application appropriately addresses the relevant constraints applying to the site, and is
recommended for approval subject to the conditions listed in the Recommendation of this Report
below.



25 NOTE TO COUNCILLORS:

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

RECOMMENDATION:

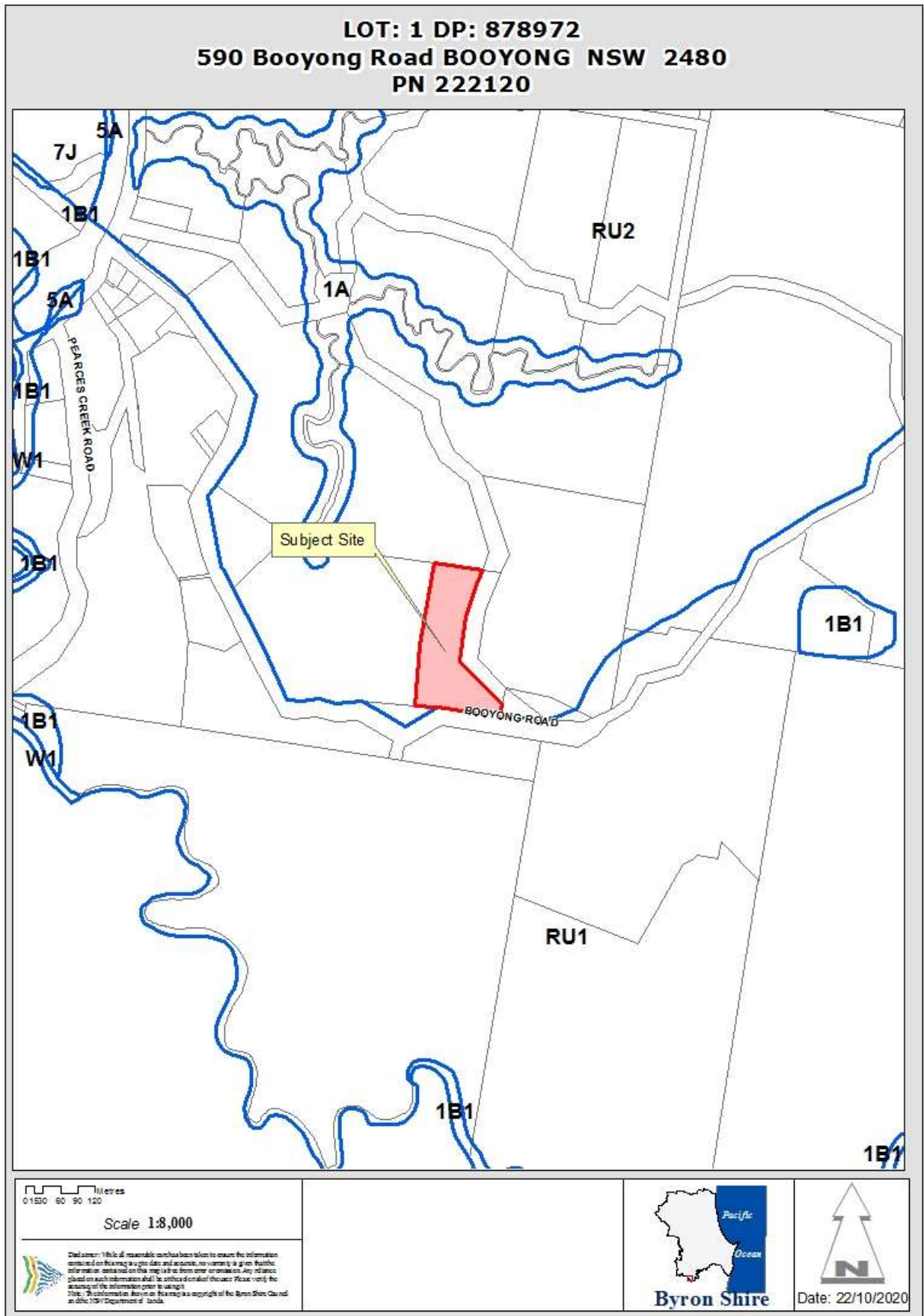
**That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979,
Development Application No. 10.2020.274.1 for New Dwelling to Create Dual Occupancy
(Detached), be granted consent subject to the recommended conditions of approval in
Attachment 2 (#E2020/85691).**

35 **Attachments:**

- 1 10.2020.274.1 - Plans, E2020/85238 
2 10.2020.274.1 - Conditions of Consent, E2020/85691 

40

REPORT



Assessment:

1. INTRODUCTION

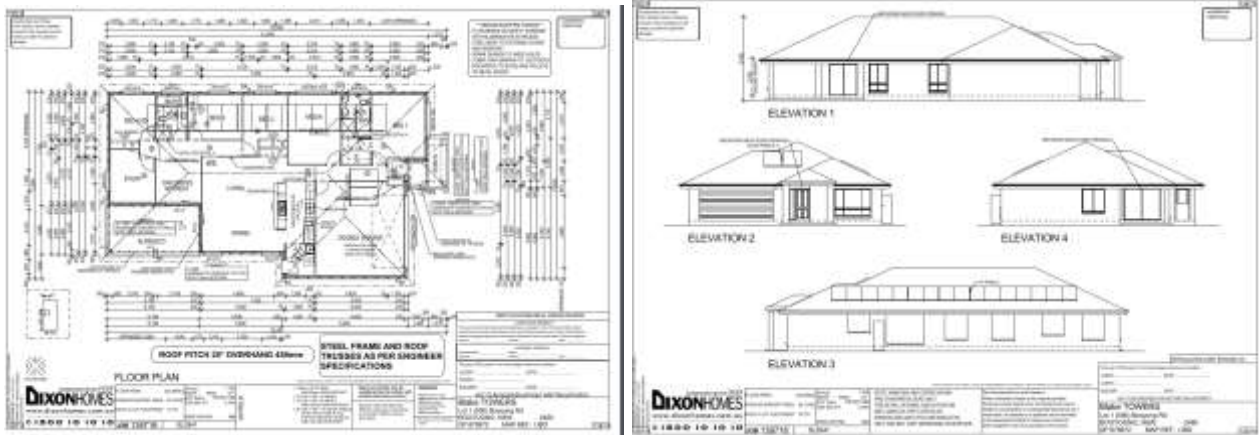
5 1.1. History/Background

005.1997.00000326.001	Development Applications	Subdivision- Boundary Adjust - Boundary adjustment	Refused Dele...	31/10/1997
005.1998.00000003.001	Development Applications	Subdivision- Boundary Adjust - Property consolidation/Boun...	Approved Del...	15/04/1998
010.1998.00000509.001	Development Application	Dwelling- rural	Approved Del...	25/09/1998
010.2000.00000480.001	Development Application	Boundary adjustment	Approved Del...	27/02/2001
010.2000.00000480.002	Development Application	Section 96 Modification - Delation of Condition No 7	Approved	06/12/2001

1.2. Description of the proposed development

10 This application seeks approval for a new single storey dwelling to create a dual occupancy (detached).

The proposed dwelling will be approximately 124 metres to the south of the existing dwelling on the site and will share the existing driveway access off Booyong Road. The dwelling includes 4 bedrooms, media room, study, 2 bathrooms, a laundry and double garage.



15 *Plans and elevations*

20 The proposal is of a brick veneer design with a colorbond roof and is single storey in terms of height.

1.3. Description of the site

A site inspection was carried out on 3 September 2020

Land is legally described	LOT: 1 DP: 878972, LOT: 8 DP: 41024, LOT: 1 DP: 1187774	
Property address	590 Booyong Road BOOYONG	
Land is zoned:	RU2 Rural Landscape	
Land area is:	2.023 hectares	
Property is constrained by:	Bushfire prone land, High Environmental Value, Drinking Water Catchment	
	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



GIS Mapping Extract

2. SUMMARY OF REFERRALS

5

Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions. .
S94 / Contributions Officer	No objections subject to conditions.
Land Information Officer	No objections subject to conditions.

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

3. SECTION 4.14 – BUSH FIRE PRONE LAND

10 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 2019’. The site is bush fire prone land. The development application is accompanied by a Report by Peter Thornton dated 23 October 2019 which provides conditions. Due to legislative changes to Planning for Bushfire Protection since the report was prepared, the assessing officer has undertaken an updated assessment in accordance with Planning for Bushfire Protection 2019, based on the site details provided in the Bushfire report.

15

20 Using the provisions under Planning for Bushfire Protection 2019’, the asset protection zone and bush fire attack levels for this proposed development (which is in fire weather area FDI 80) are as follows:

Direction	Effective Slope	Veg Formation	Distance to Veg	APZ	BAL
N	0-5	Grassland	>20	11m	19
NE	10-15	Rainforest	>39	20m	19
E	5-10	Grassland	26	12m	12.5
S	5-10	Forest	80	To the boundary	12.5
W	0-5	Grassland	17	11m	19

Condition number 4 is included in the Recommendation of this Report requiring that the development must comply at all times with the recommended bushfire protection measures.

EFFECT OF 10/50 RULE ON SIGNIFICANT VEGETATION

5 A small portion of land mapped High Environmental Value may be affected by the APZ required to the south. The trees in this location are Camphor Laurel on the road reserve and are not considered to be of high environmental value and the APZ is still achievable to the boundary without their removal.

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

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

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy Koala Habitat Protection 2019	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposed development is entirely on existing cleared land. No further consideration is required.		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: <u>History</u> Review of Council’s archive shows that PR239691 was created by way of DA 5.1998.3.1 <i>Subdivision – Boundary Adjustment – Property Consolidation/Boundary Adjustment</i> (DM1101852). The preliminary contaminated land assessment states that the larger agricultural allotment (pre-subdivision) was predominately used for cattle grazing, dairy farming and other agricultural pursuits.</p> <p>Observable point sources of contamination were identified during the site visit on 03 September 2020. Point sources included an abandoned vehicle at site of proposed dwelling, and waste/rubbish (mainly scrap metal, tyres and vehicle machinery). No unusual odours or yellowing of vegetation was identified.</p> <p><u>Results</u> Two composite soil samples were prepared from eight individual samples taken within the building envelope. Samples taken were analysed for a range of organochlorines pesticides, organophosphorus and heavy metals relevant for the sites land use history. The report concluded that the all results were below the relevant Health Investigation Limits (HILs) from NEPM 1999.</p> <p>Given the above and the unchanged land use type, the site is deemed suitable from the proposed development. No further investigation or action warranted. Conditions are recommended.</p>		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: A BASIX certificate was submitted with the application.		
State Environmental Planning Policy (Primary Production and Rural Development) 2019	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposed development is not contrary to rural planning principals and land use conflicts have been considered during assessment.		

15

4.2 Byron Local Environmental Plan 2014 (LEP 2014)

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

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

Zone Objective	Consideration
<ul style="list-style-type: none"> • To encourage sustainable primary industry production by maintaining and enhancing the natural resource base. • To maintain the rural landscape character of the land. • To provide for a range of compatible land uses, including extensive agriculture. • 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. • To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality. 	<p>The proposed development is not contrary to the objectives of the zone.</p>

10 The remaining underlined clauses 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 of these clauses (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to Clause 4.2D, which is considered

15 further as follows:

Clause 4.1 E Minimum lot sizes for dual occupancies, manor houses, multi dwelling housing and residential flat buildings

20 The site is 2.023 hectares; therefore the proposed dwelling meets the minimum site area of 4,000 square metres required for dual occupancy (detached) in the Zone RU2 Rural Landscape.

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

25 Development consent may be granted for the erection of a dual occupancy on land to which this clause applies because the land is a lot created before LEP 2014 commenced and on which the erection of a dual occupancy was permissible immediately before that commencement. No dual occupancy already exists on the lot and the new dwelling will result in a dual occupancy (detached), which is permissible with consent.

Clause 4.3 Height of Buildings

30 The proposed single storey dwelling is 5.43 metres high and less than the maximum permissible 9 metres.

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

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

The land is zoned under the Byron Local Environment Plan 2014 as RU2 Rural Landscape Zone, and is classified as Regionally Significant Farmland under the Byron Shire Rural Land Use Strategy 2018. Council’s Geocortex mapping database appears to show that the land surrounding the parcel is comprised of rural/residential lifestyle lots and farmland. The property directly south of the subject site includes an orchard. A potential conflict due to noise and space has been considered. However, as the sites are separated by a vegetative buffer on both sides of the roads, the potential for conflict is low.

The proposed dwelling to create a dual occupancy is compatible with the surrounding land uses and it is not envisaged that approval will result in significant land use conflicts.

Clause 6.2 Earthworks

Minor earthworks are required to complete driveway access. Most of the site for the rest of the building is already clear and level.

Clause 6.5 Drinking water catchments

The proposed dwelling is unlikely to have any adverse impacts on the quality and quantity of water entering drinking water storages. An intermittent water body is located approximately 60 m north east of the proposed development site. All buffer distances are met and it appears that there is space for a land application area (LAA) and reserve LAA.

The site has an approved On Site Sewage Management System (OSMS) servicing the existing five-bedroom dwelling (70.2001.202.1). This OSMS appeared to be in proper working condition with no signs of failure during the inspection on 03 September 2020. Council records also show this system has up to date quarterly servicing of the AWTS – see most recent maintenance report dated 09/09/20 (E2020/72301).

Therefore, the site is suitable and has capacity to assimilate the wastewater from the proposed development. A Section 68 application to install a new OSMS is required – conditions recommended.

Clause 6.6 Essential Services

Council can be satisfied that the following services that are essential for the development can be made available:

- (a) the supply of water,
 - (b) the supply of electricity,
 - (c) the disposal and management of sewage,
 - (d) stormwater drainage,
 - (e) suitable vehicular access.
- Conditions are recommended.

<p>What clause does the development not comply with and what is the nature of the non-compliance?</p>	<p>Further consideration, including whether the development application is recommended for approval or refusal accordingly</p>
<p>4.2D Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2 (1) The objectives of this clause are as follows— (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,</p>	<p>Each dwelling will be 124 metres apart.</p> <p>The assessment planner has considered the applicants written request to vary the development standard. The request is in the form and content required by the NSW Guide to Varying a development standard (2011).</p> <p>Having considered the applicant’s written request to vary the development standard, Council can be satisfied that the proposed development is</p>

(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.

(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—

(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

(f) the development will not have an adverse impact on the scenic amenity or character of the rural environment.

consistent with the relevant objectives of the RU2 zone and development standard:

- (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.*

No public submissions were made.

The proposed development will not result in any adverse impacts on the character, amenity and environment of the locality.

Upon review of the applicant's written request it is considered that compliance with the development standards is unreasonable or unnecessary in the circumstances of the case, with consideration, as follows:

- Locating the dwelling closer than proposed will result in vegetation clearing which is deemed to be
- unnecessary given that there is a previously cleared area where development can occur which meets the objectives of the zone.
- The proposed development location has been chosen due to the level nature of the site requiring minimal earthworks to establish the proposed building pad.
- The proposed location will retain an existing Teak Tree located on site which is located at the 100m separation mark and will also provide separation from onsite power lines.
- The additional distance is not likely to impact on surrounding properties.

In summary, the requirement to consider the distance between buildings and an additional access under the current LEP means that there will be a variation of 24% to the distance a, which means the DA can only be determined by Council (being a numeric variation greater than 10%).

The proposal raises no other issues under the LEP.

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

Not applicable

4.4 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 type="checkbox"/> B5 <input checked="" type="checkbox"/> B6 <input type="checkbox"/> B7 <input checked="" type="checkbox"/> B8 <input type="checkbox"/> B9 <input type="checkbox"/> B10 <input type="checkbox"/> B11 <input type="checkbox"/> B12 <input type="checkbox"/> B13 <input checked="" type="checkbox"/> B14
Part C Chapters:	<input type="checkbox"/> C1 <input type="checkbox"/> C2 <input checked="" type="checkbox"/> C3 <input checked="" type="checkbox"/> C4
Part D Chapters	<input type="checkbox"/> D1 <input checked="" type="checkbox"/> D2 <input type="checkbox"/> D3 <input type="checkbox"/> D4 <input type="checkbox"/> D5 <input type="checkbox"/> D6 <input type="checkbox"/> D7 <input type="checkbox"/> D8
Part E Chapters	<input type="checkbox"/> E1 <input type="checkbox"/> E2 <input type="checkbox"/> E3 <input type="checkbox"/> E4 <input type="checkbox"/> E5 <input type="checkbox"/> E6 <input type="checkbox"/> E7

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 is demonstrated to meet the relevant Objectives of all relevant Parts/Chapters (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

Chapter C3 Visually prominent sites, visually prominent development & view sharing

The single storey dwelling will be located on a level site which is approximately 81 metres AHD. The 5.43 metres high building is modest in scale and existing vegetation on site will ensure that development does not adversely impact on the Shire’s scenic character and visual quality. A condition is recommended to address materials and colours that must be muted bushland tones.

Chapter C4 Development in the Drinking Water Catchment

This chapter aims to facilitate and support the provisions of Byron LEP 2014 relating to development in a drinking water catchment, as considered in Section 4.2 above. The application has been assessed and conditions of consent are recommended to ensure that development within the drinking water catchments does not adversely impact on the quality or quantity of the public water supply. The proposed development has been adequately designed and assessed to prevent unacceptable risks to water quality, both individually and in terms of incremental and cumulative risk.

Chapter D2 Residential Accommodation and Ancillary Development in Rural Zones

The proposed development is setback 19.876 metres to Booyung Road Reserve and complies with the setback requirements including the 15 metre minimum setback to the road.

The development application was accompanied by sufficient details including existing use of all parts of the site; potential conflicts, including the distance from the proposed dual occupancy to adjoining land holdings and access and site details. Parking is provided

The dual occupancy is proposed to be located so that it does not create potential for conflict with adjoining land uses and is to be located and retained on the same legal title as the principal dwelling house on the property. The proposal will result in two dwellings being located more than 100 metres apart. Both dwellings will be serviced by a common vehicle access.

The proposed dwelling has its own private open space, car parking and is sited to retain mature vegetation on the site. It will not generate additional adverse environmental impacts through excessive vegetation removal for bushfire protection or detract from the visual amenity of the locality.

5

Note. Non compliance with the 100 metre is considered reasonable and justifiable in the circumstances and on its own merit, as detailed under Section 4.2 of this report.

The proposal raises no other issues under the DCP.

10

4.5 Environmental Planning & Assessment Regulation 2000 Considerations

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

* Non-compliances and any other significant issues discussed below

15

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

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

20

Conditions of consent are proposed to control construction activities such as hours of work, construction noise, sedimentation and erosion control measures, builders waste and the like,

4.7 The suitability of the site for the development

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

25

4.8 Submissions made in accordance with this Act or the regulations

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

30

4.9 Public interest

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

35

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. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

5

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

7. CONCLUSION

10

The DA proposes a new single storey dwelling to create a dual occupancy (detached).

The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site.

15

The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development.

The application appropriately addresses the relevant constraints applying to the site, and is recommended for approval subject to the conditions attached to this report.

Report No. 13.6 **PLANNING - Development Application 10.2020.296.1 New dwelling to create dual occupancy (detached) in two stages at 665 Coopers Shoot Road Coopers Shoot: Stage 1 – Main dwelling with 2 bedrooms, 2 bathrooms, kitchen, laundry and car port. Stage 2 – Expanded outbuilding with 1 bedroom, 1 bathroom and separate living area**

5 **Directorate:** Sustainable Environment and Economy

Report Author: Patricia Docherty, Planner

File No: I2020/1453

Proposal:

Proposal description: New dwelling to create dual occupancy (detached) in two stages:
 Stage 1 – Main dwelling with 2 bedrooms, 2 bathrooms, kitchen, laundry and car port.
 Stage 2 – Expanded outbuilding with 1 bedroom, 1 bathroom and separate living area.

Property description: LOT: 5 DP: 747075
 665 Coopers Shoot Road COOPERS SHOOT

Parcel No/s: 113580

Applicant: Mr B Walker

Owner: Ms C M Byrnes

Zoning: RU2 Rural Landscape

Date received: 10 July 2020

Integrated / Designated Development: Integrated Designated Not applicable

Concurrence required No

Public notification or exhibition:

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 23/7/20 to 5/8/20
- No Submissions were received

Variation request Clause 4.6

Delegation to determine Council

Issues: Clause 4.6 Variation of Development Standards to Clause 4.2D - Distance between dwellings 113m (>100m) and a second access off Coopers Shoot Road.

15 **Summary:**

The DA proposes a new dwelling to create dual occupancy (detached) to be constructed in two stages as follows:

Stage 1 – Main dwelling with 2 bedrooms, bathrooms, kitchen, laundry and car port.

20 Stage 2 – Expanded outbuilding comprising of a bedroom, ensuite and small living area.

The new dwelling is proposed to be located 113 metres to the north of the existing dwelling with its own separate driveway access from Byron Creek Road. Byron Creek Road is an unsealed Council Road which currently services three properties. The existing dwelling is accessed via an existing

25 driveway from Coopers Shoot Road which also provides access to an approved farm shed.

5 A variation has been sought to the controls under Clause 4.2D *Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2* in relation to the 100 metre separation distance between dwellings and the secondary access. Moving the development site closer to the existing dwelling to comply with the 100 m requirements would locate the dwelling closer to a watercourse. Other sites within 100m radius would offer less privacy for all occupants, reduced protection from prevailing weather conditions and increase the potential for visual; amenity impacts to arise on more elevated land. The alternative access from Byron Creek Road reduces the general impact of the driveway as it avoids the need for a creek crossing. The clause 4.6 variation is supported in this instance.

15 The proposed development will not result in any adverse impacts on the character, amenity and environment of the locality. The application appropriately addresses the relevant constraints applying to the site, and is recommended for approval subject to the conditions of consent.



NOTE TO COUNCILLORS:

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

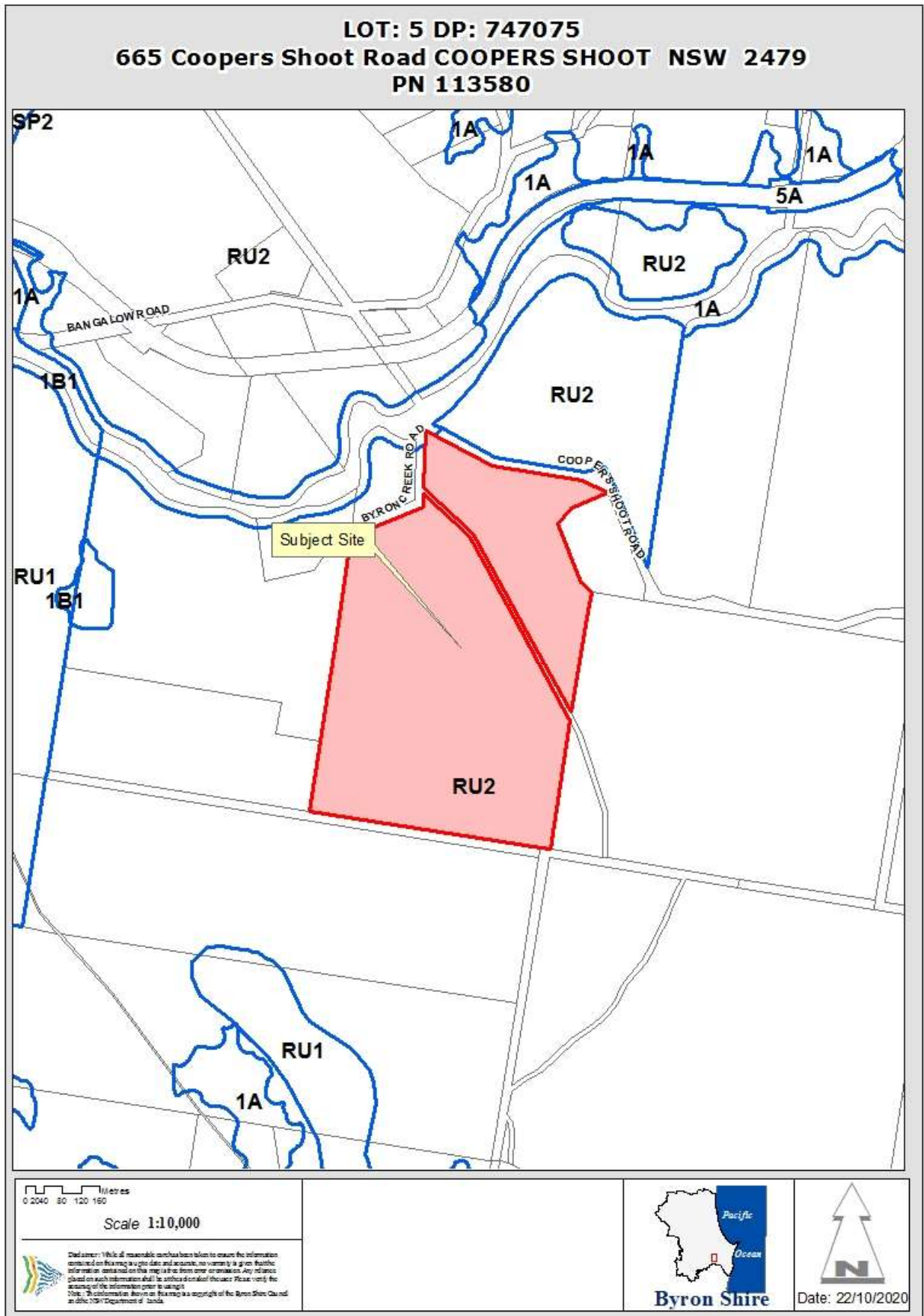
RECOMMENDATION:

25 **That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.296.1 for New dwelling to create dual occupancy (detached) in two stages: Stage 1 – Main dwelling with 2 bedrooms, 2 bathrooms, kitchen, laundry and car port. Stage 2 – Expanded outbuilding with 1 bedroom, 1 bathroom and separate living area, be granted consent subject to the conditions of approval listed in Attachment 2 (#E2020/85108).**

Attachments:

- 1 10.2020.296.1 - Plans, E2020/52518 
- 2 10.2020.296.1 - Conditions Of Consent, E2020/85108 

REPORT



Assessment:

1. INTRODUCTION

5

1.1. History/Background

006.1995.00002592.001	Building Applications	Swimming Pool	Approved Del...	03/11/1995
006.1988.00002558.001	Building Applications	Extensions to Dwelling	Finalised	14/10/1998
010.2008.00000280.001	Development Application	Alterations and additions to a single storey dwelling house	Approved	28/07/2008
010.2020.00000073.001	Development Application	Farm Building	Approved	11/05/2020

1.2. Description of the proposed development

10

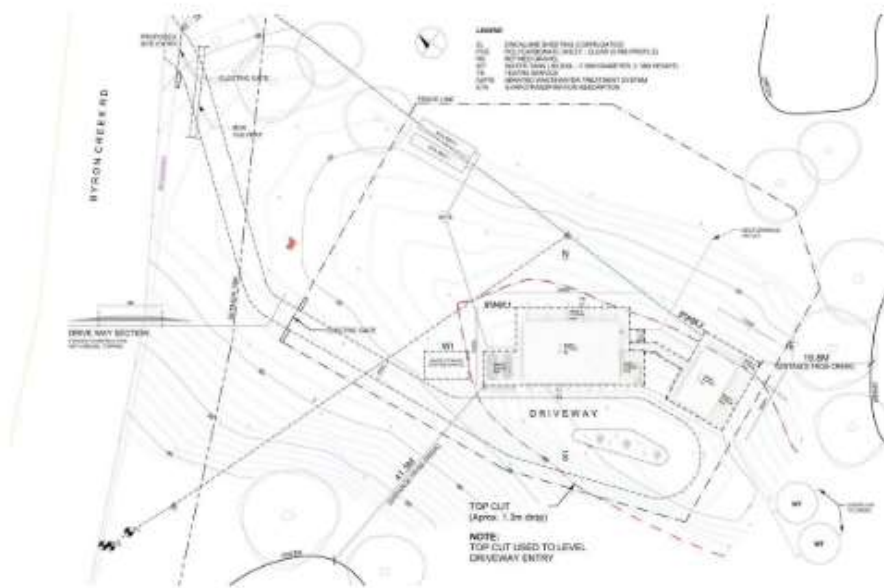
This application seeks approval for a new dwelling to create dual occupancy (detached) in two stages:

- Stage 1 – Main dwelling with 2 bedrooms, 2 bathrooms, kitchen, laundry and car port.
- Stage 2 – Expanded outbuilding with 1 bedroom, 1 bathroom and separate living area.

15

The new dwelling is proposed to be located 113 metres to the north of the existing dwelling with its own separate driveway access. The dwelling includes three (3) bedrooms, (3) bathrooms kitchen and laundry facilities. One of the bedrooms is provided in an expanded dwelling module with all weather access to the main dwelling. Car parking for two vehicles is to be accommodated by a car port.

20



Proposed dwelling 3D and part site plan

25

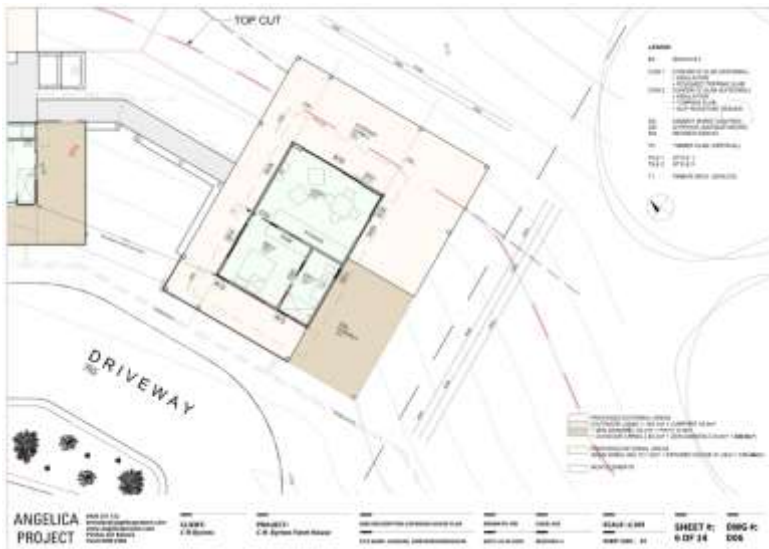
The proposed dwelling is sited approximately 68m from the west boundary with a total floor area of 512.74 m2. This structure sits below the highest point of the property.

5 Additional driveway access is proposed from Byron Creek Road, which is a public road under Council control. Byron Creek Road is an unsealed road which currently services three properties. The existing dwelling is accessed via an existing driveway from Coopers Shoot Road which also provides access to an approved farm shed and Lot 1 DP 381321.

The proposed dwelling and access is sited to avoid the creek that runs through the property between the existing dwelling and the proposed development site.



10



15

Floor plans of the dwelling and expanded dwelling module

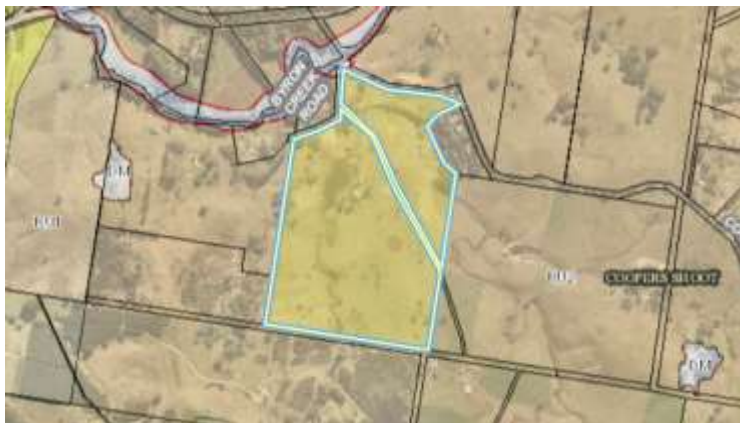
1.3. Description of the site

A site inspection was carried out on 4 August 2020

Land is legally described	LOT: 5 DP: 747075	
Property address	665 Coopers Shoot Road COOPERS SHOOT	
Land is zoned:	RU2 Rural Landscape	
Land area is:	38.41 ha	
Property is constrained by:	Flood Liable Land, pockets of Bushfire prone land, pockets of High Environmental Value, Dip Site Cattle Dip Buffer on part of site, drinking water catchment.	
	Is a BDAR required due to the location of the	<input type="checkbox"/> Yes <input checked="" type="checkbox"/>

proposed development?	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

5 The site is a working cattle farm separated by a Crown owned paper road which is currently unmade. Survey plan shows the driveway access to the existing dwelling and adjoining lot is not located with the Crown road reserve. There is a watercourse and dam on the site between the existing and proposed dwelling. The proposed dwelling and access have been sited to minimise impacts on cattle farm operations and to avoid ecological and hydrological environmental impacts.



Zoning map



10

Existing site access

2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
S94 / Contributions Officer	No objections subject to conditions.
Land Information Officer	No objections subject to conditions.

15

3. SECTION 4.14 – BUSH FIRE PRONE LAND

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

for Bush Fire Protection 2019'. The site is bush fire prone land on a small part of the north western corner of the site and the south western corner of the site. The dwelling and access are located over 200 metres from bushfire vegetation buffer to the north and more than 440 metres to the bushfire vegetation buffer to the south. No bushfire protection measures are required.

5



Bushfire mapping

10 **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.

15 **4.1 State Environmental Planning Instruments**

	Satisfactory	Unsatisfactory
State Environmental Planning Policy Koala Habitat Protection (2019)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposed development is entirely on existing cleared land. No further consideration is required.		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: A BASIX certificate was submitted with the application.		
State Environmental Planning Policy (Primary Production and Rural Development) 2019	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposed development is not contrary to rural planning principals and land use conflicts have been considered during assessment.		

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

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

Zone Objective	Consideration
<ul style="list-style-type: none"> • To encourage sustainable primary industry production by maintaining and enhancing the natural resource base. • To maintain the rural landscape character of the land. • To provide for a range of compatible land uses, including extensive agriculture. • 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. • To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality. 	<p>The proposed development is not contrary to the objectives of the zone.</p>

10 The remaining clauses 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 of these clauses (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to Clause 4.2D which is considered further as follows:

Clause 4.1 E Minimum lot sizes for dual occupancies, manor houses, multi dwelling housing and residential flat buildings

20 The site is 38.41 hectares; therefore the proposed dwelling meets the minimum site area of 4,000 square metres required for dual occupancy (detached) in the Zone RU2 Rural Landscape.

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

25 Development consent may be granted for the erection of a dual occupancy on land to which this clause applies because the land is a lot created before LEP 2014 commenced and on which the erection of a dual occupancy was permissible immediately before that commencement. No dual occupancy already exists on the lot and the new dwelling will result in a dual occupancy (detached), which is permissible with consent.

Clause 4.3 Height of Buildings

30 The proposed single storey dwelling is 4.94 metres high and less than the maximum permissible 9 metres.

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

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

5 The land is zoned under the Byron Local Environment Plan 2014 as RU2 Rural Landscape Zone, and is classified as Regionally Significant Farmland under the Byron Shire Rural Land Use Strategy 2018. Council’s Geocortex mapping shows that the land surrounding the parcel is comprised of contiguous rural lots and farmland.

10 A land use conflict report prepared in support of the application dated 18.06.2020 has been considered as satisfactory (Record # E2020/52529) following referral and assessment by a Council Environmental Health Officer.

15 The proposed structure is positioned in the centre of open field with an enclosing fence line, fitted with an electric gate. This will allow cattle to easily pass around the development when feeding in the northern area of the property. Proposed ETA beds, part of the septic system are also within the fence line are; preventing a potential conflict in feeding area. Two proposed tanks sit just outside of the fenced area to the south-east, with planned light fencing around their immediate position to prevent damage to tank and external pump. Both electric gates from roadside and site entry will be manually remote controlled to manage accessibility and prevent cattle from reaching non-feeding areas.

20 The proposed dwelling to create a dual occupancy is compatible with the surrounding land uses including existing cattle grazing on the site, and is not envisaged that approval will result in significant land use conflicts.

Clause 6.2 Earthworks

25 Minor earthworks are required to provide driveway access and a building pad. Most of the site for the building is already cleared. No geotechnical hazards have been identified using Council’s GIS or from the site inspection. No retaining walls are proposed or required.

Clause 6.5 Drinking water catchments

30 The proposed dwelling is unlikely to have any adverse impacts on the quality and quantity of water entering drinking water storages. The site is suitable and has capacity to assimilate the wastewater from the proposed development. A Section 68 application is approved concurrently with this application to install a new OSMS – Approval No. 70.2020.296., which is to be constructed in accordance with NSW Environment and Health Protection Guidelines; and Council specifications.

Clause 6.6 Essential Services

35 Council can be satisfied that the following services that are essential for the development can be made available:

- 40 (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage,
- (d) stormwater drainage,
- (e) suitable vehicular access.

45 Conditions are recommended.

What clause does the development not comply with and what is the nature of the non-compliance?	Further consideration, including whether the development application is recommended for approval or refusal accordingly
4.2D Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2 (1) The objectives of this clause are as follows— (a) to provide alternative accommodation for rural families and workers,	Each dwelling will be 113 metres apart and a second driveway access is proposed to be used. The assessment planner has considered the applicants written request to vary these development standards. The request is in the form and content required by the NSW Guide to Varying

(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.

(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—

(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

(f) the development will not have an adverse impact on the scenic amenity or character of the rural environment.

a development standard (2011).

Having considered the applicant's written request to vary the development standard Council can be satisfied that the proposed development is consistent with the relevant objectives of the RU2 zone and development standard:

(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.

No public submissions were made.

The proposed development will not result in any adverse impacts on the character, amenity and environment of the locality.

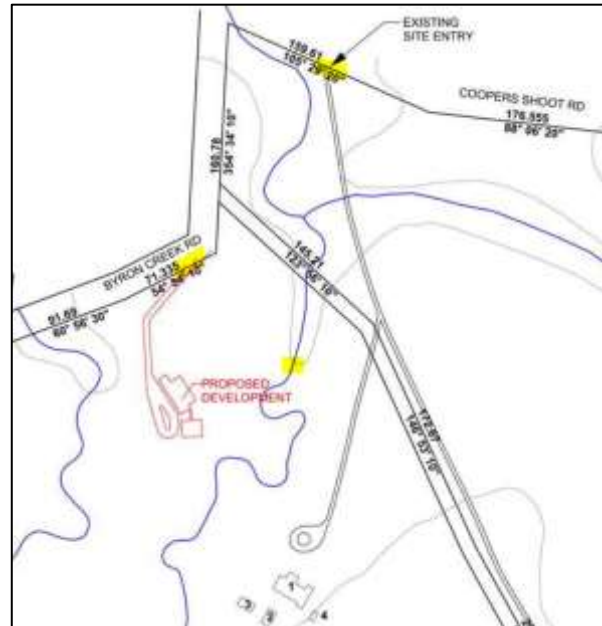
Upon review of the applicant's written request it is considered that compliance with the development standards is unreasonable or unnecessary in the circumstances of the case, with separate consideration for each matter, as follows

Distance:

Moving the development site closer to the existing dwelling would impact on the creek, vegetation, and cattle grazing. Other sites within 100m radius would offer less privacy for all occupants, reduced protection from prevailing weather conditions and increase the potential for land use conflicts (disruptive to cattle grazing).

Access:

Alternative access from Byron Creek Road reduces the general impact of the driveway because it avoids the need for a creek crossing and will be a shorter driveway than would be possible if the proposed dwelling used the same access to Coopers Shoot Road.



Location of dwellings, existing access and proposed second access

The potential for any application to subdivide the Land is highly unlikely to be supported with a minimum lot size requirement of 40ha under BLEP 2014.

In summary, the requirement to consider the distance between buildings and an additional access under the current LEP means that there will be a variation of 13% to the distance and 100% for the additional driveway, which means the DA can only be determined by Council (being a numeric variation greater than 10%).

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

5 Not applicable

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

Chapter C3 Visually prominent sites, visually prominent development & view sharing

10 The single storey dwelling will be located on a level site which is approximately 60 metres AHD, 40 metres below the highest point on the lot. The 4.94 metre high building is modest in scale and existing vegetation on site will ensure that development does not adversely impact on the Shire’s scenic character and visual quality. A condition is recommended to address materials and colours that must be muted bushland tones.

15 **Chapter C4 Development in the Drinking Water Catchment**

20 This chapter aims to facilitate and support the provisions of Byron LEP 2014 relating to development in a drinking water catchment, as considered in Section 4.2 above. The application has been assessed and conditions of consent are recommended to ensure that development within the drinking water catchments does not adversely impact on the quality or quantity of the public water supply. The proposed development has been adequately designed and assessed to

prevent unacceptable risks to water quality, both individually and in terms of incremental and cumulative risk.

Chapter D2 Residential Accommodation and Ancillary Development in Rural Zones

- 5 The proposed development is setback metres over 60 metres to Byron Creek Road and complies with the setback requirements including the 15 metre minimum setback to the road.

10 The development application was accompanied by sufficient details including existing use of all parts of the site; potential conflicts, including the distance from the proposed dual occupancy to adjoining land holdings and access and site details.

15 The dual occupancy is proposed to be located so that it does not create potential for conflict with adjoining land uses and is to be located and will be retained on the same legal title as the principal dwelling house on the property.

The proposal will result in two dwellings being located more than 100 metres apart. Both dwellings will be serviced by a separate access which is deemed to be the most orderly means of servicing the development to minimise environmental impacts in the particular circumstances of this site.

20 The proposed dwelling has its own private open space, car parking and is sited to retain mature vegetation on the site and avoid works that will affect the creek. It will not generate additional adverse environmental impacts through excessive vegetation removal for bushfire protection or detract from the visual amenity of the locality.

25 Non compliance with the 100 metre is considered reasonable and justifiable in the circumstances and on its own merit, as detailed under Section 4.2 of this report.

Note. D2.3.3 Expanded House

Objectives

- 30 1. To facilitate the provision of a dwelling house comprising a number of separate building components.

Prescriptive Measures

- 35 The design and use of the expanded house conforms to the following relevant criteria:
- a) *No expanded house habitable outbuilding is to be located more than 20m from the wall of the main building, measured from wall to wall at the closest point;*
 - b) *the main building must contain an identifiable living area including the kitchen;*
 - c) *a maximum of three outbuildings may be connected to the main building by paths with an all-weather surface;*
 - 40 d) *outbuildings are to be connected to the main building by paths with an all weather surface;*
 - e) *no separate driveway, car parking area, garage or carport structure is to be provided to service any outbuilding;*
 - f) *the outbuilding must be limited to a maximum floor area of 45m² excluding decks, verandahs, patios, balconies and the like;*
 - 45 g) *none of the outbuildings is to contain facilities (e.g. kitchen, sink or the like) that would enable the preparation of food or beverages;*
 - h) *each separate outbuilding may incorporate a maximum of two bedrooms (including rooms with an ensuite or bathroom).*

50 The proposal raises no other issues under the DCP.

4.5 Environmental Planning & Assessment Regulation 2000 Considerations

The proposal raises no issues against the Regulations for consideration

5 4.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

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

10 Standard conditions of consent to apply in terms of hours of construction work, noise, builders waste, sediment and erosion control measures and the like.

