



Byron Shire Council



Agenda

Ordinary (Planning) Meeting Thursday, 10 December 2020

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

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

Mark Arnold
General Manager

CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

Disclosure and participation in meetings

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

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

Non-pecuniary Interests - Must be disclosed in meetings.

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

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

RECORDING OF VOTING ON PLANNING MATTERS

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

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

BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING

BUSINESS OF ORDINARY (PLANNING) MEETING

1. PUBLIC ACCESS
2. APOLOGIES
3. REQUESTS FOR LEAVE OF ABSENCE
4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY
5. TABLING OF PECUNIARY INTEREST RETURNS (CL 4.9 CODE OF CONDUCT FOR COUNCILLORS)
6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS
- 6.1 Ordinary (Planning) Meeting held on 19 November 2020
7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS
8. MAYORAL MINUTE
9. NOTICES OF MOTION
- Nil
10. PETITIONS
11. SUBMISSIONS AND GRANTS
12. DELEGATES' REPORTS
13. STAFF REPORTS

Sustainable Environment and Economy

- | | | |
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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

BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING

recommendations should be provided to Councillor Support prior to the meeting to allow the changes to be typed and presented on the overhead projector at the meeting.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**Report No. 13.1 Submission report on Development Control Plan 2014 Chapter B1 Biodiversity**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Karen Love, Research Officer – Climate Change
File No: I2020/1561

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Summary:

15 Council's Development Control Plan (DCP) 2014 Chapter B1 Biodiversity was placed on public exhibition for 28 days and received one submission. During this time, the State Environmental Planning Policy (SEPP) Koala Habitat Protection 2019 was amended and associated Guideline finalised and published. At the same time, the Local Land Services Amendment (Miscellaneous) Bill 2020 was presented to [NSW Parliament](#) (See associated report included in this Council meeting).



20 Given recent parliamentary readings (19 November 2020), the timely adoption and implementation of this DCP Chapter is now crucial, as it presents the fastest and most effective pathway to ensure biodiversity protection within the Shire.

25 This report outlines and responds to the single submission received, and presents DCP 2014 Chapter B1 Biodiversity (Attachment 1) with included minor amendments (highlighted in yellow) for adoption.

RECOMMENDATION:

1. **That Council adopts the Draft Development Control Plan 2014 Chapter B1 Biodiversity, as revised and contained in Attachment 1(E2020/92568).**
2. **That Development Control Plan 2014 'Part A Dictionary' be updated to reflect Chapter B1 Biodiversity definitions.**
3. **That Council staff publish the adopted Development Control Plan 2014 Chapter B1 on Council's website and notify the public as required.**
4. **That Council notes the recent parliamentary decision regarding the Local Land Services Amendment (Miscellaneous) Bill 2020 and that State Environmental Planning Policy Koala Habitat Protection 2019 may be subject to change.**

30 **Attachments:**

- 1 Final Draft Byron Shire DCP 2014 Chapter B1 Biodiversity, E2020/92568 
- 2 Submission on draft DCP 2014 Chapter B1 Biodiversity, E2020/92065 

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REPORT

Council’s Development Control Plan (DCP) 2014 draft Chapter B1 Natural Environment has been deferred since 2014 ([Res 14-315](#)) due to the State Environmental Planning Policy SEPP 44 – Koala Habitat Protection (SEPP 44) review and its implications regarding the Byron Coast Comprehensive Koala Plan of Management (CKPoM). The recent enactment of the new State Environmental Planning Policy (SEPP) Koala Habitat Protection 2019 resulted in Council resubmitting the CKPoM ([Res 20-090](#)) and given the legislative changes (*Biodiversity Conservation Act 2016*, *Local Land Services Act 2013*), DCP Chapter B1 has been reviewed and revised accordingly.

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

During the exhibition period, additional amendments to the Koala Habitat Protection SEPP 2019 and the publication of the associated Guideline have further reduced protections and added increased complexity to the development of Koala Plans of Management. Simultaneously, the Local Land Services (Miscellaneous) Amendment Bill 2020 was presented to [NSW Parliament](#) (see associated report within this Council meeting).

In this context, Council’s updated DCP 2014 Chapter B1 Biodiversity is critical as it delivers an immediate, simple and effective path for Biodiversity protection within the Shire while providing clarity to planners, developers and community.

Receiving only one submission (Attachment 2), the following response and minor amendments (Table 1) are made:

Table 1: Submission summary, staff response and minor DCP amendments required the result.

| Submission: | Response: | Action: |
|--|--|---|
| 1. Appropriateness of a Council DCP to trigger the Koala Habitat Protection SEPP 2019 | Given the recent Koala Habitat Protection SEPP amendment, and within the now published Guideline (16 October 2020) it states: "Councils are encouraged to develop requirements within their development control plans that specifically deal with koala habitat management issues as this will provide more detailed and tailored information around what is expected in the local area." | <i>Remove reference that triggers the Koala SEPP within the prescriptive measures.</i> |
| 2. Appropriateness of an Ecological Assessment requirement on properties with HEV or red flagged, where a development proposal does not impact those areas. | Noted. Within B1.2.4: Where a development proposal does not impact HEV or a red flagged area and a vegetation or biodiversity management plan is not required, there is no requirement for an ecological assessment as 'avoidance' has been demonstrated. Where the development proposal impacts HEV or a red flagged area an Ecological Assessment will be required. | <i>DCP amended to clarify that an ecological assessment is not required where the proposed development does not impact HEV or a red flagged area.</i> |

| Submission: | Response: | Action: |
|--|---|---|
| 3. Suggestion to condense Appendix 1 length. | | Appendix 1 reformatted and condensed |
| 4. Vegetation removal outside of development consent should be acknowledged. | Within <i>B1.1.2 Application of this Chapter</i> and also referenced in <i>B1.2 Defining the development envelope</i> it states: Vegetation removal outside of development is managed by DCP 2014 Chapter B2 Tree and Vegetation Management. DCP 2014 Chapter B2 has been recently updated to include the provisions of State Environmental Planning Policy (Vegetation in non-rural areas) 2017. The updated draft DCP 2014 Chapter B2 was endorsed for public exhibition at the 19 November Planning Meeting. | Box wording within the DCP to clarify and emphasise information in both places. |
| 5. Question regarding the validity of 'no net loss' and 'avoid and minimise' principles within the assessment of development proposals. Requests examples of acceptable solutions. | Draft DCP Chapter B1 Biodiversity is based on a 'not net loss to biodiversity' principle (P3). In addition, the <i>Biodiversity Conservation Act 2016</i> stipulates that development should 'avoid and minimise' impacts to biodiversity values before offsetting those impacts that are unavoidable. Some examples of acceptable solutions can be found at B1.2.1 (6) and Figures 5, 6 and 7. Additionally, Council strongly advises that any development proposal involving variations or offsetting of impacts B1.2.1 (14) should be discussed before lodgement through Council's pre-lodgement process (see B1.3.3 and B1.3.4). It is through this method that acceptable solutions may be identified before the process and cost of lodging a development application. | No change. |
| 6. Suggestion of flexibility regarding application of ecological buffers (Table 3) and to not use the DCP as a rigid tool. | Noted. As stated above, Council encourages a pre-lodgement discussion with staff to identify acceptable solutions, thereby streamlining the development application process. | No change. |

Other amendments (highlighted in yellow within the Final Draft DCP Chapter B1) relate to the location of certain definitions, slight formatting changes to increase readability, and a word change as a result of the Koala Habitat Protection SEPP 2019 amendment, as outlined below:

- 5
- A change in the location of certain definitions from the appendix into the main document given their biodiversity-specific nature and to ensure;
 1. ease of transition for the DCP Part A updates, and
 2. increased readability
- 10
- Definitions for inclusion into DCP Part A Dictionary now coloured blue, thus aligning and providing consistency with the other DCP Chapters.

- Definitions explicitly relating to Biodiversity and DCP Chapter B1 will remain within the DCP Chapter in text (some as notes within boxes) and only found within the DCP Chapter Appendix 3: Definition and Acronyms.
- 5
- A naming update throughout the document from 'Koala feed trees' to 'Koala use trees' reflecting the recent Koala Habitat Protection SEPP (2019) amendment.

The only text change is where one paragraph (below) was removed from B1.2.3 Koala Habitat on page 33 as a result of staff review:

10

Other recommendations relate directly to ensuring koala habitat and corridors are maintained (2, 10, 12); including through funding community groups to plant and regenerate corridors, exclusion fencing and the use of underpasses and or overpasses on existing infrastructure and new developments. Mitigation of climate change impacts (11), planning for and mitigation of bushfires (15, 16, 19, 20, 21, 22) and that amendments to the various State legislation, including the *Local Land Services Act 2013*, *Biodiversity Conservation Act 2016* and Private Native Forestry Code of Practice be undertaken (30, 31, 33, 34, 36, 37).

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STRATEGIC CONSIDERATIONS

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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 | 3.1.1.3 | Continue to develop a Biodiversity DCP (Biodiversity Conservation Strategy action) |

Legal/Statutory/Policy Considerations

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- Commonwealth Environment Protection and Biodiversity Conservation Act 1999*
- Environmental Planning and Assessment Act 1979*
- Environmental Planning and Assessment Regulation 2000*
- Biodiversity Conservation Act 2016*
- Biodiversity Conservation Regulations 2017*

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- Coastal Management Act 2016*
 - Fisheries Management Act 1994*
 - Local Land Services Act 2013*
 - Local Land Services Regulation 2014*
 - National Parks and Wildlife Act 1974*
- 35
- Protection of the Environment Administration Act 1991*
 - State Environmental Planning Policy Koala Habitat Protection 2019*
 - State Environmental Planning Policy (Coastal Management) 2018*
 - State Environmental Planning Policy (Vegetation in non-rural areas) 2017*

Financial Considerations

40 Nil

Consultation and Engagement

- Preliminary discussions and on-going collaboration with Tweed Shire Council planners who enabled development of DCP Chapter B1 through the use of their DCP as a template.
- 5 • Development of DCP Chapter B1 and ecological setbacks endorsed by the Biodiversity Advisory Committee.
- Peer review of DCP Chapter B1 by five local ecologists and local Koala Landcare expert.
- Peer review of DCP Chapter B1 by internal and strategic planners and open space team leaders including a worked example assessment on a highly constrained site to ensure compatibility.
- 10 • Internal review of DCP Chapter B1 by compliance team.
- Peer review of DCP Chapter B1 by external planners.
- Public exhibition period of 28 days receiving one submission.
- Internal review by strategic planning staff to enable the cohesion of DCP 2014 Chapter B1 definitions transfer.