4.7 The suitability of the site for the development

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

4.8 Submissions made in accordance with this Act or the regulations

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

4.9 Public interest

25 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

30 No Section 64 levies will be required.

5.2 Section 7.11 Contributions

Section 7.11 Contributions will be payable.

35 6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

Provide Disclosure Statement register details here: Not applicable

7. CONCLUSION

The DA proposes a new dwelling to create a dual occupancy (detached) in two stages:

- 5 Stage 1 – Main dwelling with 2 bedrooms, 2 bathrooms, kitchen, laundry and car port.
- Stage 2 – Expanded outbuilding with 1 bedroom, 1 bathroom and separate living area.

The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site.

10

The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development.

15

The application appropriately addresses the relevant constraints applying to the site, and is recommended for approval subject to the conditions of consent.

Report No. 13.7 **PLANNING - Development Application 10.2020.30.1 Dual Occupancy at 20 Prince Street Mullumbimby**
Directorate: Sustainable Environment and Economy
Report Author: Luke Munro, Planner
File No: I2020/1522

5

Proposal:
Proposal description: Dual Occupancy
Property description: LOT: 12 DP: 527314
 20 Prince Street MULLUMBIMBY
Parcel No/s: 8780
Applicant: Town Planning Studio Pty Ltd
Owner: Mr J M Fehlberg & Ms M T Franz
Zoning: R2 Low Density Residential / PART RU2 Rural Landscape
Date received: 17 January 2020
Integrated / Designated Development: Integrated Designated **X** Not applicable
Concurrence required No
Public notification or exhibition: – Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
 – Exhibition period: 24/1/20 to 7/2/20
 – Submissions received: None
Planning Review Committee: Not applicable
Variation request Clause 4.6
Delegation to determine Council
Issues: Clause 4.6 variation to Clause 4.1E Minimum lot sizes for dual occupancies, manor houses, multi dwelling housing and residential flat buildings

10

Summary:
 The development application seeks approval for a shed conversion to create a dual occupancy (detached) on split zoned land with different lot sizes applicable. A variation request to the minimum lot size for a dual occupancy development is necessary and has been assessed with the zone split in mind and can be supported.

15

The proposal is otherwise considered acceptable having regard to the provisions of the LEP and DCP 2014, and is recommended for approval subject to conditions.

20 **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.



25

RECOMMENDATION:

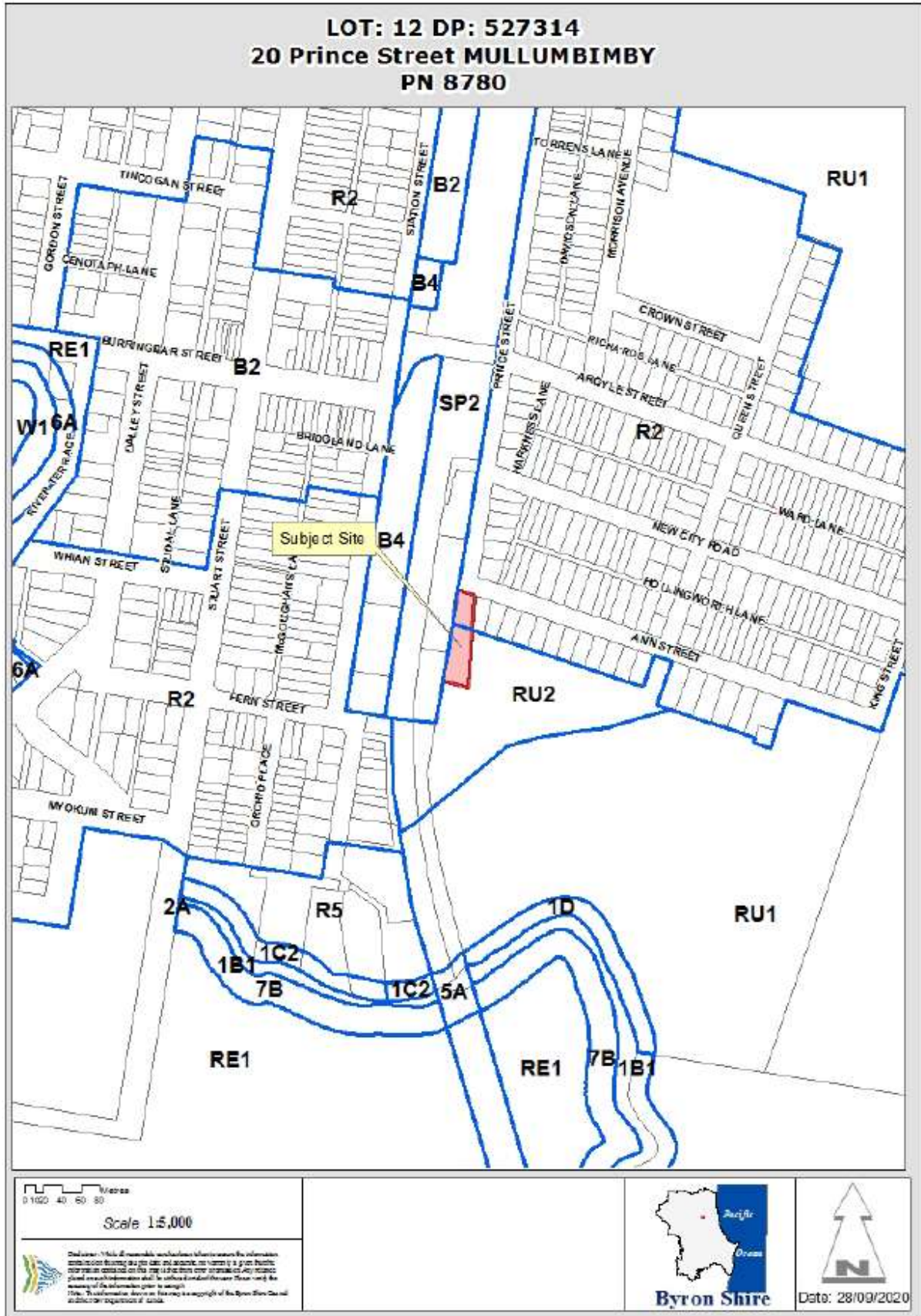
That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.30.1 for Dual Occupancy, be granted consent subject to the conditions listed in Attachment 2 (#E2020/86238).

Attachments:

5

- 1 10.2020.30.1 - Plans, E2020/83116 
- 2 10.2020.30.1 - Conditions of consent, E2020/86238 

10



REPORT

Assessment:

1. INTRODUCTION

5

1.1. History/Background

The site has the following development history:

10.2001.742.1	Two Storey Dwelling and shed	Approved	06.01.2003
10.2001.742.2	S96 modification to amend Condition 14	Approved	26.02.2003
10.2001.742.3	Modification to alter stormwater disposal	Approved	09.02.2004
10.2010.268.1	Use of unauthorised dwelling additions	Approved	11.08.2010

1.2. Description of the proposed development

15

The application seeks to convert an existing shed to a dwelling. The new dwelling will create a dual occupancy (detached) on the subject site. The existing shed (new dwelling) is located in the south-western corner of the property. The existing single storey dwelling is located in the northern area of the property, and is to remain there.

20

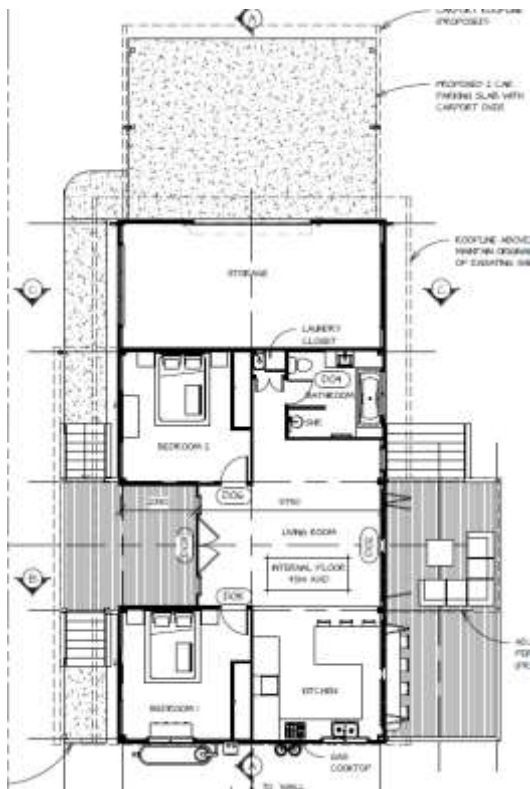
The shed conversion will create:

- two bedrooms;
- one bathroom;
- combined kitchen and living room leading onto a large deck;
- storage area and double carport.

25

The shed conversion will include a new bearer and joist floor to raise the internal floor level to meet flood requirements. An existing driveway from Prince Street is proposed to access the rear dwelling.

30



The development application proposes a dual occupancy (detached) on a lot with an area of 2,384m² that has a split zoning. Approximately one third of the northern area of the site is zoned R2 Residential with the southern two thirds of the site zoned RU2 Rural Landscape Zone under Byron Local Environmental Plan 2014. The existing dwelling is located in the R2 zone; the proposed dwelling (shed) is located in RU2 zone. This creates a conflict of development standard. As such, a request for a variation under clause 4.6 of the LEP has been submitted by the applicant. The R2 zone requires a minimum lot size of 800m² and the RU2 Zone requires a minimum of 4,000m². The applicant's variation request to the RU2 lot size is supported and the development application is recommended for approval despite the non-compliance.

Further, and of note - the site is subject to further investigation under the Residential Strategy (Council Resolution 20-276 – further addressed in Sections 1.3 & 4.2A of this report). This zone and development standard anomaly is likely to be corrected as a result.

1.3. Description of the site

A site inspection was carried out on 26 March 2020.

The site contains a single storey dwelling and a detached shed. The dwelling is positioned near the front property boundary (north). The shed is located within the south-western corner of the site. The site has lawn areas, landscaped gardens and is partly fenced.

The site is a large flat flood prone corner lot measuring approximately 100m x 20m. The site is adjacent to the North Coast Railway to the west and the site was apparently used for railway purposes as a fuel depot.

Adjoining development to the north and east consists of similar residential dwellings.

Land is legally described as	LOT: 12 DP: 527314	
Property address is	20 Prince Street MULLUMBIMBY	
Land is zoned:	R2 Low Density Residential / PART RU2 Rural Landscape	
Land area is:	2384 m ²	
Property is constrained by:	Flood Liable Land	
	Acid Sulfate Soils Class 4	
	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

Council at the Ordinary (Planning) Meeting on the 18 June 2020 resolved (resolution **20-276**) to support the Residential Strategy being updated to include the subject site (as detailed in #E2020/40080 – map shown below), as an investigation area in the Strategy:

- a) *part of Lot 12 DP 527314 (20 Prince St Mullumbimby) due to Strategy investigation areas to the south east potentially contributing to this being a small pocket of isolated rural land within the Mullumbimby township.*



5 The portion of RU2 Zoned land is to be incorporated into the Strategy “due to Strategy investigation areas to the south east potentially contributing to this being a small pocket of isolated rural land within the Mullumbimby township.”

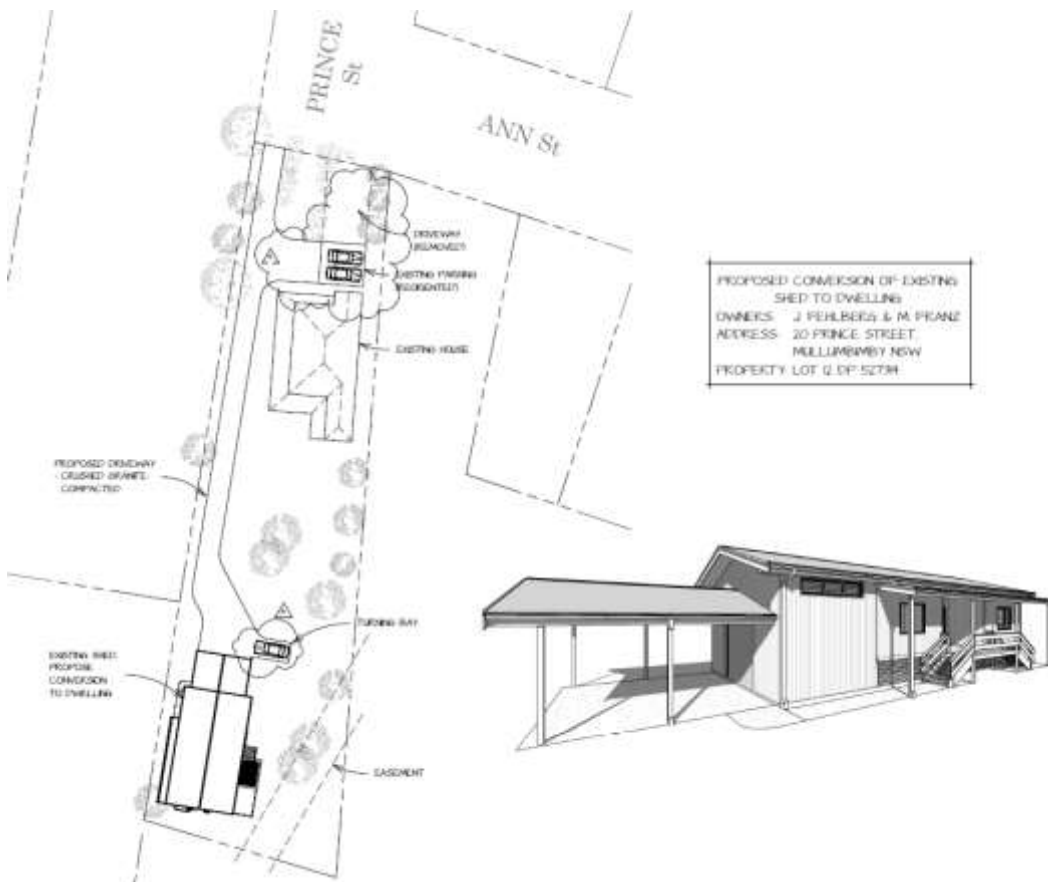


Table 4: Site 4
20 Prince St Mullumbimby (part of Lot 12 DP 527314)
The site is highlighted by a dotted yellow border. The site is shown in context to adjacent land exhibited as investigation areas highlighted by a dark blue border.

2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer*	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
Building Surveyor	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to conditions.
S94 / Contributions Officer	No objections subject to conditions.
John Holland Rail	No objections subject to conditions.

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

3. SECTION 4.14 – BUSH FIRE PRONE LAND

10 Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document ‘Planning for Bush Fire Protection 2006’. The site is not bush fire prone land.

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

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

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The site was subdivided on the 19 February 1968 and used since 2002 for residential purposes.		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: A valid BASIX certificate has been provided in support of the application.		
State Environmental Planning Policy (Coastal Management) 2018	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The site is partially mapped within the Coastal Environment Area. The boundary realignment will not result in any works that would impact on the coastal processes or integrity of waterways.		

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

- 5 In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:
- (a) The proposed development is defined in the LEP 2014 Dictionary as Dual Occupancy;
 - (b) The land is within the R2 Low Density Residential / PART RU2 Rural Landscape according to the Land Zoning Map;
 - 10 (c) The proposed development is Permitted with Consent on both the R2 and RU2 Zones; and
 - (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
<p>Zone RU2 Rural Landscape Objectives of zone</p> <ul style="list-style-type: none"> • To encourage sustainable primary industry production by maintaining and enhancing the natural resource base. • To maintain the rural landscape character of the land. • To provide for a range of compatible land uses, including extensive agriculture. • 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. • To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality. 	<p>The use of the site as a dual occupancy does not conflict with the objectives of the zone in these circumstances.</p> <p>The site is currently under investigation for a zone review as part of Council’s Residential Strategy (Resolution 20-276).</p> <p>The use of the site as a Dual Occupancy will not conflict with the existing character of the area as it is a conversion of an existing shed into a dwelling.</p>
<p>Zone R2 Low Density Residential Objectives of zone</p> <ul style="list-style-type: none"> • To provide for the housing needs of the community within a low density residential environment. • To enable other land uses that provide facilities or services to meet the day to day needs of residents. 	<p>The proposal will provide additional housing in the area.</p>

5 The remaining underlined clauses 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 of these clauses (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to **Clause 4.1E Minimum lot sizes for dual occupancies, manor houses, multi dwelling housing and residential flat buildings** which is considered further as follows:

What clause does the development not comply with and what is the nature of the non-compliance?	Further consideration, including whether the development application is recommended for approval or refusal accordingly																								
<p>4.1E Minimum lot sizes for dual occupancies, manor houses, multi dwelling housing and residential flat buildings</p> <p>(1) The objective of this clause is to achieve planned residential density in certain zones.</p> <p>(2) Development consent may be granted to development on a lot in a zone shown in Column 2 of the table to this clause for a purpose shown in Column 1 of the table opposite that zone, if the area of the lot is equal to or greater than the area specified for that purpose and shown in Column 3 of the table.</p> <p>(3) In this clause, manor house has the same meaning as in clause 1.5 of <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>.</p> <p>Note— Clause 3B.1A of <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i> provides that development for the purposes of manor houses is permitted with development consent in Zones R2 and R3.</p> <table border="1" data-bbox="188 1317 1141 2042"> <thead> <tr> <th>Column 1</th> <th>Column 2</th> <th>Column 3</th> </tr> </thead> <tbody> <tr> <td>Dual occupancy (attached)</td> <td>Zone R2 Low Density Residential, Zone R3 Medium Density Residential</td> <td>800 square metres</td> </tr> <tr> <td>Dual occupancy (attached)</td> <td>Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU5 Village, Zone R5 Large Lot Residential</td> <td>4,000 square metres</td> </tr> <tr> <td>Dual occupancy (detached)</td> <td>Zone RU1 Primary Production, Zone RU2 Rural Landscape</td> <td>4,000 square metres</td> </tr> <tr> <td>Dual occupancy (detached)</td> <td>Zone R2 Low Density Residential, Zone R3 Medium Density Residential</td> <td>800 square metres</td> </tr> <tr> <td>Manor house</td> <td>Zone R2 Low Density Residential</td> <td>1,000 square metres</td> </tr> <tr> <td>Manor house</td> <td>Zone R3 Medium Density Residential</td> <td>800 square metres</td> </tr> <tr> <td>Multi dwelling housing</td> <td>Zone R2 Low Density Residential</td> <td>1,000 square metres</td> </tr> </tbody> </table>	Column 1	Column 2	Column 3	Dual occupancy (attached)	Zone R2 Low Density Residential, Zone R3 Medium Density Residential	800 square metres	Dual occupancy (attached)	Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU5 Village, Zone R5 Large Lot Residential	4,000 square metres	Dual occupancy (detached)	Zone RU1 Primary Production, Zone RU2 Rural Landscape	4,000 square metres	Dual occupancy (detached)	Zone R2 Low Density Residential, Zone R3 Medium Density Residential	800 square metres	Manor house	Zone R2 Low Density Residential	1,000 square metres	Manor house	Zone R3 Medium Density Residential	800 square metres	Multi dwelling housing	Zone R2 Low Density Residential	1,000 square metres	<p>See assessment below.</p>
Column 1	Column 2	Column 3																							
Dual occupancy (attached)	Zone R2 Low Density Residential, Zone R3 Medium Density Residential	800 square metres																							
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Multi dwelling housing	Zone R2 Low Density Residential	1,000 square metres																							

Multi dwelling housing	Zone R3 Medium Density Residential	800 square metres	
Residential flat building	Zone R3 Medium Density Residential	800 square metres	

The Applicant has submitted a clause 4.6 variation request. The clause 4.6 variation request is considered with reference to relevant matters as follows:

- 5 **a) Introduction – Summary of proposed development**
 The proposal is for a shed conversion to create a dual occupancy dwelling (detached) on a lot with an area of 2,384m². This lot has a split zoning with a minimum lot size for a RU2 Zone being 4000m², and 800m² for the R2 Zone. The proposed dwelling is sited on the RU2 zoned area of the land and as such does not meet the development standard requirement for RU2 lot size.
- 10
- b) Clause 4.6 Exceptions to Development Standards**
 Clause 4.6 of Byron LEP 2014 is accessible via:
<https://legislation.nsw.gov.au/view/html/inforce/current/epi-2014-0297#sec.4.6>
- 15
- c) The Development Standard to be varied**
 The development standard to be varied is Clause 4.1E (2).
- d) Extent of Variation to the Development Standard**
 This lot has a split zoning with a minimum lot size for the RU2 Zone being 4000m², and 800m² for the R2 Zone. The proposed dwelling is sited on the RU2 zoned area of the land and as such does not meet the development standard requirement for RU2 lot size.
- 20
- The southern portion of the site in the RU2 Zone is 1,616m² (or 40.4%) below the minimum lot size for a dual occupancy in the RU2 Zone.
- 25
- Note: If the new dwelling was located on the R2 land it would comply.
- e) Objective of the Development Standard**
- 30
- The objectives of the development standard are stated in LEP 2014 subclause 4.1E (1) which states: *The objective of this clause is to achieve planned residential density in certain zones.*
- 35
- f) Objectives of the Zone**
 The objectives of the R2 Low Density Residential Zone which applies to the location of the proposed Dual Occupancy (detached) are stated in the Land Use Table to LEP clause 2.8, which states:
- 40
- *To provide for the housing needs of the community within a low density residential environment.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- 45
- The objectives of the RU2 Rural Landscape Zone which applies to the location of the proposed Dual Occupancy (detached) are stated in the Land Use Table to LEP clause 2.8, which states:
- 50
- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
 - *To maintain the rural landscape character of the land.*

- To provide for a range of compatible land uses, including extensive agriculture.
- 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.
- To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.

g) Assessment – the specific questions to be addressed:

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

This lot has a split zoning with a minimum lot size for the RU2 Zone being 4000m², and 800m² for the R2 Zone. The proposed dwelling is sited on the RU2 zoned area of the land and as such does not meet the development standard requirement for RU2 lot size.

If the new dwelling was located on the R2 land it would comply. As the new dwelling is the conversion of an existing shed, it is unreasonable and unnecessary to require compliance with the RU2 lot size.

The provisions of Byron Local Environmental Plan 2014 allow dual occupancy development in both zones. That is all the proposal is seeking to do on the site.

Further given the inclusion of the site in the Residential Strategy (see Section 4.3 of this report), the development of the site for a dual occupancy (detached) will achieve the objective of Clause 4.1E by achieving the planned residential density within the zone.

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

There are sufficient grounds to justify the proposal on environmental planning grounds as follows:

- Council has resolved to include the site within the Residential Strategy as an investigation area (Resolution 20-276)
- The site is located within an existing urban area and partially zoned as R2 Low Density Residential Zone and is in close proximity to the Mullumbimby business district and with a level topography, pedestrian and cycling is a common form of transport;
- Retaining the existing dwelling house within the streetscape – no significant change to streetscape or character of Prince Street and locality.
- The development will enable the efficient use of resources through the retention and adaptive reuse of the shed into a dwelling;
- Given the site is located within a Flood Prone Area there will be no increase in intensity of development as a result of this proposal;
- The site has an area of 2,384m² which already limits any agricultural or rural industry potential given the split zoning and adjoining land uses. The development will not change this.
- Pedestrian accessibility and service provision (reticulated water and sewer, garbage collection and postal services) are available to the site;

(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?

5 The circumstances of the case warrant a more flexible approach to application of the minimum lot size required for a dual occupancy (detached) given the split zoning of the site and the development is further supported by the inclusion of the site as an investigation area in the Residential Strategy due to Strategy investigation areas to the south east potentially contributing to this being a small pocket of isolated rural land within the Mullumbimby township. There is no conflict with the public interest the result of the proposal.

10 The Applicant's variation request is supported and the development application is recommended for approval despite the non-compliance.

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

15 Council must not grant consent for development under Clause 4.2D, unless the consent authority is satisfied of the following.

Clause	Comment
(a) the development will not impair the use of the land for agriculture or rural industries, and	The site has an area of 2,384m ² which already limits any agricultural or rural industry potential given the split zoning and adjoining land uses. The development will not change this.
(b) each dwelling will use the same vehicular access to and from a public road, and	The new dwelling will use a common vehicular access point adjacent to the western boundary of the site.
(c) any dwellings will be situated within 100 metres of each other, and	The new dwelling will be located within 40m of the existing dwelling.
(d) the land is physically suitable for the development, and	The site is serviced and is currently under consideration in the Residential Strategy, as an investigation area. The land is suitable for the proposed development
(e) the land is capable of accommodating the on-site disposal and management of sewage for the development, and	Not Applicable – the site has access to reticulated sewerage and onsite effluent disposal is not required.
(f) the development will not have an adverse impact on the scenic amenity or character of the rural environment.	The development results in no change to the scenic amenity of the area as the new dwelling is the result of an existing shed conversion.

20 The proposed dual occupancy (detached) complies with the requirements of Clause 4.2D as described above.

4.3 Height of buildings

25 There will be no change to the height of either the existing dwelling house or to the shed which will be converted into a dual occupancy (detached). The existing height of the shed will be retained at 5.6m, below the 9m maximum building height.

4.4 Floor Space Ratio

30 The site has a split zoning with the front portion of the lot containing the existing dwelling house being in the R2 Zone with a FSR of 0.5:1 the remainder of the site is in the RU2 Zone where there are no FSR controls. There is no change to the existing FSR in the R2 Zone and overall the site has a FSR of 0.09:1 – well below the FSR of the surrounding R2 residential area of 0.5:1.

6.1 Acid Sulfate Soils

5 Soil disturbance is proposed and where excavations are greater than 1m in depth a condition has been recommended requiring the preparation of an Acid Sulfate Soils Management Plan where excavations of over 1m occur.

6.3 Flood Planning

10 The existing dwelling house will remain onsite and the proposed shed conversion will include a raised flooring system to comply with the applicable Flood Planning Level of 4.33m AHD.

6.6 Essential Services

15 The site is connected to sewer, water, electricity, access to a formed road via a single crossover/driveway and stormwater dispersal as addressed in this report and as assessed by Council engineers.

The proposal raise no other issues under the LEP.

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

20 No instrument. The site is subject to further investigation under the Residential Strategy (Council Resolution 20-276 – further addressed in Sections 1.3 & 4.2A of this report). The zone and development standard anomaly that currently exists is likely to be corrected as a result.

25



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

Chapter B4 Traffic planning, vehicle parking, circulation and access

The proposal provides adequate car parking for both dwellings as per the DCP.

5

Chapter C2 Areas affected by flood

The finished floor level of the proposed dual occupancy dwelling is 4.5m AHD which is above the 2050 flood planning level of 4.33m AHD.

10 The dwelling is to be raised on piers to allow the flow of flood waters through the building. The storage area is slab on ground which will exclude flood waters from the area however this small volume of flood water to be displaced is unlikely to create any significant increase in flood levels to adjoining properties.

Chapter D1 Residential Accommodation in Urban, village and Special Purpose Zones

Given the development is a conversion of an existing shed there will be no significant change in the layout of the site or to the character of the area.

Chapter D2 Residential Accommodation and Ancillary development in Rural Zones

20 Given the development is a conversion of an existing shed there will be no significant change in the layout of the site or to the character of the area.

Chapter E3 Mullumbimby

25 The site is identified in Figure E3.1 – Mullumbimby Residential Character Areas in the Sensitive Character Area. The proposal does not conflict with these controls.

Further the development complies with the objectives for Precinct 3 by providing urban consolidation of underdeveloped lots in close proximity to Precinct 1 (town centre).

4.5 Any Planning Agreement or Draft Planning Agreement?

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

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

Clause	<i>This control is applicable to the proposal:</i>	<i>I have considered this control as it relates to the proposal:</i>	<i>If this control is applicable, does the proposal comply?</i>
92	No	N/A	N/A
93	Yes	Yes	Yes – The proposed dwelling will need to comply with the Building code requirements for fire safety
94	No	N/A	N/A
94A	No	N/A	N/A

35 * Non-compliances and any other significant issues discussed below

4.7 Any Coastal Zone Management Plan?

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

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

Impact on:	Likely significant impact/s?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
Social Environment	No. The proposal will not have a significant social impact on the locality. The development will provide additional housing within Mullumbimby.
Economic impact	No. The proposal will not have a significant economic impact on the locality.

Conditions of consent to apply in relation controlling construction activities such as hours of work, construction noise, builders waste and the like.

4.9 The suitability of the site for the development

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

4.10 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited from 24/1/20 to 7/2/20. No submissions were received.

4.11 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

Section 64 levies will be payable.

5.2 Section 7.11 Contributions

Section 7.11 Contributions will be payable.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be	No

determined by the Director or Manager of the Planning, Development and Environment Division.	
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Provide Disclosure Statement register details here: Not applicable

7. CONCLUSION

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

Report No. 13.8 **PLANNING - Development Application 10.2020.145.1 Boundary Adjustment and Demolition of Garage and Shed at 35A and 35B Argyle Street Mullumbimby**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Luke Munro, Planner
File No: I2020/1523

10 **Proposal:**
DA No: 10.2020.145.1
Proposal description: Boundary Adjustment and Demolition of Garage and Shed
Property description: LOT: 7 SEC: 2 DP: 4721, LOT: 8 SEC: 2 DP: 4721
 35A Argyle Street MULLUMBIMBY, 35B Argyle Street MULLUMBIMBY
Parcel No/s: 15470, 125930
Applicant: Mrs S A McGarry
Owner: Mr D Harper & Ms E Ricks
Zoning: R2 Low Density Residential
Date received: 25 March 2020
Integrated / Designated Development: Integrated Designated Not applicable
Concurrence required No
Public notification or exhibition: – Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
 – Exhibition period: 7/4/2020 - 28/4/2020
 – Submissions received: 0
Planning Review Committee: Not applicable
Variation request Clause 4.6

Delegation to determine Council
Issues: • Clause 4.6 variation to Minimum Lot Size

Summary:

15 Approval is sought for the re-subdivision of two lots into two lots by way of a boundary adjustment and Demolition of a Garage and Shed over 35A Argyle Street and 35B Argyle Street, Mullumbimby. The existing lots are both currently undersized at 474.6m².

The resultant subdivision will create the following:

- 20 • Proposed Lot 77 – 453m² - vacant land with access via an existing crossover to Argyle Street.
 • Proposed Lot 78 – 497m² - contain the existing dwelling house with access from Ward Lane via an existing approved crossover.

25 The application is supported by a request for a variation pursuant to clause 4.6 of the LEP as both lots created are less than the required minimum of 600m². Given the existing lot size and

arrangement, a more flexible approach to lot size is warranted and the variation to the minimum lot size provisions is supported in this instance.

- 5 The proposed development is considered to be an appropriate response to the characteristics of the site and the neighbourhood having regard to the provisions of the LEP and Byron DCP 2014, and is recommended for approval subject to conditions.



NOTE TO COUNCILLORS:

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

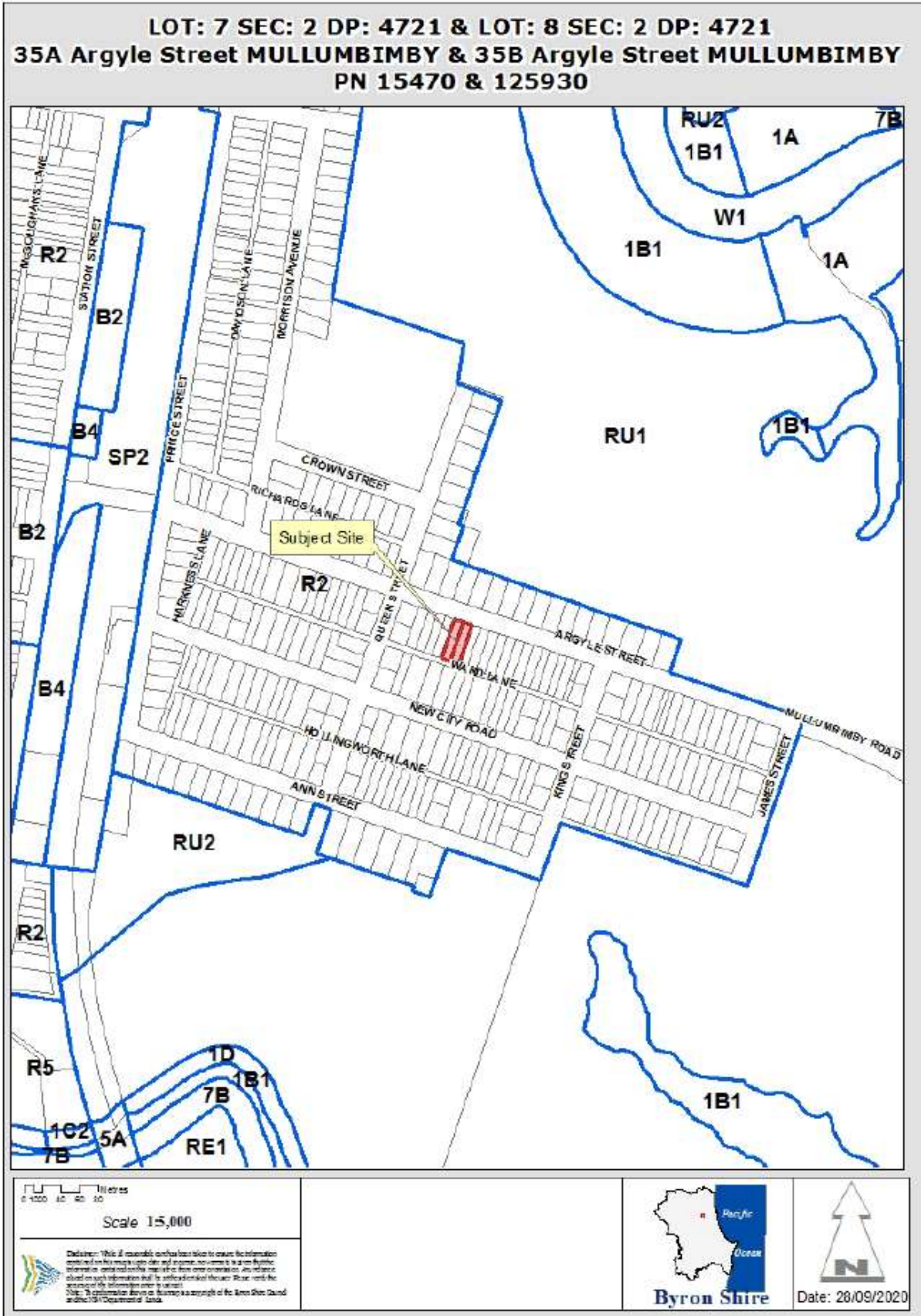
RECOMMENDATION:

That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.145.1 for Boundary Adjustment and Demolition of Garage and Shed, be granted consent subject to conditions listed in Attachment 2 (#E2020/86240).

Attachments:

- 20 1 10.2020.145.1 - Plans, E2020/86331 
2 10.2020.145 - Conditions of consent, E2020/86240 

REPORT



Assessment:

1. INTRODUCTION

1.1. History/Background

Previous development history of the site: 6.1975.2045.1 Building Application for Double Garage

1.2. Description of the proposed development

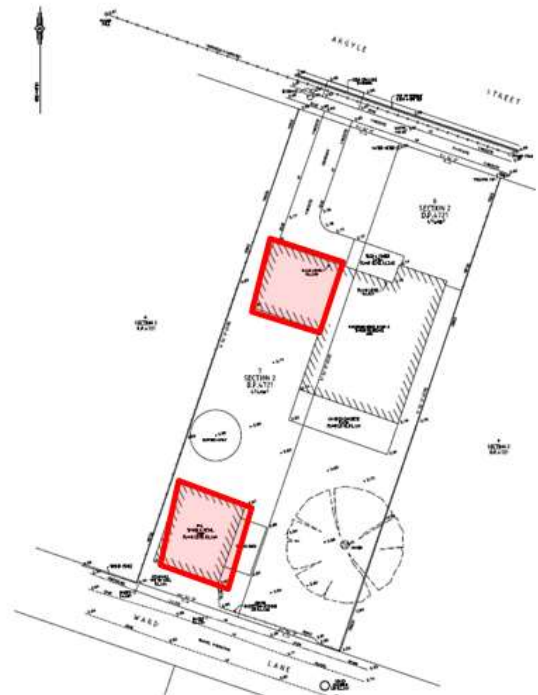
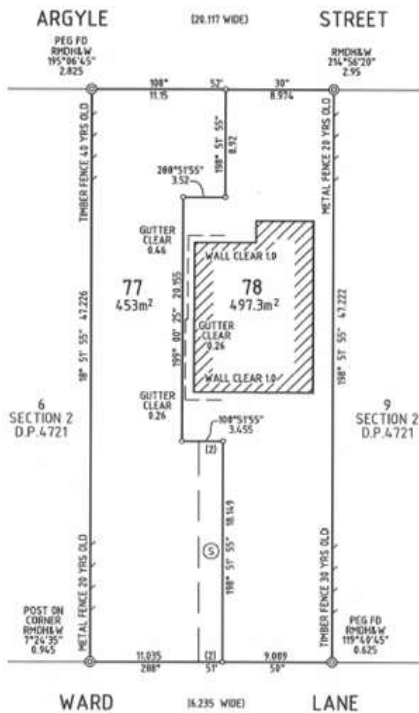
This application seeks approval for Boundary Adjustment and Demolition of Garage and Shed.

The existing dwelling house straddles the two lots, each with an area of 474.6m² (Lot 7 Sec.2 DP4721 and Lot 8 Sec.2 DP4721). The proposal will adjust the boundaries of the existing 2 lots to enable the siting of the existing timber dwelling to be fully contained within proposed Lot 78.

The resultant lots will be as follows:

- Lot 77 – 453m² and vacant land with access gained via an existing crossover to Argyle Street.
- Lot 78 – 497.3m² and will contain the existing dwelling house. Access will be gained from Ward Lane via an existing approved crossover.

There is adequate area for parking of two vehicles on both lots.



Plan of subdivision

Garage and Shed - previously demolished

The garage that was previously attached to the existing dwelling has been demolished and enables the existing dwelling to be contained within a single allotment where subject to the proposed boundary reconfiguration/subdivision as part of the current proposal. It should be noted that the garage and shed have already been demolished, boundaries surveyed and an adjoining fence constructed.

There are no issues arising from the removal of the garage or shed as both proposed lots have adequate vehicular access to enable parking onsite in accordance with the Byron DCP 2014.

1.3. Description of the site

5

A site inspection was carried out on 22 May 2020

Land is legally described	LOT: 7 SEC: 2 DP: 4721, LOT: 8 SEC: 2 DP: 4721	
Property address	35A Argyle Street MULLUMBIMBY, 35B Argyle Street MULLUMBIMBY	
Land is zoned:	R2 Low Density Residential	
Land area is:	474.2 m ² + 474.2 m ²	
Property is constrained by:	Flood Liable Land Acid Sulfate Soils Class 3	
	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



Photo 1: Argyle Street frontage



Photo 2: Aerial photo of subject site showing (garage and shed demolished)

2. SUMMARY OF REFERRALS

Referral	Issue
Development Engineer	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to conditions.
S94 / Contributions Officer	No objections subject to conditions.

5 **3. SECTION 4.14 – BUSH FIRE PRONE LAND**

Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document *‘Planning for Bush Fire Protection 2006’*. The site is not bush fire prone land.

10 **EFFECT OF 10/50 RULE ON SIGNIFICANT VEGETATION**

The site is not bushfire prone land.

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

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

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Site has been subdivided for residential use since 8 October 1905. Proposal raises no issues in terms of contamination. The site has an existing residential dwelling onsite with records showing sewer was connected to the site in 1966 (Tested 22/7/1966) with a sewerage drainage diagram dated the 20 June 1968. The site has been developed for residential purposes for over 50 years. No issues are raised in regards to potential contamination.		
State Environmental Planning Policy (Coastal Management) 2018	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The site is partially mapped within the Coastal Environment Area. The boundary realignment will not result in any works that would impact on the coastal processes or integrity of waterways. No substantive issues are raised in regard to this.		

5 4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

- (a) The proposed development is defined in the LEP 2014 Dictionary as Subdivision;
- (b) The land is within the R2 Low Density Residential according to the Land Zoning Map;
- (c) The proposed development is Permitted with Consent; and
- (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
To provide for the housing needs of the community within a low density residential environment.	The proposed subdivision/boundary realignment will enable the use of an existing lot for additional housing in the locality and maintains the existing character of the residential area.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	Not Applicable

4.1 Minimum subdivision lot size

Clause 4.1 of LEP 2014 states

- (1) *The objectives of this clause are as follows—*
 - (a) *to ensure that lot sizes are compatible with local environmental values and constraints,*
 - (b) *to facilitate efficient use of land resources for residential and other human purposes.*
- (2) *This clause applies to a subdivision of any land shown on the [Lot Size Map](#) that requires development consent and that is carried out after the commencement of this Plan.*
- (3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the [Lot Size Map](#) in relation to that land.*
- (4) *This clause does not apply in relation to the subdivision of any land—*
 - (a) *by the registration of a strata plan or strata plan of subdivision under the [Strata Schemes Development Act 2015](#), or*
 - (b) *by any kind of subdivision under the [Community Land Development Act 1989](#).*

Comment

The existing dwelling house straddles two equal sized lots, each with an area of 474.6m² (Lot 7 and Lot 8 Sec. 2 DP4721). The proposal will adjust the boundaries of the existing 2 lots to enable the siting of the existing dwelling house to be retained on a single allotment. The proposed lot sizes are less than the required 600m² under clause 4.1. The applicant has submitted a clause 4.6 variation request with reference to relevant matters as follows:

a) Introduction – Summary of proposed development

The development application proposes a boundary adjustment of two (2) equal sized lots of 474.6m² into two (2) lots, with an area of 453m² (Lot 77) and 497.3m² (Lot 78 – which will retain the existing dwelling house).

b) Clause 4.6 Exceptions to Development Standards

Clause 4.6 of Byron LEP 2014 enables development standards to be varied.

c) The Development Standard to be varied

The development standard to be varied is contained in LEP 2014 under Clause 4.1(3). The lot size requirements are 600m².

d) Extent of Variation to the Development Standard

The Statement of Environmental Effects indicates that the current lots have an area of 474.6m² each. The proposal seeks a boundary realignment to reconfigure the existing lots into two (2) lots with a lot size of 453m² (Lot 77) and 497.3m² (Lot 78). Currently each of the existing lots are 474.6m² (20.9%) below the Minimum Lot Size of 600m². The development will result in Lot 77 being 24.5% and Lot 78 being 17.1% below the minimum lot size identified on the Minimum Lot Size Map.

The extent of the variation to the minimum lot size development standard is therefore 27.5%.

e) Objective of the Development Standard

The objectives of the development standard are stated in LEP 2014 subclause 4.1(1) which states:

- (a) to ensure that lot sizes are compatible with local environmental values and constraints,
- (b) to facilitate efficient use of land resources for residential and other human purposes

f) Objectives of the Zone

The objectives of the R2 Low Density Residential Zone which applies to the location of the proposed boundary realignment are stated in the Land Use Table to LEP clause 2.8, which states:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

g) Assessment – the specific questions to be addressed:**(a) Clause 4.6(3)(a) – Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

The site consists of two existing non-compliant lots. Requiring compliance with the development standard is unnecessary in this instance as there will be no further intensification of the development potential of the site and will ensure the existing dwelling is retained on a single lot of 497.3m².

- a. The boundary adjustment is to ensure the existing dwelling house is retained on a single lot.
- b. There currently exists the ability to develop a single dwelling house on each of the existing lots, the current proposal will not increase this development potential and will enable the retention of the existing dwelling while demonstrating a dwelling can be contained on the vacant Lot 77.
- c. The lots sizes are generally consistent within the existing lot sizes in the locality of the site.
- d. The proposed boundary adjustment will retain lot widths that are generally compliant with the existing lot widths within Argyle Street and will not impact on the existing streetscape and character of the surrounding low density residential area. There will be no impact on the streetscape as a result of this development application.

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

The proposed adjustment of property boundaries will result in lots which provide wider lots over parts of the sites to enable easier development of each site.

Currently each of the existing lots are 20.9% below the Minimum Lot Size of 600m². The development will result in Lot 77 being 24.5% and Lot 78 being 17.1% below the minimum lot size while retaining the existing dwelling. The applicant has provided indicative building envelope diagrams showing that a dwelling house could be constructed on proposed Lot 77.

There are sufficient grounds to justify the proposal on environmental planning grounds as follows:

- Retaining the existing dwelling house within the streetscape – no change to streetscape or character of Argyle Street.
- The development will enable the retention of the exiting dwelling house (on a single lot with no change to the streetscape);
- Given the site is located within a Flood Prone Area there will be no increase in intensity of development as a result of this proposal;
- The Lot sizes remain generally consistent with the surrounding neighbourhood, and width of lots.
- The proposed lots retain frontage to both Argyle Street and Ward Lane;
- Pedestrian accessibility and service provision (garbage collection, postal services) are able to be provided from the main street frontage on Argyle Street;
- The site is located within an existing urban area with close proximity to the Mullumbimby business district and with a level topography, pedestrian and cycling is a common form of transport;
- the existing dwelling on the proposed Lot 78 will comply with the floor space ratio of 0.5:1.

There are sufficient environmental planning grounds to justify contravening the development 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?

The proposal will provide a more suitable lot layout with adequate areas on each to contain a dwelling.

Numerically no additional lots or dwelling entitlements are created as a result of this development.

5 Further the proposal is consistent with the objectives of the development standard and the zone. The proposal will not create an undesirable precedent in the circumstances given there are a number of similar developments proximate to the site which have resulted in development on the existing smaller allotments within the 'New City' area of Mullumbimby to the east of the railway line. .

10 The proposed development is not significantly contrary to the public interest because it will not adversely affect the welfare and wellbeing of the broader public.

The applicant's variation request is supported and the development application can be recommended for approval in this instance.

15 **4.3 Height of buildings**
Complies with the control.

4.4 Floor space ratio
Complies with the control.

20 **6.1 Acid Sulfate Soils**

Where excavations are greater than 1m in depth a condition requiring the preparation of an Acid Sulfate Soils Management Plan will apply.

25 **6.3 Flood Planning**

The existing dwelling house will remain onsite and future dwellings will be subject to requirements to comply with the applicable Flood Planning Level of 3.73m AHD.

30 **6.6 Essential services**
All urban services will be available to the site with connections to services to be provided to the vacant lot and service connections to the existing dwelling over Lot 78 to be modified where required.

35 **4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority**

Not Applicable.

40 **4.4A Byron Shire Development Control Plan 2014 (DCP 2014)**

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

Part A	
Part B Chapters:	<input type="checkbox"/> B2 <input checked="" type="checkbox"/> B3 <input checked="" type="checkbox"/> B4 <input type="checkbox"/> B5 <input type="checkbox"/> B6 <input type="checkbox"/> B7 <input checked="" type="checkbox"/> B8 <input type="checkbox"/> B9 <input type="checkbox"/> B10 <input type="checkbox"/> B11 <input type="checkbox"/> B12 <input type="checkbox"/> B13 <input type="checkbox"/> B14
Part C Chapters:	<input type="checkbox"/> C1 <input checked="" type="checkbox"/> C2 <input type="checkbox"/> C3 <input type="checkbox"/> C4
Part D Chapters	<input checked="" type="checkbox"/> D1 <input type="checkbox"/> D2 <input type="checkbox"/> D3 <input type="checkbox"/> D4 <input type="checkbox"/> D5 <input checked="" type="checkbox"/> D6 <input type="checkbox"/> D7 <input type="checkbox"/> D8
Part E Chapters	<input type="checkbox"/> E1 <input type="checkbox"/> E2 <input checked="" type="checkbox"/> E3 <input type="checkbox"/> E4 <input type="checkbox"/> E5 <input type="checkbox"/> E6 <input type="checkbox"/> E7

5 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:

What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Objectives of this Section? Address.	Does the proposed development comply with the Performance Criteria of this Section? Address.
B4.2.5 Car Parking Requirements	<p>Yes</p> <p>The existing dwelling will have adequate area at the rear of proposed Lot 78 for 2 car parking spaces – both of which will be uncovered and accessed from Ward Lane.</p>	<p>Yes</p> <p>The existing dwelling will have adequate area at the rear of the site (Lot 78) for 2 car parking spaces – both of which will be uncovered.</p> <p>Proposed Lot 77 will retain the existing access onto Argyle Street and has adequate area onsite for the parking of 2 vehicles for any future dwelling proposed over this site.</p>
D6.4.1 Lot Size and shape	<p>Yes</p> <p>The proposed boundary realignment/subdivision will allow portions of both lots to provide lots of sufficient size to satisfy the needs of future residents, and which will accommodate well designed development while retaining the existing dwelling over Proposed Lot 78.</p> <p>Existing lots are 10m wide and are unable to provide a building envelope of 12 x 15m. The current proposal will enable closer compliance with the building envelope requirements with wider sections of each lot better able to site dwellings.</p> <p>The applicant has provided indicative plans demonstrating that a dwelling can be sited on proposed Lot 77.</p>	<p>Yes</p> <p>Lots must provide an appropriate shape and area to accommodate an unconstrained building envelope with minimum dimensions of 12 metres by 15 metres.</p> <p>The two existing lots are 10.06m wide and are currently unable to comply with the provision of a building envelope of 12 x 15m. The proposed boundary realignment/subdivision will allow both lots to retain portions capable of providing areas of the site better capable of containing a dwelling.</p> <p>The existing dwelling and boundary encroachment will be rectified as part of this proposal with a future dwelling on Lot 77 being able to locate towards the Ward Lane frontage of the site where the lot is 11.035m wide (an increase of approximately 1m over the current lot width).</p>

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

Chapter B3 Services

5 All urban services will be available to the site with connections to services to be provided to the vacant lot and service connections to the existing dwelling over Lot 78 to be modified where required.

Chapter C2: Areas affected by flood

10 The existing dwelling house will remain onsite and future dwellings will be subject to requirements to comply with the applicable Flood Planning Level of 3.73m AHD.

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

15 The site is formed by two (2) existing lots which will be adjusted to remove the existing boundary encroachment of the existing dwelling. The dwelling house will be retained on Lot 78 and will not change the streetscape character of the area.

The dwelling on lot 77 will be subject to a future development application.

Chapter E3 Mullumbimby

E3.6 Infill Development in Precincts 2 and 3

20 The site is formed by two (2) existing lots with a boundary adjustment proposed between the lots to allow the existing dwelling to be retained on a single allotment and to provide a vacant residential lot for the development of housing into the future. The proposal provides frontage to both Argyle Street and Ward Lane for both lots. The development will ensure the existing lot frontages are largely retained to retain the consistence of form within the streetscape and is not inconsistent with the character narrative for Mullumbimby.

25 The proposal raises no other issues under the DCP.

30

4.5 Any Planning Agreement or Draft Planning Agreement?

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

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

35

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

* Non-compliances and any other significant issues discussed below

4.7 Any Coastal Zone Management Plan?

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

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

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

5

4.9 The suitability of the site for the development

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

4.10 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited from 7/4/2020 - 28/4/2020. No submissions were received.

4.11 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.

The proposed development does not generate additional loading onto Council's Water, Bulk Water and or Sewer systems beyond the existing ET entitlements.

5.2 Section 7.11 Contributions

No Section 7.11 Contributions will be required.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

35 Provide Disclosure Statement register details here: Not applicable

7. CONCLUSION

5 The proposed subdivision is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site, and is recommended for approval subject to the conditions.

REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED

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

Statement of Reasons

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

How community views were addressed

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

Report No. 13.9 **PLANNING - Report Exceptions to Development Standards 1 July 2020 to 30 September 2020**

Directorate: Sustainable Environment and Economy

Report Author: Chris Larkin, Manager Sustainable Development

 Noreen Scott, EA Sustainable Environment and Economy

File No: I2020/1588

5

10 **Summary:**

This report is provided as a requirement of the NSW Department of Planning Circular PS17-006, for reporting on exceptions to development standards for applications made under clause 4.6 of the Standard Instrument LEP and Clause 64A of Byron LEP 1988.

15

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.

20

RECOMMENDATION:

That Council adopts the report on exceptions to development standards for the period 1 July to 30 September 2020.

25

REPORT

5 This report is provided as a requirement of the NSW Department of Planning Circular PS17-006, for reporting on exceptions to development standards. Clause 4.6 applies to development applications submitted under Byron LEP 2014. SEPP 1 has been repealed and replaced with Clause 64A (Exceptions to Development Standards) of Byron LEP 1988.

The period of reporting is for the 1 July 2020 to 30 September 2020 for the following DAs:

DA No	10.2020.189.1
Development	Residential alteration/addition. Demolition and replacement, that does not involve the creation of additional dwellings.
Property:	9/124 Lighthouse Road BYRON BAY NSW
Lot and DP:	LOT 9: DP 58355
Zoning:	R3 Medium Density Residential
Development Standard being varied	4.4 - Floor Space Ratio
Justification Summary	Compliance with the development standard is unreasonable or unnecessary, because the FSR exceedance is minor and unnoticeable when compared to the existing approved built form on site.
Extent of variation	1%
Concurrence	Director- delegate of Council under assumed concurrence
Determination Date	7/07/2020
Determined by	Director
DA No.	10.2020.179.1
Development	Dual Occupancy (attached)
Property:	10 Elizabeth Avenue SOUTH GOLDEN BEACH
Lot and DP:	LOT: 244 DP: 31166
Zoning:	R2 Low Density residential
Development Standard being varied:	4.1E - Minimum lot size for dual occupancies
Justification Summary	Continued use of the site as a Dual occupancy. Compliance with the standard is unreasonable and unnecessary as the built form exists and the lot size variation is minor.
Extent of variation	7.89%
Concurrence	Council under assumed concurrence
Determined Date	7/07/2020
Determined By	Director
DA No.	10.2020.177.1
Development	Dwelling house & Secondary dwelling
Property:	39 Browning Street BYRON BAY
Lot and DP:	LOT: 15 SEC: 50 DP: 758207
Zoning:	R2 Low Density residential
Development Standard being varied:	4.3 Height of Buildings
Justification Summary	Compliance with the development standard is unreasonable or unnecessary, because it is minor and unnoticeable when compared to the existing approved building on the site and adjoining development.
Extent of variation	3.42%
Concurrence	Director- delegate of Council under assumed concurrence

Determined Date	8/09/2020
Determined By	Director

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.3	Manage development through a transparent and efficient assessment process	4.1.3.1	Assess and determine development applications

5

Legal/Statutory/Policy Considerations

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

Report No. 13.10 **PLANNING - Report of the 15 October 2020 Planning Review Committee**

Directorate: Sustainable Environment and Economy

Report Author: Chris Larkin, Manager Sustainable Development

5 **File No:** I2020/1610

Summary:

10 This report provides the outcome of the Planning Review Committee (PRC) held on 15 October 2020.

15 **NOTE TO COUNCILLORS:**

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

RECOMMENDATION:

That Council endorses the outcomes of the Planning Review Committee meeting held on 15 October 2020.

25

REPORT

The Planning Review Committee meeting was held on 17 September 2020. The Meeting commenced at 2:45pm and concluded at 3.10pm.

5

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

Apologies: Cr Cameron

10

Staff: Chris Larkin (Manager Sustainable Development)

The following development applications were reviewed with the outcome shown in the final column.

DA No.	Applicant	Property Address	Proposal	Exhibition Submissions	Reason/s Outcome
10.2020.257.1	Logan Architecture	113A Paterson Street BYRON BAY	Multi Dwelling Housing Comprising Seven (7) Dwellings, including Demolition of Existing Dwelling House	Level 2 18/6/20 to 8/7/20 17 submissions	The number of public submissions. Council
10.2020.358.1	Ardill Payne & Partners	194 St Helena Rd McLeods Shoot	Primitive Camping Ground consisting Eight (8) Sites with Ancillary Ensuites and Onsite Sewage Management Disposal System	Level 2 6/8/20 to 19/8/20 7 submissions	The number of public submissions Council

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.11

Report No. 13.11 **PLANNING - Development Application - 10.2020.132.1 - Alterations and Additions to Existing Dwelling House, Swimming Pool, Subdivision of two (2) lots into two (2) lots - 19 Campbell Street Bangalow**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Lachlan Wall, Gateway Planner
File No: I2020/1644

10

Proposal:

DA No: 10.2020.132.1

Proposal description: Alterations and Additions to Existing Dwelling and Swimming Pool, and Subdivision of two (2) lots into two (2) lots

Property description: LOT: 24 SEC: 1 DP: 4358, LOT: 25 SEC: 1 DP: 4358
19 Campbell Street BANGALOW

Parcel No/s: 112470, 112480

Applicant: Sanctuary Design Studio

Owner: Ms S C Ryan & Mr A T Norton

Zoning: R2 Low Density Residential

Date received: 13 March 2020

Integrated / Designated Development: Integrated Designated Not applicable

Concurrence required No

Public notification or exhibition: – Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
– Exhibition period: 25/3/20 to 7/4/20
– Submissions received: 4 (against)
– Submissions acknowledged: Yes

Variation request Clause 4.6

Delegation to determine Council

Issues: Clause 4.6 variation to clause 4.1 Minimum Lot Size
Encroachment to the Building height plane

Summary:

15

The development application is seeking approval for the re-siting of an existing dwelling, alterations and additions to an existing dwelling, new swimming pool and re - subdivision of two (2) lots into two (2) lots.

20

The subject properties are zoned R2 Low Density Residential under Byron LEP 2014 and are located within the Bangalow Heritage Conservation Area. The existing dwelling is nominated as a contributory item to the heritage conservation area, but is not a listed heritage item.

25

The subject property contains two Torrens title lots with the existing dwelling house encroaching over the shared boundary. The proposal seeks to move the dwelling to partially rectify the encroachment and to also carry out a boundary adjustment to create a vacant lot. The current lots are both 460 m² each in area and the re-subdivision will create two new lots with the same areas.

The application requests a variation to clause 4.1 of the Byron LEP 2014 under Clause 4.6 in relation to the minimum lot size which is supported in this instance.

5 The application also seeks a number of variations to the Byron Development Control Plan 2014 in relation to depth of excavation and the building height plane which are also supported in this instance.

10 The development is considered to be able to comply with the objectives of the applicable planning instruments and development controls, and does not offend the heritage character of the neighbourhood. The application is recommended for approval subject to conditions of consent.

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.

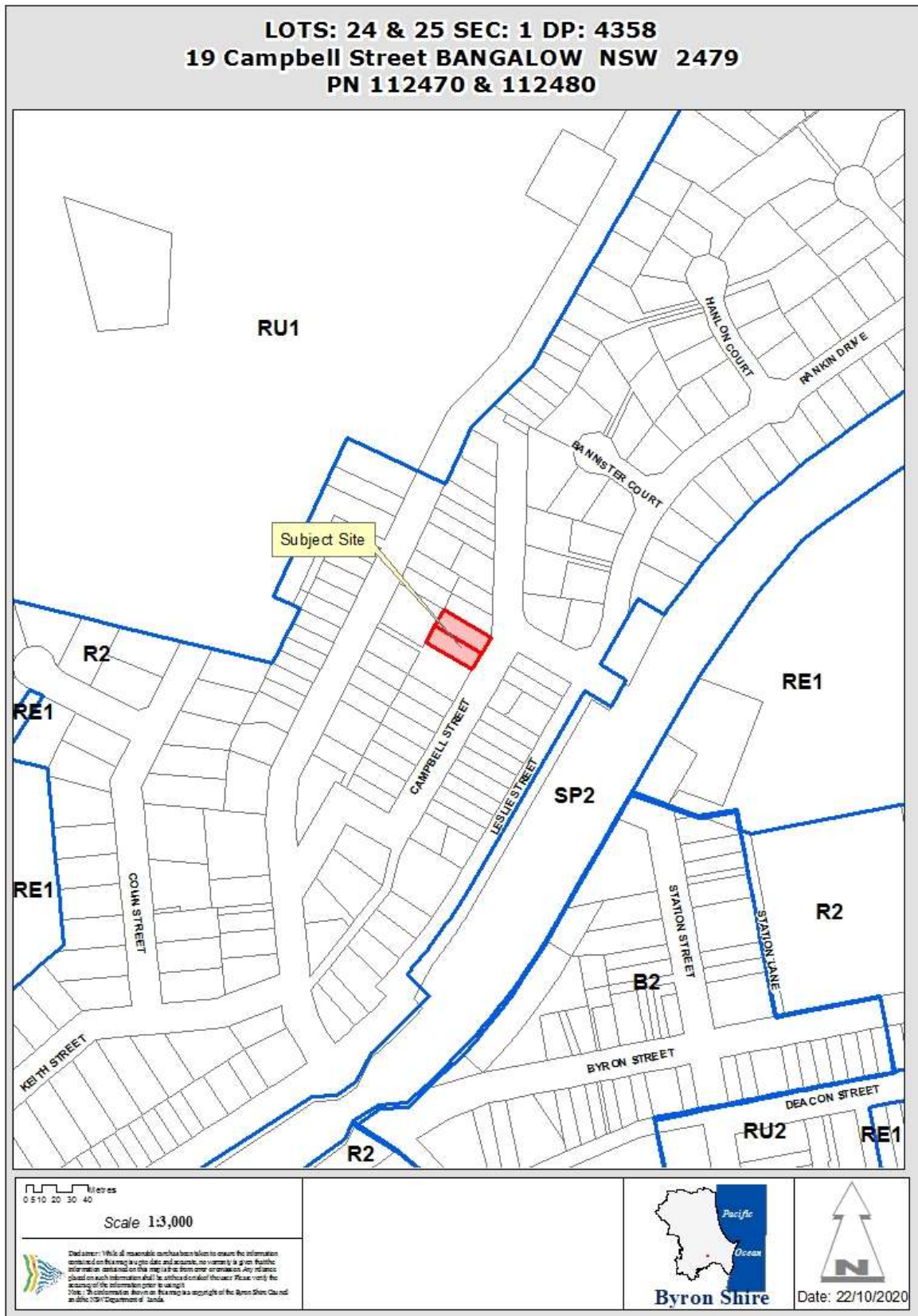
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RECOMMENDATION:

That Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.132.1 for Alterations and Additions to Existing Dwelling and Swimming Pool, and Subdivision of two (2) lots into two (2) lots be granted consent subject to the conditions listed in Attachment 3 (#E2020/86847) to this report.

Attachments:

- 25
- 1 Plans 10.2020.132.1, E2020/86324 
 - 2 Confidential - Submissions 10.2020.132.1, E2020/85909
 - 3 Conditions of Consent 10.2020.132.1, E2020/86847 



REPORT

1. INTRODUCTION

5 1.1. History/Background

The applicant’s heritage impact statement claims that the dwelling was likely to have been constructed circa 1920, but has been altered since then, date unknown.

10 The site is listed as a contributory item in the Bangalow Heritage Conservation area as “Dickibusch” 19 Campbell Street.

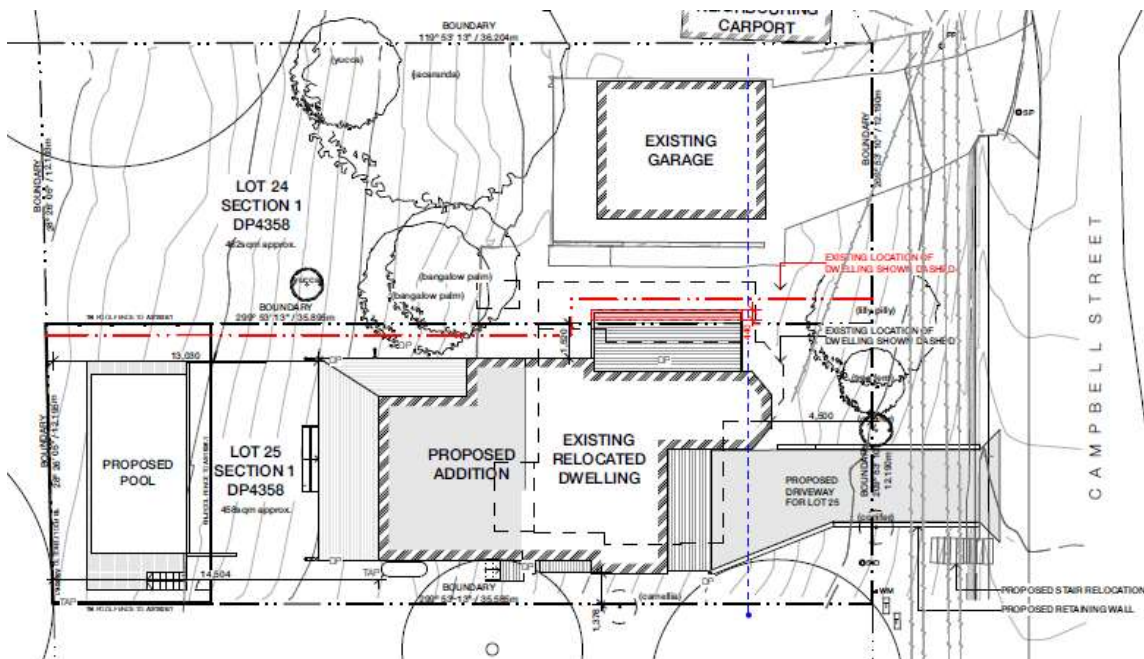
Bangalow Historical Society confirmed that the subject lots were purchased from the 1903 Campbell Subdivision on the 19/11/1904 by Elizabeth Lee. The property was bought by John Nestor Ferguson the auctioneer in Bangalow and the house built circa 1914. It was named "Dickibusch after the place where his son Lieutenant Thomas Karl Ferguson died 11/10/1916 aged 23. He was with 47th Battalion. AIF and is buried at Ridge Wood Military Cemetery in West-Vlaanderen, Belgium, 1 mile S.E. of Dickebus and 2.5 miles S.W. of Ypres.

15 1.2. Description of the proposed development

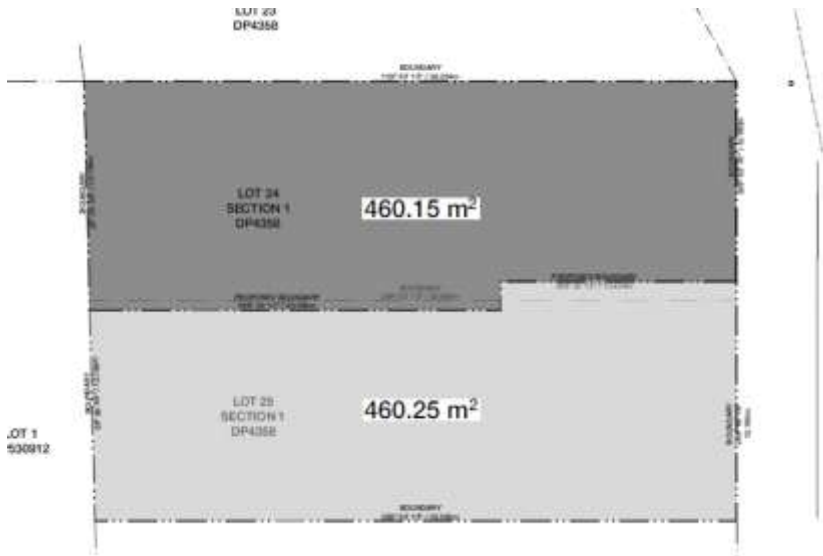
This application seeks approval for Alterations and Additions to Existing Dwelling and Swimming Pool and subdivision of 2 lots into 2 lots.

20 The proposal seeks to re-site the existing dwelling so that it is sited within the southern parcel of land, Lot 25 Section 1 DP 4358 by approximately 1.2 metres to the south. In re-siting the dwelling it is also proposed to raise the dwelling to provide a usable subfloor area to create a new living / rumpus room and two (2) car garage.

25



Site plan of proposed works.



Boundary Adjustment plans

5 A boundary adjustment is also proposed to create a vacant lot other than a retained garage which has access to Campbell Street.

10 The proposed driveway will also remove the existing pedestrian staircase within the retaining wall in the road reserve. The application also indicates that these stairs will be relocated and rebuilt to retain pedestrian access from the street.

1.3. Description of the site

Land is legally described	LOT: 24 SEC: 1 DP: 4358, LOT: 25 SEC: 1 DP: 4358	
Property address	19 Campbell Street BANGALOW	
Land is zoned:	R2 Low Density Residential	
Land area is:	460 m ² (both lots)	
Property is constrained by:	Heritage conservation area	
	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



View of house from Campbell Street.



- 5 Existing driveway crossover of northern lot. Existing double garage structure and vehicular crossover on lot 24.



Front entrance as existing; Front sunroom to be converted back into verandah/deck.

2. SUMMARY OF REFERRALS

5

Referral	Issue
Development Engineer	No objections subject to conditions.
ET Engineer	No objections subject to conditions.
Heritage Advisor	See comments below under Clause 5.10

Issues:

Relocation of and connection to services

10 The removal of the encroachment will allow for a vacant lot that does not have essential services directly connected.

15 Clause 6.6 Essential Services of the BLEP 2014 states that: Development Consent must not be granted unless the consent authority is satisfied that the services within this clause are available, or adequate arrangements have been made to make them available when required. The developer is required to provide these services when additional lots are created. All services required to be provided to the site are located within the street frontage and additional connections to lots can be achieved.

20 Conditions have been recommended for services to be relocated and provided.

Works within Road reserve

25 Council's Infrastructure Services has reviewed the application and the driveway design is acceptable. Conditions are included in the recommendation.

Pedestrian access for adjoining properties

30 The proposal seeks to demolish the existing stairs within the retaining wall. An objection was received noting that this is undesirable. The applicant's plans show the stairs to be relocated – conditions have been included in the recommendation for these works to occur.

3. SECTION 4.14 – BUSH FIRE PRONE LAND

5 Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document ‘*Planning for Bush Fire Protection 2019*’. The site is not bush fire prone land.

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

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

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 Consideration: A Basix Certificate has been provided	<input checked="" type="checkbox"/>	<input type="checkbox"/>
State Environmental Planning Policy (Infrastructure) 2007 Consideration: The dwelling will be located more than 5m from overhead powerlines when relocated; the proposed works will increase the setback to 6.2m as per plans.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
State Environmental Planning Policy No - 55 Contamination of Land Consideration: The subject site has been and will continue to be used for residential purposes. The works do not propose a change in land use or an increase in sensitivity to receivers. No information was provided on the management of excavated material. A condition is recommended for all excavated material that is transported off site to be accompanied by a s143 Certificate and disposed of at a licensed waste facility, in accordance with NSW EPA Waste Classification Guidelines.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

15

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

- 20 (a) The proposed development is defined in the LEP 2014 Dictionary as dwelling house, swimming pool, Subdivision;
 (b) The land is within the R2 Low Density Residential according to the Land Zoning Map;
 (c) The proposed development is permissible with consent; and
 (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
To provide for the housing needs of the community within a low density residential environment.	Objective met.
To enable other land uses that provides facilities or services to meet the day to day needs of residents.	No conflict. Propose residential use only.

25

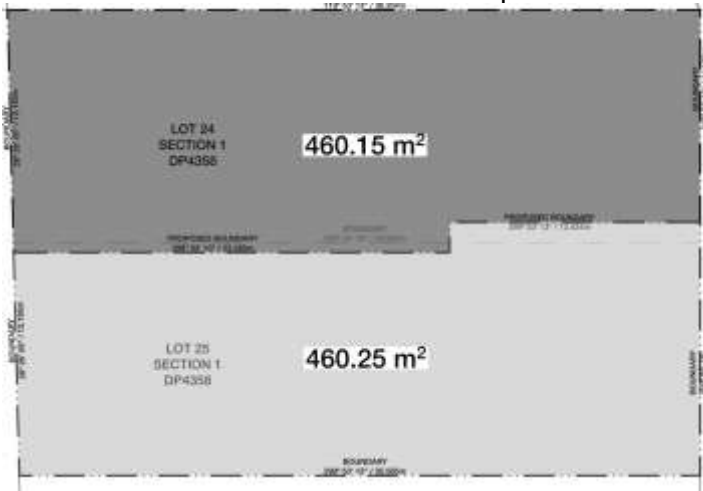
What clause does the development not comply with and what is the nature of the non-compliance?	Further consideration, including whether the development application is recommended for approval or refusal accordingly
--	---

Clause 4.1 Minimum Subdivision Lot Size

1. Introduction – Summary of Proposed Development

The development application proposes to re-site a dwelling onto the southern lot at the subject site, undertake alterations and additions to the existing dwelling, and to re-subdivide the two (2) existing lots into two (2) lots.

The re-subdivision provides for a lot size of 460.15 and 460.25m² respectively. This being 139.85m² and 139.75m² less than the prescribed 600m² minimum lot size.



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 600m² minimum lot size, prescribed by the Minimum Lot Size Map applicable to the site under Clause 4.1 of LEP 2014.

4. Extent of Variation to the Development Standard

The extent of the variation is approximately 23.3% (for each lot).

5. Objective of the Development Standard

The objectives of the development standard, as outlined in subclause 4.1(1) are:

- (a) to ensure that lot sizes are compatible with local environmental values and constraints,
- (b) To facilitate efficient use of land resources for residential and other human purposes.

6. Objective of the Zone

The objectives of the Low density residential (R2) zone have been addressed in the section above.

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provides facilities or services to meet the day to day needs of residents.

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 in support of the DA advises as follows in this regard:

'The subject site consists of two titles each approximately 460m², with a single dwelling that is listed as 'an item that contributes to the heritage significance and character of the precinct'. The client wishes to seek a boundary adjustment in order to retain the majority of the northern verandah of the existing dwelling and enable compliance with boundary setbacks, so that the two titles can be independent'.

'...so to achieve strict compliance would involve merging the two titles, which would detract from the historical pattern of subdivision and devalue the client's asset.

Comment:

In this circumstance, strict compliance with the development standard is impossible to achieve, as both lots are existing torrens lots, and both are under the minimum lot size prescribed by Clause 4.1 of the BLEP 2014. Strict compliance with the control is unreasonable and unnecessary. The variation should be supported as it will allow for the retention of original elements of a contributory item to the heritage character of Bangalow.

Requiring compliance with the standard would result in a subdivision plan that would be inconsistent with the pattern of subdivision within this area of Bangalow, comprising Granuaille Road, Campbell Street and Leslie Street. The historical pattern of subdivision generally is a number of narrow lots with dwellings orientated either to the east or west, facing the street frontage. There are no examples within the area of boundaries running in a north/south orientation.

The potential to devalue the asset is not a matter of consideration under s4.15 of the act.

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

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

'Although the existing lot size is less than the current minimum lot size, the variation is to simply to adjust the boundary while retaining the existing historical lot sizes, in order to better preserve the historical item located on the site'.

Comment:

Both lots currently are less than the prescribed minimum lot size. The boundary adjustment allows for the retention of original elements of the dwelling and retains the general appearance of the dwelling to the street. The proposed boundary adjustment will not result in a noticeable change to the street frontage as the existing dwelling will retain a similar street façade and width. Allowing the variation will also remove an existing encroachment between the two lots.

The two resultant lots will retain sufficient frontage to the street so as to comply with the development control plan 2014, and will retain sufficient space within the northern lot to allow for the future construction of a dwelling and access on the site.

There are sufficient environmental planning grounds to justify the contravention of the standard, as the extent of the variation will result in a better outcome for the heritage character of the streetscape by retaining the general bulk and shape of the existing contributory heritage dwelling and will retain the existing pattern of subdivision within the area.

In reducing the size of the lot that will contain the dwelling as proposed within this application, does

not exceed the floor space ratio of 0.5:1 required on the site.

(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?

Comment:

The proposal is for development that is permitted with consent in the zone; the resultant development footprint complies with the floor space ratio and provides boundary setbacks that comply with the DCP. Approval of the variation will also allow for the upgrade / replacement of the pedestrian access from the Campbell Street frontage that will allow for a safer pedestrian movement within the street.

It is considered that the proposal achieves the objectives of the development standard and the zone.

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

Clause 4.3 Height of buildings

The proposal complies with the prescribed 9m height limit with a building height of 7.2m.

5 **Clause 4.4 floor space ratio**

Lot 24 will contain the dwelling after subdivision.

Proposed lot size = 460.25m²

Proposed dwelling Floor area = 150.26m²

Ground floor = 33.8m²

10 First floor = 116.46m²

FSR = 0.32:1 - Complies

Lot 25 will contain the existing garage.

15 But will contain no habitable spaces.

Clause 4.6 Exceptions to development standards.

The application has sought a variation to clause 4.1 of the BLEP 2014 as discussed above.

20 **Clause 5.10 Heritage Conservation**

The site is located within the Bangalow Heritage Conservation Area. The application has been reviewed by Council's Heritage Advisor. Initial concern was raised regarding the loss of the kitchen and the verandah on the northern façade and the height of the building, but in principal there was no objection to the sympathetic upgrades and extensions to the dwelling. The applicant submitted amended plans to retain the verandah and other external elements including the french doors and lowered the building to reduce the overall height.

25

The application is considered to be consistent with the heritage character of the conservation area. Conditions of consent are proposed in relation to colours and external finishes.

30

Clause 6.2 Earthworks

The application requires earthworks of up to 1.85m depth to allow the carpark/ garage to be constructed under the dwelling.

35 A search of the AHMIS database was undertaken and no Aboriginal relics or places were identified within a 50m proximity to the site. A condition is included in the recommendation for works to stop if relics are encountered in accordance with the National Parks and Wildlife Act 1974.

The earthworks are of a residential scale and will not impact on the potential or likely future use of the land for residential purposes. A condition is included in the recommendation for geotechnical reports to be prepared and submitted with the construction certificate.

5 Clause 6.6 Essential Services

Connections to water, sewer and stormwater and electricity are able to be provided as the services exist within the Campbell Street frontage. Connections to the northern lot, (lot 25) are required to be provided by the developer, subject to conditions of consent. Suitable vehicular access can be achieved. The applicant has demonstrated how the new crossover will be achieved; the design is satisfactory to Council’s Development Engineers subject to conditions.

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

Chapter B2 Preservation of trees and other vegetation

15 The plans show 1Tree to be removed that is likely to be impacted by the construction of the driveway for Lot 25. The plans identify this tree as a conifer. A condition is included in the recommendation requiring a landscape plan sympathetic to the dwelling and to show the replacement of the tree at a 1:1 ratio.

20 Chapter B4 Traffic Planning, vehicle Parking, circulation and access

The proposed design complies with the DCP provision with 2 car parking spaces provided for the dwelling.

Chapter B14 Excavation and fill

25 Excavation to a depth of 1.85m is proposed. Under B14.2 – excavation and fill for car parking is permitted to a level up to 2m. The proposal complies.

Chapter D6 – Subdivision

30 Both lots are capable of siting a dwelling and ancillary buildings. Standard subdivision conditions to apply.

Chapter D1.2.1 – building height plane

35 Due to the relocation of the existing house towards the southern boundary a building height plane encroachment results. The dwelling has varied setbacks to this boundary from 1.3m to 2.0m with the level of encroachment prevalent when viewed from the street elevation and all but compliant when viewed from the back boundary due to the topography of the site.

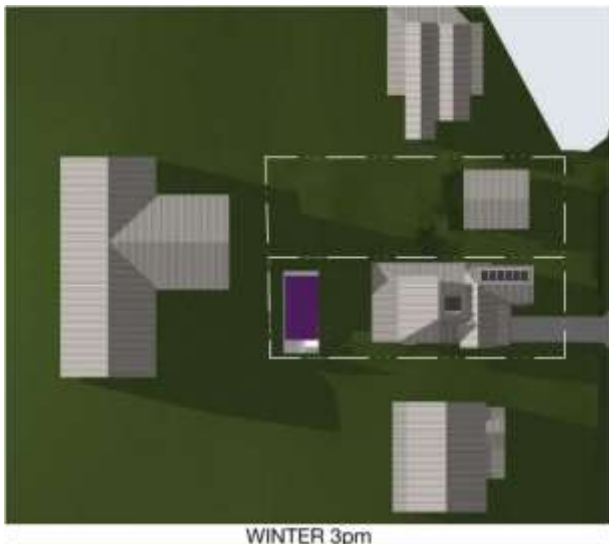


Front / Street elevation of proposed dwelling



Rear elevation of the proposed dwelling.

- 5 The applicant has submitted shadow plans which indicate that the dwelling will cast a shadow onto the neighbours property during the winter months.



10

15

Some shadow is likely to be cast on the southern dwelling at 9am period but by noon there is no impact. It is considered that the proposal will not restrict the use of the site or unduly impact on the adjoining lots ability to enjoy winter sunlight or summer shade (performance criteria 2 & 3). The shadow diagrams provided show that a minimal impact to solar access and views will occur from the development. Privacy is generally maintained with existing landscaping, and conditions of

consent are proposed for the inclusion of privacy screening to decks and windows. It is considered a variation can be granted in this instance.

Chapter C1 – Non-indigenous Heritage.

5 Council’s heritage advisor has reviewed the application and provided comments. Recommendations of this report; where possible have been incorporated into the design.

C1.4.1 Roof form and chimneys

10 Proposal retains the general existing scale and form of the roof. New works are not readily visible from the street frontage

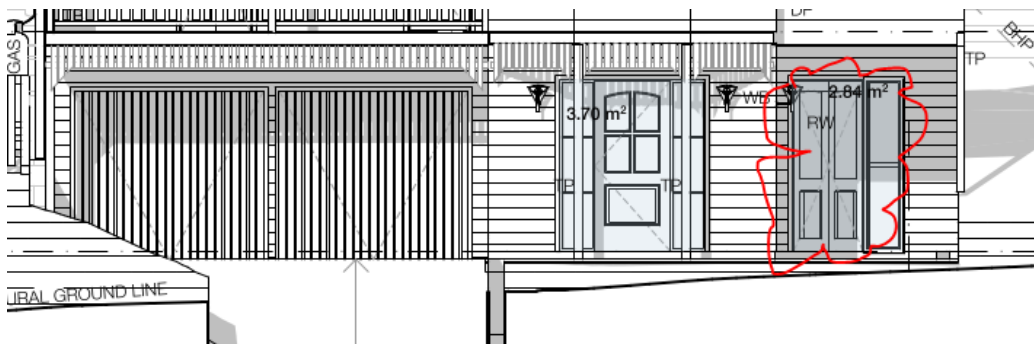
- Solar panels are to be relocated onto the new roof part so that they are not readily visible from the street. – marked in red on plans.

C1.4.2 Verandahs

15 Existing Verandahs are to be maintained. Where original verandahs have been enclosed, the design seeks to restore these to the original form.

C1.4.3 Windows and doors

20 The proposal generally retains existing windows and doors; new works at the rear of the site are not inconsistent with the character of the site and is not readily visible. The current design as proposed presents with two doors that confuses the placement and character of the existing dwelling. The new ground floor habitable area is recommended to be altered so that only 1 door entrance is located within the front façade. Plans marked in red.



25 Second, recessed door in the front façade is to be replaced with a window.

C1.4.4 building materials

30 New works are proposed as weatherboard, and metal roof sheeting, and generally is consistent with the existing materials. A condition requiring a schedule of materials and colours is to be approved by Council prior to the issue of a Construction Certificate.

C1.4.5 colours

35 Condition recommended for colour scheme to be approved by Council prior to issue of Construction Certificate.

C1.4.6 parking, garages and carports

40 Garages in general should be located behind the dwelling, however the built form is consistent with other dwellings constructed in the street with parking located underneath and/or attached to the dwelling and is consistent with the established character of the area. The garage is also well setback under the front deck and will not dominate the buildings appearance to the street. The proposal is considered satisfactory.

C1.4.7 fences

45 No new fencing proposed forward of the building line.

Proposed pool fencing is located at the rear of the site and is not visible from the street frontage. No specific heritage style of fencing is required in this instance.

C1.4.8 Outbuildings and swimming pools

5 Proposed pool is located at the rear of the property – complies.

C1.4.9 Subdivision

10 The proposed boundary adjustment results in a better heritage outcome as the resultant subdivision allows for the original heritage elements to be retained i.e. verandah to northern elevation. The resultant lots are generally the same as existing. And do not compromise the vehicular access of the existing crossover. New access to the southern lot is not inconsistent with other dwellings in the street.

15 The pattern of subdivision within the Campbell Street area includes a number of narrow lots with high set dwellings. The corner of Campbell Street and the northern arm of the street is a transition area into larger lots that have reduced setbacks.

20 The applicant has provided a clause 4.6 variation that demonstrates that the non-compliance with the LEP Clause would result in a better planning outcome by allowing flexibility in this particular circumstance. The variation to the development standard will result in two lots that currently do not meet the minimum lot size under the LEP to retain the existing pattern of subdivision within the area.

C1.6.7 Bangalow Conservation Area

25 The proposal generally complies with Chapter E2 see below.

Chapter C4 – Development within a drinking water catchment

30 The site is located within the Bangalow Township. Any water runoff is capable of being directed into Council controlled systems, and is unlikely to impact on water quality.

Chapter E2 – Bangalow

E2.3.1 Character, bulk and scale of development

35 The re-sited dwelling will be generally consistent with the existing built form visible from the street frontage. It is noted there was a preference for the existing kitchen to be retained, however, it is noted the dwelling is not a heritage item, and the external fabric and appearance of the dwelling in its residential setting will be conserved. The proposal is considered to be generally consistent with the existing character of the street and the requirements of Chapter C1.