Report No. 13.2 **Update - State Environmental Planning Policy Koala Habitat Protection (2019) Amendment 2020 and finalised guideline; Local Land Services (LLS) Amendment (Miscellaneous) Bill 2020**
Directorate: Sustainable Environment and Economy
5 **Report Author:** Karen Love, Research Officer – Climate Change
File No: I2020/1793

10 **Summary:**

Coming into effect on 16 October 2020, the State Environmental Planning Policy Koala Habitat Protection 2019 (Koala SEPP) has been amended and its associated guideline finalised and published.

15 The same week, the Local Land Services (LLS) Amendment (Miscellaneous) Bill 2020 (Bill) was presented to [NSW Parliament](#). As a result of this timing, Council had the opportunity to advocate on behalf of our community to NSW Members of Parliament before the second reading in the NSW Upper House. On 19 November 2020, the second reading before the Legislative Council successfully resulted in the Bill being voted down and subsequently sent to an inquiry.

20 This report outlines both amendments, comments on the Koala SEPP Guidelines, and provides information on their implications to Byron Shire’s biodiversity.

RECOMMENDATION:

1. **That Council notes the report and implications of the State Environmental Planning Policy Koala Habitat Protection (2019) Amendment 2020 and published Guideline.**
2. **That Council recognises the Local Land Services Amendment (Miscellaneous) Bill 2020 will now be subject to an inquiry by the Legislative Council.**
3. **That Council notes the newly enacted State Environmental Planning Policy Koala Habitat Protection (2019) may be subject to change.**

25

REPORT

After the enactment of the State Environmental Planning Policy Koala Habitat Protection (Koala SEPP) on 1 March 2020, the associated draft Koala SEPP Guideline was exhibited (after some
5 debate) for 5 weeks (2 March – 6 April 2020). In that time, the DPIE received 2181 formal submissions ([see Council submission](#)) on the draft Guideline and have recently published the finalised version, alongside an amendment to the Koala SEPP (in effect from 16 October 2020).

Staff became aware of both the Koala SEPP Guideline finalisation and amendment at the same
10 time the Local Land Services Amendment (Miscellaneous) Bill 2020 was presented to NSW Parliament. As a result, an urgency was put to Council on 22 October 2020, where it was resolved ([Res 20-588](#)) that Council:

- 15 1. Notes its strong objection to the Local Land Services Amendment (Miscellaneous) Bill 2020 currently before the NSW Parliament
2. Makes, and seeks support from the local member for Ballina, Tamara Smith to make, urgent representations to the Premier, Gladys Berejiklian, and the Minister for Energy and the Environment, Matthew Kean and members of the NSW Parliament on behalf of Council about the potential impact that the Bill will have on our biodiversity.
- 20 3. Prepares a media release outlining the objection and explaining reasons.
(Lyon/Richardson)

*Please note: The Byron Coast Comprehensive Koala Plan of Management is still waiting for
25 ratification under Clause 17 of the Koala SEPP.*

Koala Habitat Protection SEPP (2019) amendment and guidelines

A critical analysis was quickly compiled and the following key issues identified;

30 The amendments to the Koala Habitat Protection SEPP:

- change the process for assessing and determining development applications through the repeal of the DA Map (pink map) resulting in **all DA's within Byron Shire on land >1 hectare** now require assessment in accordance with Clause 9 of the Koala SEPP, rather
35 than just those properties previously identified on the DA Map,
- change the definition of core koala habitat,
- change the naming of Schedule 2 from 'Koala Feed Trees' to 'Koala Use Trees',
- allow the Planning Secretary to amend a Koala Plan of Management (KPoM) and conditionally approve that KPoM based on such amendments,
- 40 • increase the exhibition period for KPoM's from 28 days to 90 days, and
- increase the consultation requirements for the preparation of a KPoM.

The finalisation of the Guideline has resulted in:

- 45 • an additional 'stop the clock' process resulting in a potential 150 day consultation period,
- an additional requirement for council to conduct on-ground survey at their own expense if requested by a landholder,
- a less robust Tier 1 assessment process (not requiring site inspection),
- cost prohibitive survey requirements to establish 'highly suitable koala habitat' for inclusion
50 into a KPoM,
- the exclusion of trees <10cm DBHOB (Diameter at Breast Height Over Bark) within survey to establish 'highly suitable koala habitat', which precludes planted or naturally regenerating habitat that form linkages or extensions of core koala habitat, and

- the retention of issues raised during the consultation process including; the nominal threshold of 1 hectare for triggering assessment and inadequate buffer distances for the inclusion of koala records.

5 *Comment: These new requirements will result in the cost of delivering a KPOM prohibitive without substantial external funding.*

Please also note: The Koala SEPP guideline submissions report repeatedly mentions decoupling of the Local Land Services (LLS) Act and Private Native Forestry (PNF) codes within the LLS Amendment (Miscellaneous) Bill 2020. At the moment, the PNF code *prohibits clearing* of 'core koala habitat' identified in a KPOM. **If the bill is passed, this will no longer apply.**

Local Land Services (LLS) Amendment (Miscellaneous) Bill 2020

As noted, the LLS Amendment (Miscellaneous) Bill 2020 (the Bill) was before Parliament the same week the Koala SEPP amendment and guidelines were finalised. Since then, it has gained extraordinary attention from across a wide stakeholder demographic, including demonstrations held across the Northern Rivers and calls for advocacy from NSW MP's. Of particular concern are; the implications for our newly gazetted E zones (not to mention the considerable time spent in their negotiations) and the prevention of Byron Shire's identified 'core koala habitat' being legislatively protected.

Key issues with the Bill:

- it introduces significant changes to the PNF, increasing the ability to clear native vegetation (including koala habitat) and increasing the timeframes in which to do it (from 15 to 30 years).
- it undermines the E zones, where an extension of 'allowable activities' (Part 5A) on Environmental zoned land will allow them to be cleared **without any regulation.**
- **it freezes in time** 'core koala habitat' in already approved KPOM's. Where any future KPOM's with identified 'core koala habitat' approved after 6 October 2020 won't be designated as Category 2 regulated land. Thereby excluding them from any future regulatory assessments and allowing 'core koala habitat' to be cleared under PNF. it allows clearing of native vegetation even if it *"is in contravention of a provision of another Act."*

In addition the Bill conflicts with:

- the findings of the 2019 NSW Upper House Inquiry into koalas and their habitat,
- NSW Minister for the Environment commitment to double NSW koala populations by 2050,
- findings of the NSW Audit Office (2019); and
- the 2019 Natural Resources Commission review of the Land Management Framework.

Current status:

On behalf of the Mayor, Council staff sent letters to all NSW Members of Parliament at the end of October as per [Res 20-588](#) and received numerous responses in support. On 19 November 2020, the LLS Amendment (Miscellaneous) Bill 2020 (Bill) was read in the Upper House and as a result of Liberal Catherine Cusack crossing the floor, the Bill was sent to the Legislative Council for inquiry. In response, the Premier, Deputy Premier and Nationals leader issued a joint statement stating their intention to revert to the former SEPP 44, and that a new policy would be developed in the New Year.

Despite this, SEPP 44 currently remains repealed and State Environmental Planning Policy Koala Habitat Protection 2019 remains active.

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

As discussed in the report.

Report No. 13.3 **Final Residential Strategy including submissions review report**
Directorate: Sustainable Environment and Economy
Report Author: Natalie Hancock, Senior Planner
 Steve Daniels, Project Officer - Planning Reforms
5 **File No:** I2020/819

Summary:

10 Council is preparing a Residential Strategy (Strategy) to provide a policy framework and action plan to guide urban residential development over the next 20 years. How we deliver our future housing will influence the form, layout and character of our towns and villages, as well as the future diversity of community that lives here. The Residential Strategy promotes opportunities for Council
15 to manage future housing provision in a way that supports the community’s desire to leave a better place for future generations.

20 The Strategy relates to future housing in the Bangalow, Brunswick Heads, Byron Bay, Mullumbimby, New Brighton, Ocean Shores, South Golden Beach, Suffolk Park and Sunrise localities.

25 Council in December 2018 resolved (**Res 18-823**) to exhibit a draft Residential Strategy together with appendices and background report, noting that the documents considered at the time were still working drafts that required further refinements prior to public exhibition.

Exhibition of a draft Strategy occurred from 28 August – 11 October 2019, with engagement focused on housing issues, Strategy policy, directions and actions.

30 Amongst the submissions received were 19 landowner requests for their land to be designated as a possible residential area in the Strategy. These requests were considered by Council at the 18 June 2020 Planning Meeting where it resolved (**Res 20-276**) to update the Strategy to include six additional investigation areas, and prior to reporting back the final Strategy, consult with the community and relevant government agencies on the additional areas.

35 This report provides:

- an overview of exhibition and engagement to date
- a Submissions Review Report (Attachment ‘1’) on matters raised during the August 2019 exhibition (not previously reported to Council), together with the additional sites exhibited in August 2020
- 40 • copies of submissions from August 2019 exhibition (Attachment ‘2’: 2019 - Government agency submissions and Attachment ‘3’: 2019 - Confidential community submissions including landowner requests for their land to be added to the Strategy)
- copies of submissions from August 2020 ‘additional lands’ exhibition (Attachment ‘4’: 2020 - Government agency submissions and Attachment ‘5’: 2020 - Confidential community
45 submissions)
- a final Residential Strategy for consideration and adoption (Attachment ‘6’)
- a Residential Strategy ‘Background Report’ containing a compilation of analyses that have informed the final strategy (Attachment ‘7’)
- a summary of key revisions to draft strategy documentation culminating in the final Strategy as
50 presented.

The most significant revisions to the draft residential strategy have been in response to:

- matters raised by the Department of Planning, Industry & Environment (DPIE), as these are considered necessary to enable the DPIE's endorsement of a final Residential Strategy
- inclusion of additional 'investigation area' lands
- Council's more recent work (post the 2019 exhibition) in the affordable housing, local character and infrastructure planning spaces.

Subject to Council supporting the recommendations contained in this report, a final Strategy will be forwarded to the DPIE together with the other attachments listed above.