4.5 Environmental Planning & Assessment Regulation 2000 Considerations

Clause	<i>This control is applicable to the proposal:</i>	<i>I have considered this control as it relates to the proposal:</i>	<i>If this control is applicable, does the proposal comply?</i>
92 (b) demolition	Yes	Yes	Yes Condition recommended for demolition works to comply with AS2601–1991
93	No	N/a	N/a
94	No	N/a	N/a
94A	No	N/a	N/a

40 * Non-compliances and any other significant issues discussed below

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

Impact on:	Likely significant impact/s?
Natural environment	No likely impacts on the natural environment of the locality.
Built environment	No likely impacts on the built environment of the locality.
Social Environment	No likely impacts on the social environment of the locality.
Economic impact	No likely impacts on the economic environment of the locality.

4.7 The suitability of the site for the development

The site is suitable for the proposed development.

4.8 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited

There were **4** submissions made on the development application:

Against

Submission	Comment
Streetscape amenity	<p>The existing dwelling has a reduced front setback. Amended plans received provide a minimum front setback of 4.5m which is compliant with the DCP requirements as the proposed new dwelling location will be set back further from the front boundary.</p> <p>The Campbell street frontage contains examples of reduced front setbacks that do not comply with the building height plane as well as driveways that include retaining walls within the road reserve.</p> <p>The driveway design will retain the mature magnolia tree within the street front setback. Council's Heritage Advisor noted that this tree was a contributory planting.</p> <p>The new works are not readily visible from the street frontage as the dwellings are constructed at a level higher than the road.</p>
Heritage preservation	<p>Council's Heritage Advisor has reviewed the application and has provided comments and recommendations.</p> <p>The proposed alterations will retain generally the same front façade. In terms of shape and bulk. The proposed dwelling in the relocated position increases the minimum front setback</p> <p>The rock retaining wall within the road reserve is not part of the heritage conservation area or a heritage item itself. It is also noted that there have been numerous driveways and accesses created through this retaining wall.</p> <p>The application had sought to create a secondary door within the front façade into a downstairs rumpus room. This is not supported and is recommended to be converted to a window.</p>
Driveway location and gradient	Council's Infrastructure Services and Development Engineers have reviewed the driveway design and raise no issues, subject to conditions.

Building height plane	The building height plane encroachments are considered acceptable as discussed above.
Solar access and overshadowing caused by vegetation. Impacts on solar panels	<p>It is noted that the tree referred to in the objection is not located on the subject lot but situated on the neighbouring property to the northwest of the subject site. The impact on the tree is not a matter for consideration of this DA. Shadow diagrams have been provided of the development. There is minimal overshadowing that will occur to the southern dwelling at 9am and is no impact by noon and no impact at 3pm. The shadow diagrams do not show the shadows cast by vegetation or fencing surrounding the site. It is also noted that the new works located at the rear of the site, generally comply with the building height plane.</p> <p>An existing 1.8m high timber fence exists on the southern boundary, as well as mature landscaping on the adjoining lot, creates additional privacy for both lots.</p> <p>The shadow diagrams provided show minimal shadow falls over the roof form of the adjoining dwellings, except for a small area at 9am during winter. This is unlikely to significantly impact on Photovoltaic appliances on the adjoining structures.</p>
Privacy impacts	<p>There are 4 areas of the design that pose a potential impact to privacy / overlooking impacts.</p> <ul style="list-style-type: none"> - The deck on the front façade of the dwelling and the proximity to the southern boundary. - Bedroom 1 (w1.11) (southern elevation) - Bathroom (southern elevation (existing window)) - Deck to the northern boundary <p>Conditions to apply in terms of privacy screening.</p>
Setbacks	<p>The dwelling currently is 2.6m from the southern boundary. It is proposed to reduce the side setback to 1.3m, which is compliant with the minimum 900 mm setback requirements of the BCA and the DCP 2014.</p> <p>Given the area is a residential area within an established town; it is unreasonable to require additional setbacks to the adjoining properties, where it complies with the planning controls. The dwelling will also be set back more than 7m from the adjoining dwelling to the south. The area of Bangalow is characteristic of narrow lots and the two lots at the subject of this application appear to be part of the original town subdivision.</p> <p>The proposal seeks to increase the front setback to 4.5m, which will comply with the DCP 2014 requirements.</p>
Removal of staircase within road reserve	The stairs will be required to be removed to allow for the driveway to be constructed. The stairs will be required to be reconstructed by the applicant. Conditions of consent to apply.
Geotechnical stability	Conditions of consent to apply to require plans and specifications that indicate retaining walls and methods for preventing movement of the soil, and geotechnical report to be prepared for the construction certificate.

4.9 Public interest

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

5

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

10 No Section 64 levies will be required.

5.2 Section 7.11 Contributions

15 No Section 7.11 Contributions will be required.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

Provide Disclosure Statement register details here: Not applicable

20 **7. CONCLUSION**

The proposed development is considered acceptable and provides a satisfactory response to the planning controls applicable to the site and the constraints affecting the land. The application is recommended for approval subject to the conditions of consent.

Report No. 13.12 **PLANNING - Development Application 10.2020.306.1 Rural Dual occupancy (detached) at 212 Fowlers Lane, Bangalow**
Directorate: Sustainable Environment and Economy
Report Author: Jordan Vickers, Planner
File No: I2020/1650

5

Proposal:

DA No: 10.2020.306.1
Proposal description: Dual Occupancy (Detached)
Property description: LOT: 2 DP: 261219
 212 Fowlers Lane BANGALOW
Parcel No/s: 25130
Applicant: Balanced Systems Planning Consultants
Owner: Drs J D Mortensen & R L Reardon
Zoning: RU2 Rural Landscape
Date received: 29 June 2020
Integrated / Designated Development: Integrated Designated Not applicable
Concurrence required No
Public notification or exhibition: – Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
 – Exhibition period: 9/7/20 to 22/7/20
 – No Submissions received.
Variation request Clause 4.6 – second driveway access to rural dual occupancy.
Delegation to determine Council

10

Summary:

This application seeks approval for a Dual Occupancy (Detached) at the subject site. The proposed Dual occupancy dwelling is located 100m to the north of the existing dwelling on the allotment and is comprised of four (4) bedrooms, one (1) study/media room, open-plan dining/kitchen/living area, covered outdoor deck, and a two (2) car carport.

15

A Clause 4.6 variation has been lodged to vary the single shared vehicular access development standard (Clause 4.2D (2)(b)) with a second driveway to be used to serve the new dwelling. In this regard the driveway already exists and although an alternative path from the driveway serving the primary dwelling exists, this will require an existing OSMS to be relocated, removal of established vegetation, and potentially relocate Essential Energy overhead infrastructure to achieve the same end. Having regards to the above, strict compliance with the single vehicle access development standard is considered unreasonable and unnecessary in the circumstances.

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The application raises no other issues in terms of site suitability or generates any deleterious impacts and is recommended for approval subject to the conditions listed in the recommendation.

25



NOTE TO COUNCILLORS:

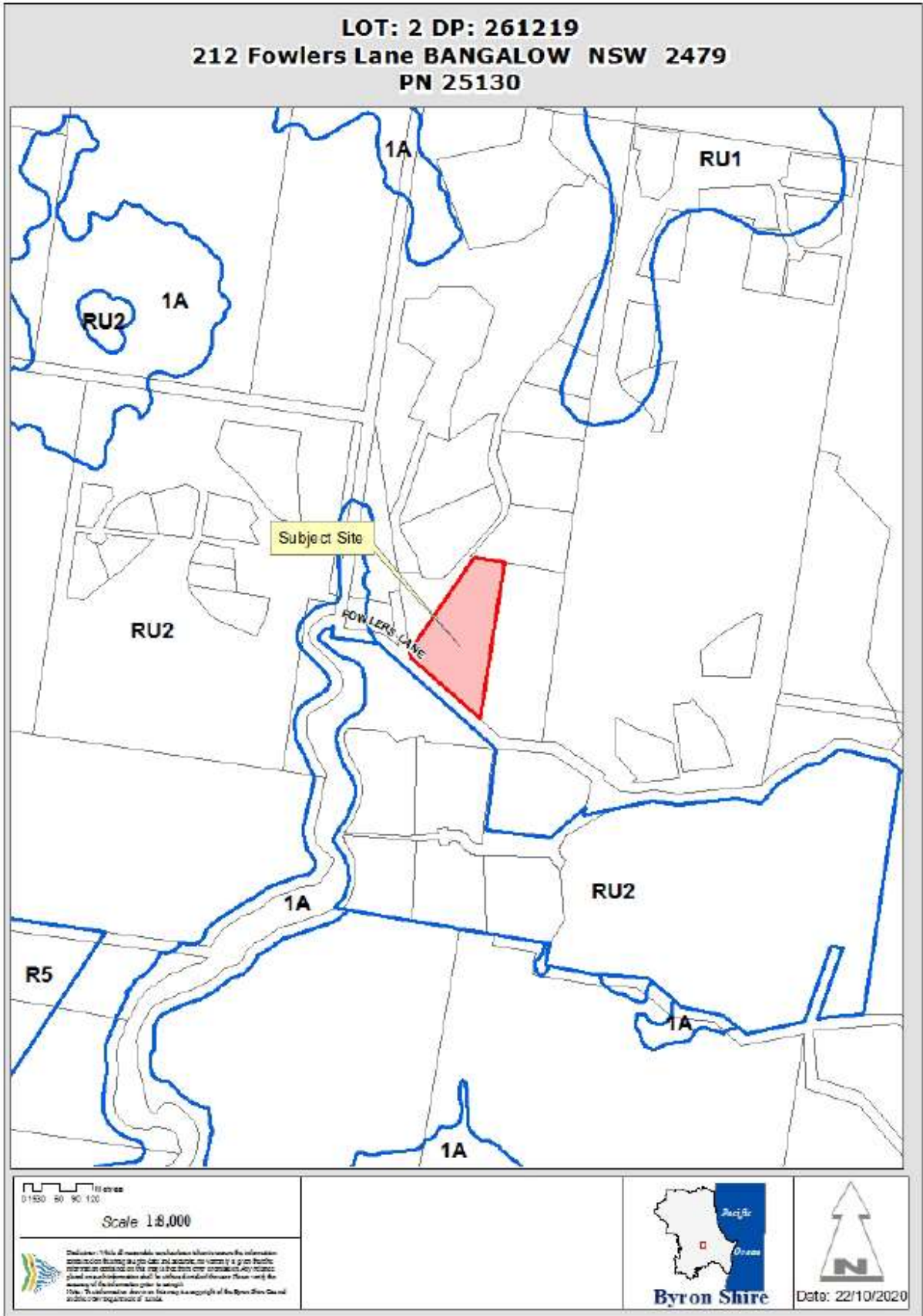
5 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes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

RECOMMENDATION:

10 That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.306.1 for Dual Occupancy (Detached), be granted consent subject to the following conditions listed in Attachment 2 (#E2020/84751).

Attachments:

- 15
- 1 10.2020.306.1 - Plans, E2020/85917 
 - 2 10.2020.306.1 - Conditions of consent, E2020/84751 



Assessment:

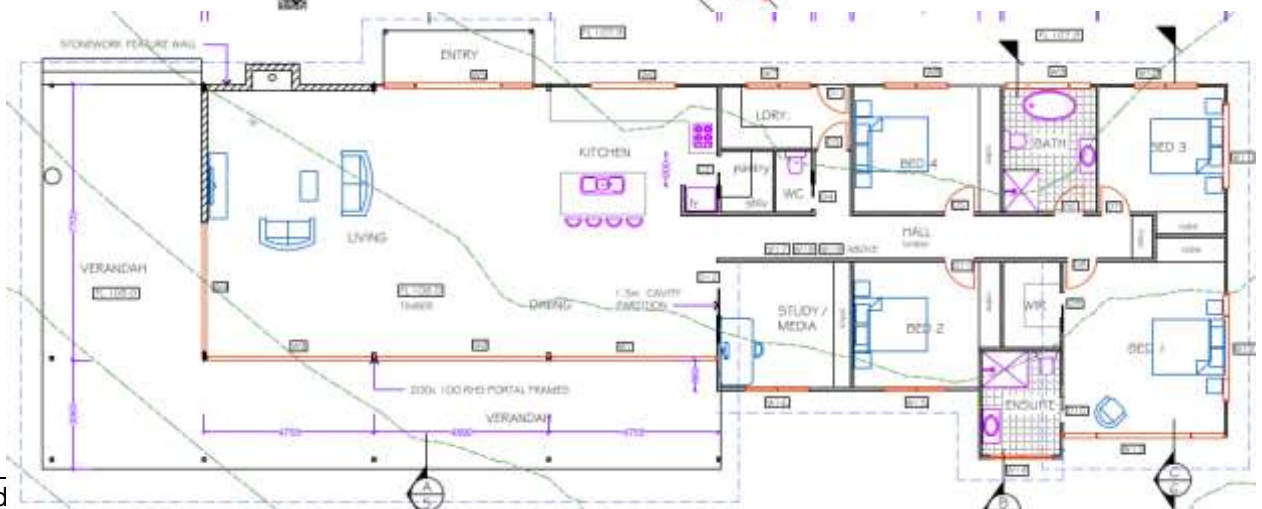
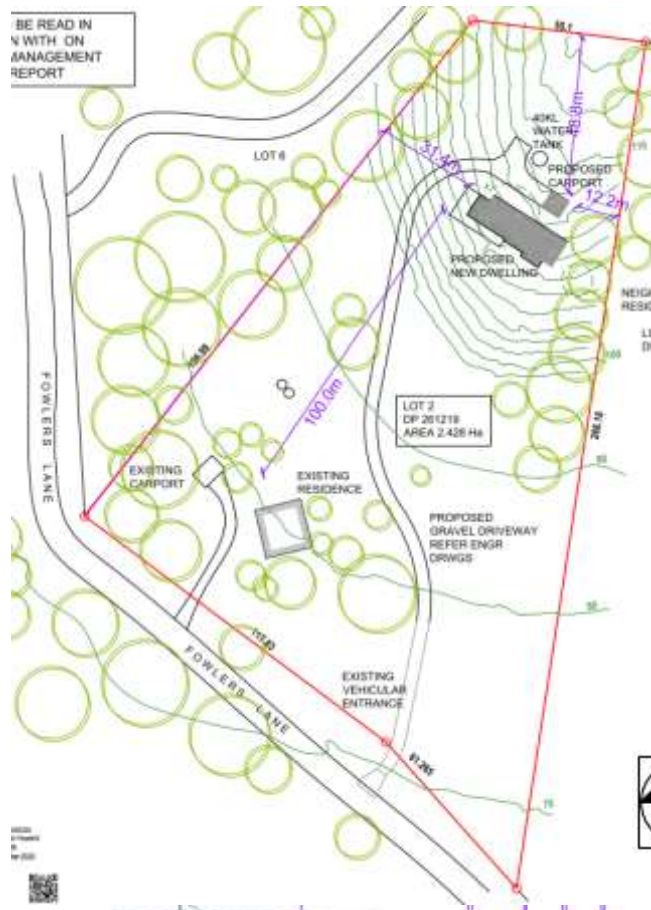
1.1. History/Background

A search of Council records indicates the following relevant site history:

DA No.	Description	Outcome	Date
6.1988.2609	Alterations and Additions to a Dwelling	Approved	17/10/1988
10.2016.75.1	Use of Existing Swimming Pool & Deck	Approved	15/02/2016

5 1.2. Description of the proposed development

This application seeks approval for a Dual Occupancy (Detached) at the subject site. The proposed Dual occupancy dwelling is located 100m to the north of the existing dwelling on the allotment and is comprised of four (4) bedrooms, one (1) study/media room, an open-plan dining/kitchen/living area, covered outdoor deck, and a two (2) car carport. The dwelling is a single level design but elevated on piers to account for the sloping topography of the site.

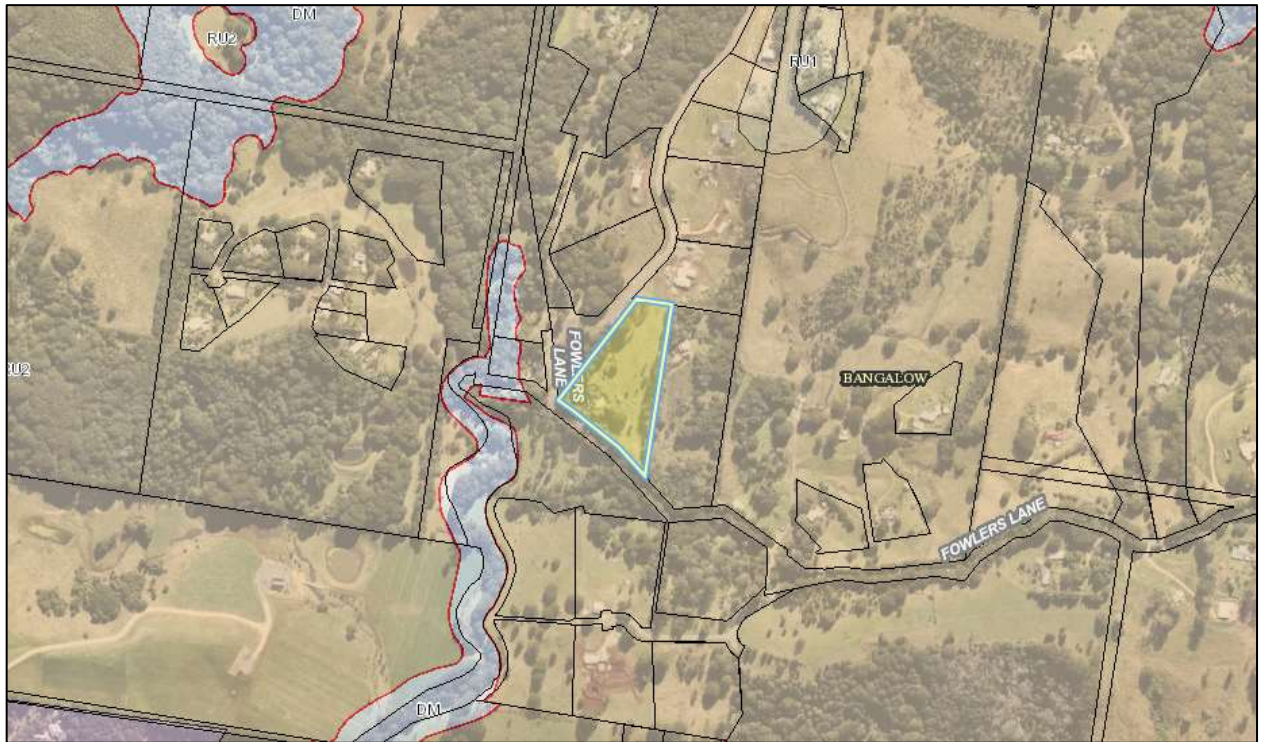


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Both the dwelling and detached carport employ skillion roofs. The dwelling is located on a cleared area of the property and no clearing is required.

1.3. Description of the site

- 5 The subject site known as 212 Fowlers Lane, Bangalow and legally described as Lot 2 on DP261219 has a total site area of 2.428ha and is located within the Rural Landscape (RU2) zone of the Byron Local Environmental Plan 2014. The property is currently improved by a single Dwelling house and carport with access granted via a crossover at Fowlers Lane. The site is identified as Bushfire prone land and containing High Environmental Value vegetation.



- 10 A site inspection was carried out on 7 September 2020

Land is legally described	LOT: 2 DP: 261219	
Property address	212 Fowlers Lane BANGALOW	
Land is zoned:	RU2 Rural Landscape	
Land area is:	2.428ha	
Property is constrained by:	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



1. SUMMARY OF REFERRALS

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

2. SECTION 4.14 – BUSH FIRE PRONE LAND

Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document ‘Planning for Bush Fire Protection 2006’. The site is bush fire prone land. The development application is accompanied by a Report by Helen Robinson of Sustainable Home Solutions dated 28 May 2019 which provides conditions. A Condition is included in the Recommendation of this Report requiring that the development must comply at all times with the requirements of the aforementioned Report.

EFFECT OF 10/50 RULE ON SIGNIFICANT VEGETATION

A search for the subject site was conducted on the Rural Fire Service website to determine the 10/50 status. The search identified the following:

“The parcel of land you have selected is located in a designated 10/50 vegetation entitlement clearing area. You must read the 10/50 Code of Practice carefully to ensure that you are only clearing in accordance with the 10/50 Code. For more information see our frequently asked questions.”

Accordingly, the land owner may clear vegetation in accordance with the 10/50 Vegetation Clearing Code Of Practice For New South Wales.

3. 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.

3.1 State Environmental Planning Instruments

25

	Satisfactory	Unsatisfactory
State Environmental Planning Policy — Koala Habitat Protection 2019	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: A development application has been made on the subject site which has an area greater than 1 hectare and is identified on the Koala Habitat Protection map. However, the proposal has been demonstrated to be Tier 1 – Low or no direct impact development – in accordance with the Koala Habitat Protection Guideline. Council’s Ecologist has recommended the imposition of Conditions accordingly.		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Council’s Environmental Health Officer reviewed information provided by the applicant and determined that “[t]he proposed development site is considered suitable for the intended development.”		
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. The SEPP has been addressed and the proposal is considered to comply.		

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

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

Zone Objective	Consideration
<ul style="list-style-type: none"> • To encourage sustainable primary industry production by maintaining and enhancing the natural resource base. • To maintain the rural landscape character of the land. • To provide for a range of compatible land uses, including extensive agriculture. • 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. • To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality. 	<p>The proposal will maintain the natural resource base and rural character of the land while protecting the significant scenic landscape and scenic quality of the locality.</p>

<p>What clause does the development not comply with and what is the nature of the non-compliance?</p>	<p>Further consideration, including whether the development application is recommended for approval or refusal accordingly</p>
<p>Clause 4.2D(2)(b), which states: <i>“each dwelling will use the same vehicular access to and from a public road”</i></p>	<p>In response to the deviation from this development standard, the applicant has lodged a 4.6 variation request which is considered in further detail below.</p>

10

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

The proposal in the main is satisfactory with the provisions except the new dwelling will be serviced by a second driveway. A variation has been sought to this provision and is discussed below under
15 Clause 4.6.

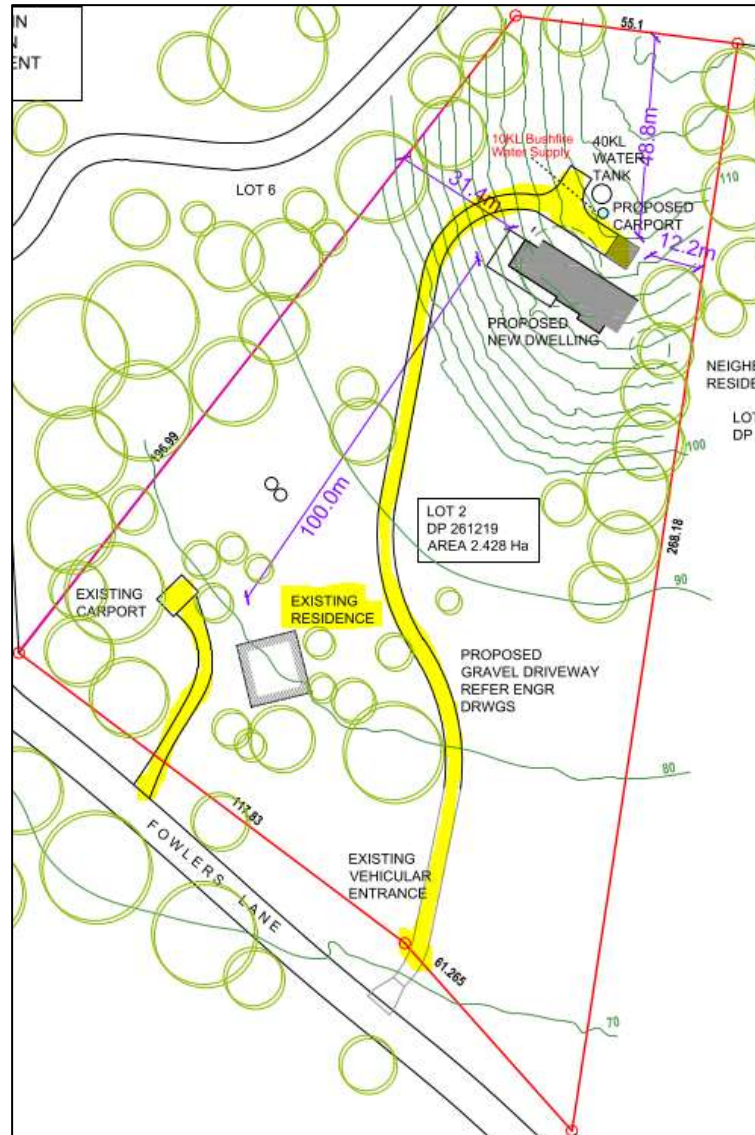
Clause 4.6 Exception to Development Standards.

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1. Introduction – Summary of Proposed Development

The development application proposes to establish a Dual Occupancy (detached) at the subject site. The building is located 100m from the existing dwelling on the allotment, and access from the public road is proposed by upgrading an existing farm entrance, being additional and separate to the crossover for the existing dwelling as prescribed by the development standard (see image below).

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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:

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- 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.

15

3. **The Development Standard to be varied**

The Development Standard to be varied is Clause 4.2D(2)(b), which states:

“each [Dual occupancy] dwelling will use the same vehicular access to and from a public road”

5

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

The extent of the variation relates to the use of an entirely separate driveway and crossover.

Objective of the Development Standard

10 The objectives of the development standard, as outlined in subclause 4.3(1) 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.

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5. **Objective of the Zone**

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

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- 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.

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30 6. **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 in support of the DA advises as follows in this regard:

35

“the proposed variation...is sought based on achieving the following positive outcomes for the development:

- *reduced environmental impacts by lessened driveway length;*
- *improved vehicular access to the new dwelling;*
- *reduced costs of development; and*
- *lessened interaction with over-head powerlines”*

40

“In the circumstances of this specific proposal on this rural site, it [is] considered [that] strict compliance with the one standard regarding singular access is deemed as unreasonable and unnecessary, as it does not result in any beneficial planning or environmental outcomes”

45

Comment:

Requiring the applicant to comply with the standard would necessitate additional earthworks that are not otherwise needed, potentially require the removal of native vegetation to comply with bushfire access standards, require turning circles in close proximity to power poles (and potentially relocation of those poles), require a relocation of the existing OSMS, and require 50m additional driveway than that proposed. Conversely,

50

the proposed access point is an existing farm entrance to the site that would require only

minor upgrades with no vegetation removal, excessive excavation, and disturb a smaller portion of the land (50m less driveway length). Use of the existing farm entrance is unlikely to introduce land use conflicts from additional vehicle access or fragmentation/alienation of uses, will reduce the overall footprint of the driveway on the site and introduce fewer environmental impacts. Nor is the second access likely to lead to any sort of request to subdivide the land having regard to the minimum lots size requirements of 40 hectares.

In this circumstance, the proposed development presents a better planning outcome than strict compliance with the development standard.

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

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

“The proposed use and upgrade of the existing second farm vehicular entrance satisfies the objectives of the clause, by providing a logical and practical vehicular access from Fowlers Lane, resulting in nil additional adverse environmental effects. The use and upgrade of the existing second entrance maintains a suitable scale and nature with the rural character and environmental capabilities of the land. The driveway entrance does not involve any buildings and will require a s138 application to be made to Council for the rural crossover.

The attached Driveway Access Plans with mark ups shows the existing main dwelling driveway centreline, as well as the power line infrastructure and existing vegetation. Utilising the existing driveway entrance to the property would require an additional section of driveway of approximately 50 metres as well as a very tight turning circle between the existing power pole and the eucalyptus vegetation. Utilising the existing entrance requires additional length of driveway and may require removal/pruning of native vegetation for bushfire access requirements”

Comment:

The proposal causes no adverse environmental impacts on the subject and surrounding properties, and making use of the existing farm access mitigates additional environmental impacts (vegetation clearing) which would be required if the development standard were enforced. Despite deviating from the development standard, the proposal complies with the objectives of both the Development Standard and Zone, by maintaining the rural landscape character of the land and protecting the scenic quality of the landscape.

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?

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

“It is in the public interest to support minor variations to development standards where it results in logical and practical planning outcomes. Development standards are in place to provide for positive development outcomes however each specific development application and site has its own characteristics where it is in the public interest to permit a degree of flexibility.

The request is in the public interest as the proposal results in beneficial outcomes for accessibility to the site and does not result in any adverse environmental impacts on the safety of traffic movements on Fowlers Lane.”

Comment:

5 It is contended that use of the existing farm access for the Dual Occupancy dwelling is in the public interest as it demonstrates compliance with the provisions of the Byron LEP 2014, DCP 2014, and the Objectives of the Development Standard and zone. Further, it will reduce the volume of traffic making use of the existing vehicle crossover which is in close proximity to a sharp, blind corner at Fowlers Lane.

It is considered that the proposal achieves the Objectives of the development standard and relevant zone and therefore that the proposal is in the public interest.

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

15 **Clause 4.1E Minimum lot sizes for dual occupancies, manor houses, multi dwelling housing and residential flat buildings**

The proposal complies with the minimum lots size requirements of 4000 m².

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

20 The proposal seeks to establish a rural Dual occupancy (detached) at the subject site, which achieves the minimum lot size for rural dual occupancies, is a lot created under this plan, and the complies with the objectives of this clause.

Clause 4.3 Height of Buildings

25 The proposed dwelling house complies with the 9m maximum height of buildings development standard.

Clause 6.2 Earthworks

30 Earthworks proposed under the subject application will not have detrimental impact on environmental functions and processes, neighbouring uses, cultural nor heritage items or features on surrounding lands.

Clause 6.5 Drinking Water catchments

35 The proposal is cognisant of and suitably distanced from nearby waterways; no chemicals are to be used, stored nor disposed of on the site under the proposal; and Council's EHO has reviewed the proposed On-Site Sewage Management System (OSMS) and recommended that the application be approved subject to conditions.

Clause 6.6 Essential Services

40 The subject site is connected to telecommunications and electricity infrastructure; access is granted to the site via a lawful point of access; the proposed dwelling is afforded a 40,000L water tank, and the suitability of the site to accommodate an OSMS has been considered by Council's EHO.

45 The proposal raises no other issues under the LEP.

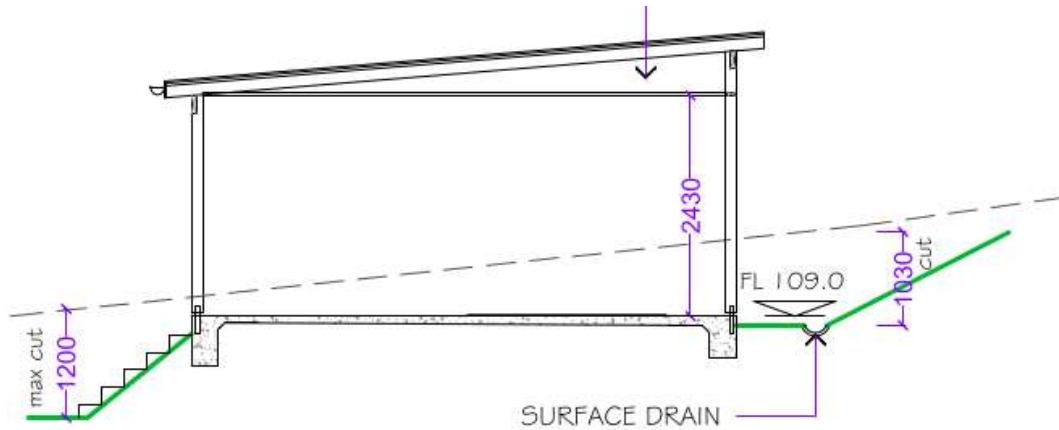
4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority

50 There are no proposed Environmental Planning Instruments of relevance to the proposed development.

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

Chapter B14 – Excavation and Fill

Chapter B14 allows for excavation and fill/battering up to 1m in order to facilitate a car parking space. The proposed development seeks a maximum cut up to 1.2m (see image below). The exceedance of 0.2m is minimal and is not anticipated to introduce adverse environmental impacts and a variation is supported in this instance to facilitate the construction of the car port.



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

DCP 2014 Chapter B4 requires that two car parking spaces are required per dwelling. The proposal provides two car parking spaces adjacent to the dwelling.

Chapters C3 – Visually prominent Sites & Development

The proposal promotes the Shire’s natural features, vegetation and topography by way of situating amongst the natural landscape with minimal excavation/fill, not being located in front/behind adjacent/adjoining dwellings in a manner that may damage existing views and vistas, establishes within an existing portion of cleared land to mitigate vegetation clearing, and does not intrude on the skyline when viewed from public land.

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

D2 – Residential Accommodation in Rural zones

Prescriptive Measure 2 of Chapter D2.5.2 prescribes (in accordance with LEP clause 4.2D(2)(b)) that Dual Occupancy (detached) buildings are not located greater than 100m apart, and must be serviced by a common vehicle access point. Variation to this development control has been considered above under the clause 4.6 variation discussion.

The proposal complies with the prescribed boundary setbacks, on-site car parking, and private open space requirements.

The proposal raises no other issues under the DCP.

4.5 Environmental Planning & Assessment Regulation 2000 Considerations

The proposal raises no issues under the regulations

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

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

	natural environment of the locality.
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.

Relevant conditions of consent are proposed to control construction activities such as hours of work, construction noise, builders waste and the like.

5 4.7 The suitability of the site for the development

Issue	Comment
Services - Water/ Sewer/ Stormwater - Ph/ power - Access	- The site is connected to telecommunications and electricity infrastructure; - Access is granted to the site via a lawful point of access - The proposed dwelling is afforded a 40,000L water tank, and an On-Site Sewage Management System (OSMS) will be required by condition of consent.
Onsite Effluent Disposal	- Council's EHO has assessed and confirmed the sites suitability for an On-site Sewage Management System (OSMS). A condition will be applied requiring the lodgement of a s68 application for an OSMS.
Hazards - Bushfire	- The site is Bushfire prone land and a bushfire assessment report has been lodged alongside the application.
Land Use conflicts	- The proposal maintains the rural residential use of the land and is not inconsistent with the other forms of lifestyle acreage lots in Fowlers Lane. It is not anticipated to introduce any land use conflicts.

4.8 Submissions made in accordance with this Act or the regulations

10 The development application was publicly exhibited. Council received no submissions.

4.9 Public interest

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

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

20 No Section 64 levies will be required.

5.2 Section 7.11 Contributions

Section 7.11 Contributions will be payable.

5 6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

7. CONCLUSION

10 The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development. The application is recommended for approval subject to the conditions of consent.

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Report No. 13.13 **PLANNING - Development Application 10.2020.138.1 to establish Multi-Dwelling Housing (7 units) at 8 Kumbellin Glen, Ocean Shores**
Directorate: Sustainable Environment and Economy
Report Author: Jordan Vickers, Planner
File No: I2020/1710

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Proposal:
DA No: 10.2020.138.1
Proposal description: Demolition of Existing Dwelling House and Construction of Multi-Dwelling Housing Comprising Seven (7) Dwellings
Property description: LOT: 1323 DP: 243480
 8 Kumbellin Glen OCEAN SHORES
Parcel No/s: 40380
Applicant: Ardill Payne & Partners
Owner: Chincogan Property Developments Pty Ltd
Zoning: R2 Low Density Residential
Date received: 17 March 2020
Integrated / Designated Development: Integrated Designated Not applicable
Concurrence required No
Public notification or exhibition:
 – Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
 – Exhibition period: 2/4 - 22/4/20
 – Submissions received: 20
 – Submissions acknowledged: Yes No
Planning Review Committee: Not applicable
Variation request Not applicable
Delegation to determine Council
Issues:
 • Building Height Plane
 • DIP Site buffer area
 • Setbacks
 • Safe vehicular manoeuvring
 • Density & integration with zone
Summary: The DA proposes Demolition of Existing Dwelling House and Construction of Multi-Dwelling Housing Comprising Seven (7) Dwellings.

10 **Summary:**

This application seeks approval for the demolition of an Existing Dwelling House and the construction of Multi-Dwelling Housing comprising Seven (7) Dwellings. The proposed Multi-Dwelling Housing building is a single structure of attached units spanning approximately 30m across the subject site.

15 Each unit is a three-storey domicile comprised of: ground floor single-car garage and utilities room; first floor kitchen, dining/living areas, and outdoor private open space; and a second floor containing two bedrooms (Master bedroom + one bedroom) and a bathroom.

The building is a slab-on-ground construction, articulated with a variety of materials (FC sheets, weatherboard and rendered cladding), colorbond roofing and timber-look garage doors.

Excavation and retaining up to 2m is required to establish the ground floor car parking area. Planted landscaping is required to be removed to facilitate the development. A landscaping plan has been provided with the application demonstrating proposed replacement plantings to be established along the Goondooloo Drive frontage.

The site is located within the R2 Low Density Residential zone which is predominantly characterised by Dwelling houses and detached Secondary dwellings and Dual occupancies. The development does not integrate with, and is not indicative of the expected built form of the low density residential environment which surrounds the development site (traditional free standing homes).

Submissions received during community notification identified density and built form as a primary matter of concern, identifying that the proposal far exceeds the existing and expected residential density within the Low density residential zone and that the bulk of the building is out of character with the streetscape.

The applicant was advised prior to (DAP meeting) and throughout (information request & a meeting at Council) assessment of the abovementioned issues, and provided with alternatives to the proposed development that would alleviate the deficiencies/non-compliances identified; however, the proposal has remained unchanged. The proposal also presents encroachments into the Building Height Plane, is deficient of Communal Landscaping Area with part of it not accessible to all residents, whilst access/egress to the allocated car parking space for Unit 7 is extremely tight in terms of manoeuvrability and potentially unsafe.

Reducing the development by one dwelling unit and separating those remaining into two (2) detached buildings would more accurately reflect the desired and existing built form of the low density environment; ensure the site is capable of accommodating the required Communal Landscaped Areas and provide better vehicular manoeuvring for car parking.

The application is therefore recommended for approval subject to a deferred commencement consent requiring the plans to be amended accordingly.

NOTE TO COUNCILLORS:

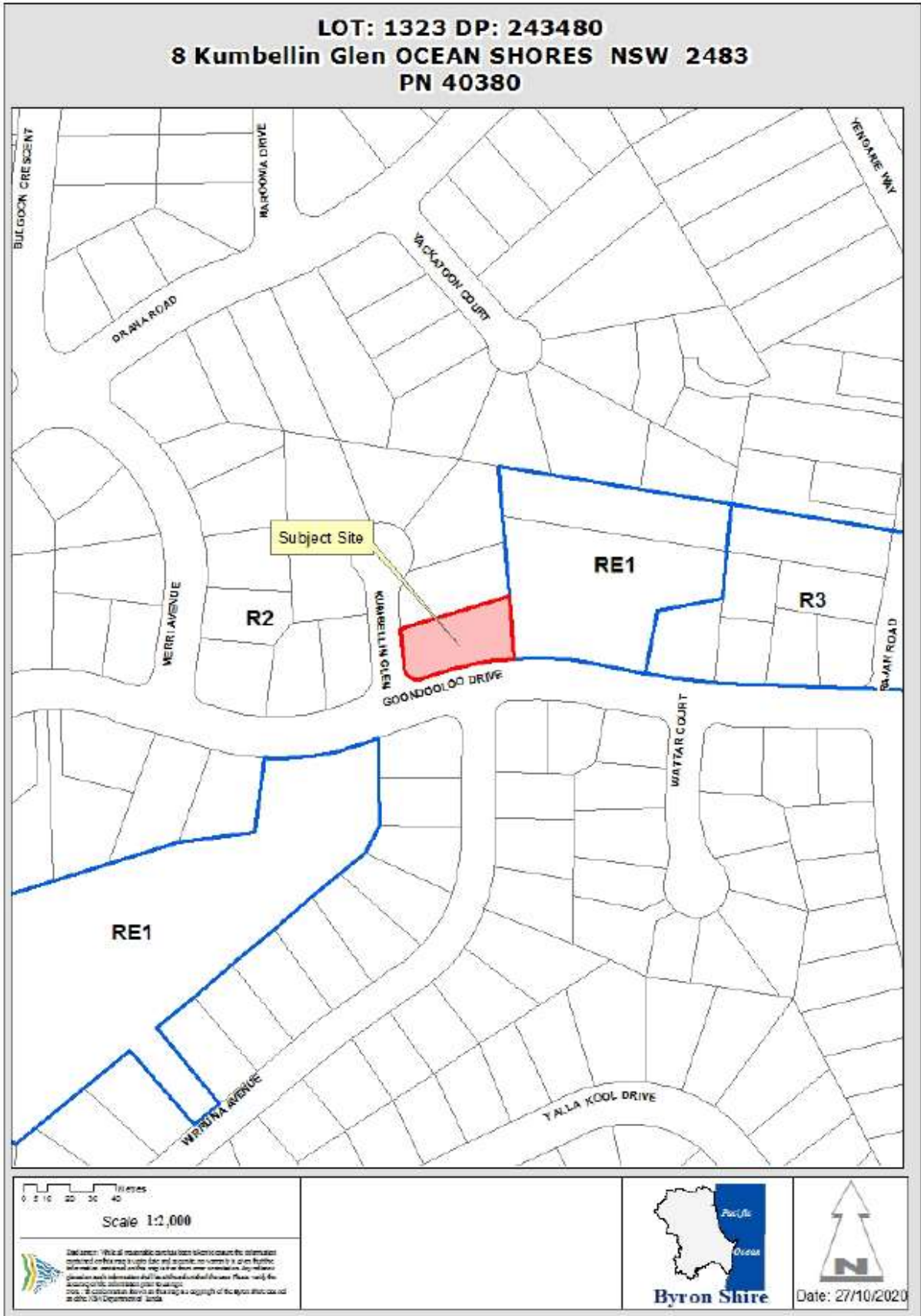
In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes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

RECOMMENDATION:

That Development Application No. 10.2020.138.1 for Demolition of Existing Dwelling House and Construction of Multi-Dwelling Housing Comprising Seven (7) Dwellings be granted consent subject to Deferred Commencement Conditions listed in Attachment 2 (E2020/86297).

Attachments:

- 1 10.2020.138.1 - Plans, E2020/84846 
- 2 10.2020.138.1 - Conditions of Consent - Deferred Commencement, E2020/86297 
- 3 Confidential - 10.2020.138.1 - Submissions, E2020/86349



REPORT

Assessment:

1. INTRODUCTION

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1.1. History/Background

A search of Council records indicates the following site history:

DA No.	Description	Outcome	Date
6.1991.2202.1	BA - Dwelling	Finalised	05/06/1991
10.2017.653.1	Multi-Dwelling housing (4 units) & Alts & Adds	Withdrawn	23/04/2018

Development Advisory Panel:

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A Development Advisory Panel meeting was held **12 September 2019** regarding the proposed development between Council staff and the property owner. In summary, **the applicant was advised:**

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- to break-up the 30m long, three (3)-storey high building into two smaller buildings with a 3m separation distance;
- that the proposed building is not reflective of the Low density residential (R2) zone objectives and contrasts dramatically with the surrounding area which is dominated by detached dwellings; and
- that one dwelling unit may need to be deleted from the proposal.