- 10 The final Strategy provided with this report (Attachment '6') includes additional reader information on how the Strategy has been revised. This version will be provided to the DPIE along with a final 'clean' version (i.e. where such information has been removed and incorporating any changes arising from Council deliberations on the final Strategy) to assist with their review.

15

RECOMMENDATION:

1. **That Council does not support the following land being included as an 'investigation area' in the final draft Residential Strategy:**
 - a) **Lot 1 DP1256460, 152 Stuart Street, Mullumbimby due to high hazard flooding and contamination constraints**
 - b) **any further expansion to that part of Lot 350 DP 755695 located on Ewingsdale Road, Byron Bay (Strategy investigation area '10'), as exhibited in August 2019**
 - c) **Lot 285 DP 1198641, 64 Corkwood Crescent, Byron Bay as:**
 - i. **a review of the relevant history has identified that landowners previously seeking a change to the 7(d) Scenic Escarpment zone boundaries have been consistently advised that this can only be considered as part of a Shire wide study; and**
 - ii. **consultation with the Department of Planning, Industry, and Environment on potential land use constraints determined that the wider range and density of permissible uses in a residential zone could adversely impact on the significant mapped biodiversity values on this and adjacent land.**








2. **In relation to recommendation '1.', that Council advise the respective landowners/consultants of Council's decision and the reasons for excluding the above land from the Strategy.**

3. **That Council notes the following updates made in relation to the draft Strategy 'investigation areas' and other sections:**
 - a) **strategy investigation area '5', comprising Lot 1 DP803292, Lot 2 DP1256460, Lot 2 DP803292, Lot 4 DP837851, Lot 5 DP1111848; 124, 127 and 130 – 134 Station Street, Mullumbimby, is identified only for a review of minimum lot size provisions and not a zone change due to flooding and access limitations, and is to be included in the Saltwater Creek Precinct structure planning process**
 - b) **the inclusion of "acoustic impacts" in Strategy Action '9' Saltwater Precinct structure plan considerations, in relation to traffic management**
 - c) **inclusion of the following additional wording in the profile for Investigation Area 10 (Part of Lot 350 DP 755695, Ewingsdale Road, Byron Bay in Appendix C):**
"final development footprint will be determined following further flood

assessment. Any variations must be in accordance with the North Coast Regional Plan Urban Growth Area Variation Principles (Appendix A) and will need to be considered and justified through a strategic planning or rezoning process. Only minor and contiguous variations to urban growth areas in the coastal strip will be considered due to its environmental sensitivity and the range of land uses competing for this limited area”

- d) the Residential Strategy updates outlined in this report’s ‘Table 2: Summary of key strategy revisions to reflect the outcomes of consultation’ and Council’s more recent work in the affordable housing, local character and infrastructure planning spaces
 - e) the additional reader information on how the Residential Strategy has been revised, which will be removed from the final version when submitted to NSW Department of Planning, Industry & Environment for endorsement.
4. That Council adopts the Residential Strategy as contained in Attachment ‘6’ (E2020/5277) and forward to the NSW Department of Planning, Industry & Environment for final endorsement together with the Background Report (Attachments ‘1’ and ‘7’, E2020/37962 and E2020/91141 respectively).
 5. That Council delegates authority to the Director Sustainable Environment & Economy, through the General Manager, to amend the Residential Strategy in relation to any consequential (non-policy) and/or other minor editorial amendments required for clarity or accuracy, prior to submitting to Department of Planning & Environment for final endorsement.

Attachments:

- 1 Submissions review report, E2020/37962 
 - 5 2 Combined government agency submission on draft residential strategy Aug 2019, E2020/14681 
 - 3 Confidential - Combined community submissions Aug 2019 exhibition, E2020/14682
 - 4 Combined government agency submissions on additional land, E2020/92502 
 - 5 Confidential - Combined community submissions on additional lands Aug 2020, E2020/69671
 - 6 Final draft Residential Strategy, E2020/5277 
 - 10 7 Residential Strategy Background Report, E2020/91141 
 - 8 Letter of response on the North Coast Settlement Planning Guidelines - Department of Planning, Industry and Environment, S2019/9516 
 - 9 Special Disclosure for Pecuniary Interest Annexure, E2012/2815 
- 15

REPORT

Background and Purpose

5 Council is preparing a Residential Strategy (Strategy) to provide a policy framework and action plan to guide urban residential development over the next 20 years.

The Strategy specifically relates to future housing in Bangalow, Brunswick Heads, Byron Bay, Mullumbimby, New Brighton, Ocean Shores, South Golden Beach, Suffolk Park and Sunrise.

10 The Strategy is the result of three years of planning, research and community consultation. This has included the Housing Needs Report, the Housing Summit, targeted community engagement, the Accessible Housing Project, the Housing Roundtable and the Housing Charrette. Overall, this collection of work clearly indicated that a diverse supply of housing for a range of incomes, lifestyle
15 choices, household types and life stages is needed to maintain our community diversity and social cohesion.

Council in December 2018 resolved (**Res:18-823**) to exhibit a draft Strategy and associated background documents, noting that the documents considered at the time were still working drafts
20 that required further refinements prior to public exhibition.

A draft Strategy was exhibited from 28 August – 11 October 2019. The engagement sought to inform on housing issues, Strategy policy, directions and actions. The feedback has assisted in its
25 finalisation.

Amongst the submissions received were 19 landowner requests for their land to be designated as a possible residential area in the Strategy. Council considered these requests at the 18 June 2020
30 planning meeting where it-resolved (**Res 20-276**) to update the Strategy to include six additional investigation areas and prior to reporting back the final Strategy consult with the community and relevant government agencies on the additional areas.

This report provides:

- an overview of the exhibition engagement processes
- a Submissions Review Report (Attachment '1') on matters raised during the August 2019
35 exhibition (not previously reported to Council), and the additional sites as exhibited in August 2020, together with copies of government agency and confidential community submissions from both exhibitions (Attachments '2' '3' '4' and '5')
- a final Residential Strategy for consideration and adoption (Attachment '6')
- a Residential Strategy Background Report containing a compilation of analysis that has
40 informed the final strategy (Attachment '7')
- a summary of key revisions to draft strategy documentation culminating in the final Strategy as presented.

The most significant revisions to the draft Strategy have been in response to:

- 45 • matters raised by the Department of Planning, Industry & Environment (DPIE), as these are considered necessary to enable the DPIE's endorsement of a final Residential Strategy
- inclusion of additional lands
- Council's more recent work (post the 2019 exhibition) in the affordable housing, local character and infrastructure planning spaces.

50 This report's recommendations are to be workshopped with Councillors at a strategic planning workshop on 3 December 2020.

Overview of engagement

An Engagement Plan for the strategy was endorsed at the 13 December 2019 Council meeting.

- 5 This engagement built on earlier targeted engagement used to inform draft Strategy content. Diagram 1 on page 5 - Submissions Review Report (Attachment '1') summarises the pathway taken in looking at important issues such as housing affordability.

Engagement involved three key steps:

- 10
- Shaping our neighbourhoods discussion (May 2019)
 - Full exhibition (28 August – 11 October 2019)
 - Additional lands exhibition (1 - 31 August 2020).

15 The full exhibition program took place over a six week period involving the following activities and methods of communication:

- Notification letters to Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) surrounding Councils, Tweed Byron Local Aboriginal Land Council and state government agencies
- Public media, Council website, Facebook page and an e-newsletter to advertise engagement
- Provision of information including the Strategy and Background Report, FAQ and fact sheets, and information on how to lodge a submission
- Farmers markets stalls
- One-on-one meetings and responses to emails & phone calls.

Submission Profile

25 A Submissions Review Report is provided as Attachment '1'.

A total of 66 submissions were received to the 2019 full exhibition and can be considered in two categories:

- 30
- State government agency response
 - Community groups and broader community response.

35 A total of 22 submissions were received to the additional lands 2020 exhibition and are appropriately considered on a lot by lot basis.

Government agency submissions (Attachments '2' and '4') were from the following:

- 40
- NSW Department of Planning, Industry and Environment - Division of Planning Divisions (DPIE - PD)
 - NSW Department of Planning and Environment Biodiversity and Conservation Division (DPIE - BCD)
 - Transport for NSW (TfNSW)
 - NSW Department of Primary Industries (DPI)
 - 45 — Tweed Shire Council made a submission on the full exhibition only
 - Rous Water made a submission on the full exhibition only.

Copies of the community submissions are provided as confidential Attachments '3' and '5' to this report.

The Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) (part of Attachment '3') made a submission on the 'full exhibition' engagement only.

5 **Full exhibition: key submission issues (August 2019)**

The key issues raised under the full exhibition by agencies are summarised below.

Department of Planning Industry and Environment - Planning Division (DPIE - PD)

10 The DPIE – PD submission identified the need for the Strategy to:

- be consistent with state policy positions under:
 - State Environmental Planning Policies (SEPP)
 - [North Coast Regional Plan 2036](#) (NCRP)
 - *Environmental Planning and Assessment Act 1979* [Section 9.1 Directions](#)
- set detailed site specific investigations required in support of any future rezoning/development applications for investigation areas
- be supported by an assessment against NCRP Urban Variation Principles and the North Coast Settlement Planning Guidelines. Clarification was sought from the DPIE – PD as to applicability of the guidelines given the draft Strategy was exhibited prior to release of the settlement planning guidelines on 23 October 2019. Advice indicated that the guidelines are not mandatory for exhibited land (Attachment '8' Letter of response on the North Coast Settlement Planning Guidelines - Department of Planning, Industry and Environment)
- be updated in its appraisal of the land and housing delivery impediments or opportunities having regard to more recent data, policy or legislative changes such as the infrastructure capacity or the Low Rise Housing Diversity Code
- where an action references a process that is affected by a state government guideline, such as SEPP 70 Affordable housing contribution scheme that such guidelines are to be (explicitly) referred to in the delivery of the action.

30

Department of Primary Industry (DPI)

Matters raised by DPI raised were largely consistent with DPIE. Of note was a preference to avoid investigation areas on significant farmland and where such land was impacted, the inclusion of measures to address avoidance of speculation and/or increased land use conflict. This request makes it difficult to identify new housing land in Byron Shire due to the proximity of such farmland to all of our towns and villages. The land identified in the Strategy is a logical extension of established urban areas and within a comfortable 'localised' walking distance of the town/village business centres and schools.

40 *Transport for NSW (previously Roads and Maritime Services) (TfNSW)*

The key interest for TfNSW is the safety and efficiency of the road network, traffic management, integrity of infrastructure and the integration of land use and transport. In this regard it should be noted that additional land releases that directly impact the Ewingsdale Road and Pacific Highway interchange may not be supported until improvements are realised.

45

Department of Planning Industry and Environment – Biodiversity and Conservation Division (DPIE - BCD)

As with TfNSW & DPIE - PD, the DPIE - BCD identified a need to identify site specific investigations required in support of any future rezoning/development applications for investigation areas.

5 To address this common agency request (for all sites), the Strategy has been revised to include greater guidance on the specific investigation areas moving forward to a rezoning/development application.

Rous County Council

10 Rous advice indicated that the projected dwelling growth in the Strategy (2019 version) is generally within the Peak Day forecast and has been allowed for in current augmentation planning. Where the projected dwelling growth outpaces the peak day forecast, there is sufficient capacity in the existing bulk water supply infrastructure to meet the increased water demand. Since receiving this advice, Council staff have been working with consultants acting on behalf of Rous to provide updated growth figures and locations as part of the long term water security planning. These
15 numbers generally accord with those in the final Strategy.

Arakwal

20 The Arakwal submission identified a need for detailed site specific cultural heritage investigations and requested consideration to be given to identifying opportunities and levers to achieve additional housing on Country. Following receipt of this submission staff have worked with Arakwal officers to frame a 'Protocol' to be included in the Strategy for guidance on key cultural heritage assessments. The Byron Shire Affordable Housing contribution Policy and procedures adopted by Council in August 2020 are an important step towards establishing levers for access to housing.

25 *Community groups and broader community*

Submissions from **community groups and the broader community** indicated general support for the Strategy.

30 The feedback focused on the policy directions as contained in the draft Strategy with the following points in common:

- supporting the Strategy's focus on building communities
- planning for climate change in particular flood and stormwater management
- coordinating land use planning with infrastructure provision
- 35 • protecting certain areas such as koala habitat and agricultural land from development
- a juxtaposition between those seeking to limit rather than manage growth
- how to better manage the impacts of short term holiday rental on housing supply for residents.

40 ***Additional lands exhibition: key submission issues (August 2020)***

'Table 1: Key points on additional lands' provide a snapshot summary of submission points and staff response to these on the proposed additional lands. More detail on these submissions is provided in the Submission Review Report (Attachment '1').

45 Figure 1 below shows the location of the additional lands considered.



Mullumbimby



Bangalow



Byron Bay



Suffolk Park

Figure 1: Additional land locations

Table 1: Key points on additional lands

| Site # – location shown on Figure 1 | Key points raised | Staff comment | Strategy response |
|---|--|---|---|
| <p>1. 20 Prince St, Mullumbimby part of Lot 12 DP 527314</p> | <ul style="list-style-type: none"> – should be considered in conjunction with adjoining investigation area | <ul style="list-style-type: none"> – supported | <p>20 Prince Street, Mullumbimby merged with the adjoining investigation area to form Investigation area '8'</p> |
| <p>2. 152 Stuart St, & 124, 127, 130 - 134 Station St, Mullumbimby (Lot 1 DP1256460, Lot 1 DP803292, Lot 2 DP1256460, Lot 2 DP803292, Lot 4 DP837851, Lot 5 DP1111848)</p> | <ul style="list-style-type: none"> – traffic impacts including noise – flooding and stormwater management – is infill the best way to deliver affordable housing and will it provide good urban design outcomes <p>Staff identified possible contamination limitations as well.</p> | <ul style="list-style-type: none"> – relevant issue – relevant issue – noted | <p>Strategy Investigation Area '5' - Lot 1 DP1256460 not included.</p> <p>See recommendation 1a) following this table.</p> <p>This land added to Strategy Action 10 – <i>Support the delivery of a high-level concept structure plan for the Saltwater Creek Precinct.</i></p> <p>see recommendation 2a) following this table.</p> <p>Acoustic impacts included as part of the Strategy Action 9 Saltwater Precinct structure plan investigations. See recommendation 2b) following this table.</p> |
| <p>3. Part of Lot PT32/1169053 located east of Tuckeroo Avenue, Mullumbimby</p> | <ul style="list-style-type: none"> – flooding and stormwater management implications for this and adjacent land – an expectation that the land would only be developed as R5 | <ul style="list-style-type: none"> – relevant issue – noted | <p>Strategy Investigation Area '4'.</p> <p>Matters incorporated in Strategy Appendix C investigation area profile - housing and infrastructure planning.</p> |

BYRON SHIRE COUNCIL

| Site # – location shown on Figure 1 | Key points raised | Staff comment | Strategy response |
|---|---|---|---|
| <p>4. 31 Ballina Road (Lot 2 DP 1260751) previously part of 21 Ballina Road Bangalow (Lot 3 DP1220608)</p> | <ul style="list-style-type: none"> – acoustic issues associate with highway traffic – flooding – site is steep in parts | <ul style="list-style-type: none"> – all relevant issues | <p>Strategy Investigation Area '13'. Matters incorporated Strategy Appendix C investigation area profile - key issues and infrastructure planning.</p> |
| <p>5. Part of Lot 350 DP 755695, Ewingsdale Road, Byron Bay</p> | <ul style="list-style-type: none"> – landowner request not to include as land uses being considered may not necessarily fit neatly within the Residential Strategy. – the site adjoins the existing Byron Bay urban area and may be considered under the provisions of the North Coast Regional Plan 2036 variation principles – flooding and stormwater management investigation is being undertaken | <ul style="list-style-type: none"> – noted | <p>Extension not shown in Strategy see recommendation 1b) following this table</p> <p>Strategy Appendix C investigation area profile includes wording as contained in the recommendation 2 c) following this table.</p> |
| <p>6. Part 64 Corkwood Cr, Suffolk Park (Lot 285 DP1198641)</p> | <ul style="list-style-type: none"> – part of the scenic escarpment – potential adverse impacts on moderate – high biodiversity values on this and adjacent land <p>Landowner raised:</p> <ul style="list-style-type: none"> – site has an approved dual occupancy (partially constructed) – front section is within and abuts land in a R2 zone – further development potential would be | <ul style="list-style-type: none"> – relevant issues <p>Landowner</p> <ul style="list-style-type: none"> – an 'attached' dual occupancy is permitted in a 7d Zone, hence a zone change is not required to enable this use – Noted. Not uncommon for larger land parcels to have mixed zoning – noted and agree that further | <p>Not included in the Strategy – see recommendation 1c) below</p> |

| Site # – location shown on Figure 1 | Key points raised | Staff comment | Strategy response |
|-------------------------------------|---|----------------------------------|-------------------|
| | extremely limited due to existing sensitive vegetation on the site, bushfire and stormwater constraints | development potential is limited | |

Recommendations pertaining to additional lands

- 5 1. That Council does not support the following land being included as an ‘investigation area’ in the final draft Residential Strategy:
 - a) Lot 1 DP1256460, 152 Stuart Street, Mullumbimby due to high hazard flooding and contamination constraints.
 - 10 b) any further expansion to that part of Lot 350 DP 755695 located on Ewingsdale Road, (Byron Bay investigation area ‘10’), as exhibited in August 2019
 - c) Lot 285 DP 1198641, 64 Corkwood Crescent, Byron Bay as:
 - 15 i. a review of the relevant history has identified that landowners previously seeking a change to the 7(d) Scenic Escarpment zone boundaries have been consistently advised that this can only be considered as part of a Shire wide study; and
 - ii. consultation with the Department of Planning, Industry, and Environment on potential land use constraints determined that the wider range and density of permissible uses in a residential zoning could adversely impact on the significant mapped biodiversity values on this and adjacent land.

- 20 2. That Council notes the following updates made in relation to the draft Strategy ‘investigation areas’:
 - 25 a) strategy investigation area ‘5’, comprising Lot 1 DP803292, Lot 2 DP1256460, Lot 2 DP803292, Lot 4 DP837851, Lot 5 DP1111848; 124, 127 and 130 – 134 Station Street, Mullumbimby, is identified only for a review of minimum lot size provisions and not a zone change due to flooding and access limitations, and is to be included in the Saltwater Creek Precinct structure planning
 - b) the inclusion of “acoustic impacts” in Strategy Action ‘9’ Saltwater Precinct structure plan considerations, in relation to traffic management
 - 30 c) inclusion of the following additional wording in the profile for Investigation Area 10 (Part of Lot 350 DP 755695, Ewingsdale Road, Byron Bay in Appendix C): *“final development footprint will be determined following further flood assessment. Any variations must be in accordance with the North Coast Regional Plan Urban Growth Area Variation Principles (Appendix A) and will need to be considered and justified through a strategic planning or rezoning process. Only minor and contiguous variations to urban growth areas in the coastal strip will be considered due to its environmental sensitivity and the range of land uses competing for this limited area”*
 - 35

Strategy revision

40 Table 2 presents a summary of key revisions made to the exhibition version of the draft Residential Strategy. The revisions reflect state government agencies, traditional owner and community input as well updates in response to Council policy and/or practice. The information is presented in an

order consistent with the Strategy sections. Item numbers 5, 6, 7, 11, and 14 are considered to be the more significant revision matters. Table 2 forms the basis of the report Recommendation 3 d).

- 5 Attachment '6' provides a version of the final Strategy with text highlighted to show where/how changes have been incorporated. The explanation of these edits to the draft Strategy will be removed from the final version when submitted to the NSW Department of Planning, Industry & Environment for endorsement. This forms the basis of the report Recommendation 3 e).