1.2. Description of the proposed development

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This application seeks approval for the demolition of an Existing Dwelling House and the construction of Multi-Dwelling Housing comprising Seven (7) Dwellings. The proposed Multi-Dwelling Housing building is a single structure of attached units spanning approximately 30m across the subject site. Each unit is a three-storey domicile comprised of: ground floor single-car garage and utilities room; first floor kitchen, dining and living areas, and outdoor private open space; and a second floor containing two bedrooms (Master bedroom + one bedroom) and a bathroom. Each dwelling unit is afforded private open space area with a minimum area of 30m² and minimum dimension >4m.

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Excavation and retaining is required to establish the ground floor car parking area and planted landscaping is required to be removed to facilitate the development. A landscaping plan has been provided with the application demonstrating plantings that are to take place.





1.3. Description of the site

The subject site known as 8 Kumbellin Glen, Ocean Shores and legally described as Lot 1323 on DP243480 has a total site area of 1075m² and is located within the R2 Low Density Residential zone of the Byron Local Environmental Plan 2014. The property is a corner lot with dual frontage to Kumbellin Glen and Goondooloo Drive, and is currently improved by a single dwelling house and extensive mature planted landscaping. The allotment has an average gradient of approximately 30% (15° -18°), falling from north to south. No easements encumber the site, however Council Sewage infrastructure is located at and parallel to the frontage to Kumbellin Glen and the site is located within a Cattle DIP buffer area and the Coastal Environment Area of the Coastal Management SEPP 2018.

The greater locality is predominantly comprised of detached dwelling houses, however the immediate vicinity of the subject site (particularly Kumbellin Glen) is characterised by Dwelling houses, detached Dual occupancies and a detached Multi-dwelling housing development comprised of three (3) dwellings (see image below).

A site inspection was carried out on 1 April 2020



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Land is legally described	LOT: 1323 DP: 243480	
Property address	8 Kumbellin Glen OCEAN SHORES	
Land is zoned:	R2 Low Density Residential	
Land area is:	1075m ²	
Property is constrained by:	Dip Buffer, Coastal Management SEPP (Coastal Environment Area)	
	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

Referral	Issue
Environmental Health Officer*	No objections subject to conditions.
Development Engineer*	Car Parking issues. See discussion below.
S64 / Systems Planning Officer*	No objections subject to conditions.
S94 / Contributions Officer*	No objections subject to conditions.

5 3. SECTION 4.14 – BUSH FIRE PRONE LAND

Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document '*Planning for Bush Fire Protection 2006*'. The site is not bush fire prone land.

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.

5 4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration:</p> <p>A report entitled Preliminary Contaminated Land Investigation prepared by Ardill Payne & Partners dated February 2018 provides that soil sampling results were below the Health Investigation Levels (HIL) in accordance with NEPM (2013) Table 1 A (1) Column A – ‘Standard’ Residential with garden/accessible soil (home grown produce <10% fruit and vegetable intake (no poultry), also includes childcare centres, preschools and primary schools. Reporting was conducted in accordance <i>NSW EPA Guidelines for Consultants Reporting on Contaminated Sites 2000</i>.</p> <p>There is no increase in sensitivity as a result of the proposal. The site is therefore considered suitable for the intended development.</p>		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration:</p> <p>The proposal is accompanied by a valid BASIX and NatHers certificate. The SEPP has been addressed and the proposal is considered to comply.</p>		
State Environmental Planning Policy (Coastal Management) 2018	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration:</p> <p><u>Coastal Environment Area:</u></p> <p>The property is within the Coastal Environment Area and the proposed development is unlikely to cause an adverse impact on:</p> <ol style="list-style-type: none"> a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment, b) coastal environmental values and natural coastal processes, c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1, d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms, e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability, f) Aboriginal cultural heritage, practices and places, g) the use of the surf zone. 		

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

- (a) The proposed development is defined in the LEP 2014 Dictionary as Multi-Dwelling housing;
- (b) The land is within the R2 Low Density Residential according to the Land Zoning Map;
- (c) The proposed development is permitted with consent; and
- (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
<ul style="list-style-type: none"> To provide for the housing needs of the community within a low density residential environment. To enable other land uses that provide facilities or services to meet the day to day needs of residents. 	The development provides for the housing needs of the community, however is not aligned with the low density residential environment of the locality. The proposed dwelling density of 1 dwelling/153m ² far exceeds the expected residential density within a Low density residential context.

The remaining underlined clauses 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 of these clauses (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to Clause 2.3 which is considered further as follows:

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What clause does the development not comply with and what is the nature of the non-compliance?	Further consideration, including whether the development application is recommended for approval or refusal accordingly
<u>Clause 2.3 - Zone objectives and Land Use Table</u>	See discussion below
<u>Clause 4.1E Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings</u>	See discussion below

Clause 2.3 - Zone objectives and Land Use Table

The Objectives of the Low density residential zone (LDRZ) strive to provide for the housing needs of the community *within a low density environment*. Within the LDRZ, the minimum lot size to establish a dwelling house is 600m², and 800m² for a Dual occupancy. Therefore, the expected residential density in the LDRZ is between 1 dwelling/600m² and 1 dwelling/400m² respectively. The proposal seeks to establish a Multi-dwelling housing development comprised of seven (7) attached dwelling units at the site with a total area of 1075m², equating to a dwelling density of one (1) dwelling/153m².

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Locality analysis:

An analysis of thirteen (13) properties in the surrounding Low density residential zone (LDRZ) and eight (8) properties in the surrounding and nearby Medium density residential zone (MDRZ) was conducted to identify the predominant density and lot configuration in the locale. It was found that dwelling density achieves an average of one (1) dwelling/666m² within the LDRZ, where allotments with multiple dwellings are most characteristically configured as detached buildings.

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Comparatively, dwelling density in the MDRZ achieved an average of one (1) dwelling/287.36m², where multiple dwellings often present as attached buildings.

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Address (parcel no.)	Use	Density	Area	Configuration
Low density residential zone				
5 Kumbellin Glen (268438)	Multi-dwelling housing	3 x dwellings 1/439m²	1318m ²	Detached
4 Kumbellin Glen (40410)	Dual Occupancy	2 x dwellings 1/588m²	1176m ²	Detached
3 Kumbellin Glen (40420)	Dwelling house	1 x dwelling 1/1397m²	1397m ²	-
2 Kumbellin Glen (239591)	Dual Occupancy	2 x dwellings 1/555m²	1110m ²	Detached
1 Kumbellin Glen (29200)	Dwelling house	1 x dwelling 1/844m²	844m ²	-
10 Goondooloo Drive (240213)	Dual Occupancy	2 x dwellings 1/428.5m²	857m ²	Detached

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9 Goodndooloo Drive (100330)	Dwelling house	1 x dwelling 1/866m²	866m ²	-
26 Wirruna Avenue (29080)	Dwelling house	1 x dwelling 1/746m²	746m ²	-
7 Goondooloo Drive (29090)	Dwelling house	1 x dwelling 1/695m²	695m ²	-
12 Merri Avenue (51680)	Dwelling house	1 x dwelling 1/910m²	910m ²	-
1 Merri Avenue (29220)	Dwelling house & Secondary dwelling	2 x dwellings 1/401.5m²	803m ²	Detached
14 Goondooloo Drive (29230)	Dwelling house & Secondary dwelling	2 x dwellings 1/382.55m²	765.1m ²	Attached
29 Goondooloo Drive (268281)	Multi-dwelling housing	3 x dwellings 1/415.3m²	1246m ²	Detached
Average =		1/666.75m²		Detached
Medium Density residential zone				
6 Goondooloo Drive (268541)	Dual Occupancy	2 x dwellings 1/483.5m²	967m ²	Detached
92 Rajah Road (240195)	Multi-dwelling housing	5 x dwellings 1/280m²	1400m ²	Attached
90 Rajah Road (238705)	Multi-dwelling housing	4 x dwellings 1/251.25m²	1005m ²	Attached
88 Rajah Road (75810)	Multi-dwelling housing	8 x dwellings 1/121m²	973m ²	Attached
3 Bindaree Way (240932)	Residential Flat Building	4 x dwellings 1/393m²	1572m ²	Attached
51 Rajah Road (268623)	Multi-dwelling housing	14 dwellings 1/127m²	1779m ²	Attached
3 Jarrah Crescent (238877)	Residential Flat Building (Multi-dwelling housing)	4 dwellings 1/297.25m²	1189m ²	Attached
1 Nunyar Court (239561)	Multi-dwelling housing	3 dwellings 1/ 346m²	1040m ²	Attached/Detached
Average =		1/287.36m²		Attached

The above analysis of the LDRZ and MDRZ surrounding the development site indicates that although Dual occupancies and (infrequently) Multi-dwelling housing are evident, these often achieve a dwelling density of ± 1 dwelling/400-500m², present as spatially separated (detached) structures that contribute to a low-density urban form, and do not exceed 3 dwellings on the site.

- 5 Comparatively, dwelling density within the surrounding and nearby Medium density residential zone (MDRZ) achieves an average of one (1) dwelling/287.36m², where Multi-dwelling housing developments are most regularly attached buildings.

It is evident that the proposed development is reflective of the average density and built-form that is characteristic of the Medium density residential zone of Ocean Shores as opposed to the Low density residential zone. This is further demonstrated by Council's recent assessment of

- 10 DA10.2020.170.1 and DA10.2016.423.1 nearby, which resolved as follows:

- DA10.2020.170.1 proposed four (4) dwellings at density of **one (1) dwelling/253m²** within the LDRZ at 16 Short Street, Brunswick Heads, and was determined to be "*not consistent with the low density nature and character of this neighbourhood*" and was **recommended for refusal**.
- DA10.2016.423.1 proposed eight (8) dwellings at a density of **one (1) dwelling per 257m²** within the LDRZ at 4 Roundhouse Place, Ocean Shores, was determined by Council as "*not reflecting the expected density in a low density residential environment*" and was

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recommended for refusal. This proposal was eventually resolved via mediation with the Land and Environment Court whereby two dwellings were removed from the design.

- Submissions received during community notification identified density as a primary matter of concern, identifying that the proposal far exceeds the existing and expected residential density within the LDRZ.

The development as proposed does not integrate with, nor is indicative of the low density residential environment surrounding the development site (see also discussion under clause 4.1E and DCP part D1.2.4 below). This assessment is consistent with the preliminary advice provided to the applicant at the Development Advisory Panel meeting held prior to lodgement and assessment of the application, where the applicant was advised:

- to break-up the 30m long, three (3) storey high building into two or more smaller buildings with a 3m separation distance;
- that the proposal is not reflective of the Low density residential (R2) zone objectives and contrasts dramatically with the surrounding area which is dominated by detached dwellings; and
- that at least one dwelling unit may need to be deleted from the proposal.

Information Request:

An information request was issued to the applicant requesting that the proposal is amended such that the density and built form is reflective of the Low density residential zone and urban character that is established within the locality.

Response to Information request:

The applicant’s response to the information request posits that “...*there is little to no difference between the character of the MDRZ and the LDRZ in Byron Shire as the subject controls including FSR, Landscaped Areas, Private Open Space and permissibility are very similar in both zones.*”

While controls may be “*very similar*” between the LDRZ and MDRZ, it is contended that the Objectives of each zone indicate the intended difference between the two, being the intended residential density and housing typologies:

Low density residential zone Objectives	Medium density residential zone Objectives
<ul style="list-style-type: none"> • To provide for the housing needs of the community <u>within a low density residential environment.</u> • To enable other land uses that provide facilities or services to meet the day to day needs of residents. 	<ul style="list-style-type: none"> • To provide for the housing needs of the community <u>within a medium density residential environment.</u> • To provide a <u>variety of housing types within a medium density residential environment.</u> • To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The Objectives of the LDRZ seek to provide for the housing needs of the community within a low density residential environment, whereas the Objectives of the MDRZ anticipate a variety of housing types that are established within a medium density environment.

As previously noted, the proposal:

- does not integrate with existing housing typologies of the low density residential environment which is predominantly characterised by Dwellings, Secondary dwellings and Dual occupancies which are detached;
- exceeds the existing density within the LDRZ;
- exceeds the expected density within the LDRZ (when considering minimum lot size);
- exceeds the existing density within the surrounding MDRZ; and
- is more dense (at 1 dwelling/153m²) than recent proposals which Council have resolved do not align with the expected density of the LDRZ (at 1 dwelling/253m² and 1 dwelling/257m² respectively).

Despite comprising similar controls, the Objectives of the LDRZ and MDRZ envisage development outcomes that do not exhibit “*little to no difference*”. Further, the similarity between the controls of the LDRZ and MDRZ is not considered suitable justification for substantial deviation from the Objectives of the zone, nor the necessity for development to integrate with the surrounding character and environment.

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It is considered that the proposal is inconsistent with what is expected and existing within the “low density environment” surrounding the development site.



Clause 4.1E Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings

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Pursuant to clause 4.1E, Multi-dwelling housing within land zoned Low Density Residential (R2) must be sited on allotments 1,000m² or greater. This site has an area of 1,075m², thus multi dwelling housing is a permissible use on the subject site. Notwithstanding, the merits of the proposal need to be considered to determine if the proposal is appropriate development in context.

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The development as proposed is in conflict with the Objectives of clause 4.1E, notably: “*to achieve planned residential density in certain zones*”. Given the minimum lot size map for the locality is 600m², council’s expectation is that the planned residential density for the locality would be 1 dwelling/600m²; or, with the inclusion of Secondary dwellings, a maximum of 1 dwelling per 300m². Similarly, Dual occupancies in the zone are permissible on lots ≥ 800m², and the maximum considered density of each allotment in such an instance would be 1 dwelling/400m².

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As the proposal seeks to establish a Multi-dwelling housing development at a residential density of 1 dwelling /153m², it is not reflective of the planned residential density of the Low density residential zone.

It is considered that the proposal is inconsistent with the intent of the Objectives of Clause 4.1E.

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However, LEP 2014 does not stipulate a density control for Multi dwelling housing proposed within the LDRZ, and relies on other development standards (LEP, such as Floor Space Ratio) and development controls (DCP, such as setbacks, Private Open Space etc.) to guide this density.

Clause 4.4 Floor Space Ratio

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The Statement of Environmental Effects (SEE) notes that the proposed development is compliant with applicable the Floor Space Ratio (FSR) development standard (0.5:1). The SEE provides the GFA of the units as:

- Unit 1 GFAs:
 - ground floor (concession) – 24.89m²
 - first floor living – 36.31m²
 - second floor living – 44.78m²
- Units 2-7 GFAs:
 - ground floor (concession) – 25.87m²
 - first floor living – 35.21m²
 - second floor living – 39.25m²

Table 1 below demonstrates that the total GFA of the development equates to 527.85m², resulting in a compliant FSR of 0.49:1.

Note: Ground floor GFA has not been included in the calculation as it only contains spaces exempt from the GFA calculation pursuant to the Definitions of the LEP, those being: staircase, car parking, and storage, garbage and services.

Table 1

		Unit							
		1	2	3	4	5	6	7	
Floor level	Ground	0	0	0	0	0	0	0	
	First	36.31	35.21	35.21	35.21	35.21	35.21	35.21	
	Second	44.78	39.25	39.25	39.25	39.25	39.25	39.25	
	Third	-	-	-	-	-	-	-	
Total =		81.09	74.46	74.46	74.46	74.46	74.46	74.46	527.85

Clause 4.3 – Maximum Height of Buildings

Plans provided with the Development Application demonstrate that the proposal remains below the 9m maximum building height limit.

Clause 6.1 – Acid Sulfate Soils

The site is not identified as containing Acid Sulfate Soils.

Clause 6.2 – Earthworks

The proposal requires earthworks to establish the building pad and car parking areas. An assessment of the required earthworks has been undertaken by Council’s Development Engineer and the proposal will not have a detrimental impact on environmental functions, processes neighbouring uses, cultural or heritage items or features of the surrounding land.

Clause 6.6 – Provision of services

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

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 Environmental Planning Instruments of relevance to the proposed development.

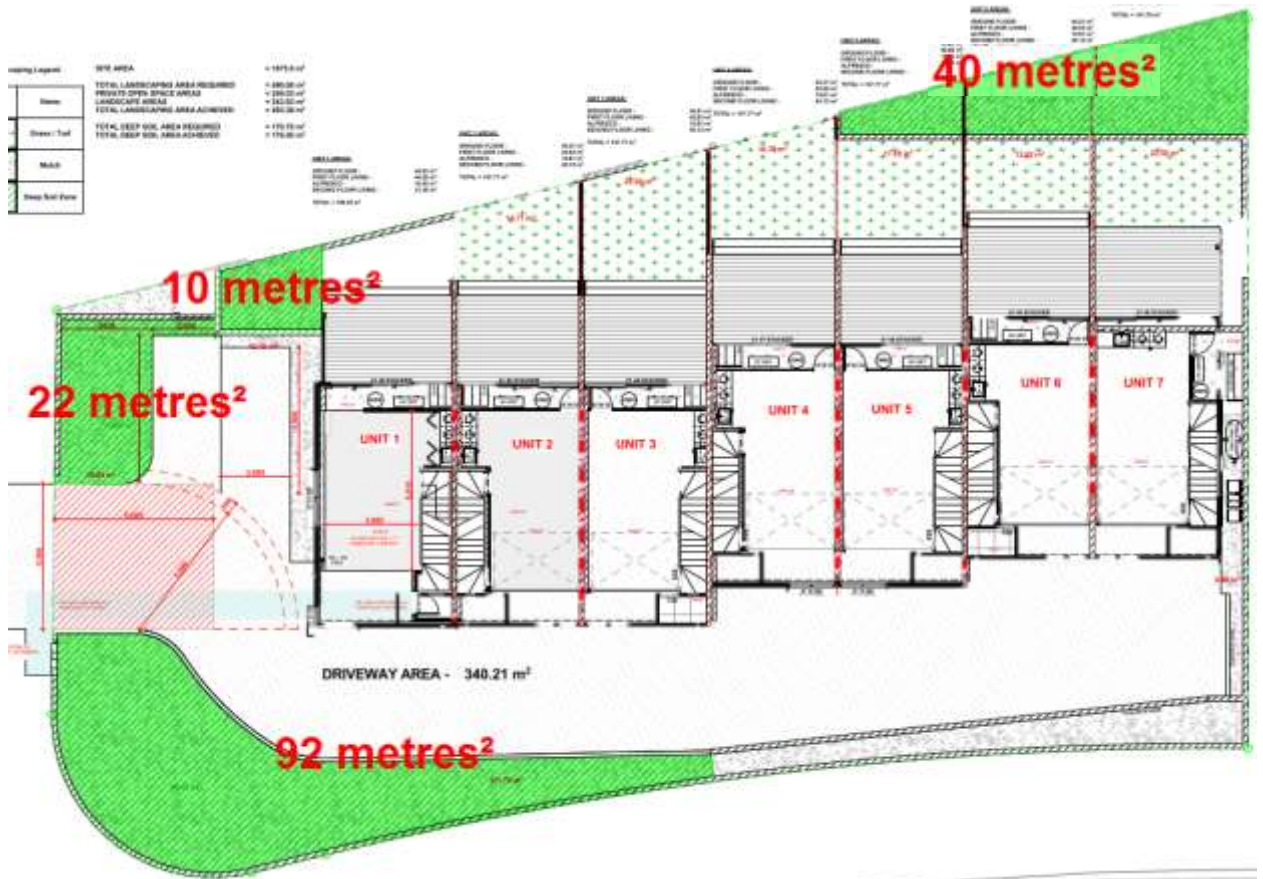
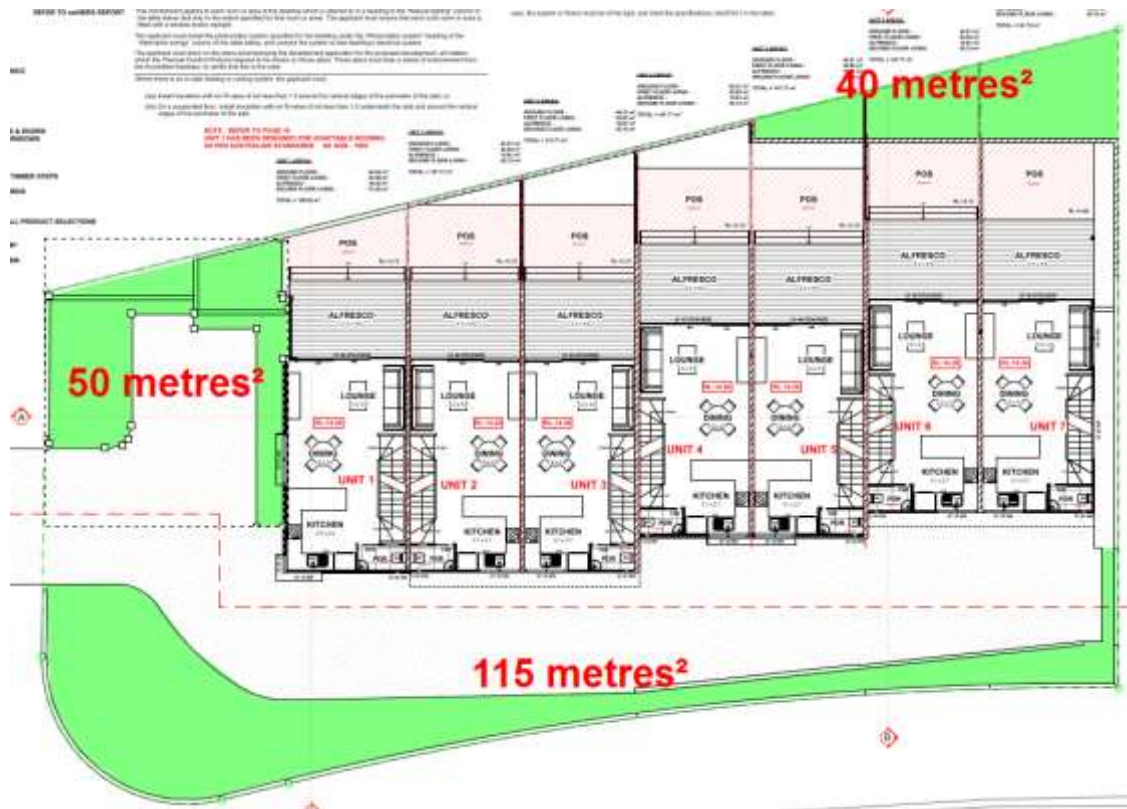
4.4A Byron Shire Development Control Plan 2014 (DCP 2014)

The following specific comments are provided on DCP matters of relevance in terms of non compliance.

B9.4.1 & 9.4.2 – Common Landscape Area

In accordance with DCP Part B9.4.1 a Common Landscaped Area (CLA) of 490m² is to be provided for the site, being 70m²/dwelling @ 7 dwellings. For the sake of calculating CLA in accordance with these controls, CLA is to be calculated less the total of areas provided for Private Open Space (POS) which has been found to equate to 241m². Therefore, 249m² of CLA is required. The applicant states that 243.83m² of CLA has been provided, however a review of proposal plans indicates that 205m² of CLA has been provided (50+40+115 = 205m²), being 44m² deficient:

Prescriptive Measure 2 of DCP Part B9.4.2, requires that a minimum of 75% of the CLA must consist of deep soil areas. Therefore, the required deep soil area is 153.75m². The proposal includes 165m² of deep soil areas, being ≈80% of the CLA. Therefore the proposal complies with this requirement.



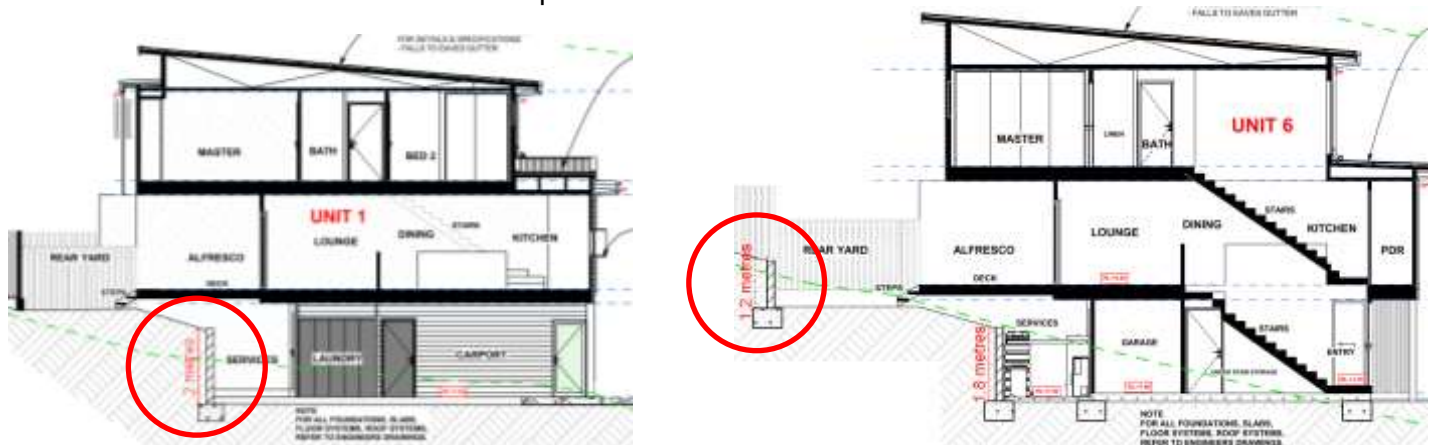
In addition to being 44m² deficient of required Common Landscaping Area, it is arguable as to how much of the CLA is “available for common use and enjoyment” as required by the definition of CLA in the DCP. The 10m² depicted in the image above is located atop a 2m high retaining structure that is not afforded access other than for private use by the occupants of Unit 1. Similarly, the 40m² depicted in the north east corner of the site is not granted common access, and is seemingly an extension of the private open space of the residents of Units 5 – 7.

Chapter B13 Adaptable Housing.

The applicant provided amended plans demonstrating that unit 1 can be used as the adaptable housing unit to comply with the Prescriptive Measures of this Development Control.

B14 – Excavation and Fill & D1.2.5 - Fences

Excavation and retaining up to 2m is required in order to create the ground floor and visitor car parking spaces and services areas for the proposed development (see Unit 1 below). DCP Part B14.2 allows for excavation up to 2m for car parking beneath a building, and while the proposal also locates services within the excavated area, these located behind enclosed garage spaces and will not be visible from the streetscape



Excavation up to 1.2m is also proposed for the rear yard of Units 5-7 (see Unit 6 above). Rear yard retaining will provide usable private open space for the units in a scale and character that is compatible with the surrounds and does not introduce adverse visual impacts.

The proposal seeks to establish a retaining structure along the front property boundary to create a landscaping bay along the Goondooloo road frontage, and is thereby considered a Fence in accordance with the DCP Part D1.2.5. As proposed, the structure is located on the property boundary line growing in height from approximately 1.2m at the western end of the site to a maximum height of approximately 2.2m at the east, with hedging to be located in front of the structure within the Council road reserve. Without the hedging in front of the wall the structure will adversely effect streetscape character; however if the hedging is not located on the property the landowner holds no responsibility for its maintenance. The applicant has been requested to provide amended plans demonstrating that the structure and hedging are located entirely within the subject site to accord with DCP Part D1.2.5 for a fence > 1.2m.



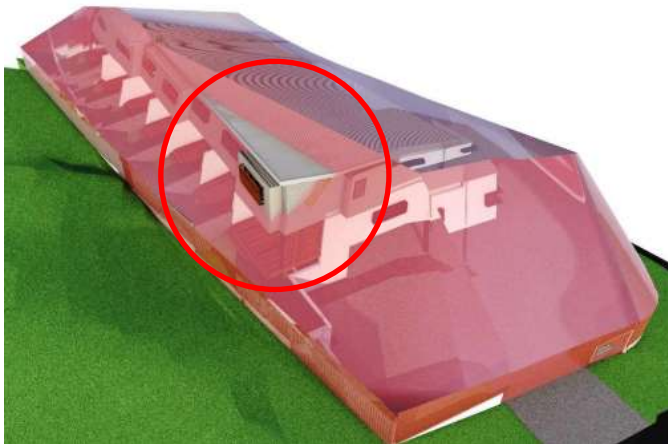
In their response, the applicant did not address this component of the Information Request. Accordingly, if approved, a Condition of consent will be applied requiring that amended plans demonstrate compliance with DCP part D1.2.5 by locating the retaining wall not less than 50cm inside the front boundary with the area in front to be landscaped, or are articulated with landscaping recessions.

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D1.2.1 Building Height Plane

The proposal presents encroachments into the Building Height Plane (BHP) at the eastern and north-western (rear) property boundaries. While the development is not gradually recessed from the eastern side boundary, the subject site adjoins public park land and the development will therefore not adversely affect development of the site by way of overshadowing, impinging on privacy or obstructing views.

10



D1.6.4 – On-site car parking

Council’s Development Engineer reviewed the proposal and identified that the vehicle manoeuvring at Unit 7 is precarious and potentially dangerous as proposed, where any over manoeuvring will create the potential for a vehicle to fall from the edge of the driveway along the common boundary approximately 1.9m (see images below).

15

This is very unsafe, especially when driving with bad visibility (at night when there is less light and when there is rain), and conflicts with the Objectives of the development control D1.6.4 “To ensure that vehicle access to and from the development is safe, effective and enhances visual amenity.”

20

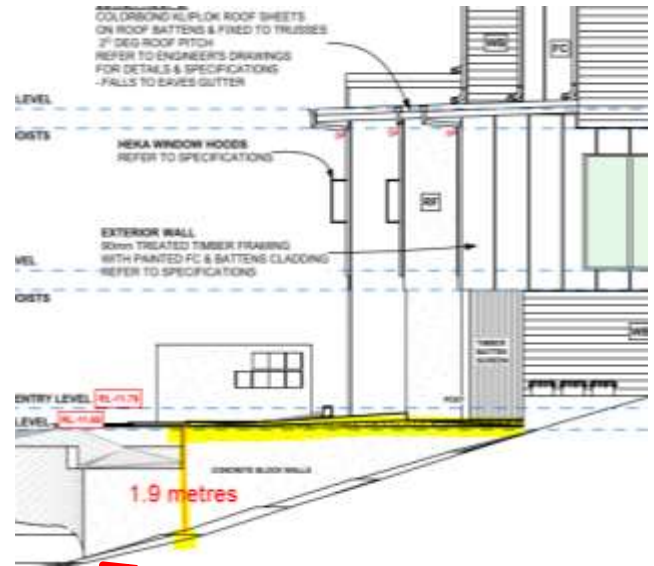
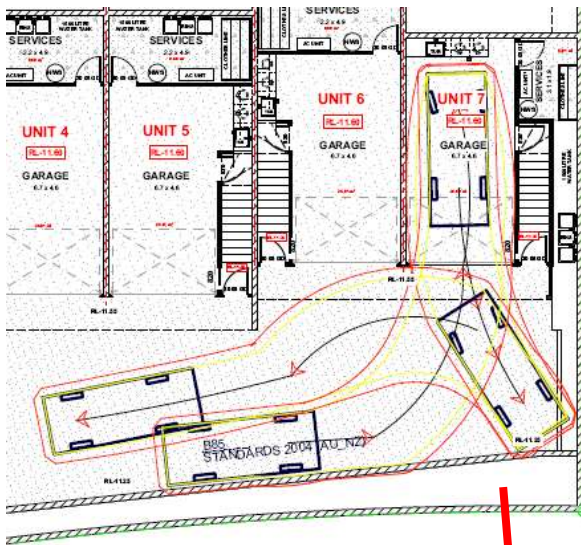
Council’s Development Engineer ran swept path analyses and advised that this scenario can be improved by moving Lots 4, 5, 6 & 7, 1m to the rear (north), increasing the manoeuvring area and improving safety and efficiency.

25

The applicant was requested to amend the proposal plans as noted above, however relocated the dwelling only 500mm to the rear (north) as opposed to the 1m requested. Council’s Development

Engineer reviewed the amended plans, and resolved that amended plans provided did not alleviate the issue of safety and efficiency.

The proposal is not considered to achieve the objective of this development control.



D1.6.10 – Character & E9 – Ocean Shores, New Brighton and South Golden Beach Residential Character Areas

5 This development control seeks to ensure that medium density housing development (including attached dwellings) is compatible in character with the locality, provides adequate private open space, addresses slope and drainage issues, and is consistent with the character narrative within Chapter E9 of the DCP. The relevant character narrative for Ocean Shores notes that residential areas are predominantly comprised of “*low density, low rise single and attached dwellings with low-impact bulk and scale.*”

10 As noted to the applicant in the pre-lodgement DAP meeting, through an information request, and at a meeting with Council officers, the 30m long singular building presents excessive bulk that is not consistent with the built form of the area which is predominantly comprised of detached dwellings, Secondary dwellings and Dual occupancies.

15 Additionally, Chapter E9 accounts for medium density development, “*earmarking an area for change*” to incorporate “*pockets of low rise medium density homes that match the amenity of traditional free standing homes.*” The subject site is not located in the earmarked area, and does not match the amenity of free standing homes.

Discussion of assessment against LEP and DCP:

20 The proposal is considered to be inconsistent with the Objectives of Clauses 2.3 (Zone objectives) and 4.1E (Minimum lot sizes) of the Byron LEP 2014, being development that does not align with

the existing 'low density residential environment' and not reflective of the planned residential density of the Low density residential zone.

5 However, LEP 2014 does not stipulate a density control (dwellings/xm²) for Multi dwelling housing proposed within the LDRZ, and relies on other development standards (LEP, such as Floor Space Ratio) and development controls (DCP, such as setbacks, Private Open Space etc.) to guide this density.

Multi dwelling housing is permitted with consent on an allotment of this size and the proposal is demonstrated to comply with the development standards of the Byron LEP other than the Objectives listed above.

10 The building does not comply with the prescribed Building Height Plane, however is considered to achieve the objectives of the development control as it does not overshadow adjoining buildings.

The design is deficient 44m² of Common Landscaped Area (CLA), and of that provided, it is questionable as to how much of the CLA is "*available for common use and enjoyment*", when 50m² of that provided is landlocked and inaccessible.

15 Council's Development Engineer posits that access/egress to the allocated car parking space for Unit 7 is unsafe and inefficient, conflicting with the Objectives of the development control 'D1.6.4 – On-site car parking'.

In summary the proposal is considered to be an overdevelopment of the site for the following reasons:

- 20
- The built form does not integrate with existing housing typologies of the low density residential environment which is predominantly characterised by Dwellings, Secondary dwellings and Dual occupancies which are predominantly detached;
 - The density is inconsistent with the existing and expected density within the low density residential zone and surrounding environment; and
 - The proposal does not provide the prescribed area of Common Landscaped Area, and 25% of that which is provided is not freely accessible for common use and enjoyment;
 - the proposal requires encroachments into the Building Height Plane and
 - safe and efficient vehicular access/egress to car parking within the site cannot be
- 25
- 30 guaranteed by the proposal.

Notwithstanding, the subject site is within ≈300m (walking distance) of the Ocean Shores Shopping Village, is proximal to nearby Medium density residential zones, and Multi dwelling housing is permitted with consent on an allotment of this size. Additionally, the proposal provides a housing typology (2-bed housing) that is desirable in the Shire, pursuant to Clause 6.7 of the Byron LEP 2014 which endeavours to:

- 35
- a) *increase the supply of affordable housing,*
 - b) *provide accommodation to support a diverse residential population inclusive of all income groups within Byron,*
 - c) *to ensure a housing mix and tenure choice including affordable housing,*
 - d) *to ensure that affordable housing is identified by the Council as in demand and located close to transport and services appropriate to the intended households.*
- 40

45 If the proposal were to be reduced by one dwelling unit (i.e., Unit 4), and the remaining units present as two (2) detached buildings, the development would more accurately reflect the desired and existing built form of the low density environment; the site will be capable of accommodating the Communal Landscaped Areas that it is currently deficient of and reconfiguration of the buildings will allow for this space to be accessible for common use and enjoyment; vehicular manoeuvring about the property can be reconfigured to ensure the safety and efficiency of it's

50 operation; and the proposal will provide accommodation to support a diverse residential population inclusive of affordable housing in close proximity (walking distance) to a local commercial centre.

This is consistent with advice provided to the applicant both prior to (at DAP meeting) and throughout assessment of the development application (by way of information requests & discussions with the applicant).

5 Recommendation:

It is recommended that the proposal be approved, subject to the imposition of a Deferred Commencement Condition requiring amended plans to be submitted reducing the total number of units within the development to six (6) and to separate the building into two (2) structures to reflect the built form of the locality. Amended plans must demonstrate that vehicular access/egress to car parking areas is safe and efficient, to Council's Development Engineer's satisfaction.

4.5 Any Planning Agreement or Draft Planning Agreement?

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

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

The proposal raises no issues against the relevant Regulations.

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

Impact on:	Likely significant impact/s?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	The building as proposed is incapable of providing the required Communal Landscaped Area, safe vehicular access/egress, and is considered to be inconsistent with the built form and character of the Low density residential zone. Approval of the structure in its current format may introduce an undesired precedent for bulky Multi-dwelling housing that does not contribute to or conform with the Low density residential zone.
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.

4.8 The suitability of the site for the development

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

4.9 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited

There were **18** submissions made on the development application:

- 1 For
- 17 Against

Primary concerns from submissions of opposition:

Numerous submissions were received regarding the proposed development. A summary of these submissions and the assessment officer's comment are discussed hereafter.

❖ **Conflicts with existing and expected density**

Submitters posit that the bulk and built form of the proposal does not reflect the low density residential environment that is characteristic of the area (dwelling houses, Secondary dwellings and detached Dual occupancies), nor the expected residential density of the Low density residential zone.

Comment:

It is the opinion of the assessment officer that the proposal exceeds the expected residential density and built form that is characteristic of the low density residential area. The applicant was requested to revise the proposal with due regard to the expected built form and residential density within the Low density residential zone and did not.

❖ **Use as air bnb (short term accom) and consequential impact on amenity:**

Submitters highlight concerns regarding the 'potential' use of the development for short term accommodation, and the consequential degradation of amenity and community within the locality (as is commonly experienced from such occurrence).

Comment:

The proposal seeks to establish Multi-Dwelling Housing at the subject site, development that is 'permitted with consent' pursuant to the Byron Local Environmental Plan 2014. Granting development consent to Multi-Dwelling Housing is not granting development consent for a short-term accommodation and use of the dwellings as such without appropriate consent is considered a development offence under the Environmental Planning and Assessment Act 1979. Conditions will be applied to the development restricting the use of the dwellings to that approved under the consent. Use of the dwelling inconsistent with the development consent will be unlawful and a matter for Council's Development Compliance team to investigate if enacted.

❖ **Excess traffic, Number of car parking spaces provided and flow-on on-street parking.**

Submitters are concerned that increased density within Kumbellin Glen is unsustainable, and identify that each dwelling is afforded a single car parking space and that flow-on on-street parking is likely however not feasible.

Comment:

While it is acknowledged that each dwelling is comprised of two bedrooms and it is possible that each dwelling may therefore require two car parking spaces, the proposal complies with the measures prescribed by the Byron DCP.

❖ **Degradation to Goondooloo Drive road surface**

Submitters posit that additional vehicles trafficking Goondooloo Drive will further contribute to the degradation of the road surface.

Comment:

The applicant will be required to pay developer contributions in accordance with Council's Policy whereby a portion of the contribution paid will be allocated to maintenance of Urban Roads.

❖ **Noise**

Submitters are concerned about the noise of demolition/construction and habitation of the proposed residences.

Comment:

Demolition and construction of the existing and proposed buildings respectively is required to be undertaken in accordance with the Protection of Environment Operations Act 1997. Noise caused by inhabitants of the dwellings cannot be controlled in Development Assessment.

❖ **Height - the development is > 10m)**

Submissions purport that the proposal exceeds the maximum building height development standard.

Comment:

5 Proposal plans demonstrate that the proposal is less than 9m overall height. Proposal unlikely to impact on views or the like

❖ **Noncompliance with the Building Height Plane**

10 A submitter highlighted that the Building Height Plane (BHP) is encroached at the eastern side property boundary (adjoining Council park land).

Comment:

15 Clause 4.14(6) of the Act requires malleability in the application of the DCP. Using the Dual Path assessment process, the BHP encroachment is justifiable as it will not cause overshadowing, privacy or amenity implications for adjoining property owners, and provides an acceptable performance outcome.

❖ **Overshadowing**

One submitter highlights concerns regarding overshadowing of the development to adjoining properties.

20 Comment:

Shadow diagrams provided with the proposal demonstrate that any shadow caused by the development will be cast onto public land and road reserve, and not affect adjoining properties or residences.

25 ❖ **The dangerous intersection of Goondooloo and Kumbellin – people speed down the hill and it is dangerous.**

Submitters are concerned that increased density within Kumbellin Glen will intensify the existing dangerous intersection of Kumbellin Glen and Goondooloo Drive.

30 Comment:

The assessment of this DA cannot respond to the dangerous driving within the locality.

❖ **School Bus stop at Goondooloo**

35 Submitters highlight concerns regarding safety for students using the Goondooloo Drive bus stop with additional traffic using the (Kumbellin Glen – Goondooloo Drive) intersection, considering increased density within Kumbellin Glen and assumed on-street parking.

Comment:

The proposal will not inhibit use of the School Bus stop at Goondooloo Drive; and on-street parking is assumed in this instance.

40 ❖ **Submission of support:**

One submission of support was received from a local developer who claims to own the adjoining property, commending the developer of the site for:

- their transparency in the design process;
- an impressive proposed design; and
- 45 • contributing to housing options in the area.

The submitter also made comments noting:

- that they do not have concerns regarding car parking on site or within Kumbellin Glen;
- that they have no concerns regarding the density of the development;
- that they consider it to be an improvement of the use of the site;
- 50 • that they have “no concern about traffic movements as the property is at the bottom of the street so clearly will not add any further traffic along...[the]... cul-de-sac”; and

- that the design and appearance of the building is “very appealing” and “consistent with the size of other home buildings in the area”

5 Comment
Noted.

4.10 Public interest

10 The proposed development does not integrate with the existing and expected low density residential environment, numerous controls of the Byron DCP, is not considered suitable for the site and is therefore likely to compromise the public interest or create an undesirable precedent within the zone.

5. DEVELOPER CONTRIBUTIONS

15

5.1 Water & Sewer Levies

Section 64 levies will be payable.

5.2 Section 7.11 Contributions

20

Section 7.11 Contributions will be payable.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

25

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

7. CONCLUSION

30 Council could refuse the application based on the development being inconsistent with the objectives of the R2 Low density Zone, relevant provisions of the Byron DCP 2014 and being an overdevelopment of the site.