Table 2: Summary of key strategy revisions

| # | Strategy section reference | Key revision | Basis for document change Where government agency advice – see above for acronym |
|---|--------------------------------------|--|---|
| 1 | Vision & Structure | Document structured into four sections: Section 1: Overview includes the vision Section 2: Background Section 3: Policies and Directions Section 4: Making it happen | Guided by DPIE-PD and community feedback on improving the reader useability. |
| 2 | Why does Byron Shire need a strategy | Added bullet point: <i>'to ensure residential development is directed to areas of least biodiversity value so as to limit adverse impacts on the biodiversity, coastal and aquatic habitats and water catchments and help reduce development costs and time frames.'</i> | Guided by DPIE-BCD advice - update responds to state government environmental policy. |
| 3 | Terms throughout | Key term changes: 'accessible' to 'affordable' 'possible area for residential' to 'investigation areas' | Both guided by of DPIE-PD advice. 'Affordable' consistent with state terminology. 'Investigation area' clarifies land may be suitable for development and further detailed assessment is needed prior to being determined as a 'new release area' i.e. land identified as suitable for future urban residential development. Consistent with the NCRP, Local Strategic Planning Statement and Business and Industrial Lands Strategy (BILS) terminology. |

| # | Strategy section reference | Key revision | Basis for document change Where government agency advice – see above for acronym |
|---|---|---|--|
| 4 | Policy 1 Direction 1.2 Urban residential suitable for use principles & Appendix B | Three changes: a) lead sentence added to clarify a need for consistency with state and regional policy when applying the ‘principles’. b) ‘principle ii’ revised on farmland of state or regional significance. c) ‘principle vii’ revised and Appendix B: Protocol framework for participatory working with the Aboriginal community added. | a) & b) Guided by DPIE-PD and DPI advice. Consistent with the approved BILS ‘principles’ terminology. c) Guided by Arakwal feedback to better reflect their unique connection to their ancestral lands. This is consistent with the approved BILS ‘principles’ and protocol. |
| 5 | Policy 1 Direction 1.2 Capacity analysis & Housing supply summary An extract of Strategy Table 3 follows this table (some of this information was previously contained in Policy 3 Figure 7) | Updated subsection to reflect: – added investigation areas (IA) – infill capacity based on revised LEP 2014 minimum lot sizes for low rise medium density – a 10% allowance in new housing stock being potentially affected by short term rental accommodation (STRA). <i>How has the potential yield changed?</i> – Mullumbimby’s investigation area yield increased from 445 dwellings (2019 exhibited version) to a range of 823 – 925 additional dwellings. – Other towns and villages have overall minor variations to the 2019 stated figures. – The overall Shire wide dwelling supply to 2036 (19275 dwellings) remains consistent with the North Coast Regional Plan 2036 minimum supply figure (19,250 dwellings). | Guided by DPIE-PD and community feedback seeking greater explanation of housing needs and supply. The NCRP minimum supply figure does not allow for housing stock used as (STRA) which is recognised by the NSW government to be at very high levels in Byron Shire. STRA may occur within existing residential zone areas as well as new release areas. At the Council meeting 12 Dec 2019 it was resolved Res 19-676 to ‘investigate and apply an appropriate planning mechanism to limit 10% of the total housing stock in use as non-hosted STRA’. Mullumbimby’s additional dwellings result from additional investigation areas being included, as well as more detailed Saltwater Creek Precinct analysis of flood risk and stormwater management and a proposed R1 General Residential zone for Lot 22 (IA# 7 – as reported to Council at the November 2020 planning meeting). |
| 6 | Policy 1 Direction 1.2 - Land for housing Actions 5,6,7,& | New subsection on ‘investigation areas’ cross referenced to new Strategy Actions 4,5, 6 & 7 and Appendix C Investigation area profiles containing: | Guided by DPIE-PD advice and community feedback requesting for greater clarity on the process moving forward. The profiles give clarity to the |

| # | Strategy section reference | Key revision | Basis for document change Where government agency advice – see above for acronym |
|---|---|--|--|
| | 8 & Appendix C | <ul style="list-style-type: none"> – area image – a brief description of strengths – housing diversity, character and affordability contribution – key issues requiring investigation – infrastructure planning matters: <ul style="list-style-type: none"> • staging - Mullumbimby only • flooding and stormwater management • movement and access • water and sewer including potential reuse water distribution systems. <p>Staging priority given to areas most likely to deliver the highest proportion affordable housing. Under staging, stage 2 lands would not be supported to progress to a planning proposal until post June 2024.</p> | <p>investigation process and housing outcomes sought.</p> <p>The staging program applied to assist with Mullumbimby’s infrastructure upgrade delivery. Elements include: a new water treatment plant; an extended Rous Water connection into Mullumbimby; and reuse water distribution mains construction.</p> <p>The prioritising is consistent with Strategy Direction 2.2 supporting affordable housing delivery.</p> <p>A reuse water system is part of Council’s evolving framework for guiding the strategic direction of (recycled) water management.</p> |
| 7 | Policy 1 Direction 1.2 - Land for housing Additional investigation areas | <p>Added the following investigation areas to the strategy:</p> <ul style="list-style-type: none"> i. part of 20 Prince Street Mullumbimby. ii. 124,127,130 -134 Station Street Mullumbimby iii. part of the land part of Lot PT32/1169053 located east of Tuckeroo Avenue. iv. 31 Ballina Road Bangalow. | <p>As addressed in the report to Council’s 18 June 2020 planning meeting (<i>Res 20-276</i>), Submission summary review report (Attachment ‘1’) and <i>Submissions on additional lands (August 2020)</i> section of this report.</p> <p><i>Res 20-276</i> Planning meeting June 2020</p> |
| 8 | Policy 1 & 3 Strategy maps & investigation areas numbers | <p>Strategy Policy 1 Maps 1 - 6 combine infill, pipeline and investigation areas on a by town or village. The investigation areas have been renumbered. To view Maps see approx. page 34 of the Strategy (Attachment ‘6’).</p> | <p>Changes to improve usability of maps.</p> <p>New numbering provides a more logical sequence.</p> |
| 9 | Policy 1 Action 3 | <p>Revised wording including looking at affordable housing options as part of Council car parks.</p> | <p>Action amended to capture Council <i>Res 20-26</i>. February Council meeting, possible future opportunities yet to be identified and to better align with concepts in the ‘Explanation of</p> |

| # | Strategy section reference | Key revision | Basis for document change Where government agency advice – see above for acronym |
|----|--|--|--|
| | | | intended effects' in the SEPP Housing Diversity. |
| 10 | Policy 2 Action framework & Action 17 (old action 15) | Revised to include an explanation and updated action on a SEPP 70 Affordable housing contribution scheme. | Affordable housing provisions are consistent with Res 19-636 Council meeting 12 Dec 2019 and Res 20-365 Planning meeting 13 August 2020 - Affordable Housing Contribution Policy. Funding is provided in the 2020-21 budget for progression of Action 17. |
| 11 | Policy 2 Table 5 (old figure 6) See extract of Table 5 below this table Also Appendix F Key housing terminology and definitions – definitions of lots included. | A revised Table 5 – Lot diversity and size mix now shows a mix combination in relation to residential zones. The lots comprise: <ul style="list-style-type: none">– Micro lot– Compact Lot– Traditional lot– Medium density lot Facilitates new release land to generally have: <ul style="list-style-type: none">– R2 & R3 Zones - 45% of lots secured for low rise medium density housing and/or compact lots.– R1 General Residential Zone - 40% lots secured for medium density housing and/or micro lots. | Guided by DPIE – PD and community feedback and emerging provisions for a Lot 22 - R1 General Residential Zone in response to investigative work. A lot size mix allocation is viewed as an appropriate means to meet the requirements of the North Coast Regional Plan 2036 – Action 23.1. 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.' Definitions inserted in response to community request for greater explanation of terms. |
| 12 | Policy 2 Actions | Revised actions to reflect early implementation progress in the delivery of a number of actions such as LEP minimum lots sizes for manor houses. | Revisions reflect more recent work by Council. |
| 13 | Policy 2 Actions & Appendix D | Draft criteria for affordable housing and social housing, urban villages intentional community refined and included as Strategy Appendix D. | Criteria in the 2019 exhibition were separate to the strategy document. Intentional community criteria refined with a community member's input. Affordable housing refined to reflect more recent work in this space by Council such as the Affordable Housing Contribution Policy. |

| # | Strategy section reference | Key revision | Basis for document change Where government agency advice – see above for acronym |
|----|---|--|---|
| 14 | Policy 3 Character Narratives and Action 21 (old 18) Appendix E | Character narratives removed. Action revised to note Development Control Plan (DCP) local residential character narratives will be supplemented by a local residential <i>Style Guide</i> over the coming year. Community ideas and initiatives to assist with this work moved to Strategy Appendix E. | Narratives removed as have now been included in the DCP 2014. The DCP versions reflect feedback from residential strategy submissions as summarised in the submissions report (Attachment '1'). Consistent with Council Res:20-473 Planning meeting 17 Sept 2020 Funding provided in the 2020-21 budget for delivery of Action 21. |
| 15 | Policy 4 Action 25 (old 22) | Revised to consider the implications to land owner existing use rights. Pertains to a possible change from residential to tourism zone in the Shirley St north area. | Guided by DPIE – PD and landowner feedback. |
| 16 | Section 5 Monitoring and review | Added new dot point – “examine the local environmental plan minimum lot size provisions for low rise medium density development, and assess whether the provisions as they stand continue to successfully support meeting Byron Shire local housing needs”. | Responds to DPIE – PD’s comment for the Strategy to consider alternative options for housing should the some investigation areas (on closer examination) not yield the dwelling numbers anticipated. |
| 17 | Appendix F Housing Terms and definitions | Added the following to the key worker list: cleaners, property maintenance (handymen, plumbers, carpenters, electricians, garden maintenance). | The inclusion was suggested by a community member and is appropriate as it supports the tourism component of the Byron Shire economy. |

Extract of Residential Strategy ‘Table 3’ summarising possible dwelling yields by land source and locality (as referenced in #5 above):

| Table 3: Estimate of Dwelling Yield by Land Supply Type and Locality | | | | | | | |
|---|-------------------------------------|--|---|---|---------------------|---|--|
| Urban locality <i>(map ref)</i> | Existing dwellings (census 2016) | Dwellings commenced 2016-2017 <small>source: Housing and Land Monitor</small> | Approved for residential and zoned vacant | Infill based on current zoning - dispersed locations ⁵ | Investigation areas | Summary total additional dwelling capacity 2016 - 2036 (rounded) | Total projected dwellings capacity as at 2036 (rounded) |
| Mullumbimby (1) | 1,774 | 37 | 231 | 160 ² | 925 ³ | 1,355 ³ | 3,130 |
| | 0 | 0 | 0 | 0 | 823 ⁴ | 1,250 ⁴ | 2,995 |
| Bangalow (2) | 745 | 32 | 105 | 85 | 96 | 315 | 1,065 |
| Brunswick Heads (3) | 1,025 | 9 | 213 | 43 | 0 | 265 | 1,290 |
| Byron Bay & Sunrise (4) | 3,039 | 95 | 800 ¹ | 113 | 33 | 1,040 | 4,080 |
| Suffolk Park (4) | 1,699 | in above figure | 0 | 95 | 0 | 95 | 1,795 |
| Ocean Shores, Sth Golden Beach, New Brighton (5) | 2,966 | 55 | 21 | 211 | 0 | 290 | 3,255 |
| Combined Urban areas (6) | 11,248 | 228 | 1,370 | 707 | Range 952 – 1,054 | Range 3,250 – 3,355 3,300 as av. (88% of new ⁶) | Range 14,500 – 14,600 14,550 as av. |
| Rural areas | 4,294 | - | - | - | - | 430 (12% of new) | 4,725 |
| Shire total | 15,542 | - | - | - | - | 3,732 | 19,275⁷ |

Note 1. Based on West Byron providing 650 additional dwellings, it is noted that this figure may be subject to review pending court case determinations

Note 2. Hospital part of infill figure

Note 3. Scenario 1 Yield – based on private landowners for investigation areas using a Residential Strategy R2/R3 diversity lot mix & R1 mix for Council land

Note 4. Scenario 2 Yield – based on all investigation areas using a Residential Strategy R2/R3 diversity lot mix – refer to Policy 2: Table 5 for an explanation

Note 5. These estimates are based on current regulations and anticipated infill take-up range of 10 to 15%.