35 It is recommended though that the proposal be approved though with deferred commencement conditions to delete one of the units and to break the building into two. This will ensure the development is at an acceptable scale having regards to the objectives of the R2 Zone the provisions under DCP 2014.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.14

Report No. 13.14 **PLANNING - Development Application 10.2020.530.1 Swimming Pool and decks at 36 Roses Road Federal**
Directorate: Sustainable Environment and Economy
Report Author: Shannon Burt, Director Sustainable Environment and Economy
5 **File No:** I2020/1600

Proposal:

10

DA No: 10.2019.516.1

Proposal description: Swimming Pool and decks

Property description: LOT: 4 DP: 1003205
 36 Roses Road FEDERAL

Parcel No/s: 226140

Applicant: Mr S G Richardson

Owner: Mr S G Richardson

Zoning: RU5 Village

Date received: 14 October 2020

Integrated / Designated Development: Integrated Designated Not applicable

Concurrence required No

Public notification or exhibition: Level 0 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications

Variation request Clause 4.6 SEPP 1 Not applicable

Delegation to determine Council

Issues: No issues identified

Summary:

15 Development consent is sought for a swimming pool and decks on the subject property at Federal.

The pool and decks are located in a rear yard, which backs onto a Council reserve.

20 The pool has a general diameter of 6 metres. A deck extension with an area of approximately 18 m² is proposed connecting the pool with the house, and a smaller circular deck with a nominal height of 300 mm proposed as a landscape feature.

The proposal raises no issues in terms of environmental impacts or site constraints and is permissible with consent in the RU5 under Byron LEP 2014.

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

The proposed pool and decks are recommended for approval subject to Conditions of Consent.

30 NOTE TO COUNCILLORS:

In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on



planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

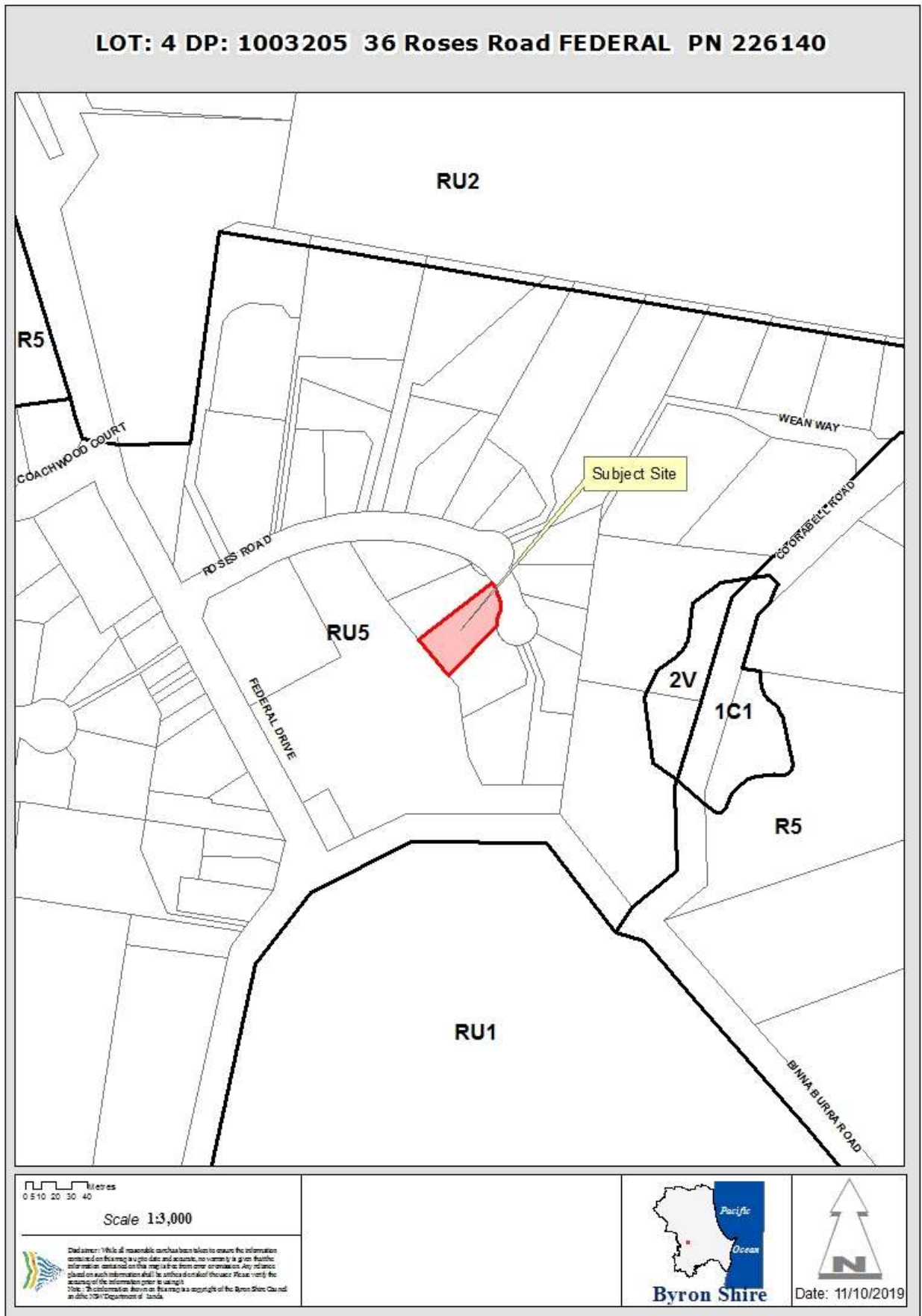
5

RECOMMENDATION:

That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.530.1 for Swimming Pool and decks be granted consent subject to conditions listed in Attachment 2 #E2020/85634.

Attachments:

- 1 10.2020.530.1 - Plans, E2020/86285 
- 10 2 10.2020.530.1 - Conditions of consent, E2020/85634 



REPORT**1. INTRODUCTION****5 1.1. History/Background**

Council records indicate that the lot was created by way of a Council approved subdivision registered in 1999. Since that time, the following development approvals have been granted:

10.2001.710.1	Dwelling	Approved 23/04/2002
10.2006.467.1	Double garage / shed	Approved 13/10/2006
10.2019.516.1	Additions to Dwelling	Approved 21/11/2019

10 1.2. Description of the proposed development

Development consent is sought for a swimming pool and decks on the subject property at Federal.

15 The pool is located in the rear yard with a general diameter of 6 metres and a variable depth of 1.2 to 1.6 metres

The larger deck has an area of approximately 18 m² with general dimensions of 9 x 2 metres. The deck is a timber construction and will connect the pool with the house.

20 A small circular deck with a nominal height of 300 mm is proposed as a landscape feature.

The proposed pool and decks are located in the rear yard of the property which backs onto a Council Reserve at Federal.

25 1.3. Description of the site

Land is legally described as	LOT: 4 DP: 1003205
Property address is	36 Roses Road FEDERAL
Land is zoned:	RU5 Village
Land area is:	1,491m ²
Property is constrained by:	Drinking water catchment

2. SUMMARY OF REFERRALS

30 There were no referrals for this application.

3. SECTION 4.14 – BUSH FIRE PRONE LAND

35 The site is not identified as bush fire prone land.

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

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

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 44—Koala Habitat Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The property has an area less than 1ha. Therefore, the development control provisions of this SEPP do not apply.		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The application proposes a minor addition to an existing dwelling in terms of deck and swimming pools. No further assessment is considered to be required.		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: A BASIX is not required in this instance.		

4.2 Byron Local Environmental Plan 2014 (LEP 2014)

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

- 10 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 *Dwelling House*;
 - (b) The land is within the **RU5 Village** according to the Land Zoning Map;
 - (c) The proposed development is permissible with consent; and
 - 15 (d) Regard is had for the Zone Objectives as follows:

Zone Objective

To provide for a range of land uses, services and facilities that are associated with a rural village

Consideration

The proposal raises no issues in regards to the zone objective.

Clause 4.3 Height of Buildings

The proposal complies with the 9 metre height limit.

Clause 4.4 Floor Space ratio

No new floor area is generated by the development.

Clause 6.2 Earthworks

25 Minor earthworks are proposed to excavate for the pool and footings and a small retaining wall (approximately 0.8 metre high) to be erected long the rear boundary. Any spoil from the pool will be spread to level out parts of the rear yard.

30 Conditions of consent will apply in relation to the installation and maintenance of sedimentation and erosion controls and for plans to be submitted for the retaining walls with the construction certificate.

Clause 6.6 Services

The proposed development places no demand on Council infrastructure and the pools location does not conflict with the location of the existing onsite sewage management system which is positioned in the front yard.

5

The proposal raises no other issues under the LEP.

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

10

None applicable.

4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

C4 – Development in a Drinking Water Catchment

No issues the result of the proposal.

E6 – Federal Village

The subject site is located within a residential area as nominated within Chapter E6. The proposed pool and decks raise no issues with the provisions contained within the DCP.

20

The proposal raises no other issues under the DCP.

4.5 Any Planning Agreement or Draft Planning Agreement?

25

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

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

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

4.7 Any Coastal Zone Management Plan?

30

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

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

35

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

	management system does not require upgrading for the development.
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.

Standard conditions of consent to apply in terms of hours of work, builders waste, construction noise and the like.

5 4.9 The suitability of the site for the development

The site is suitable for the proposed development.

10 4.10 Submissions made in accordance with this Act or the regulations

Not applicable.

4.11 Public interest

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

5. DEVELOPER CONTRIBUTIONS

20 There is no nexus to levy contributions or headworks charges.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

25 7. CONCLUSION

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

8. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED

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

Statement of Reasons

The proposed development complies with the provisions of Byron Local Environmental Plan 2014.
The proposed development complies with relevant State Environmental Planning Policies
The proposed development complies with relevant provisions of Development Control Plan 2014
The proposed development complies with Environmental Planning & Assessment Regulation 2000

considerations.

The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.

The proposed development is considered suitable for the proposed site.

The proposed development is unlikely to prejudice or compromise the public interest.

How community views were addressed

The DA did not require advertising or notification as per Development Control Plan 2014.

Report No. 13.15 **PLANNING - 26.2020.5.1 Planning proposal to permit a car park at 158 Jonson Street, Byron Bay**
Directorate: Sustainable Environment and Economy
Report Author: Sam Tarrant, Planning Support Officer
File No: I2020/1603

5

Summary:

10 Council received a planning proposal in July 2020 requesting an amendment to Byron LEP 2014 to permit a car park on land described as Lot 51 DP 844054 and Part Lot 4729 DP 1228104. It is a triangle-shaped parcel with a combined area of approximately 0.619 hectares. The street address is 158 Jonson Street, Byron Bay.

15 Historically, the subject land has been owned by the relevant NSW rail authority (most recently Transport for NSW) and has only passed into private hands in the last ten years. The land contains a Coastal Wetland mapped under SEPP Coastal Management plus some remnant native vegetation.

20 The subject land is currently zoned entirely SP2 Infrastructure (Rail corridor) under Byron LEP 2014 (BLEP14). It has a building height limit of 9 metres, no minimum lot size (MLS) and no floor space ratio (FSR).

The planning proposal will change the zone of the subject land from SP2 Infrastructure (Rail corridor) to part SP2 Infrastructure (*Car park*). The land mapped as coastal wetlands will be included in an E2 Environmental Conservation zone, and a buffer and vegetation offset area is to be zoned E3 Environmental Management.

25 The car park will be restricted to the land zoned SP2. The current height of buildings (9 metres) will be retained and a minimum lot size of 40 hectares is proposed for the land to be zoned E2 and E3, which is consistent with other locations where these zones are used. No minimum lot size is required for the SP2 car park land.

30 The current owners of the subject site also own both parcels directly to the north. The car park is intended to service a proposed redevelopment of the large vacant shed within the business zone. The applicants have advised they will submit a development application for this redevelopment once the car park rezoning receives a positive gateway determination.

35 The planning proposal is the only way to permit a car park on the subject land. The current zone for rail infrastructure is no longer relevant now that the land is privately owned and no longer required for rail purposes. The car park will be located on the edge of the CBD and accessed from Jonson Street via the Byron Bay bypass and Browning Street. This aligns with Council's goals of promoting parking on the CBD edges and promoting pedestrian uses in the CBD as identified in the *Byron Bay Town Centre Masterplan*.

40 This report recommends that Council proceed with the planning proposal and forward to the NSW Department of Planning, Industry and Environment for a Gateway determination.

Pending a positive Gateway determination, further information and studies that are required prior to public exhibition and agency consultation include:

- A study of the site's Aboriginal heritage.
- A preliminary contaminated land investigation to ensure that any disturbance will not pose a threat to neighbouring dwellings during development.
- A Bushfire Hazard Report

45

NOTE TO COUNCILLORS:

50 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on




planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

5

RECOMMENDATION:**That Council:**

- 1. proceed with the planning proposal as attached to this report (Attachment 1 – E2020/83230) to amend LEP 2014 to permit a car park and apply environment protection zones on the subject land;**
- 2. forward the planning proposal to the NSW Department of Planning, Industry and Environment for a Gateway determination;**
- 3. pending a positive Gateway determination and completion of adequate studies and further supporting information, undertake public exhibition of the planning proposal in accordance with the determination requirements; and**
- 4. consider a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption.**

Attachments:

- | | | |
|----|---|--|
| 10 | 1 | 26.2020.5.1 Planning Proposal Jonson St car park (v1 Gateway), E2020/83230  |
| | 2 | 26.2020.5.1 Combined supporting information, E2020/85746  |
| | 3 | Form of Special Disclosure of Pecuniary Interest, E2012/2815  |

REPORT

Background and Subject Land

Council received a planning proposal in July 2020 requesting an amendment to Byron LEP 2014 to permit a car park on land described as Lot 51 DP 844054 and Part Lot 4729 DP 1228104.

- 5 Historically, the subject land has been owned by the relevant NSW rail authority (most recently, Transport for NSW) and has only passed into private hands in the last ten years. The current owners purchased the larger piece (Lot 51 DP 844054) and are currently finalising purchase of the thin strip close to the rail line (Part Lot 4729 DP 1228104). The land has a combined total area of 0.619 hectares (Figure 1).
- 10 The current owners of the subject site also own both parcels directly to the north, which are zoned B2 Local Centre. The car park is intended to service a proposed redevelopment of the large vacant shed within the B2 zone, and potentially the other existing businesses on both parcels (Figure 2). The applicants have advised they will submit a development application for this redevelopment as soon as the car park rezoning receives a positive gateway determination.

15

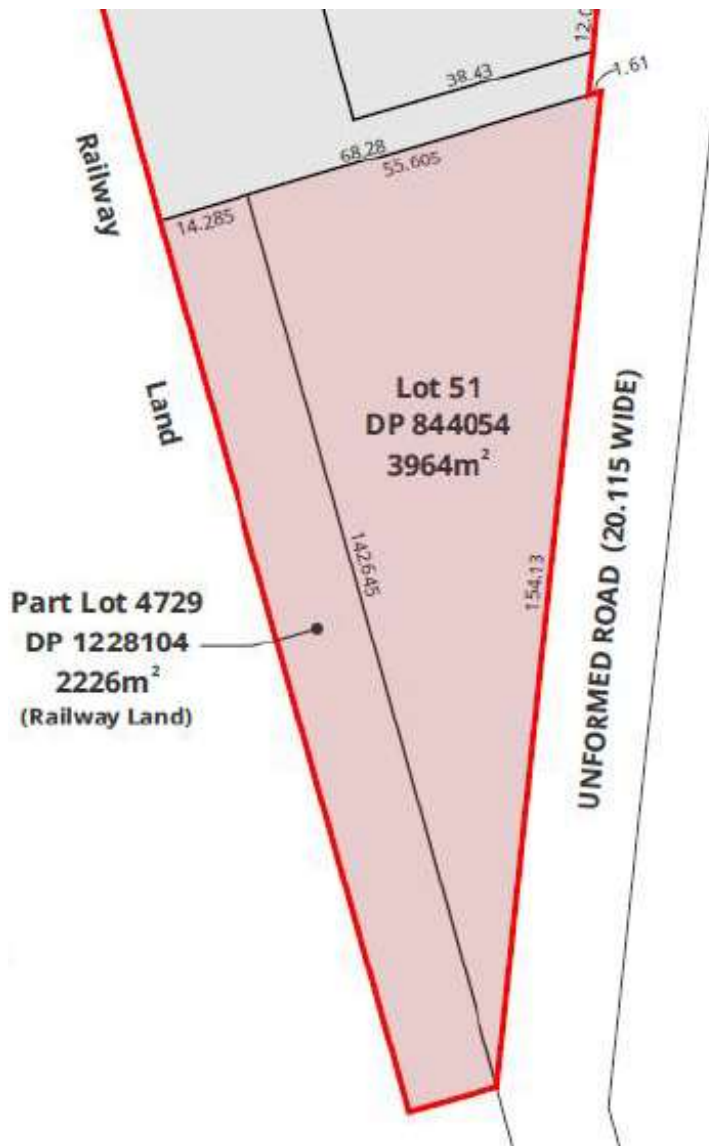


Figure 1 Subject land cadastre at southern end of Jonson Street



Figure 2 Subject land (SP2) and adjoining B2 Zone land (shaded blue) in same ownership

- 5 The site has been disturbed in the past and has contained buildings in different locations associated with its rail use. It has previously been partly cleared and partly filled without Council consent by previous owners. It contains a small patch of native vegetation that the applicant's ecologist identifies as degraded Paper bark Swamp Forest EEC. The vegetation in the south of the site is mapped as being within a SEPP Coastal Wetland. The land currently does not contain any buildings (Figure 3).
- 10 A small section at the southern end of the site is flood prone in 1:100-year flood events. The entire site is either bushfire prone or in a bushfire buffer.



Figure 3 Subject land showing current vegetation and surrounding land use in 2020

Planning Proposal

- 5 The original planning proposal lodged by the proponent proposed that the SP2 Rail Infrastructure zone across the whole site be rezoned to *SP2 Car Park*. Byron LEP 2014 states that *car park means a building or place primarily used for the purpose of parking motor vehicles, including any manoeuvring space and access thereto, whether operated for gain or not.*

The structure of the SP2 land use table is as follows:

10 **Zone SP2 Infrastructure**

1 Objectives of zone

- *To provide for infrastructure and related uses.*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.*

15 **2 Permitted without consent**

Environmental protection works

3 Permitted with consent

Aquaculture; Environmental facilities; Roads; The purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose

20

4 Prohibited

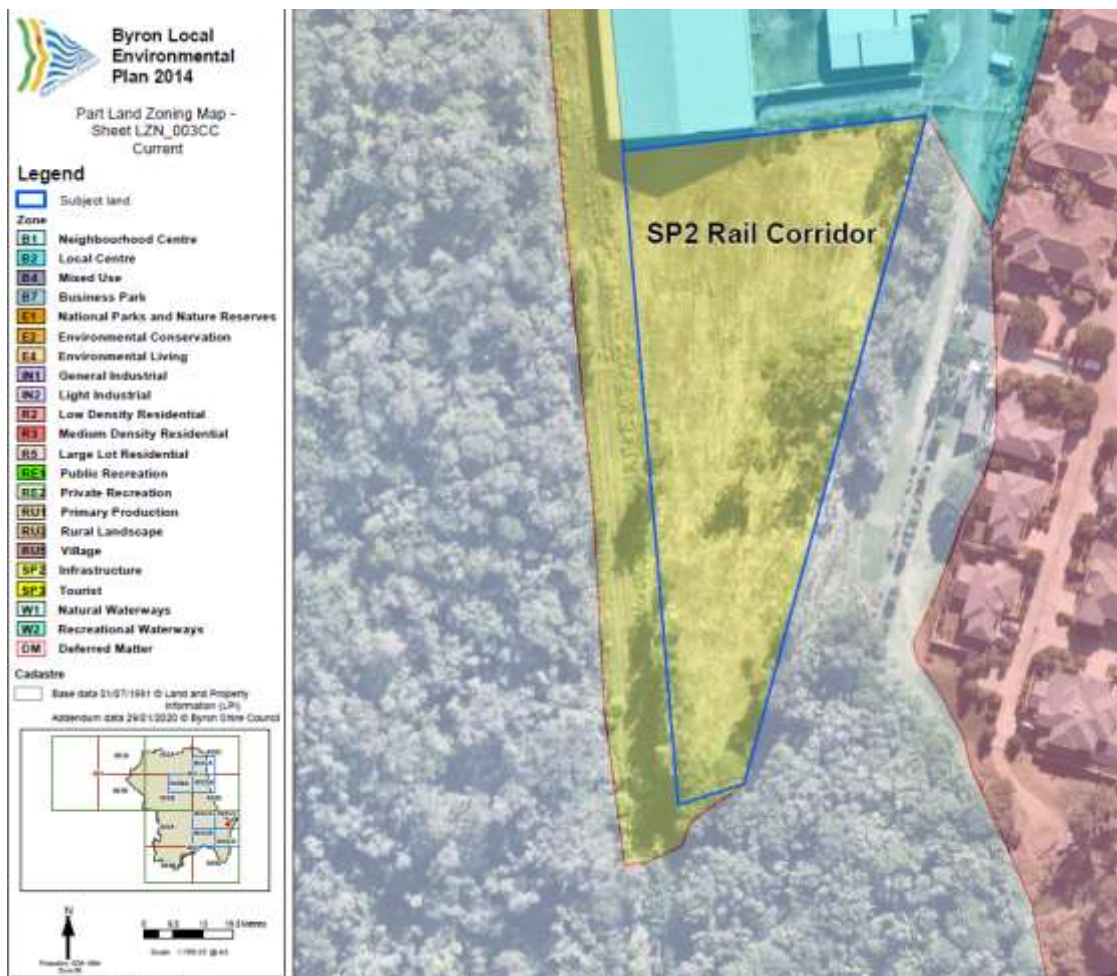
Any development not specified in item 2 or 3

5 The proposed change to SP2 Car Park will permit a car park and other development that is ancillary to a car park.

The applicant was advised that the site contained a Coastal Wetland and this area would have to be included in an E2 Environmental Conservation zone. An additional area would be required both as a buffer to the Coastal Wetland (not less than 10 metres wide) plus an area to rehabilitate as an offset for the 997m² of remnant vegetation to be cleared to construct the car park. An area of approximately 1180m² at the southern end of the subject land has been identified for this purpose and included in an E3 Environmental Management zone. The applicant has agreed to the application of the environmental zones as described.

15 It is not intended to introduce a floor space ratio (FSR) to the site (no FSR currently applies) and the current height of buildings (9 metres) will be retained. A minimum lot size of 40 hectares is proposed for the land to be zoned E2 and E3, which is consistent with other locations where these zones are used. No minimum lot size is required for the SP2 Car Park land.

The current Byron LEP 2014 zone map is at Figure 4 and the proposed Byron LEP zone map is at Figure 5.



20 Figure 4 Current LEP zone map for subject land

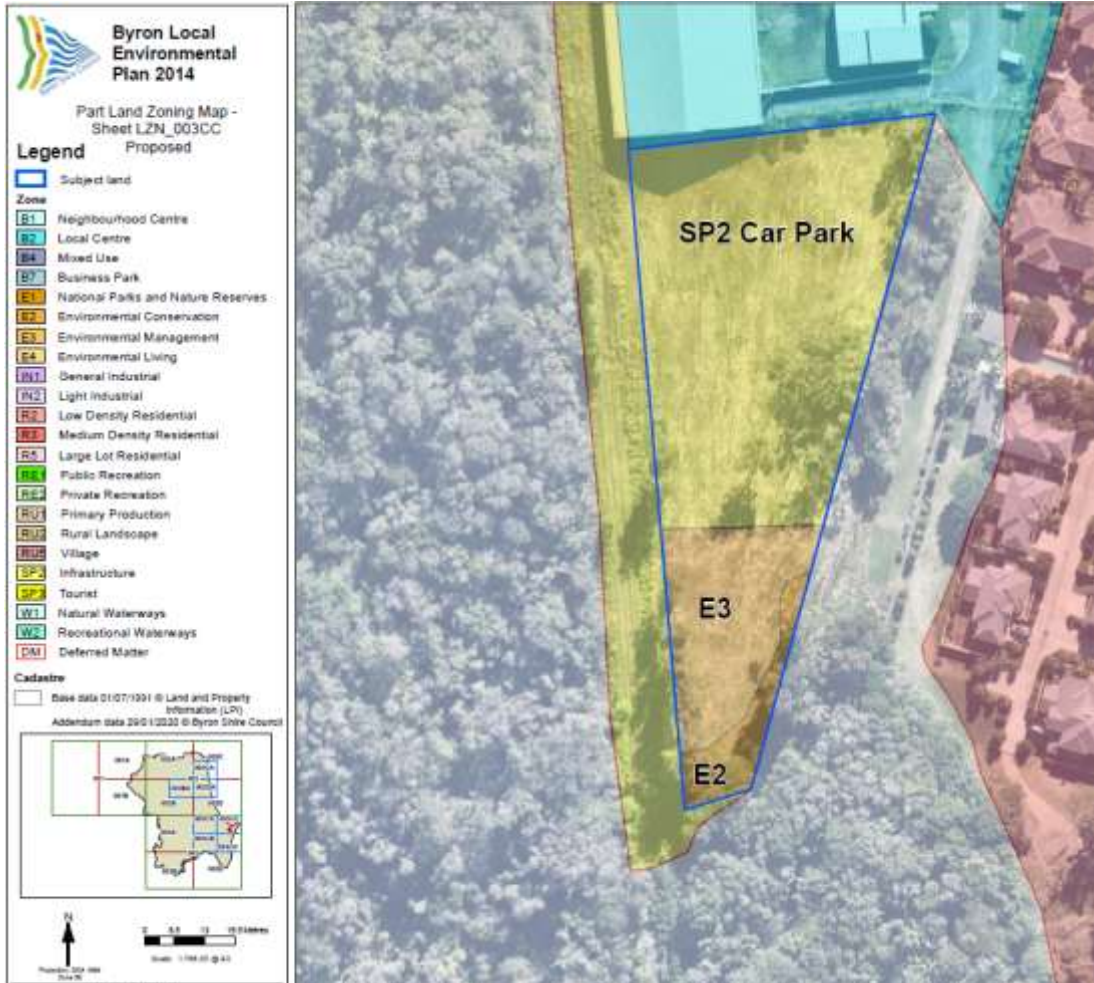


Figure 5 Proposed LEP zone map for subject land

Planning Framework

5

North Coast Regional Plan

The subject site is not located within the Byron Bay Urban Growth Area boundary under the North Coast Regional Plan 2036 (NCRP), which is located immediately adjacent to it on two sides.

10

The most relevant NCRP direction is Direction 6: *Develop successful centres of employment*, with the relevant action being 6.4 – *Focus retail and commercial activities in existing centres and develop place-making focused planning strategies for centres*. A car park on this land has the advantage of allowing the adjacent employment land to the north to be developed consistent with zone objectives. The car park will be located on the edge of the CBD and accessed from Jonson Street via the Byron Bay bypass and Browning Street. This aligns with Council’s goals of promoting parking on the CBD edges and promoting pedestrian uses in the CBD.

15

Byron Bay Town Centre Masterplan

The Byron Bay Town Centre Masterplan was completed in 2016 and includes an ‘access and movement strategy’ that addresses parking. The subject land is immediately south of the masterplan study area and is not specifically identified. However, the access and movement strategy states that a key goal is to “encourage people movement in the town centre and redirect traffic and parking away from the town centre. Large portions of existing parking need to be

20

removed to the outer fringes” (pages 25–28). The goal is to relocate 60% of on-street parking to the edge of the town centre in the long term.

The use of the subject land as an ‘edge of town centre car park’ is consistent with the Byron Bay Town Centre Masterplan.

5

Site Specific Issues

Planning (Car park) merit

10 The site is no longer required for rail related uses and is no longer publicly owned. It is logical that the zone needs to change to reflect the change of use and ownership. The current owners suggested expansion of the Business zone but this is not supported by the adopted Byron Shire Business and Industrial Lands Strategy 2020. The idea to use the site as a car park has merit because it will allow more efficient use of other land already zoned for business use nearby. It can be easily accessed by traffic arriving from the southern access to Byron Bay and easily accessed by traffic coming from the north via the Byron Bay bypass. The new Jonson Street roundabout will provide safe access to the proposed car park. The applicant has suggested a ground and first level car park with a large solar array on the roof of the upper storey. This has some potential for carbon offsets. The site will allow cars to park and occupants to shop on foot at businesses at the southern end of the CBD or access a bus service to travel back into the CBD if walking is not an option.

20 A traffic study provided by the applicants supports the proposed car park, stating that proposed development will increase traffic volume levels; however the Jonson Street roundabout will provide a safe entry and exit point to service the site.

Bushfire

25 The subject land is partly classified as affected by bushfire hazard vegetation category 1 and a bushfire buffer. A Bushfire Hazard Report has not been provided relevant to this planning proposal. It is infill development in a largely developed location. The future car park development will result in more land clearing on the site, reducing its ability to sustain a fire. A concrete car park will also be relatively fire resistant. It is not an inappropriate use in a hazardous area.

30 It is reasonable that a Bushfire Hazard Report be undertaken as a condition of the Gateway determination. The planning proposal (and Bushfire Hazard Report) will still need to be referred to the Rural Fire Service.

Land contamination

35 The applicant has not supplied a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines. The land is known to have been filled without Council consent and the geotechnical report undertaken by the applicant shows 0.6 metres to 1.5 metres of fill in two out of three boreholes located on the site. It is not known if this fill is clean or contaminated.

40 The site was also owned by NSW Rail for an extended period and has evidence of past sheds and clearing. All sheds have now been demolished or removed. Rail yards are a potentially contaminating land use and sheds can also generate lead paint and asbestos upon demolition or removal.

45 Although the proposed use of the site as a car park is not a sensitive land use, it will be a construction site to create the car park and a medium density residential development is located to the east across a 20-metre road reserve. Dust and disturbance at this site could affect adjacent property.

Given the land use history on this site it is reasonable that preliminary investigation of the land be undertaken as a condition of the Gateway determination. It should include sufficient soil test

information to identify if there are any potential issues on this site with past rail use or fill material. Any report will need to demonstrate that the site is suitable for its proposed use and that, if contaminated it will not pose an issue to neighbouring dwellings during development

5 *Aboriginal cultural heritage*

The Tweed Byron LALC has not been invited to inspect the subject land and undertake a cultural heritage assessment. An AHIMs search was undertaken in October 2020 and shows that there are no registered Aboriginal sites on the subject land or in proximity to it for 200 metres.

10 BLEP14 already contains clauses that facilitate the conservation of Aboriginal and European heritage in Byron Shire. Sites and relics are also protected under State legislation.

Despite the disturbance history on this site, it is reasonable that this cultural heritage assessment be undertaken as a condition of the Gateway determination.

Past vegetation clearing and land filling

15 Council property files show that complaints were made about the subject land in 2017 in relation to alleged vegetation clearing and land filling without Council consent (by previous owners).

20 The geotechnical report undertaken by the applicant to support a future DA shows 0.6 metres to 1.5 metres of fill in two out of three boreholes located on the site. It is not known if this fill is clean or contaminated or when it was placed there. It is not known if the land was also filled or cleared by earlier rail related landowners or managers prior to the 2017 reports.

The following series of air photos show that the site has a history of disturbance and regrowth over the last 25 years.



1991 air photo



1997 air photo



2015 air photo

Preliminary discussions regarding public car parking

As stated at the beginning of the report, the purpose of this planning proposal is to enable a private car parking facility on the subject land to service existing and future commercial development on adjoining land. Prior to lodging the planning proposal staff discussed with the applicants the possibility of formalising the adjacent Jonson Street road reserve with the intent of providing public car parking spaces, specifically through a voluntary planning agreement. This was seen as an opportunity to deliver a clear ‘public benefit’ as part of the rezoning process.

At the time of writing this report the applicants have not provided an offer to enter into a planning agreement to provide public car parking in the adjacent Jonson Street road reserve. Further discussions are still underway with Council’s Infrastructure Services team to determine the appropriateness of pursuing this option. Pending the outcome of these discussions with all parties concerned, a planning agreement could be entered into as part of any subsequent development application/s.

Conclusion and Options Going Forward

There are three options for Council to consider:

1. Proceed with the planning proposal at Attachment 1 to this report which will permit a car park on the subject land with Council consent as well as protecting a Coastal Wetland and identifying a rehabilitation area to offset native vegetation lost from the site. This option is subject to the applicant providing additional information and reports relating land contamination, Aboriginal heritage and bushfire hazard prior to public exhibition and agency consultation (Recommended); or
2. Proceed with the planning proposal in a modified form other than the version attached to this report; or
3. Not proceed with the planning proposal and advise the applicant accordingly.

There is sufficient information to support the planning proposal at Attachment 1 to this report and proceed to a Gateway submission. Council should request DPIE issue a Gateway determination for the planning proposal as attached to this report subject to further information and studies that are required prior to public exhibition and agency consultation including:

- A study of the site’s Aboriginal heritage completed by the TBLALC or a qualified Aboriginal archaeologist.
- A preliminary contaminated land investigation, which includes sufficient soil test information to identify if there are any potential issues on this site with past rail use or fill material. Any report will need to allow Council to determine that the site is suitable for its proposed use and, if contaminated, that disturbance will not pose a threat to neighbouring dwellings during development.
- A Bushfire Hazard Report that addresses the use of the site as a car park and as it is infill development (that is, development within an already subdivided area), where an appropriate APZ cannot be achieved, provides for an appropriate performance standard

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.3	Manage development through a transparent and efficient assessment process	4.1.3.11	Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps

5

Legal/Statutory/Policy Considerations

This planning proposal will amend the Byron Local Environmental Plan 2014

10 ***Financial Considerations***

This is an applicant funded planning proposal. All costs associated with this planning proposal will be borne by the applicants.

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

Consultation and Engagement

20 Consultation with the community and government agencies will occur following a gateway determination.

Report No. 13.16 **Draft Development Control Plan 2014 Chapter B2 Tree and Vegetation Management**

Directorate: Sustainable Environment and Economy

Report Author: Karen Love, Research Officer – Climate Change

5 **File No:** I2020/1539

Summary:


10 Clauses 5.9 and 5.9AA within the Byron Local Environmental Plan 2014 and the *Native Vegetation Act* 2003 have been repealed and replaced with State Environmental Planning Policy (Vegetation in non-rural areas) 2017 and the *Local Land Services Act* 2013. Given the recent gazetting of our environmental zones (E2 and E3) Council is now required to declare such vegetation within a
15 Development Control Plan (DCP) and administer its management through a tree removal permit system. As a result, DCP 2014 Chapter B2 Tree and Vegetation Management has been updated to include the information now required under the Vegetation SEPP.

20

RECOMMENDATION:

1. **That Council endorses the draft Development Control Plan Chapter B2 Tree and Vegetation Management (Attachment 1 #E2020/67970) for public exhibition for 28 days.**
2. **That staff provides a post-exhibition report to Council on item 1, including consideration and recommendations on submissions received during the exhibition period.**
3. **That staff update Development Control Plan 2014 Part A to include the definitions contained within Development Control Plan Chapter B2 Tree and Vegetation Management post public exhibition.**

Attachments:

- 25 1 Draft DCP 2014 Chapter B2 Tree and Vegetation Management, E2020/67970 

REPORT

DCP Chapter B2 Tree and Vegetation Management

5 The State Environmental Planning Policy (Vegetation in non-rural areas) 2017 (Veg SEPP) was introduced alongside the *Local Land Services Act 2013* as a result of the *Native Vegetation Act 2003* and clauses 5.9 and 5.9AA in the Byron Local Environmental Plan being repealed. The Veg SEPP manages vegetation removal in all non-rural areas including E zones that does not involve or is ancillary to development.

10 Outlining the new requirements of the Veg SEPP, Councils Draft DCP Chapter B2 Tree and Vegetation Management declares vegetation, provides information on exemptions and increases clarity to land holders and our community regarding vegetation management. Given the recently gazetted E2 and E3 zones, declared vegetation on all non-rural land (land in any zone other than
15 RU1 and RU2) within the Byron Shire local government area is now administered under the Veg SEPP which authorises Council to:

- ✓ administer Tree Removal Permits for the removal of vegetation, and
- ✓ act as the consent authority for compliance.

20 Delivering Action 1.2 within the Biodiversity Conservation Strategy 2020-2030, DCP Chapter B2 will only apply to the removal or pruning of vegetation that is under the Biodiversity Offsets Scheme (BOS) threshold.

25 The objectives of DCP Chapter B2 Tree and Vegetation Management are:

- To ensure the protection and preservation of local *native vegetation* that contributes to the biodiversity, social and amenity value of Byron Shire.
- To recognise and conserve very large trees and hollow bearing trees of habitat, amenity or
30 heritage value.
- To avoid and *minimise* wherever possible the unnecessary *removal of native vegetation*.
- To minimise the risks of destabilisation of foreshore, riparian or agricultural land.
- To provide information ensuring land holders are aware when a permit is required for the
35 *removal or pruning of vegetation*.
- To provide a consistent framework for assessing permits to *remove or prune vegetation*.
- To recognise the biodiversity values of *vegetation* that supports and provides refuge to native fauna.
- To recognise the importance and retention of *vegetation* for carbon sequestration at a local
40 scale.
- To facilitate the removal of undesirable exotic, declared invasive or otherwise inappropriate plant species, and replace them with suitable local native species that contribute to ecological, environmental or habitat value.

Next steps

- 45 ✓ Place DCP Chapter B2 Tree and Vegetation Management on public exhibition for 28 days, and report to Council on submissions,
- ✓ Update DCP Chapter A with the definitions contained within DCP Chapter B2 post exhibition,
- ✓ Amend the Tree Removal Permit form to align with Chapter B2 Tree and Vegetation
50 Management and the new Veg SEPP.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 3: We protect and enhance our natural environment	3.1	Partner to protect and enhance our biodiversity, ecosystems and ecology	3.1.1	Protect and enhance our natural environment and biodiversity	3.1.1.1	Implement the Biodiversity Conservation Strategy

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

Commonwealth Environment Protection and Biodiversity Conservation Act 1999

Environmental Planning and Assessment Act 1979

Environmental Planning and Assessment Regulation 2000

10 *Biodiversity Conservation Act 2016*

Biodiversity Conservation Regulations 2017

Coastal Management Act 2016

Fisheries Management Act 1994

Local Land Services Act 2013

15 *Local Land Services Regulation 2014*

National Parks and Wildlife Act 1974

Protection of the Environment Administration Act 1991

State Environmental Planning Policy Koala Habitat Protection 2019

State Environmental Planning Policy (Coastal Management) 2018

20 *State Environmental Planning Policy (Vegetation in non-rural areas) 2017*

Financial Considerations

Project is funded in the 2020/21 budget.

25

Consultation and Engagement

- Peer review by internal and strategic planners, open space team leaders, Infrastructure Services managers and staff.
- Internal review by compliance team.
- Peer review by local arborist.

30

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.17

Report No. 13.17 **PLANNING - S4.55 Application to modify Consent 10.2019.616.1 Mixed Use Development, cnr Jonson & Browning Streets Byron Bay**

Directorate: Sustainable Environment and Economy

Report Author: Rob Van Iersel, Major Projects Planner

File No: I2020/1567

Proposal:

Section 4.55 10.2019.616.2

Application No:

Proposed modification: S4.55 to modify design of basement carpark, some building components and various conditions of consent

Original Development: Demolition of Existing Buildings and Construction of Mixed Use Development

Type of modification sought:

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

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

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

Applicant: Mr M Scott

Owner: JGD Developments Pty Ltd

Zoning: B2 Local Centre

S96 Date received: 13 August 2020

Original DA determination date: 21/05/2020

Integrated Development: No

Public notification or exhibition: – Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications

– Exhibition period: 27/08/2020 - 09/09/2020

– Submissions received: 2

Planning Review Committee: Not applicable

Delegation to determination: Council

Issues: • Building height

Summary:

Development application 10.2019.616.1 was approved at Council (Planning) Meeting of 21 May 2020, providing consent for the construction of a mixed use development involving two levels of underground car parking, retail, commercial and café tenancies at ground level, with 28 shop top residential units in two levels above.

An application has been received to modify aspects of the approved design:

1. Modify the layout of the approved basement carpark;
2. Raise the ground floor level of the building by 300mm to account for the finished levels of the adjoining bypass roundabout;
3. Make minor internal modifications to approved building;
- 5 4. Modify the roof; and
5. Make minor amendments to various conditions of consent.

10 The amendments to the basement involve internal reconfiguration to provide a more logical circulation path between the two levels. The amendments do not alter the approved number of spaces.

15 The addition of 300mm to the ground floor level is required to 'tie in' to the finished levels of the kerb at the newly constructed adjoining roundabout. This will result in slight increase in building height, in order to maintain good internal floor to ceiling heights. This overall height increase is partially offset by the amended road design, which reduces the "thickness" of the roof. As a result, the area of roof that exceeds the 9.0m height limit is slightly reduced, even though the actual maximum height is increased by approx. 300mm. The roof of the south-east lift over-run now exceeds the 9.0m limit by approx. 0.4m, where it was at the 9.0m limit in the approved version.

20 The roof is proposed to be further amended by relocation of the roof-top plant, such as air-conditioning condensers and the like, and by extending the north-west internal lift to provide access to the roof for maintenance of building plant (air conditioners etc). The extension of this lift results in the lift over-run exceeding the 9.0m building height limit by 3.7m. This is confined to the lift itself, with the roof area around the lift below the maximum height. The lift will not be visible
25 from street level.

Internal modifications of spaces at the ground level are proposed, resulting in a reduction in floor area of approx. 58m². The proposed land uses are not changed. Minor internal modifications are also provided to shop-top residential units, not altering the number on units or bedrooms.

30 Following discussions with immediate neighbours, the developer proposes to alter Condition #6, which requires construction of an acoustic fence along one neighbour's boundary, to raise the fence height from 1.8m to 2.4m and extend it along Ruskin Lane for the frontages of 2 adjoining properties. Those land owners have given their support to that proposal.

35 The application also requests that the payment of developer contributions be deferred, with payment required prior to issue of an Occupation Certificate rather than at Construction Certificate. This is in line with a State Government Direction which provides for such deferral as part of the government's COVID response. The direction applies to contributions under Section 7.11 of the Environmental Planning and Assessment Act, but not to water and sewer headworks charges. The
40 application proposes deferral of both sets of developer contributions, but it is recommended that it only be approved for the Section 7.11 levies.

45 Adjoining owners were notified of the proposed amendments and no concerns were raised in the two submissions received.

Overall, the proposed modifications do not substantially alter the approved development and do not raise any significant planning issues that were not addressed in the original approval. The S4.55 application is recommended for approval.

50 NOTE TO COUNCILLORS:

55 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council




Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

RECOMMENDATION:

That, pursuant to Section 4.55 of the Environmental Planning and Assessment Act 1979, Application No. 10.2019.616.2 for modifications to approved mixed use development be approved by modifying Consent Number 10.2019.61.1 as per the amended conditions in Attachment 4 (#E2020/86006).

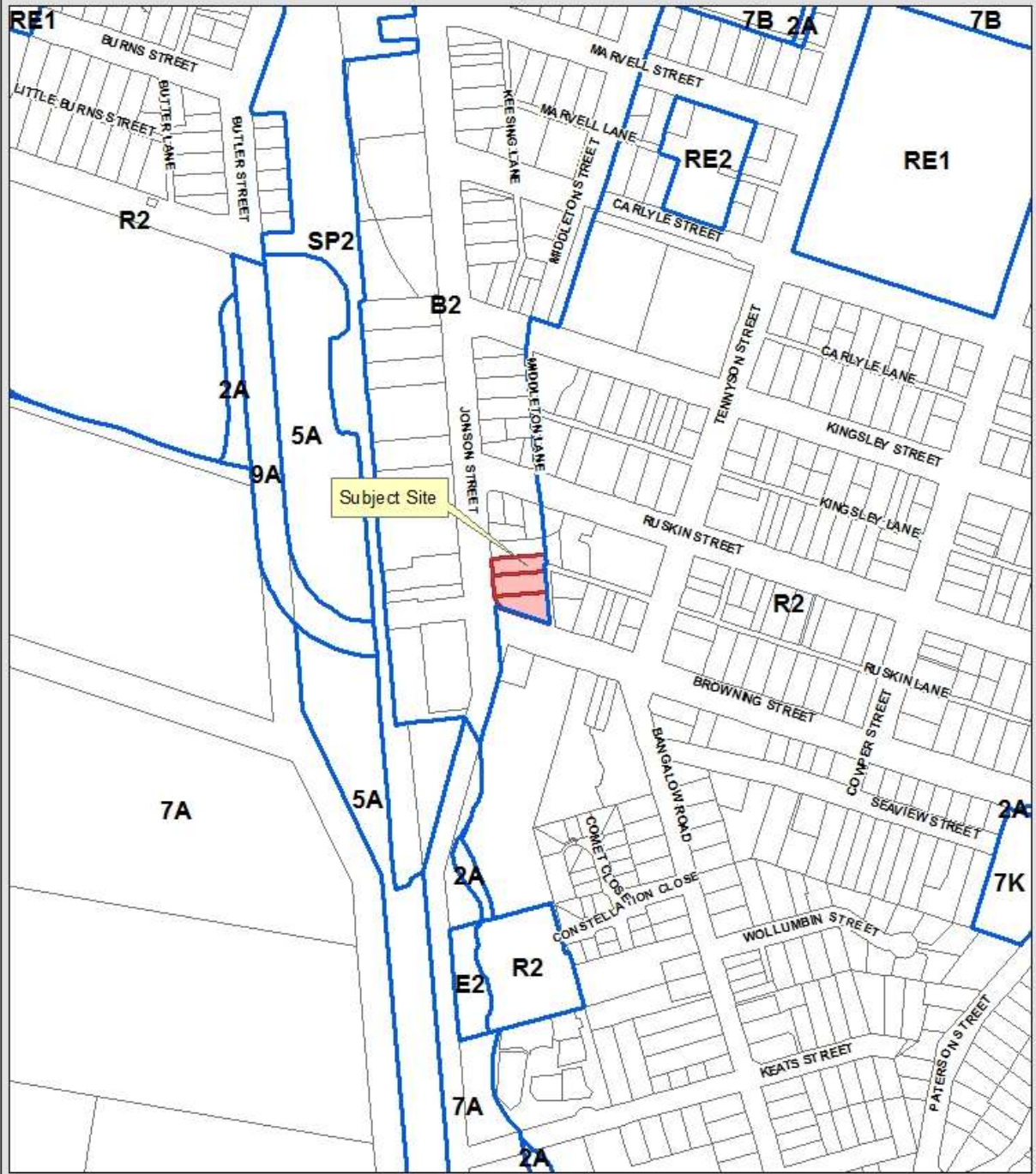
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Attachments:

- 1 10.2019.616.2 Proposed Modification Plans, E2020/86025 
- 2 10.2019.616.1 Approved Plans, E2019/86364 
- 10 3 Confidential - 10.2019.616.1 Submissions received, E2020/86068
- 4 10.2019.616.2 Recommended Modified Conditions of Consent, E2020/86006 

BYRON SHIRE COUNCIL

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



<p>Scale 1:5,000</p>	<p><small>Disclaimer: While all reasonable care has been taken to ensure the information contained on this map is up to date and accurate, no warranty is given. The information contained on this map is for general information only. Any reliance placed on such information shall be at the user's own risk. Please verify the accuracy of the information prior to using it. Note: The information shown on this map is a copyright of the Byron Shire Council and is not to be reproduced without the Council's permission.</small></p>		<p>Date: 21/04/2020</p>
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Assessment:

1. INTRODUCTION

5 1.1. History/Background

10 DA 10.2019.616.1 was approved at Council (Planning) Meeting of 21 May 2020. The consent provided for the demolition of all buildings on the site and the construction of a new mixed use building, with two levels of basement car parking, a ground floor of commercial and retail tenancies, with two levels of shop-top residential apartments.

Prior to that approval, the following approvals were relevant to the site:

137 Jonson Street – Lot 21 DP 247289:

BA 1974/80	Dwelling – 4 bedrooms	Approved 24/05/1974
DA 5.1998.398.1	Conversion of garage to dual occupancy	Approved 11/10/1988
BA 1998/2746	Alterations to existing flat	Approved 01/12/1988
BA 1991/2038	Additions to Dwelling	Approved 26/02/1991

139 Jonson Street – Lot 5 Sec 51 DP 758207:

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

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

DA 10.2017.510.1	Mixed use development comprising demolition of all existing structures, removal of vegetation and construction of commercial premises, cafe, child care centre, shop top housing, serviced apartments and associated basement car parking and landscaping.	Refused (JRPP) 14/11/2018
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15 1.2. Description of the proposed development

The approved development provides for two levels of basement car parking and:

Ground Floor

614m² retail floor space
 120m² café/ restaurant
 799m² commercial floor space
 57m² ancillary space (storage, amenities, etc.)

Upper Floors

2 x 1 bedroom units
 20 x 2 bedroom units
 2 x 3 bedroom units
 4 x 4 bedroom units

Central landscaped courtyard

20 The current application seeks to implement a number of design modifications, involving:

- modify the design of the approved basement carpark;
- raise the floor level of the building by 300mm;

- make minor internal modifications;
- modify the roof construction; and
- amendment to a number of conditions of development consent.

5 1. Basement Car Park:

The amendments to the basement involve internal realignments to provide a more logical circulation path between the two levels. The amendments do not alter the approved number of spaces.

10 The primary change is to relocate the internal ramp between the two levels from the centre, as approved, to the southern edge. In addition to providing a more efficient vehicle flow, the change provides increased storage area.

15 The total number of spaces is unchanged, although the proposal has 1 less space in basement level 1, with 1 more in basement level 2, compared to the approved layout.

The proposed new layout includes a number of tandem spaces, which would be allocated to the occupiers of residential apartments.

20 Council's Development Engineer has reviewed the modified layout and, following further minor amendments, is satisfied that it is consistent with the original consent and complies with all relevant standards.

2. Change to Building Levels:

25 The applicant advises that, during the design development process, it became apparent that levels of the now constructed kerb on the corner of Jonson and Browning Streets (part of the Byron Bay bypass works) are approx. 300mm higher than previously understood.

30 This means that the finished floor levels (FFL's) of the ground floor also need to be raised by approx. 300mm. Maintaining the ceiling heights on the commercial ground floor and residential Levels 1 and 2, means that the building overall is raised by 300mm.

35 This results in a 300mm increase in the maximum height of the building, including a corresponding increase in the 9.0m height limit exceedance at the building parapets, as shown below:

However, the proposed modification to roof design, as described below, has minimised the amount of roof area that exceeds the 9.0m height limit, such that there is actually a slightly smaller area of roof now exceeding the limit.

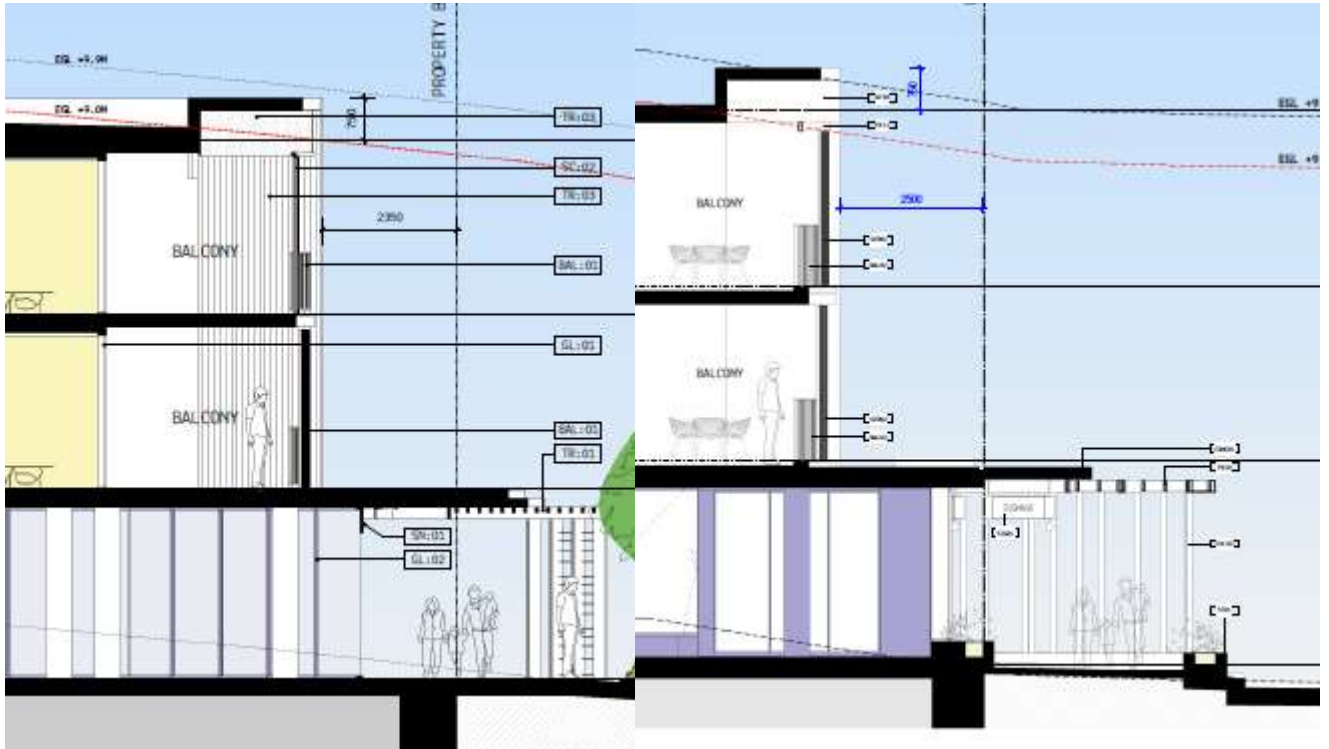
40 The diagrams below show the approved and proposed, illustrating that the height increase is limited to the roof parapets. The perspectives illustrate that there is no substantial change in the extent of roof area that exceeds the limit, and a slight decrease in the area of exceedance in the roof section located in the south-eastern corner.

45 The only additional area that exceeds the 9.0m limit as a result of the 300mm increase is the top of the lift over-run on the south-eastern building (see grey square located toward the centre of the roof on diagram below).

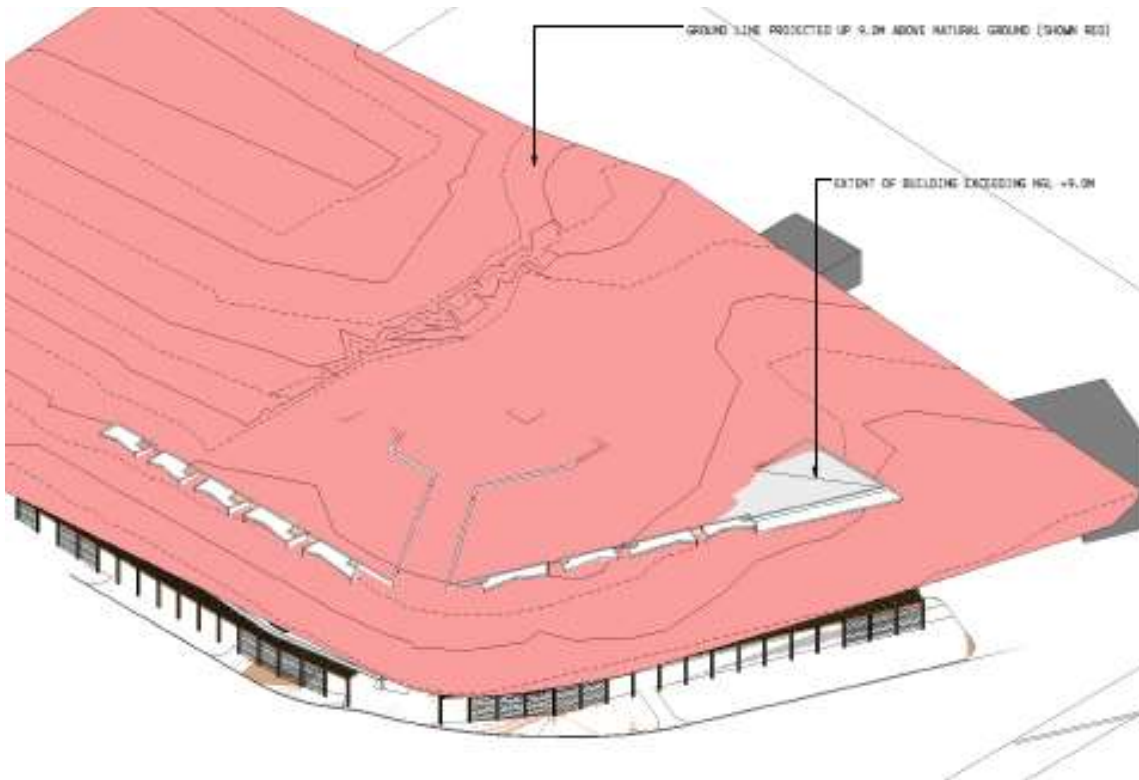
50 The exceedance of the lift over-run is approx. 0.4m.

Section – Approved

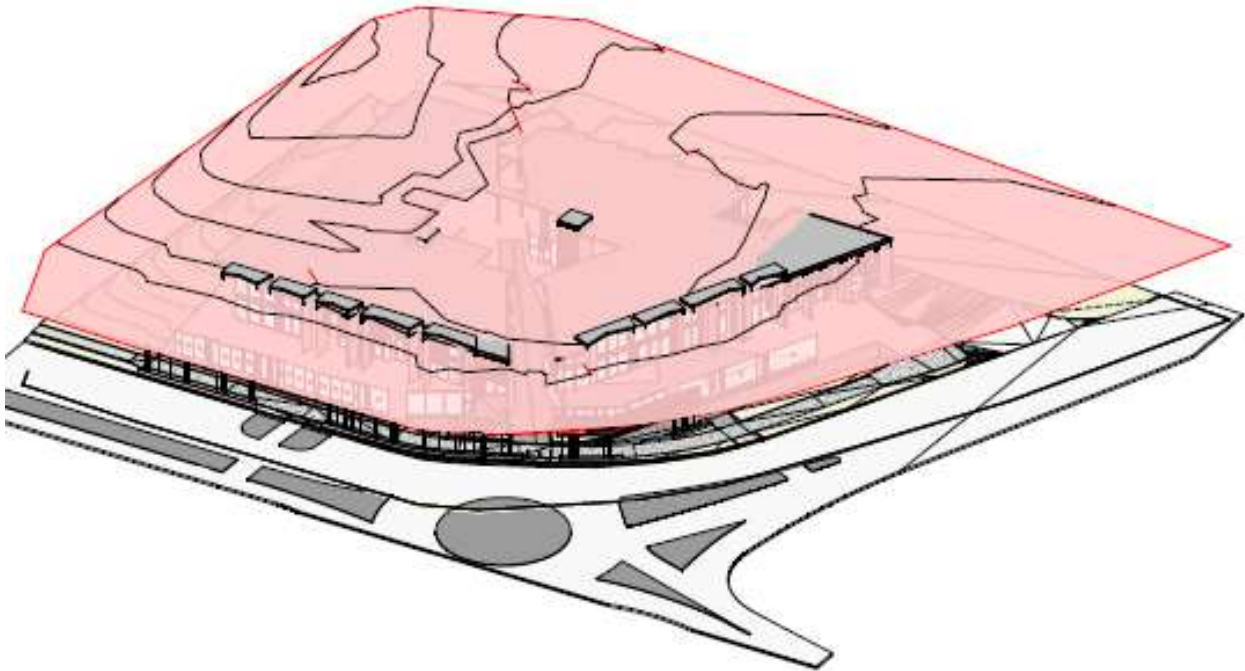
Section – Proposed



Area of Exceedance – Approved



Area of Exceedance – Proposed



3. Internal Modifications:

5 Modifications are proposed to the internal ground floor layout, altering the size of some internal tenancies, resulting in a reduction in floor space of approx. 58m². The proposed uses at ground level have not changed.

10 Other minor internal modifications are proposed throughout the building, none of which materially change the approved uses or size/ scale of the building. The nature of those modifications are what would routinely be expected between DA approval and construction certificate application and involve things such as relocation of internal doorways, changes to internal ‘back of house’ layout, and minor internal modifications to shop-top apartment layouts.

15 There are no changes to the number of shop-top apartments or the total number of bedrooms.

4. Changes to Roof:

20 The roof construction is proposed to be modified to a concrete structure, which has the effect of lowering the overall roof profile, resulting in a slight reduction in the area that exceeds the 9.0m height limit. In effect, this results in a ‘thinner’ roof structure, while having insignificant effect on the overall look of the building.

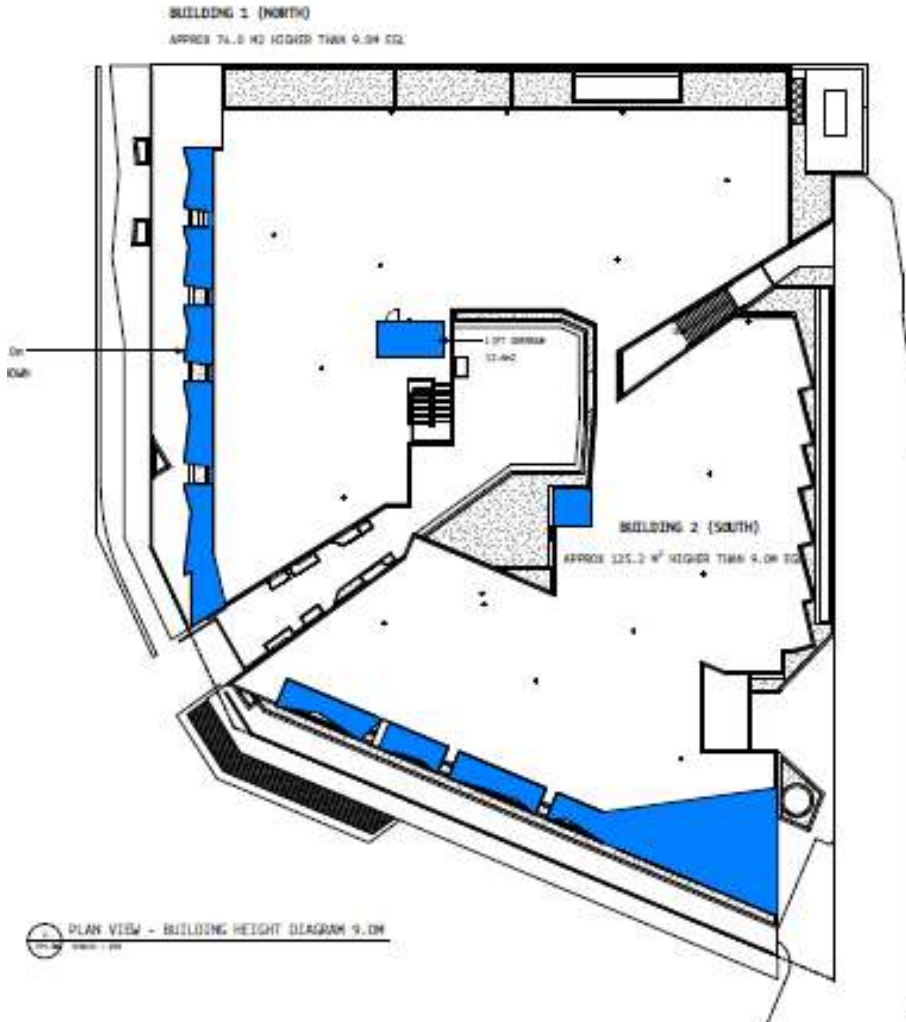
25 The application also proposed to relocate the main plant area (air conditioning etc.) to the north eastern corner of the roof.

It is proposed to extend the approved internal lift within the north-western building to access the roof area, to provide for access for maintenance of the roof-top plant. Construction contractors have advised that access to that plant by way of a lift is required, given the nature of the plant and the frequency of maintenance requirements.

30 The alternative to lift access would be to use a crane to access the roof, which would need to access the site via Ruskin Lane for each maintenance event.

Extending the lift to the roof, however, means that the lift over-run will exceed the 9.0m building height limit, with a maximum height of 12.7m.

- 5 The location of the lift over-run is shown below in blue, with the approved areas of exceedance also shown in blue. The lift over-run is the small rectangle located centrally within the roof area on the north-west building.



The location of the new lift over-run is such that it will not be visible from street level.

- 10 The application includes updated shadow diagrams demonstrating that the lift over-run does not result in any shadowing outside the property.

- 15 The shadow diagrams also demonstrate that the proposed modifications, including the additional 300mm height, do not result in any noticeable increase in shadowing above the approved development, primarily because of the reduced roof profile.

Modification of Conditions:

- Condition 6 Acoustic Barrier:
20 A 1.8m high acoustic barrier is to be constructed along the western (Ruskin Lane) frontage of adjoining residential property, No. 5 Browning Street (Lot B DP 363695), in accordance with the recommendations of the Environmental Noise Impact Report, prepared by CRG Acoustics, dated 6 November 2019 (Ref. 17083 rev.7).

Details of the barrier are to be provided to Council's Environmental Health Officer prior to the issue of a Construction Certificate.

5 The proponents have been approached by the owner of No 5 Browning St to increase the height of the barrier to 2.4m. They have also been approached by the owner of No 1 Ruskin Lane who has requested a similar acoustic barrier.

10 As approved, the 1.8m acoustic barrier would replace the existing timber fence along the first property in Ruskin Lane (see below):



15 The increase in height to 2.4m will have little visual impact given the widening of the lane and the scale of the new development.

If extended to the adjoining property, the 2.4m high acoustic barrier will replace a much smaller fence (see below). While this will have a more substantial visual impact, it is considered that the impact will be acceptable in the context of the scale of the overall change to this part of the lane.

20



The land owners have both requested the 2.4m acoustic barrier to protect their privacy.

- Condition 15 Excavation depth and dewatering limited

5 *Excavations and dewatering below the final approved basement level are not permitted without prior approval from council. Such approval must be obtained after the date of this consent.*

10 The structural engineer for the development indicates that it will be necessary to excavate approx. 0.6m below the basement level of -2.0m (AHD), which is the approved floor level of Basement 2, in order to accommodate the thickness of the slab and foundations.

The condition is proposed to be changed to:

15 *Excavations and dewatering below -2.6m (AHD) is not permitted without the prior approval of Council.*

Modifying the condition as requested creates no additional impacts.

- Condition 17 Land to be consolidated

20 *Evidence, satisfactory to the Certifying Authority, is to be provided demonstrating that arrangements have been made for all separate parcels to be consolidated into one allotment and registered with NSW Land Registry Services.*

25 *A Section 88B Instrument is to be incorporated with the consolidation plan, providing for suitable public access over the south-east corner of the property, associated with the access to the basement ramp.*

Condition No. 17 currently requires the consolidation to be finalised prior to the issue of a Construction Certificate.

30 The delay in the consolidation of the 3 titles is due to a drafting error made in regard Lots 60 & 61 in the subdivision of Lot 60 DP 758207, 3 Browning St. and the road reserve. The applicant proposes that Condition No. 17 be complied with prior to the issue of the Occupation Certificate.

35 Condition 3 of the consent provides that the development can be carried out in 2 stages, with construction of the basement car parking levels as Stage1, with the remainder of the building constructed as Stage 2. As currently worded, consolidation would be required before the first Construction Certificate.

40 It is reasonable to amend the conditions such that consolidation is required prior to the issue of a Construction Certificate for Stage 2 works. This will provide the developer with the time required, while ensuring that consolidation occurs.

- Condition 21 Certificate of Compliance – Water Management Act 2000

45 *A Certificate of Compliance will be issued upon payment of developer charges for water and sewer as calculated in accordance with Byron Shire Council and Rous Water Development Servicing Plans.*

50 *Byron Shire Council acts as Rous Water's agent in this matter and will issue a Certificate of Compliance on behalf of Rous Water upon payment of the Rous Water Development Servicing Charge to this Council.*

Note: *Copies of the application forms for Certificates of Compliance are available on Council's website http://www.byron.nsw.gov.au/files/Forms/Section_305_Certificate.pdf or from*

Council's Administration Office. Copies of Byron Shire Council's Development Servicing Plans are available at Council's Administration Office.

5 *Developer charges will be calculated in accordance with the Development Servicing Plan applicable at the date of payment. A check must be made with Council to ascertain the current rates by contacting Council's Principal Engineer Systems Planning, Water on 02 6626 7081. Applicable charges can be found on Council's website:
<http://www.byron.nsw.gov.au/development-contributions-plans-section-94-and-64>*

10 *The contributions payable will be adjusted in accordance with relevant plan and the amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment.*

Payment by Personal or Company Cheque will not be Accepted

15 Condition No. 21 is to be complied with prior to the issue of a Construction Certificate.

20 It is requested that Condition No. 21 be complied with prior to the issue of the Occupation Certificate.

The request is based on the principles outlined in *Ministerial Direction Environmental Planning and Assessment (Local Infrastructure Contributions – Timing of Payments) Direction 2020*, dated 25 June 2020.

25 This Direction is a COVID response from the State Government, which provides opportunity for payments of infrastructure contributions to be deferred for certain types of development. It relates only, however, to Developer Contributions levied under the Environmental Planning and Assessment Act and does not apply to the Water Management Act charges.

30 It is recommended, therefore, that this condition not be modified.

- Condition 24 – no right turn sign

Intersection with Browning St in accordance with Planit drawing J170-1300 Rev C dated 9/3/20, except for the following:

- 35 – *“No Right Turn” signage is to comply with the relevant standards of Transport for NSW;*
- *a “No Right Turn” sign is to be located on the eastern side of Ruskin Lane opposite the basement access ramp, so as to be clearly visible to southbound vehicles within the lane;*
- *a “No Right Turn” sign is to be located on the western side of Browning Street opposite the Ruskin Lane intersection;*
- 40 – *a “Left Turn Only” sign is to be located either on the central median in Browning Street, or at junction of Ruskin Lane and Browning Street, to be clearly visible to vehicles exiting the lane;*
- *the left arrow and words “no right turn” proposed to be painted on the Ruskin Lane pavement are not approved;*

45 The wording in the third dot point is incorrect and should read “southern side of Browning Street”.

- Condition 24 – street lighting in Ruskin Lane

50 *Upgrade of the street lighting in accordance with AS1158 from Browning St and along the full frontage of the development in of Ruskin Ln*

The applicant notes that there is currently no street lighting in Ruskin Lane and is concerned that providing lighting will negatively impact neighbouring properties on eastern side of the lane.

5 It is suggested that the condition be modified to require an assessment of the need for lighting upgrade to be carried out in accordance with AS1158 and that, if any additional lighting is required as a result of that assessment, it be designed to ensure that nearby dwellings are not impacted by light spill.

- 10 • Condition 27 Car parking

The condition includes the following table:

Basement 1	Width	Length	Aisle Width	Number
Car	2.6m	5.4m	6.0m	51
Accessible	2 x 2.6m	5.4m	6.0m	2
Motorcycle	1.2m	5.4m	6.0m	8

Basement 2	Width	Length	Aisle Width	Number
Car	2.6m	5.4m	6.2m	62
Accessible	2 x 2.6m	5.4m	6.2m	4
Motorcycle	1.2m	5.4m	6.2m	6

15 The applicant has requested that the table be updated to reflect the amended basement car parking proposal, including reduction in required aisle widths to accord with requirements of the relevant Australian Standard.

Council's Development Engineer has review the revised basement plans and provided an updated condition of consent that ensures that all spaces comply with the applicable Australian Standards.

- 20 • Condition 36 Developer Contributions to be paid

The applicant requests that the timing of payment be modified to prior to the issue of an Occupation Certificate, in lines with the Ministerial Direction outlined above (Condition 21).

25 The *Ministerial Direction Environmental Planning and Assessment (Local Infrastructure Contributions – Timing of Payments) Direction 2020*, remains in force and provides an opportunity for the timing of developer contribution payments to be deferred until the issue of an Occupation Certificate.

30 It is recommended that this condition be modified in accordance with the guidance provided in the Minister's Direction.

- Condition 42 Construction times

35 *Construction works must not unreasonably interfere with the amenity of the neighbourhood. In particular construction noise, when audible from adjoining residential premises, can only occur:*

- a) *Monday to Friday, from 7 am to 6 pm.*
- b) *Saturday, from 8 am to 3 pm.*

40 *No construction work to take place on Sundays and Public Holidays and the Construction Industry Awarded Rostered Days Off (RDO) adjacent to Public Holidays.*

The applicant has requested deletion of the component *the Construction Industry Awarded Rostered Days Off (RDO) adjacent to Public Holidays*, as a way to reduce the overall construction timeframe, thereby reducing impacts on neighbours. They estimate a saving of up to 3 weeks over the construction period.

5

The condition can be modified as requested.

- Condition 70 Parking

Parking within the development shall be provided and maintained as follows:

10

Use	Parking	Location	Allocated	Number
<i>Retail</i>	<i>Car</i>	<i>Basement 1</i>	<i>Tenants & Customer</i>	<i>31</i>
	<i>Accessible</i>	<i>Basement 1</i>	<i>Tenants & Customer</i>	<i>1</i>
<i>Cafe</i>	<i>Car</i>	<i>Basement 1</i>	<i>Tenants & Customer</i>	<i>6</i>
<i>Commercial</i>	<i>Car</i>	<i>Basement 1</i>	<i>Tenants & Customer</i>	<i>14</i>
	<i>Accessible</i>	<i>Basement 1</i>	<i>Tenants & Customer</i>	<i>1</i>
	<i>Motorcycle</i>	<i>Basement 1</i>	<i>Tenants & Customer</i>	<i>8</i>
<i>Commercial</i>	<i>Car</i>	<i>Basement 2</i>	<i>Tenants & Customer</i>	<i>25</i>
<i>Residential</i>	<i>Car</i>	<i>Basement 2</i>	<i>Residents</i>	<i>28</i>
	<i>Car</i>	<i>Basement 2</i>	<i>Visitors</i>	<i>9</i>
	<i>Accessible</i>	<i>Basement 2</i>	<i>Visitor</i>	<i>4</i>
	<i>Motorcycle</i>	<i>Basement 2</i>	<i>Tenants & Customer</i>	<i>6</i>

Tenants and customers of the development must have unrestricted access to the car parking spaces on a daily basis during business hours of the development.

15

No car parking spaces are to be reserved (generally or specifically) for any tenant or customer. Only carparking spaces required for the residential component of the development are to be reserved and made available for particular residents.

20

The applicant requests that this condition be updated in accordance with the modified basement car park design and Condition 27 (above). Council's Development Engineer has reviewed the request and provided an updated consent condition that reflects the approved basement parking plans.

25

1.3. Description of the site

The Site:

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

Lot 61 DP 1256365* 29.1m²
2,835.9m²

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



Land is zoned: B2 Local Centre
Property is constrained by: Acid Sulfate Soils (Class 5)

Proximity to Heritage Items – Norco Building located on opposite side of Jonson Street; Jasmin House located on opposite side of Browning Street.

The dwellings that previously existed on the property have been demolished since the original approval. There are a number of existing trees across the properties that will be removed for the proposed development.

5 The combined properties have a frontage to Jonson Street of approx. 49m, with approx. 48m to Browning Street and approx. 58m to Ruskin Lane.

10 The property has a high point in its north-east corner, at approx. RL 8.0m AHD. It slopes to the south west at around 3⁰, with low points at the Browning Street frontage of approx. RL 3.8m AHD. The Jonson Street frontage of the property is at approx. RL 4.2m AHD.

15 The property is oriented towards the Jonson/ Browning Streets intersection. The approved Byron Town Centre Bypass will exit at this point, with a new four-way roundabout proposed.

The property is located at the southern fringe of the Byron Bay Town Centre. It is zoned B2 Local Centre, as is land immediately north and on the opposite side of Jonson Street. Land on the eastern side of Ruskin Lane is zoned R2 Low Density Residential.

20 Land in the vicinity of the property, on the eastern side of Jonson Street and further to the east, is currently largely residential in nature, although there are a number of holiday properties among the existing dwellings.

25 On the opposite side of Jonson Street, land uses are more commercial, other than shop-top dwellings immediately opposite. Byron RSL Club is located in close proximity.

- 5 The approved design for the Byron Bypass includes the construction of a roundabout at the Jonson/ Browning Streets intersection, directly in front of the site. An acquisition of a small part of the subject land has previously occurred to allow for a widening of the road reserve in this location to accommodate the roundabout works. That adjustment also provided for the creation of Lot 61 DP 1256365, which is a narrow (approx. 0.6m wide) strip of land along the Browning Street frontage of the property, which will be transferred to the land owners and consolidated with the larger property holding.
- 10 Construction of the bypass roundabout is planned for completion in late 2020 and it is likely to be in operation before construction of the subject development begins.



Site Locality

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

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

20 **2.1. State/Regional Planning Policies, Instruments, EPA Regulations 2000**

The proposed amendments raise no issues under the relevant SEPPS, Policies or clauses of the EPA Regulations 2000.

25 **2.2. Byron Local Environmental Plan 2014**

Other than height which is discussed below, the proposed amendments raise no issues under the LEP.

Clause 4.3 Height of Buildings

As outlined above, the proposal to raise the building results in a slightly greater exceedance of the 9.0m building height limit, established in clause 4.3 of BLEP 2014.

5 The addition of 300mm to the maximum building height only affects the parapet edges and roof section in the south-eastern corner, both of which exceeded the limit in the approved scheme, and the top of the south-eastern lift over run, which is not visible from street level.

10 The minor addition to maximum height is offset somewhat by the change to roof construction, which will provide a more slender profile overall for the roof.

15 The extension of the north-western lift to service the roof space for maintenance purposes, results in an exceedance of height limit that was not part of the approved development. Its location, however, central within the roof, is such that the objectives of the development standard are maintained.

20 The minor increase in height generates no deleterious impacts on the built amenity of the neighbourhood in terms of overshadowing, loss of views or privacy. In conclusion the arguments put forward in the original application to vary the height limit remain valid, and it is considered that the exceedance of the maximum height standard associated with the proposed modifications is acceptable in the circumstances.

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

25 No draft EPIs affect the proposal.

2.4. Development Control Plans

30 The proposed amendments do not generate any additional issues that have not been previously considered.

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

35 Proposed amendments generally do not generate any impacts that have not been previously considered. The applicant has requested a minor modification to condition 42 in terms of referencing no work on industry awarded RDO's adjacent to public holidays. In terms of any RDO's this is matter between the builder and its employees and Council has no specific role in workplace flexibility. The modification is supported.

2.6. The suitability of the site for the development

45 Proposed amendments do not affect the Sites Suitability.

3.6 Submissions made in accordance with this Act or the regulations

50 The application was publicly exhibited, resulting in **2 submissions**. Both submissions were from the owners of adjoining properties within Ruskin Lane, and **both confirmed their support for the increased height for acoustic fencing along their boundaries**.

55 One submission noted, however, that amendment of the condition relating to acoustic fencing should not remove the obligation to comply with all recommendations in the approved acoustic report.

In relation to the conditions regarding lighting within Ruskin Lane, the submissions request that any lighting upgrade be designed and implemented to prevent light spill into adjoining properties.

3.7 Public interest

5 Proposed amendments are unlikely to prejudice or compromise the public interest and the minor changes to roof height do not create an undesirable precedent.

4. DEVELOPER CONTRIBUTIONS/ WATER AND SEWER CHARGES

10 There is no nexus to levy additional contributions.

The applicant requests that the timing of payment be modified to prior to the issue of an Occupation Certificate, in lines with the Ministerial Direction outlined above (Condition 21).

15 The *Ministerial Direction Environmental Planning and Assessment (Local Infrastructure Contributions – Timing of Payments) Direction 2020*, remains in force and provides an opportunity for the timing of developer contribution payments to be deferred until the issue of an Occupation Certificate.

20 It is recommended that this condition be modified in accordance with the guidance provided in the Minister's Direction.

5. CONCLUSION

25 The proposed development is considered to be substantially the same development and satisfies the requirements under S4.55 of the EPA act 1979. The application raises no issues and is recommended for approval subject to amended conditions of consent.

**Report No. 13.18 PLANNING - 26.2020.6.1 Byron Local Environmental Plan 2014
Housekeeping Amendments****Directorate:** Sustainable Environment and Economy**Report Author:** Sam Tarrant, Planning Support Officer**File No:** I2020/1438

5

Summary:

10

Staff periodically batch amendments to the Byron Local Environmental Plan (LEP) 2014 to keep it current, correct and consistent with Council policy and the Act. These amendments are commonly referred to as House Keeping.

15 This planning proposal is for 12 House Keeping amendments to the LEP: 7 policy related and 5 mapping related. The policy related amendments aim to address anomalies and correct out of date information. The 5 mapping amendments proposed are minor in scale and aim to correct mapping anomalies. None of these amendments will enable any additional development.

20 Further detail on each amendment is presented below and in the attached planning proposal.

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 Council:**

1. **Submit the planning proposal contained in Attachment 1 (E2020/69360) to the NSW Department of Planning, Industry and Environment for Gateway determination;**
2. **Subject to the Gateway determination undertake public exhibition of the planning proposal and consult with government agencies as required by the Gateway determination; and**
3. **Receive a report outlining the exhibition outcomes.**

Attachments:

- 35 1 26.2020.6.1 Byron Local Environmental Plan 2014 Housekeeping Amendments, E2020/69360 
- 2 Form of Special Disclosure of Pecuniary Interest, E2012/2815 

REPORT***Background***

5 Council maintains a live list of LEP controls and mapping matters that have been identified as being out of date, anomalous or in need of attention for other reasons. The items identified on this list are reviewed and those considered minor policy and minor mapping changes (meaning they do not warrant an individual planning proposal in their own right) are bundled into periodic
10 housekeeping planning proposals for time and staff efficiency reasons.

The intent of a housekeeping planning proposal is to ensure the LEP stays current, correct and consistent with Council policy and the Act.

15 This planning proposal is for 12 House Keeping amendments to the LEP: 7 policy related and 5 mapping related. The policy related amendments aim to address anomalies and correct out of date information. The 5 mapping amendments proposed are minor in scale and aim to correct mapping anomalies.

20 None of these amendments will enable any additional development.

Further detail on each amendment is presented below and in the attached planning proposal.

Draft Policy Amendments

25 **Item 1: Clause 4.2B – Maximum number of dwelling houses or dual occupancies on multiple occupancy or rural landsharing community developments**

30 Prohibit *Dual Occupancies* and *Secondary Dwellings* on approved Multiple Occupancies and Community Titles in the RU1 and RU2 zones

Rationale

35 Community Title Management Statements often include restrictions on secondary dwellings and dual occupancies in the rural zones. The LEP overrides the Community Title Statement and on the face of it appears to permit these land uses in the RU1 and RU2 zones, which is inconsistent with the intent of multiple occupancy and community title approvals.

40 Clause 4.2B governs dwelling density on rural multiple occupancies and community title, however the current application of the clause is only to multiple occupancies. This clause should also apply to rural community title to give consistency to existing and future community title approvals to prevent overdevelopment of the rural areas.

45 Although Development Control Plan (DCP) 2014 currently does not support dual occupancies or secondary dwellings on Multiple Occupancy and Community Title development in the rural zones, this amendment to the LEP will strengthen this position and add consistency across Council's planning instruments.

50 **Item 2: Clause 4.1F – Exceptions to minimum lot sizes for certain rural subdivisions**

Remove clause 4.1F from Byron LEP 2014

Rationale

Clause 4.1F was inserted into the LEP when it was first created to enable special purpose subdivisions in the rural areas, similar to what was permitted under the LEP 1988.

- 5 This clause was flagged for review as an applicant had interpreted this clause to enable subdivision of tourist cabins from the parent lot containing the dwelling house. This is not the intention of this clause.
- 10 Further research has found this clause is not providing for any genuine need in the shire. This clause is also not present in the neighbouring LEPs of Ballina or Tweed shire. On the other hand clause 4.1C exists to enable rural boundary adjustments and has been applied in a number of recent development applications. It is therefore considered that clause 4.1F is not required in the LEP and to avoid confusion or applications attempting to utilise this clause for unintended
- 15 purposes, this clause should be removed altogether from the LEP.

Item 3: Clause 4.1E – Minimum lot sizes for dual occupancies, manor houses, multi dwelling housing and residential flat buildings

- 20 Insert a minimum lot size for *Attached Dwellings* in R2 and R3 zones and *Dual Occupancies* (detached) in the R5 zone - Clause 4.1E

Rationale

- 25 Currently there is no minimum lot size that applies to *Attached Dwellings*. It is considered appropriate to have a minimum lot size apply to *Attached Dwellings* in line with similar types of medium density housing. Therefore the same minimum lot size that currently applies to multi dwelling housing is proposed: 1000m² in R2 Low Density Residential and 800m² in R3 Medium Density Residential zones.

- 30 Additionally, there is currently no minimum lot size for *Dual Occupancies* (detached) in the R5 Large Lot Residential zone. For consistency with the R5 zone objectives and permissible uses, a minimum lot size of 4000m² is proposed.

- 35 **Item 4: Clause 4.2A - Erection of dwelling houses and dual occupancies on land in certain rural zones AND Clause 4.1D - Exceptions to minimum subdivision lot sizes for certain split zones**

- 40 Include Zone *E3 Environmental Management* in the application of Clause 4.2A and Zones *E2 Environmental Conservation* and *E3 Environmental Management* in Clause 4.1D

Rationale

- 45 As a result of Council's E zone implementation program a number of properties in Byron Shire now have environmental zones applying to them. Clause 4.2A governs the replacement of lawfully erected dwellings in rural zones and should also apply to the E3 Environmental Management zone (which permits dwelling houses).

- 50 Multiple zonings also apply to many properties throughout the shire. Clause 4.1D allows for subdivision of the *residential, business* or *industrial* zone component of a property from the rural zone component if it meets certain criteria. The rural section of this clause should now be expanded to include the *E2 Environmental Conservation* and *E3 Environmental Management* zones.