Note 6. Consistent with Strategy Policy 1 Direction 1.1

Note 7. Aligns with the North Coast Regional Plan 2036 - Figure 10: Minimum housing supply (2016-2036) - Byron Shire; 19,250 dwellings

Extract of Residential Strategy Table 5: Lot Diversity and size mix for land identified within investigation areas (as referenced in #11 above):

5

| Column 1 – Lot type | Column 2 - Mix of lots per net developable area | | | Column 3 - Lot size range |
|--|---|-------------------|------------------------|---|
| | A: Zone R1 | B: Zones R 2 & R3 | C: R2 along Ballina Rd | |
| Type A Traditional lots | 10% | 10% | 70 | 450 – 799m ² |
| Type B compact lots | 51% | 35% | 30 | 201 – 449m ² |
| Type C medium density lots | 12% | 45% | 0 | 800m ² - 1,400m ² |
| Type D micro lots | 27% | 10% | 0 | 50 - 200m ² |
| Byron bespoke intentional communities | As appropriate | As appropriate | As appropriate | As appropriate |

Background Report updates

10 The Strategy looks at population projections and the expected demand for new dwellings. In determining where and how to best deliver new housing in Byron Shire urban areas, an evidence-

based analysis of land use planning issues has been undertaken over a number of years to support the Strategy policy, directions and actions. The background report provides a culmination of this contextual information under the following themes:

- collective strategic thinking
- 5 • planning framework – includes the state policy consistency for investigation areas
- residents, households and housing types
- land for housing – infill and new release, dwelling yield and population estimates and supporting infrastructure
- 10 • Affordable housing contribution scheme analysis - steps 1 & 2 undertaken by Judith Stubbs and Associates providing a preliminary analysis to demonstrates basis for implementation of a scheme in Byron Shire.

Summary and next steps

- 15 The Residential Strategy (Attachment ‘6’) is consistent with the relevant State policies and directions and the North Coast Regional Plan. It’s findings and actions have sufficient merit to be supported for forwarding to the NSW Department of Planning, Industry and Environment for endorsement, together with the following documentation:
- 20 • copy of this report
 - final Residential Strategy for consideration and adoption (Attachment ‘6’)
 - Residential Strategy Background Report containing a compilation of analysis that has informed the final Strategy (Attachment ‘7’).
 - 25 • Submissions Review Report in relation outstanding key issues raises during the 2019 exhibition as not yet reported to Council and the additional sites as exhibited in August 2020 (Attachment ‘1’) – will form part of the Background Report
 - copies of submissions from the August 2019 exhibition (Attachment ‘2’: 2019 - Government agency submissions and Attachment ‘3’: 2019 - Confidential community submissions)
 - 30 • copies of submissions from August 2020 additional lands exhibition (Attachment ‘4’: 2020 - Government agency submissions and Attachment ‘5’: 2020 - Confidential community submissions)

This forms the basis of report Recommendation 4.

35 STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

| CSP Objective | L2 | CSP Strategy | L3 | DP Action | L4 | OP Activity |
|---|-----|---|-------|--|---------|--|
| Community Objective 4: We manage growth and change responsibly | 4.2 | Support housing diversity in appropriate locations across the Shire | 4.2.1 | Establish planning mechanisms to support housing that meets the needs of our community | 4.2.1.4 | Finalise the Residential Strategy |

40

Legal/Statutory/Policy Considerations

The changes outlined in Tables 1 and 2 to enable finalisation of the Residential Lands Strategy are consistent with the relevant Commonwealth, State and Regional policy frameworks.

5

Financial Considerations

The cost of preparing the draft Residential Strategy has been met within Council's budget for this project. Additional funds may be required should Council decide to significantly expand the scope of this project.

10

Consultation and Engagement

Various agencies, land owners and the community as outlined in this report.

Report No. 13.4 **Federal Community Led Masterplan - Project Scope**
Directorate: Sustainable Environment and Economy
Report Author: Andrew FitzGibbon, Place Liaison Officer
File No: I2020/1776

5

Summary:

10 On 27 August 2020, Council resolved to initiate working with Federal community representatives to develop a project scope for a community led Federal Village Masterplan (*refer Res 20-418*).

15 On 15 September 2020, Council met with representatives from the Federal Community Centre and the Federal School of Arts Association to initiate the project.

15 The proposed scope within this Council Report is the result of considerable effort from this initial working group and includes information on the:

- 20 • Project Aim
- 20 • Study Area
- 20 • Steering Group
- 20 • Decision Making Authority
- 20 • Reporting and Support
- 25 • Community Consultation
- 25 • Budget
- 25 • Short Term Urgent Projects
- 25 • Milestones

RECOMMENDATION:



That Council:

1. **supports this community-led approach to masterplanning for the Village of Federal and recognises it as the next evolution of place planning for Byron Shire.**
2. **thanks the Federal Community Village Steering Group for their work and efforts to date.**
3. **endorses the Federal Community Village Masterplan Steering Group to undertake the project work as per the project scope detailed in this Council Report.**
4. **agrees to endorse as presented a Federal Village Masterplan as proposed by the Federal Village Masterplan Steering Group, subject to it being demonstrated that:**
 - **community consultation has been carried out, generally in accordance with the communications and engagement plan (in Attachment 1 E2020/93026), ensuring that primary stakeholders have been given adequate opportunity to have meaningful involvement, and demonstrating that there is general community acceptance of the final masterplan within the Federal community;**
 - **agreed milestones have generally been met;**
 - **any proposed actions are realistic and achievable in terms of Council budget limitations;**
 - **timeframes put forward for proposed actions are cognizant of Council's forward works planning to ensure shire-wide project delivery is economical and efficient;**

and

- any proposed actions adequately consider safety, lawfulness and other community risks.
5. allocates \$5,500 from Council's budget (GL2715.13) to enable project work to begin.
 6. allocates up to \$10,000 for production of a short video to capture the community-led masterplan process for future use and reference by Council (as detailed in Attachment 2 E2020/91213), with the budget allocation to be staged, \$2,000 initially from (GL2715.13), with the remaining \$8,000 to be considered as part of the quarterly budget review in February 2021.
 7. acknowledges that a detailed design of the Federal Village main street is a priority 'construction grant ready' project, and that a forward budget bid be considered for the 2021/22 operational plan process.

Attachments:

- 1 Federal Village Masterplan Project Scope Full Report Nov 2020, E2020/93026 
- 5 2 Short Film Proposal - Federal Village Masterplan Process, E2020/91213 

REPORT

Background

5 On 27 August 2020 Council resolved to initiate working with Federal community representatives to develop a project scope for a community led Federal Village Masterplan (**refer Res 20-418**).

Council resolved to:

- 10 1. *Endorse staff initiating work on a community led plan for the Federal Village.*
2. *Request staff to proceed with a community scoping meeting to be held during September/October, to explore the purpose and nature of the Federal Village plan and the process to prepare the plan.*
- 15 3. *Receive a further report on the outcomes of the community scoping meeting by or before the December meeting of Council.*
4. *Request staff to prepare a Draft Movement and Access Study as a foundation document for collaboration and co-design with the community, incorporating the following*
- 20 a) *Identify and map local transport networks (Roads, lanes, park, paths, shortcuts etc).*
- b) *Identify and map transport infrastructure links beyond the Village precinct.*
- c) *Identify all transport modes and services including school buses.*
- 25 5. *The Access and Movement mapping be used during scoping discussions to*
- a) *Explore patterns of human movement in and around village as well as preferred routes and modes in and out of the Village.*
- b) *Explore barriers, incentives and disincentives for particular modes (e.g. barriers to increasing active transport).*
- c) *Identify visitor travel patterns, modes and behaviours.*

30 On 15 September 2020, Council met with representatives from the Federal Community Centre and the Federal School of Arts Association to initiate the project.

This initial working group of community representatives has proposed the following project scope for a community led Federal Village Masterplan. The information provided in this report is an abridged version of the full report that the working group has developed as per Attachment 1.

35 ***Overview***

40 The Federal community is going through a transformation. Increases in population, tourism, events, commercial and residential developments, traffic and a changing demographic has put a huge strain on the already exhausted infrastructure, which in turn means the existing village Development Control Plan (DCP), is no longer fit for purpose.

45 The Federal Village Masterplan, created through a community led planning process, will be an adaptive plan for sustainable development in and around Federal village for the next 20 years (reviewable every 5 years). The Masterplan will be created by the Federal community with extensive local consultation, will primarily support the objectives of a liveable, community-orientated village, and ensure a future that addresses the issues and requirements of its residents and the environment.

50 ***Aim***

The aim of the project is:

- to establish a shared vision for Federal, prioritising actions that align with that vision;

- to develop a formal and collective document that will provide the strategic basis to promote and fund priorities actions;
 - to produce a Masterplan that will be adopted by Council as one of Byron Shire’s Place Planning Strategies and feed into future statutory planning documents; and,
- 5
- to test community led planning – a new way of doing things – that could be a framework for the whole Shire going forward.