Item 5: Roadside stalls in RU1 Primary Production & RU2 Rural Landscape zones

Permit roadside stalls as 'exempt' development in RU1 and RU2 zones

5 Rationale

A new clause in schedule 2 will enable roadside stalls to be exempt development in RU1 and RU2 zones as long as they meet certain criteria.

- 10 Currently a development application is needed to permit a roadside stall that farmers can use to sell excess produce to the public. Small scale stalls on private properties that do not create any traffic issues should be permitted as exempt development, which benefits local farmers and the community. This amendment will also reduce the number of development applications received helping to free up time for the assessment of higher impact applications. The maximum footprint of
15 the stall is to be no greater than 4m².

The proposed schedule 2 amendment has been taken from a recent amendment by Ballina Council to enable roadside stalls as exempt development.

20 **Item 6: Artisan food and drink industry in RU2 Rural Landscape zone**

Permit *Artisan Food and Drink Industry* with consent in RU2 Rural Landscape zone.

25 Rationale

Artisan food and drink industry is a relatively new definition introduced into the standard instrument in late 2018. The definition is as follows:

- 30 ***artisan food and drink industry*** means a building or place the principal purpose of which is the making or manufacture of boutique, artisan or craft food or drink products only. It must also include at least one of the following—

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

- 35 Prior to the introduction of this definition, uses such as breweries and other agricultural related food industries in the rural zones were permitted under the *rural industry* or *agricultural produce industry* definitions.

- 40 Now that the Department of Planning, Industry and Environment (DPIE) has introduced this new definition, which fits more closely to these uses, the previous definitions above can no longer be used to permit this type of development.

- 45 Including this land use definition as permissible with consent in the RU2 zone is considered appropriate given the range of uses it encompasses, which were previously permitted in the RU2 zones (e.g. restaurants and cafes).

This will be supported by additional controls in LEP ([Clause 5.4](#)) to limit the floor area for retail sales to the lesser of 40% of the gross floor area of the industry, or 250 square metres.

- 50 Council may choose to alter these numbers if they wish after considering feedback from exhibition of this planning proposal. Additional controls could also be drafted in the DCP to further control scale, capacity, operational hours and setbacks.

Item 7: Clause 4.1A - Minimum subdivision lot size for strata plan schemes in certain rural and residential zones AND Clause 4.1AA - Minimum subdivision lot size for community title schemes

5 Amend clause 4.1A and 4.1AA to ensure the minimum lot size map applies to Community title and Strata subdivisions in both *Special Purpose* and *Environmental* zones.

Rationale

10 Clause 4.1A and 4.1AA apply the LEP minimum lot size map to Community Title and Strata subdivisions for zones listed within these clauses (namely RU1, RU2 & R5).

15 Amendment of clause 4.1AA is proposed as a result of the Linnaeus Estate Planning Proposal (Broken Head) [report](#) noting that community title development is currently permitted in the SP1 zone with no restriction on lot numbers or size. In considering the Linnaeus planning proposal Council resolved to support this amendment. It is appropriate to amend this clause in this housekeeping planning proposal rather than the Linnaeus planning proposal as the amendment is of a housekeeping nature given it will also apply to other SP1 zoned land in the Shire and can be completed in a more timely manner.

20 It is also proposed to include *SP3 Tourist*, *E2 Environmental Conservation* and *E3 Environmental Management* zones in clause 4.1A and in clause 4.1AA to apply minimum lot sizes for Community Title and Strata subdivisions in these zones.

Draft Mapping Amendments

25 Corresponding maps for the amendments below are available in the attached planning proposal (Attachment 2; page 39 – 50).

30

Item number	Amendment
8	Remove B1 zoning from a residential property in Byron Bay (Lot 129 DP 777329). The property already contains residential housing however business zoning from the neighbouring property spills over into the residential property.
9	Rezone a small section of RU2 zoning from the back portion of RU5 lots correcting cadastre issues.
10	Remove spill over SP2 Infrastructure zoning adjacent to the Highway as requested by Transport for NSW
11	Aligning residential zoning with the properties cadastre at 10 Botanic Court Mullumbimby
12	Remove acid sulfate soil mapping from 219 The Saddle Road based on a study demonstrating no acid sulfate soils present on the site. This study is available in the planning proposal (page 51).

Next steps

35 Should council resolve to proceed with this planning proposal, a request for a Gateway determination will be sent to the Department of Planning, Industry and Environment.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.3	Manage development through a transparent and efficient assessment process	4.1.3.11	Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps

5

Legal/Statutory/Policy Considerations

This planning proposal will amend the Byron Local Environmental Plan 2014.

10

Financial Considerations

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

15

Consultation and Engagement

Should Council resolve to proceed with the planning proposal, it will be sent to the NSW Department of Planning, Industry and Environment for Gateway determination to enable formal public exhibition.

Report No. 13.19 **PLANNING - 26.2020.7.1 E zone Implementation Program - Planning Proposal STAGE 3 BLEP 2014 – Gateway Submission**

Directorate: Sustainable Environment and Economy

Report Author: Alex Caras, Land Use Planning Coordinator

5 File No: I2020/1576

10 **Summary:**

The purpose of this report is to present the Stage 3 Planning Proposal (Attachment 1) for Council's endorsement to enable submission to the Department of Planning, Industry & Environment for Gateway determination.

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

20 Stage 3 Planning Proposal (PP) applies environmental and non-environmental zones to 2,206 properties in the Shire, which includes approximately 5,350 ha of *E2 Environmental Conservation* zones and 730 ha of *E3 Environmental Management* zones. It also amends other LEP 2014 maps such as Minimum Lot Size, Height of Building, Floor Space Ratio, Drinking Water Catchment, Acid Sulfate Soils and Multiple Occupancy & Community Title Maps.

25 NOTE TO COUNCILLORS:


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

RECOMMENDATION:

That Council:

1. **submit the planning proposal contained in Attachment 1 (E2020/85949) to the NSW Department of Planning, Industry and Environment for Gateway determination;**
2. **pending Gateway determination, undertake public exhibition of the planning proposal and consult with government agencies in accordance with the Gateway determination; and**
3. **receive a report outlining the exhibition outcomes.**

35 **Attachments:**

- 1 E zone Implementation Program - Planning Proposal STAGE 3 BLEP 2014 – Gateway Version, E2020/85949 

40

REPORT

5 Council at its 22 March 2018 Ordinary Meeting resolved (**Res 18-188**) to implement the Department’s ‘Northern Councils E Zone Review Final Recommendations Report’ in several stages to deliver more timely and effective outcomes for affected landowners. An overview of the latest staged implementation program is shown in Figure 1 below.

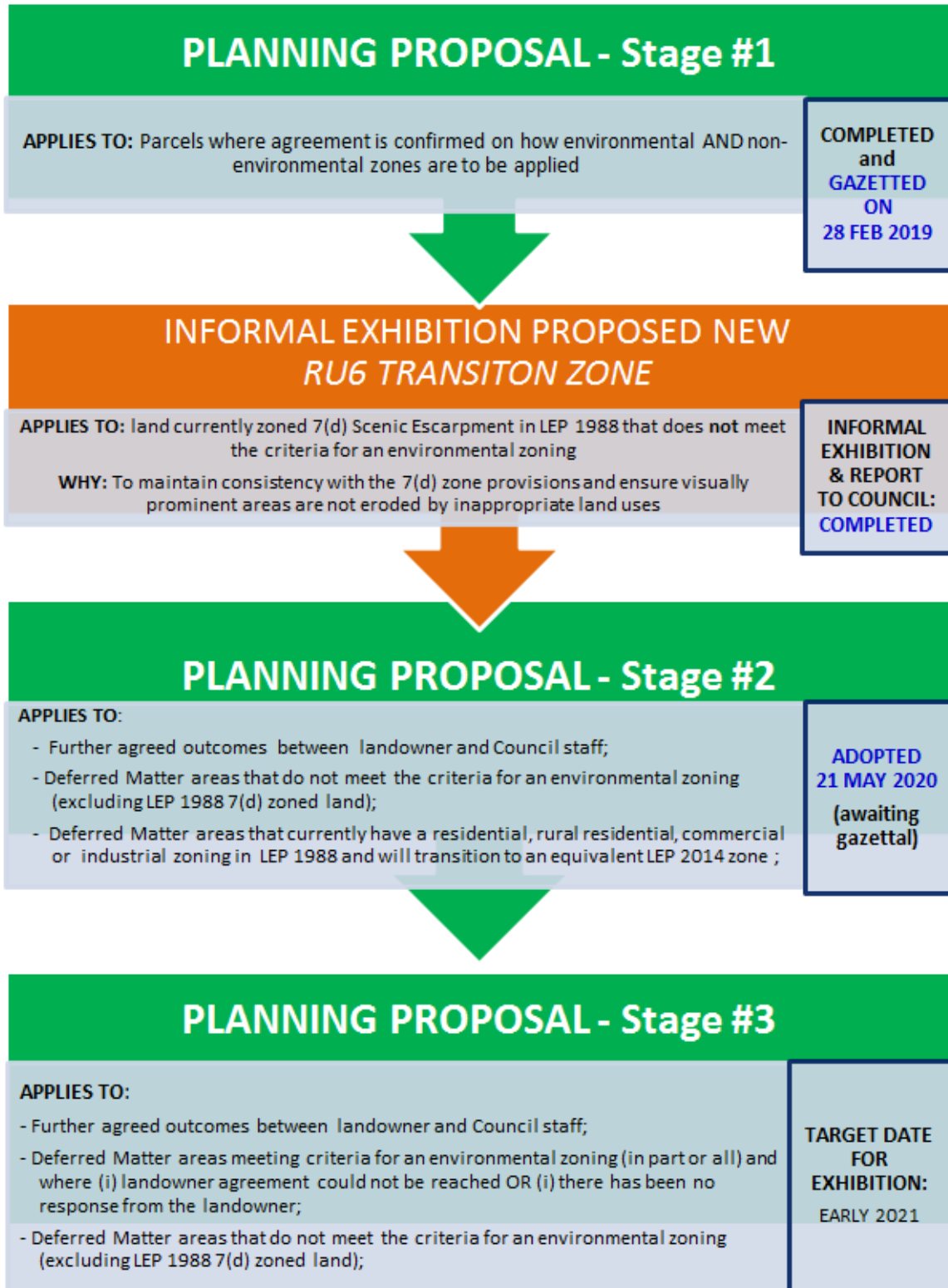


Figure 1: Staging Program to apply environmental and other zones on certain land in Byron LEP 2014

Stage 1 Planning Proposal (PP1)

PP1 applied environmental and non-environmental zones to 64 properties in the Shire based on agreed outcomes. This included approximately 340 ha of *E2 Environmental Conservation* zones and 60 ha of *E3 Environmental Management* zones.

5

Status: gazetted on 28 February 2020.

Stage 2 Planning Proposal (PP2)

PP2 applies environmental and non-environmental zones to 619 properties in the Shire based on agreed outcomes. Approximately 1,485 ha of *E2 Environmental Conservation* zones and 400 ha of *E3 Environmental Management* zones are applied in PP2. It also amends other LEP 2014 maps such as Minimum Lot Size, Height of Building, Drinking Water Catchment and Acid Sulfate Soils Maps.

10

Status: adopted by Council on 21 May 2020 and currently with the State government for finalisation.

15

Stage 3 Planning Proposal (PP3)

This report presents the Stage 3 Planning Proposal (Attachment 1) for Council's endorsement to enable submission to the Department of Planning, Industry & Environment for Gateway determination.

20

In relation to the Stage 3 Planning Proposal, Council previously resolved [*Resolution 18-188*] to:

“(6) Receive a report on draft Planning Proposal #3: (PP3) for:

- (i) Parcels where there is no agreement reached between the landowner and Council staff on proposed environmental zone/s; or*
- (ii) Deferred Matter areas that meet the criteria for an environmental zoning (in part or all) and where there has been no response from the landowner; or*
- (iii) remaining LEP 1988 7(d) zoned land to be zoned RU6 Transition (subject to Council endorsement).*

25

as soon as practical after Council's adoption of Planning Proposal #2.”

30

PP3 applies environmental and non-environmental zones to 2,206 properties in the Shire, which includes approximately 5,350 ha of *E2 Environmental Conservation* zones and 730 ha of *E3 Environmental Management* zones.

35 Consultation and Engagement to date

The E zone engagement process to date has been robust, constructive and well received by the majority of those affected. Key elements include:

40

- ✓ notification letters all potentially affected E zone landowners requesting feedback in early October 2017, with follow-up letters sent in March 2018 and June 2019.

The letters invited landowners to review the mapping with Council staff in order to understand the planning process and E zone criteria. This enabled more informed landowner feedback which in turn provided more accurate and up-to-date information to inform the rezoning of land to an environmental, rural and/or urban zone.

45

- ✓ supporting material on Council's website including: an overview of review process; electronic access to interactive mapping; an online (FAQ) video, FAQs and fact sheets including information on proposed uses and objectives in the E2 and E3 zones;
- ✓ opportunities for one on one meetings in Council's offices (beneficial for all landowners

including those who were not computer savvy or unable to use Council’s website to see what part of their land may be affected by a potential E2 or E3 zone and/or understand how primary land use was determined);

- 5 ✓ site visits (where required or requested) to ground truth Council’s vegetation mapping and inform appropriate environmental conservation and management zones; and
- ✓ responding to stakeholder phone enquiries and emails, many of which were able to be easily and quickly resolved by staff emailing more detailed vegetation and E zone mapping information at a ‘close-up’ property scale.

10 Since commencing the E zone review in October 2017, Council’s commitment to the engagement process is demonstrated by:

- ✓ over **830 face-to-face meetings** with affected landowners and/or representative consultants;
- ✓ over **110 on-site inspections**; and
- ✓ over **970 agreed outcomes** arising from submissions received

15 The engagement process has been successful in:

- ✓ providing genuine opportunities for landowner issues/potential fears to be heard and for them to have a say in the future use of their land (and thus a sense of ownership in the process);
- 20 ✓ supporting landowner aspirations regarding biodiversity/habitat/corridor enhancement;
- ✓ enabling Council to update its mapping of primary land use and updated vegetation information in collaboration with landholders;
- ✓ using a ‘staged’ process so that landowners did not feel pressured into making decisions within a ‘fixed’ timeframe and therefore could take as much time as needed to make
- 25 informed decisions about their property; and
- ✓ verifying that a very high percentage of the shire including primary producers and urban residents had aspirations of protecting the natural environment for current/future generations.

30 **RECOMMENDATION**

It is recommended that Council endorse the E zone Stage 3 Planning Proposal (Attachment 1) to enable submission to the Department of Planning, Industry & Environment for Gateway determination.

35 **STRATEGIC CONSIDERATIONS**

Community Strategic Plan and Operational Plan

CSP Objective	LSPS Priority	CSP Strategy	DP Action	OP Activity
3. We protect and enhance our natural environment	Protect and enhance our biodiversity, ecosystems and ecology	3.1 Partner to protect and enhance our biodiversity, ecosystems and ecology	3.1.1 Protect and enhance our natural environment and biodiversity	3.1.1.4 Continue the E zone review (Action No.9 from Rural Land Use Strategy)

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

The process of applying E zones and mapped overlays in Byron LEP 2014 is being undertaken in accordance with Section 117 Direction 2.5 – *Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs*. This direction specifically requires that a planning proposal that

introduces or alters an *E2 Environmental Conservation* or *E3 Environmental Management Zone*, or an overlay and associated clause must be consistent with the *Northern Councils E Zone Review Final Recommendations*

5 ***Financial Considerations***

The remaining 2020/21 budget for the E zone Implementation program will most likely be exhausted before 30 June 2021. If so, a separate report will be presented to Council detailing the additional 2020/21 budget required to finalise Stage 3 planning proposal and enable commencement of Stage 4. Stage 4 includes Council and public authority lands and will be the

10 final stage of applying E Zones.

Report No. 13.20 Update Resolution 20-525- Clarkes and Main Beach Reserves Inter Agency Meeting

Directorate: Sustainable Environment and Economy

Report Author: Chloe Dowsett, Coastal and Biodiversity Coordinator

5 **File No:** I2020/1596

Summary:

10 Council at the 25 September 2020 meeting made a resolution (**Res 20-525**) regarding the impact of coastal processes on Clarkes Beach and Main Beach Reserves as outlined below.

20-525 Resolved that Council:

- 15 1. *Request staff to convene an urgent meeting between all Land Managers of Clark’s Beach (sic) and Main Beach reserves to discuss the current impact of coastal processes on the beach and adjoining land, and explore potential options for management.*
- 20 2. *That the outcome of the meeting be reported to the next available Council meeting.*
- 25 3. *Note that significant work has occurred on the Lighthouse Road Stormwater Diversion Project and a briefing on this project is scheduled for councillors at the December SPW. This briefing will also address previous concerns raised about contribution of surface runoff and hard drainage systems to beach erosion.*

This report addresses items 1 and 2 of the above resolution.

The current erosion trend at The Pass, Clarkes Beach and Main Beach has been evident since approximately 2016.

30 Staff have been collaborating with technical staff from Department of Primary Industry and Environment (DPIE) – Environment, Energy and Sciences on the issue and it appears that this current erosion trend (as based on visual assessment) is a result of a distinct lack of sand in the eastern precinct of Byron Bay. However, the effects of these large swell events have not yet been

35 correlated against nearshore and beach profiles.

An inter-agency meeting was held at the Council Chambers and via Zoom on Wednesday 14 October 2020 attended by the following Land Managers and relevant agencies of Clarkes and Main Beach:

- 40
- Department of Primary Industry and Environment – Crown Lands
 - Reflections Holiday Parks (NSW Crown Holiday Parks Land Manager)
 - Department of Primary Industries (Fisheries) – Cape Byron Marine Park
 - National parks and Wildlife Services

45

 - Byron Shire Council (Crown Land Manager)
 - DPIE – Environment, Energy and Sciences

50 Key comments made by each of the relevant parties at the meeting regarding the issue and the present or proposed management actions is outlined below in the report.

RECOMMENDATION:

That Council notes the report on the outcome of the Clarkes and Main Beach Reserves

Inter-Agency Meeting.

5

REPORT***Background***

10 Council at the 25 September 2020 meeting made a resolution (**Res 20-525**) regarding the impact of coastal processes on Clarkes Beach and Main Beach Reserves as outlined below.

20-525 Resolved that Council:

- 15 1. *Request staff to convene an urgent meeting between all Land Managers of Clark's Beach (sic) and Main Beach reserves to discuss the current impact of coastal processes on the beach and adjoining land, and explore potential options for management.*
- 20 2. *That the outcome of the meeting be reported to the next available Council meeting.*
- 20 3. *Note that significant work has occurred on the Lighthouse Road Stormwater Diversion Project and a briefing on this project is scheduled for councillors at the December SPW. This briefing will also address previous concerns raised about contribution of surface runoff and hard drainage systems to beach erosion.*

25 This report addresses items 1& 2 of the above resolution.

Key issues – erosion trend

30 The current erosion trend at The Pass, Clarkes Beach and Main Beach has been evident since approximately 2016. Over the previous four years there have been a few significant wave events on the North Coast of NSW including 2016 'Black NE'rly and 2019 Tropical Cyclone Oma. These swell events result in various erosion impacts to the beaches of Byron Shire through interference with littoral sand transport and sand by-pass across the Byron Bay embayment.

35 Staff have been collaborating with technical staff from DPIE – Environment, Energy and Sciences on the issue and it appears that this current erosion trend (as based on visual assessment) is a result of a distinct lack of sand in the eastern precinct of Byron Bay. However, the effects of these large swell events have not yet been correlated against nearshore and beach profiles.

40 There has been notable erosion and recession primarily at Clarkes Beach, with The Pass and Main Beach also being affected. This erosion has:

- substantially lowered the beach and berm,
- removed incipient dunes,
- eroded the frontal dunes,
- 45 • removed coastal vegetation,
- undermined (resulting in the removal of some) beach access infrastructure,
- exposed indurated sand layers (coffee rock), beach rock and cobbles on the beach and in the dune,
- further exposed Aboriginal middens, and
- 50 • undermined (resulting in the removal of some) commercial assets and infrastructure.

The erosion has occurred over a period of months (not a single storm event) becoming progressively worse during subsequent events throughout 2019 that included more easterly waves combined with high tides and elevated ocean levels (for examples TC Oma in February 2019, and

a storm event in early July 2019). The erosion has also continued throughout 2020 under minor to moderate wave conditions progressively lowering and reducing sand reserves allowing waves to directly propagate onto a severely depleted beach profile.

5 **Why is this happening?**

It is generally accepted that the net sediment transport direction across the Ballina, Byron and Tweed Shires is south to north. Under predominant S/SE wave conditions, sand may be transported around Cape Byron from the south to the north before being transported generally westwards through Byron Bay (due to wave refraction around the Cape). The sand may be deposited onto, or will be transported along or past (in the subtidal zone) Wategos Beach, The Pass, Clarkes and Main Beaches and beyond.

During NE or ENE swells regimes sand transport may be significantly reduced around Cape Byron and into Byron Bay. However, sediment transport inside Byron Bay (from Wategos to Belongil Beach and beyond) would still be expected to be in a general westerly direction under the influence of such swell regime.

In strong northerly or north westerly wind conditions, sand may be transported by ‘wind waves’ and the associated littoral current in an eastwards direction in Byron Bay.

When considering observations over the past 2-3 years (or more), it appears that the eastern area of Byron Bay has suffered from a reduction in the supply of sand into the area (from around Cape Byron). This apparent reduction in sand supply around the Cape has likely occurred while sand within the Byron Bay embayment has continued to be transported out of the eastern area in a (net) westwards direction. That is, more sand has likely been transported out of the eastern Byron Bay area towards the west, than is coming in to it around the Cape. This is likely to be one of the key contributing causes of the dune erosion evident at Clarkes and Main Beach.

25 **When will it stop?**

Though difficult to predict the future state of the beach profile at Clarkes and Main Beach, and in recognition of the cyclical nature (erosion/accretion) of beach behaviour in NSW, it is expected that the beach profile will begin to accrete when a significant slug of sand re-enters the compartment from the east. It is difficult to predict when this may happen and by how much, as it is subject to many factors.

There is presently a ‘sand slug’ at The Pass as shown in the photos below.

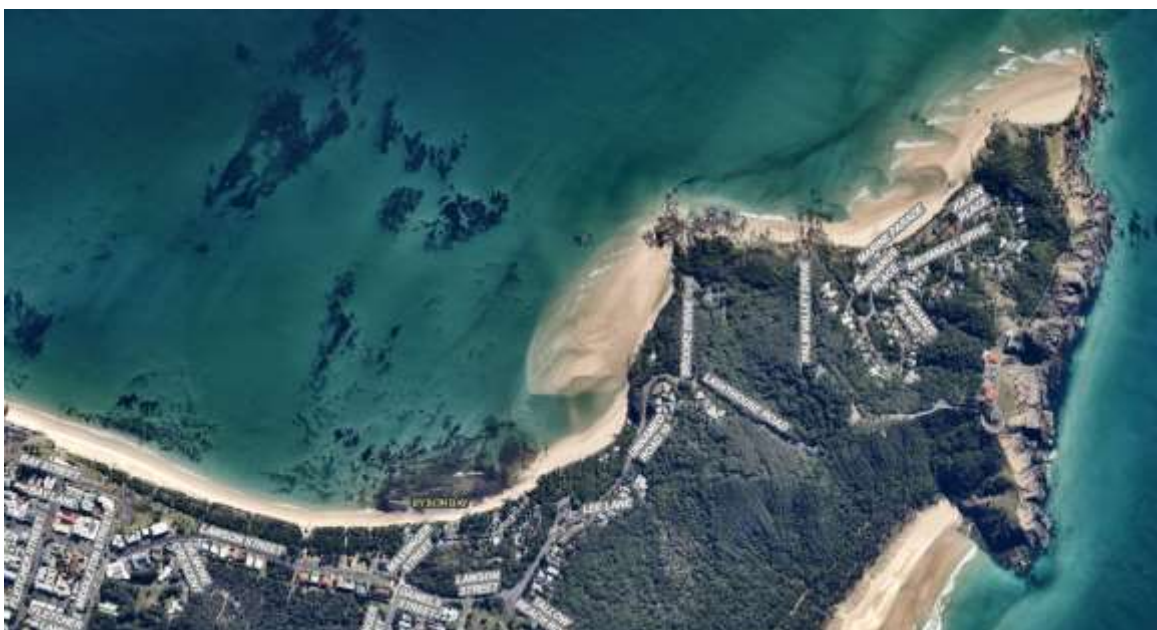


Figure 1: Near maps imagery showing slug of sand at The Pass – taken August 2020



Figure 2: Slug of sand at The Pass – looking west from Lighthouse Rd.

5 Present and proposed management actions

On Wednesday 14 October 2020 an inter-agency meeting was held at the Council Chambers and via Zoom attended by senior staff and consultants of the following Land Managers and agencies responsible for management of Clarkes and Main Beach:

10

- Department of Planning, Industry and Environment (DPIE) – Crown Lands
- Reflections Holiday Parks (NSW Crown Holiday Parks Land Manager)
- Department of Primary Industries (DPI-Fisheries) – Cape Byron Marine Park
- National Parks and Wildlife Services (NPWS)

15

- Byron Shire Council (Crown Land Manager)
- Department of Planning, Industry and Environment (DPIE) – Environment, Energy and Sciences Group

20

Outlined below are key comments made by each of the relevant parties regarding the issue and the present or proposed management actions.

Department of Planning, Industry and Environment – Crown Lands

25

- Confirmed Minister Melinda Pavey has issued a direction for temporary 90-day geobag works to be constructed in front of Clarkes Beach Café and Whites Cottage (on Reflections site) under the emergency works provisions of the coastal legislation (Coastal SEPP). Crown Lands advised that the geobags are to allow time for works to be done to reconfigure those buildings and to avoid ‘an uncontrolled incident’, with confirmation that at the end of the 90 days both the Reflections and new geobags are intended to be removed at the same time.

30

- Crown Lands will licence areas of the adjoining reserve for their contractors to use for storage of sand bags and equipment and that commencement of set up of the staging areas could commence as early as 15 October 2020.

- Confirmed they are actively working with the Café lessee who has been directed to take steps to separate the beach-side deck from the main building to ready it for removal if required and to commence preparation for reconfiguration of the building for future retreat.
- Confirmed they will lead community consultation and engagement for the construction project.

DPIE – Environment, Energy and Sciences Group

- Confirmed that the general understanding of the processes occurring at Clarkes is based on staff interpretation and not on any recent coastal hazard or technical beach profile data assessment. The recent persistent erosion trend has and is occurring due to a general lack of southerly swell regime over the past 4 years and influences of east and/or north-east swell which results in more sand leaving the embayment that entering.
- There is short, medium and long-term shoreline variability where the shoreline experiences periods of accretion (beach building) followed by periods of erosion - much like what is occurring now. The net result over time is that the shoreline is undergoing a long term trend being landward recession (movement of the shoreline landward over time) which is due to a deficit in the overall sediment budget (more sand leaving the Bay than coming in). Shoreline recession will also be influenced by sea-level rise.
- Indicated an erosion period is occurring at the moment with no way to estimate when it will end. History tells us that the shoreline will eventually accrete, however when this occurs there is no way to know.
- Stressed importance of interagency cooperation during this period with a focus on long term strategic planning as a priority (i.e. development of a Coastal Management Program).

Reflections Holiday Park

- Confirmed they have made infrastructure modifications within the Park.
- Are reviewing options for reconfiguration within the park in case retreat becomes necessary, but indicated that due to size and layout, retreat will be difficult.
- Acknowledged Crown Lands' intention to remove the works after 90 days but indicated they have engaged consultants to provide them with advice on the potential to prepare a development application for approval for the interim geobags in front of Reflections to remain pending development of a Coastal Management Program.
- Confirmed that White's Cottage, in an area also being impacted, has an asbestos management plan in place and that they too located historical asbestos when relocating other assets within the park.

DPI-Fisheries – Cape Byron Marine Park

- Confirmed that they are not a 'land manager' and that the works by Reflections and proposed by Crown Lands are above the Mean High Water Mark (MHW) and hence outside the boundary of the Cape Byron Marine Park. As such permits are required only to transit through the intertidal area of the Marine Park for construction access purposes only.
- They continue to support agencies with application processing and assisting with cultural heritage values.

National Parks and Wildlife Services

- Have been working with Reflections and Arakwal on a salvage plan and retrieval works for the aboriginal midden that has been impacted by the erosion.

- Have undertaken engineering works on Imeson Cottage at The Pass within the Cape Byron State Conservation Area that was affected.

Council (Staff)

- 5
- Confirmed ongoing monitoring, public safety and debris and contamination removal actions (when required).
 - Provided agencies with an update on the Coastal Management Program (CMP) processes, discussing realistic timelines for all the steps that have to be gone through and the need for input and cooperation from all agencies and land managers.
- 10

Commonalities:

- 15
- All land managers, including Council, are actively monitoring and addressing public safety risks.
 - All land managers, including Council, acknowledge the significance of the area and need to work with Arakwal on aboriginal cultural heritage matters.
 - All agencies agree to work together and share information to avoid unnecessary work for Arakwal, minimise duplication and maximise preservation.
 - NPWS, Reflections and Council have all had issues with the management of affected coastal trees – the three agencies agreed to work together to share experiences, learn what has and hasn't work and formulate methods to be tried in future.
- 20

Outcomes:

- 25
- The agencies thanked Council for calling the Inter-Agency meeting, confirming they found it valuable and committing to strong communication to keep everyone up to date on the different land-managers' actions.
 - A group of staff from the agencies, including Council staff, will catch up to share experiences on tree management options.
 - Staff to provide a detailed report to Council on the advice from and actions of the various land managers and agencies (this report).
- 30

STRATEGIC CONSIDERATIONS

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

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

Legal/Statutory/Policy Considerations

40

The *Coastal Management Act 2016*, Coastal SEPP and associated framework.

Financial Considerations

- 5 Not applicable.

Consultation and Engagement

Various agencies and land managers as outlined in this report.

Report No. 13.21 **Update - Impacts of and management options for short term rental accommodation (STRA) in Byron Shire**

Directorate: Sustainable Environment and Economy

Report Author: Shannon Burt, Director Sustainable Environment and Economy

5 **File No:** I2020/1740

10 **Summary:**

Council has had many reports on the impacts of and management options for short term rental accommodation (STRA) in Byron Shire. The most recent:

15 **Report No. 13.27 PLANNING - Draft Planning Controls for Short Term Rental Accommodation in response to Ministerial Direction 3.7 Reduction in non-hosted rental accommodation period to the December 2019 Ordinary Meeting of Council.**

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

20 Followed by: **Report No 13.12 - PLANNING - 26.2020.1.1 - Planning Proposal for Short Term Rental Accommodation to the 20 February 2020 Planning Meeting.**

https://byron.infocouncil.biz/Open/2020/02/PLAN_20022020_AGN_1151.PDF

25 At the February planning meeting, Council resolved to prepare and submit a planning proposal to Department of Planning, Industry and Environment (DPIE) for gateway determination. This occurred in March 2020.


30 The purpose of this report is to update: Council on the status of the planning proposal, the recent announcements by State Government on the STRA code of conduct and the state planning controls for STRA, and to seek support for amendments to the planning proposal to enable a gateway determination to be issued by the DPIE.

RECOMMENDATION:

That Council:

1. **Notes the update provided on the status of the planning proposal and state management options for short term rental accommodation in Byron Shire.**
2. **Agrees to amend the planning proposal to include precinct areas that permit non hosted STRA for 365 days in those areas that have already been taken up almost exclusively for STRA, and 90 days for those areas that have not. These precinct areas are shown in the maps in Attachment 1(#E2020/89860).**
3. **Authorises staff to submit an amended planning proposal to the Department of Industry and Environment for Gateway determination that satisfies item 2.**
4. **Pending gateway determination, undertakes public exhibition of the planning proposal and consult with government agencies in accordance with the gateway determination; and**
5. **Receives a report outlining the public exhibition outcomes.**

Attachments:

- 1 STRA maps - 365 day areas, E2020/89860 

REPORT

Current status of the planning proposal

5 At the February planning meeting, Council resolved to prepare and submit a planning proposal to DPIE for gateway determination. This occurred 10 March 2020.

10 However, in March the real time impacts of the COVID 19 pandemic hit Byron Shire. Various states of community lockdown and state border closures meant that almost all domestic travel demand went into hibernation, along with large components of the economy. More than 60% of businesses in Byron Shire relied on Job Keeper to stay afloat. This is the highest in any local government area in Australia and double the number in capital cities.

15 Housing security and affordability continued to be a major concern for community and key workers trying to maintain an existence without employment; which was not helped by STRA in Byron Shire being promoted for self isolation for return travellers prior to hotel quarantine.

20 In June 2020, Council received a letter from the DPIE, advising that a preliminary assessment of the planning proposal had indicated inconsistencies with either the Ministerial Direction 3.7 – Reduction in non-hosted short-term rental accommodation period or the draft short-term rental accommodation SEPP.

25 Council was asked for further clarification on the following aspects of the Planning Proposal prior to the DPIE finalising its assessment:

- further direction from Council on whether it is seeking to incorporate a savings provision for properties currently being used for non-hosted STRA purposes and, if not, the implications for any existing landowners and whether they would be able continue their existing practices despite the introduction of the new requirements;
- an economic analysis that evaluates and considers the impacts on the tourism industry and long-term rental housing market if landowners are required to limit the use of their non-hosted STRA to 90 days or less;
- further clarification on the intention for any new STRA provisions in Byron LEP 2014 to override any STRA SEPP as it applies to Byron Council.

40 An economic impact analysis can be a costly consultancy to engage at the best of times, but more so when the project parameters of it are so broad, and the environment in which it is sought so volatile. As such further clarification from the DPIE was requested on a scope of analysis that would satisfy their request for information. Council had already provided a sizeable amount of data and commentary when it submitted the planning proposal to them and was certain that this was sufficient to meet the Ministerial direction.

45 Several emails and phone conversations with the DPIE have since followed. Asking in particular:

- Does the Department require detailed analysis of each town/village in the Shire, or is a general analysis of impacts across the whole Shire sufficient?
- Considering ‘impacts on the tourism industry’, should the study focus only on direct impacts on the STRA sector, or should it have a broader scope covering impacts on all local industries/businesses that are directly or indirectly related to tourism.
- Having regard to ‘impacts on the long term rental housing market’, should the study focus only on economic impacts for property owners (i.e. changes in rental returns between short

and long term rental markets)? Or, is a more detailed analysis required looking into the usage of properties and the potential for increased long term rental supply under a 90 day cap scenario.

- 5 • The draft STRA SEPP includes a 180 day cap on non-hosted STRA for LGA's in the Greater Sydney Region and certain other regional LGA's. Would it be useful to include a comparison of different scenarios for day caps (i.e. 0 days, 90 days, 180 days, etc.) to demonstrate the difference in economic impact between Council's PP and the draft SEPP?

10 The most recent response from the DPIE when pressed is, that they are considering commissioning advice from an external consultancy about the potential economic impact of the state wide STRA framework. That part of the brief to the consultant will be to provide Council with information about the detail and scope required for our Byron specific study.

15 The DPIE would be in contact with Council in the near future with details.

Other recent advice from the DPIE is that it is not going to introduce a savings provision into the SEPP. DPIEs view is that STRA is captured by an existing consent for a dwelling and is not a change of use.

20 Council's view is that the use of a dwelling for STRA would in most cases be characterised as tourist and visitor accommodation. Tourist and visitor accommodation is prohibited in residential zones under Byron Local Environmental Plan 2014, which raises implications for the legality of many dwellings predominantly used for STRA in Byron Shire at the current time.

25 At the time of writing this report no further advice had been received from DPIE on the details of their consultancy.

Code of Conduct and the State planning controls for STRA

30 An (unexpected) recent announcement by the state government was that laws via a mandatory code of conduct will impose new obligations on STRA booking platforms, hosts, letting agents and guests from 18 December 2020.

35 <https://www.fairtrading.nsw.gov.au/about-fair-trading/legislation-and-publications/changes-to-legislation/changes-to-short-term-rental-accommodation>

40 The code however does not change the existing complaint handling processes for NSW Police or local councils about issues or complaints relating to fire safety (including overcrowding), planning approvals, parking or ongoing noise.

45 There will also be changes to planning laws in mid-2021, including a new planning policy that applies consistent regulation of the use of premises for short-term rental accommodation across the whole state of NSW.

Advice issued also was that a STRA premises register is currently under development for commencement in mid-2021. Hosts will be required to register their premises **once that obligation is mandated** by the Department of Planning, Industry and Environment **and the register itself becomes available online.**

50 In the meantime the public health orders remain, and affect holiday rentals and holiday homes by imposing limitations on the number of persons who can be on the premises. STRA providers are required to ensure the maximum number does not exceed 20 persons.

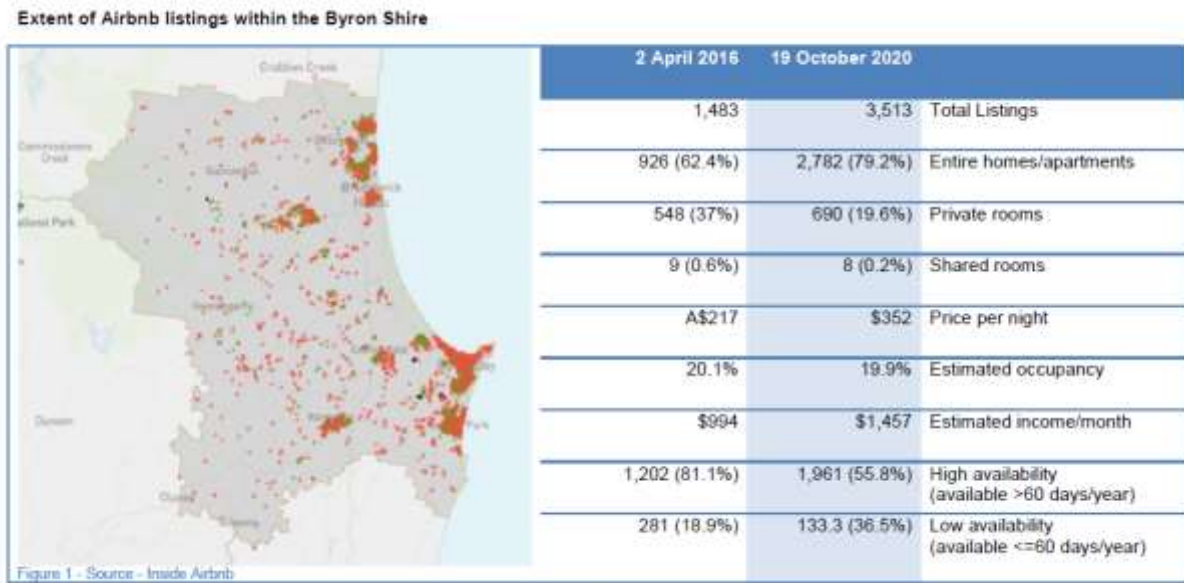
In short the code without the planning law changing and the registers in place provides little comfort to our community on the operation of STRA accommodation in Byron Shire.

Suggested amendments to the our planning proposal to move it forward

5 With the above in mind, it is critical that Council progress its STRA planning proposal prior to any STRA SEPP coming into effect, as unless the DPIE agree to exclude Byron Shire from the STRA SEPP until our local planning controls are notified it will be for nought.

10 This has been a previous request of them.

15 From a community impact perspective, the numbers of STRA properties online have now returned to higher than pre COVID times, and most are booked for the 20/21 holiday season and beyond. There are many stories circulating about displaced local families, individuals and key workers being evicted from local housing the result.



20 As reported to Council in February, after considering community feedback and the results of further research, Council opted for a more simplified approach for STRA that seeks **to introduce a 90 day limit for non-hosted STRA in all areas as an initial planning control response**. The reason for this is that a proposed precinct model apart from being difficult to define in Byron Shire with hard boundaries, if done, has the potential to create an unequal distribution of benefits and burdens across the community.

25 We also seek **to introduce a 'zero (0) day cap' on Council managed land and new release areas identified in a strategy**. The reason for this was to address our housing deficit (the result of STRA occupations) necessary to achieve strategic planning objectives for residential dwelling targets and to meet the needs for permanent housing stock for our resident community and key workers. This also has not been accepted by the DPIE.

To be clear the Ministerial Planning Direction was issued to address the **high concentration and unique impacts of STRA in the Byron Shire**.

35 The Direction allows Council to reduce non-hosted short-term rental accommodation to a minimum of 90 days per calendar year, as long as there is a sound base of evidence to support the proposed changes.

The Ministerial Direction gives Council the opportunity to implement local planning rules for STRA, rather than being subject to the planning rules in the SEPP.

The following principles needed to be addressed:

- 5
- non-hosted short term rental accommodation periods must not be reduced to be less than 90 days
 - the reasons for changing the non-hosted short-term rental accommodation period should be clearly articulated
 - there should be a sound evidence base for the proposed change, including evidence of the availability of short-term rental accommodation in the area (or parts of the area) in the 12 months preceding the proposal, relative to the amount of housing in the area, and trend-data on the availability of short-term rental accommodation over the past 5 years.
 - the impact of reducing the non-hosted short-term rental accommodation period should be analysed and explained, including social and economic impacts for the community in general, and impacted property owners specifically.
- 10
- 15
- 20

What is clear from the our research and current observations is that Byron Shire is a hotspot of activity for STRA in NSW and the sector continues to stay strong. Regulation through the planning system is needed to manage the impacts on residential amenity and to prevent further erosion of an already limited and expensive housing supply.

25

The DPIE has made it clear that it is not supportive of the proposed zero day areas applying to council owned and managed land or release areas, and is unlikely to support a blanket 90 day cap for non-hosted STRA in all areas of the Shire without further economic impact analysis.

30

So, where does this leave us?

It is recommended that **Council agree to amend the planning proposal submitted to permit non hosted STRA for 365 days in those areas that have already been taken up almost exclusively for STRA, and 90 days for those areas that have not. These are shown as precinct areas in the attached maps.**

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Further discussion with the DPIE is still needed on the merits of a zero day cap for STRA on Council owned and managed land and new release areas identified in a strategy. This can be progressed separate to this planning proposal.

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Recommendation

- It is recommended that a revised draft planning proposal be prepared by staff, based on the precinct model described in the report and maps.
 - The planning proposal is submitted to the Department of Industry and Environment for gateway determination.
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STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.3	Manage development through a transparent and efficient assessment process	4.1.3.10	Prepare a Planning Proposal to enable precinct based Short Term Rental Accommodation.

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Financial Considerations

10 Given the high number of STRA properties operating in the Shire, it is likely that additional compliance resources may be required to implement the new framework. Council will need to consider resource implication of the new controls and the compliance team work priorities.

Consultation and Engagement

Subject to gateway determination issued by the DPIE.