Aerial photo of Federal Drive showing the village core

10

Study Area

The project study area is defined below. This includes:

- Focus Area – Federal Village RU5 (Village Zone) and the adjacent R5 (Large Lot Residential) properties. This area is the main focus for the project.
 - Context Area – Greater Village impact area. Incorporating the four main access roads and surrounds.
- 15

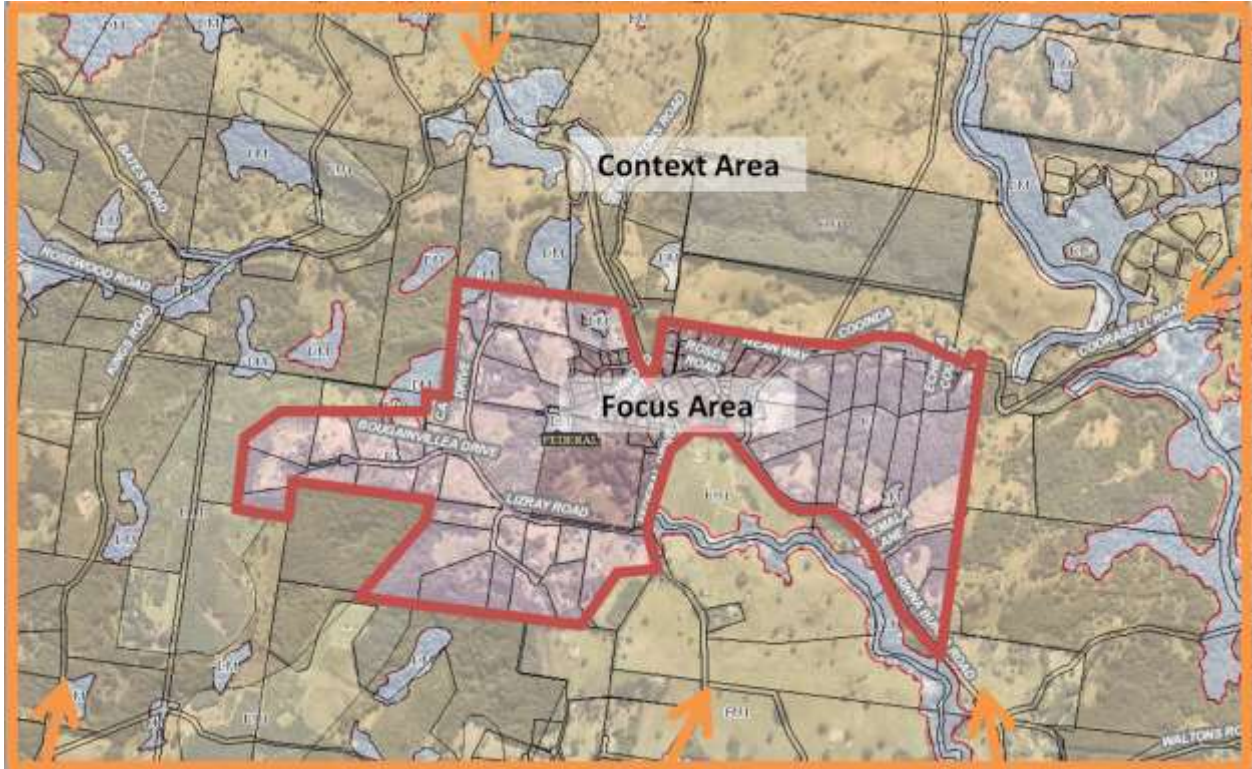


Figure showing project study area and key access roads into the village

Steering Group

5

The community will run this masterplan process. It will be coordinated by The Federal Community Centre (FCC), the main community representative group in Federal Village. For this project, the FCC has joined forces with the other long-established community group, the Federal School of Arts Association Inc. (FSAAI).

10

The Federal Village Masterplan Steering Group will sit within the legal framework (Inc. Assoc) of Federal Community Centre.

15

The Steering Group of eight members, drawn from the community, will be able to expand by up to five further members to no more than thirteen members.

The initial Steering Group members are as follows.

20

- Gary Haughton, President FCC
- Toni Appleton, Secretary FCC
- Megan Passey, FSAAI Management Committee member.
- Alan Goldstein, President Federal Film Society/Treasurer FCC
- James Mayson, President Federal Landcare/ FCC committee member
- Julie Lipsett, Federal Loves Refugees founder/FCC committee member/Byron Shire Council Public Arts Panel

25

- Ant Solomon, FCC committee member
- Megan Louis, FCC committee member

30

The other potential five members of the expanded Steering Group will be agreed to by this group as applications are received. Request for nominations to join the Steering Group will be communicated as part of an initial mail out and letterbox drop to residents and landowners.

The Steering Group will assess nominations based on selection criteria as defined in Attachment 1.



Photo of Federal Drive looking south towards the commercial centre, with community facilities in the foreground

5

Decision Making Authority

10 It is proposed to align this community led planning process with the public participation goal 'Empower' from the International Association of Public Participation (IAP2 - 2018) spectrum definitions adopted by Byron Shire Council.

This would mean that Byron Shire Council will endorse the Federal Village Masterplan as proposed by the Federal Village Masterplan Steering Group, subject to it being demonstrated that:

- 15 • community consultation has been carried out, generally in accordance with the communications and engagement plan (refer Attachment 1), ensuring that primary stakeholders have been given adequate opportunity to have meaningful involvement, and demonstrating that there is general community acceptance of the final masterplan within the Federal community;
- 20 • agreed milestones have generally been met (or as amended);
- any proposed actions are realistic in terms of Council budget limitations;
- any proposed action timeframes are cognizant of Council's forward works planning to ensure shire wide project delivery is economical and efficient; and,
- 25 • any proposed actions adequately consider safety, lawfulness and other community risks.

25

| | INFORM | CONSULT | INVOLVE | COLLABORATE | EMPOWER |
|---------------------------|--|--|---|---|--|
| PUBLIC PARTICIPATION GOAL | To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions. | To obtain public feedback on analysis, alternatives and/or decisions. | To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered. | To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution. | To place final decision making in the hands of the public. |
| PROMISE TO THE PUBLIC | We will keep you informed. | We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision. | We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision. | We will look to you for advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible. | We will implement what you decide. |

Figure showing the IAP2 Spectrum of Public Participation

Reporting and Support

5

The aim is to have an empowered and well supported Steering Group.

Reporting: The Steering Group will report directly to Council with the assistance of Council’s Place Liaison Officer and Council’s Executive Team.

10

Support: The Steering Group would be supported by Councillors and Council staff as follows.

Councillors:

15

- Councillors will be invited to public community meetings and advised of other critical moments in the process that they may want to participate in.

Council Staff:

20

- Council’s Place Liaison Officer will be the Steering Group’s primary contact and attend Steering Group meetings.
- Other Council staff will be invited to attend meetings and workshops on an as needed basis.
- A one-day information session will be provided to the Steering Group detailing relevant Council strategies and processes (refer to Attachment 1 for more information).

Place Planning Collective:

25

- A representative from The Federal Village Masterplan Steering Group would join the Place Planning Collective and attend the monthly meetings.
- The Place Planning Collective is able to provide support and mentorship as needed.

Consultation and Engagement

30

A communications and engagement plan is included in Attachment 1.

The aim of this plan is to ensure that the masterplan process fairly includes the stakeholders noted below.

The primary stakeholders are:

- 5 • Residents (within scope Focus Area)
- Landowners (within scope Focus Area)
- Aboriginal elders from Arakwal and Widjabal Wia-bal of the Bundjalung Nation
- Local business owners (within scope Focus Area)
- Locals schools and preschools (within scope Focus and Context Area)
- 10 • Local community organisations (within scope Focus and Context Area)
- Relevant transport companies
- Byron Shire Council
- Relevant state agencies

- 15 The consultation objectives are:
 - Inform stakeholders of the Federal Village Masterplan aims, scope and process; and where to go to for more information.
 - Encourage their involvement in developing the plan (by creating/joining working groups, responding to survey/emails, attending community sessions).
- 20 • Share the analysis of the submissions and feedback, and how it will shape the final plan.
- Share the final submitted plan.
- Share the decision(s) made by Councillors/Council on the submitted plan.
- Outline how and when the outcomes of the plan will be delivered to the community.

- 25 Major consultation events will be led by a professional facilitator (Cath Fisher: Associate Professor, Southern Cross University) using deliberative democracy methodology.

Community consultation will also comply with Council’s Community Participation Plan, which will require a 28 day exhibition period for the draft Masterplan.

- 30 The final report to Council will need to demonstrate that community consultation has been carried generally in accordance with the communications and engagement plan (refer Attachment 1) and to a level that it is clear that the primary stakeholders have been given adequate opportunity to have meaningful involvement.

35 ***Financial Considerations***

| Item | Description |
|--------------------------------------|--|
| \$5,500 | To cover initial costs for: <ul style="list-style-type: none"> • Communication and promotion materials and advertising fees • Independent professional facilitator for community meetings • Audio Visual contractor for community meetings • Mail out costs |
| Council Staff – in kind contribution | <ul style="list-style-type: none"> • Place Liaison Officer attendance at regular meetings and ongoing support • Other Council officers targeted involvement • Assistance from Council mapping unit to produce maps for use in the process. • Administrative/Secretarial services support from Council, including photocopying. |

| | |
|-----------------|--|
| \$5,500 | Subtotal to start project |
| Optional | Description |
| Up to \$10,000 | • Audio Visual Production of the masterplan process (refer Attachment 2) |
| \$10,000 | Subtotal optional extras |

Masterplan Deliverables

5 The Federal Village Masterplan will be documented in an illustrated report that includes the following topic areas.

| Chapter Topic | Description |
|---------------------------|---|
| 1 Where have we been? | Background chapter that describes: <ul style="list-style-type: none"> • History and character |
| 2 Where are we now? | Baseline chapter that describes: <ul style="list-style-type: none"> • Demographics • Movement and access • Community place values • Other themes depending on scope focus |
| 3 Where are we going? | Analysis chapter that describes: <ul style="list-style-type: none"> • Trends affecting the community • Identified risks, challenges or opportunities |
| 4 Where do we want to be? | Vision chapter that describes: <ul style="list-style-type: none"> • 20 year vision for Federal Village • Supporting principles |
| 5 How do we get there? | Actions chapter that describes: <ul style="list-style-type: none"> • A short list of well defined priority actions that are realistically implementable and are aligned with the vision • Actions to be detailed as described below |
| 6 Are we getting there? | Implementation chapter that describes: <ul style="list-style-type: none"> • Indicators to monitor and measure success over time |

Any action or project listed in the Masterplan will describe:

- a clearly defined scope
- 10 • cost estimate and potential funding stream
- timing
- responsibility
- category
- impact rating (the level of positive impact the action will have)
- 15 • consistency with other plans (for example council's operating plan, PAMP or bike plan)
- priority level (in the context of the other actions listed)

Short Term Urgent Project – Federal Village Movement and Access Detailed Plan

20 While many of the Federal Village Masterplan actions will not be described in detail until the process is complete, it is clear from previous work and the motivation of this project that there is an urgent need to fund and commence a Movement & Access Detailed Plan for the Federal main

street. Identified as the number one concern of residents, this item should not wait to begin until the end of initial community discussions because it is the core of all other discussions. It is the foundation block for detailing the remaining focus points of the Masterplan, whose details cannot be advanced without the results of this item.

5

Establishing this detailed plan would enable Council to be ready to apply for future grants to construct the main street upgrades when they arise.

This project study area and scope is detailed below.

10

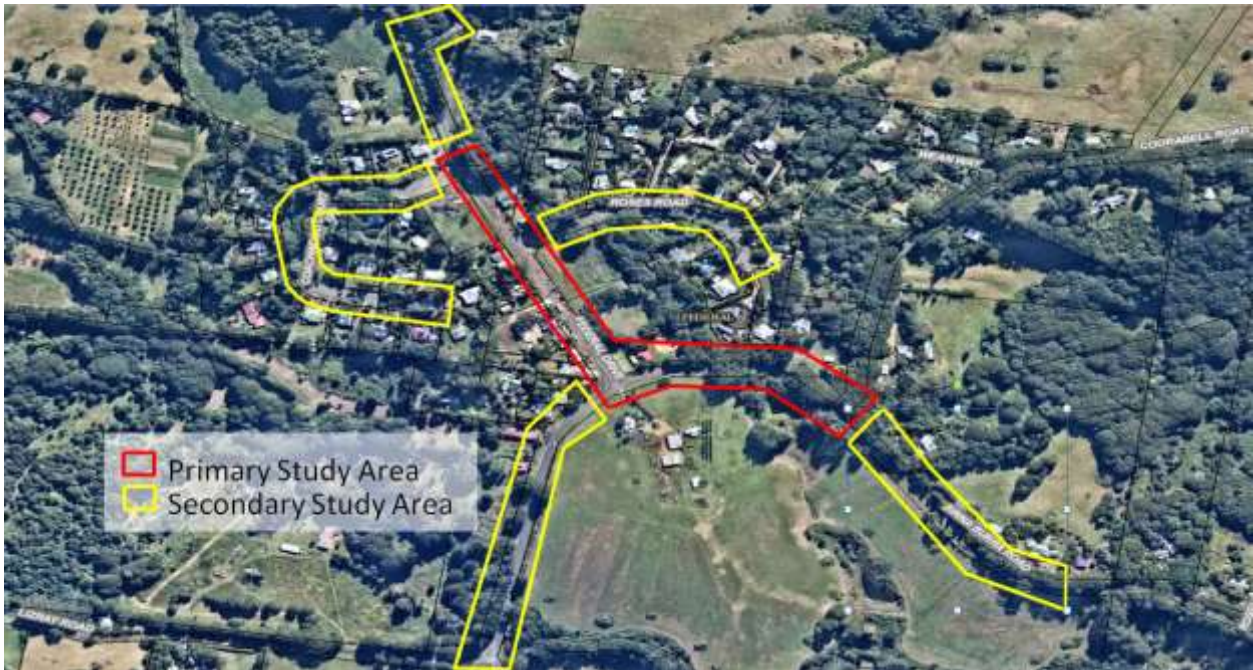


Image of Movement and Access Detailed Plan study areas

| Title | Federal Village Masterplan Movement and Access Detailed Plan |
|--|--|
| <p>Scope</p> | <p>Refer to plan below in relation to scope Study Areas. The Plan, should where possible anticipate future needs into design outcomes.</p> <ul style="list-style-type: none"> • For Primary Study Area (red): Provide a detailed plan for Federal, - 550m approximate length. Plan to include detailed design of pedestrian paths and crossings, cycle provisions, carriage way, bus stops, parking, speed limits, landscaping, and stormwater management; • For Secondary Study Area (yellow): Provide a integrated plan for approach roads to the main street to identify speed limits, traffic calming measures and other consideration which arise (e.g. PAMP/Bike Plan requirements); and • Cost estimate of works |
| <p>Project Preparation Work</p> | <p>Background Movement and Access study. This could be carried out by community and staff and is aligned with the Council Resolution from 27 August 2020 (refer Res 20-418). Study to analyse:</p> <ul style="list-style-type: none"> • pedestrian movements and barriers to these; • cyclist movements and barriers to these; • bus networks; • private vehicle movements and car parking; |

| Title | Federal Village Masterplan Movement and Access Detailed Plan |
|------------------------------|---|
| | <ul style="list-style-type: none"> • other key streetscape elements such as stormwater management and landscaping; and • gather and consolidate current & previous town planning information around pedestrian and bike paths with a view to acknowledgement and perhaps expansion during this Movement Study. <p>Detailed project brief development by Steering Group and staff. To include project aims and objectives etc.</p> |
| Background | <p>Establishing this detailed plan would enable Council to be ready to apply for future grants to construct main street upgrades.</p> <p>The outcomes of this detailed plan will have a large bearing on other parts of the Federal Village Masterplan under discussion.</p> |
| Cost Estimate | \$65,000 (to be confirmed) |
| Timing | July to December 2021 (if survey already complete) |
| Responsibility | <p>Byron Shire Council to procure consultant to undertake the work.</p> <p>The Federal Village Masterplan Steering Group to be part of the brief development and tender selection process.</p> |
| Category | Infrastructure |
| Impact Rating | <p>High</p> <p>This project would be a step forward to address existing pedestrian safety risks. It would also provide broad benefit to residents, businesses and visitors who all use the village centre.</p> <p>The outcomes of this detailed plan will have a large bearing on other parts of the Federal Village Masterplan under discussion.</p> |
| Strategic Consistency | <p>Would need to align with the Pedestrian Access and Mobility Plan Action FE001.</p> <p>To align with community action plans around road safety, greenspace and 'Living Village'.</p> |
| Consultation | The consultant would work closely and directly with the Federal Village Masterplan Steering Group and key stakeholders. |
| Priority Level | High |

Ongoing Federal Projects

5 It is noted that there are several other on-going more detailed projects that are being progressed alongside a masterplanning process. These include the Federal Village Common; Federal Park Improvements; Federal Hall Improvements; and, Crown Land Long Term Use. Further information on these projects can be found in Attachment 1.

Milestones

10 Refer to Attachment 1 for detailed timeframes.

| | Masterplanning | Movement & Access Detailed Plan |
|-----------------|--|---------------------------------|
| Jan 2021 | First community consultation letter sent, including invitation for others to | |

| | | |
|---------------------|--|--|
| | nominate for Steering Group. | |
| Feb 2021 | Wider Steering Group predominately established | Council Meeting – to recommend budget bid for Movement and Access Detailed Plan |
| Mar-May 2021 | Consultation and Drafting | Project preparation work complete (including 1. Movement and Access Background Study and 2. Project Brief) |
| June 2021 | Consultation and Drafting | (Council Budget Meeting) |

Note that milestones identified beyond this point are contingent on the Movement and Access Detailed Plan funding being confirmed by Council.

| | Masterplanning | Movement & Access Detailed Plan |
|------------------|---|--|
| July 2021 | Consultation and Drafting | Consultant appointed and briefed |
| Aug 2021 | Consultation and Drafting | Consultation and Drafting |
| Sept 2021 | Draft Report | Draft Report |
| Oct 2021 | Council (Planning) Meeting – to seek endorsement to go to formal exhibition of Draft Masterplan | |
| Nov 2021 | Exhibition of Draft Masterplan for 28 days | |
| Dec 2021 | Council (Planning) Meeting – to seek endorsement of Federal Village Masterplan | Final Report |

5

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

| CSP Objective | L2 | CSP Strategy | L3 | DP Action | L4 | OP Activity |
|---|-----------|--|-----------|--|-----------|---|
| Community Objective 4: We manage growth and change responsibly | 4.1 | Support the visions and aspirations of local communities through place-based planning and management | 4.1.1 | Develop, implement and update Place Plans that promote place-based forward planning strategies and actions | 4.1.1.6 | Investigate priority needs for future masterplans |
| Community Objective 4: We manage growth and change responsibly | 4.1 | Support the visions and aspirations of local communities through place-based planning and management | 4.1.1 | Develop, implement and update Place Plans that promote place-based forward planning strategies and actions | 4.1.1.8 | Develop a community led master planning process for Federal village |

Legal/Statutory/Policy Considerations

5 The proposed masterplan will not be a statutory document. However, it would be used to inform or initiate future changes to the Byron Local Environmental Plan 2014 and the Byron Development Control Plan 2014. It will also be used to assist with development application assessment.

Financial Considerations

10 As discussed in the report.

Consultation and Engagement

As discussed in the report.

15 Note that Community consultation will comply with Council's Community Participation Plan that requires a 28 day exhibition period for the draft Masterplan.

Report No. 13.5 PLANNING - 26.2017.6.1 - Byron Bay Town Centre Planning Controls - Update and Next Steps

Directorate: Sustainable Environment and Economy

Report Author: Isabelle Hawton, Planner

5 File No: I2020/1447

10 Summary:

This report addresses proposed amendments to planning controls applicable to development within the Byron Bay Town Centre.

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

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

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

25 Council considered a report on the most recent public exhibition (37 submissions received) in April 2020. At that meeting, Council resolved to defer further consideration of the proposal, to allow investigation of the potential to apply the proposed Affordable Housing Contributions Scheme across the town centre (**Res 20-151**).

30 This work has now been undertaken and it is appropriate to consider next steps for the amended Planning Proposal and Development Control Plan (DCP) Provisions.

35 As exhibited, the Planning Proposal included amending the zoning from B2 to B3; removal of Floor Space Ratio as a built form development control; changes to the car parking rates; changes to the flood planning provisions; the introduction of design excellence and active street frontage provisions in the Byron Local Environmental Plan 2014; and the introduction of a specific DCP Chapter to govern development in the Byron Town Centre.

40 Based on assessment of the public submissions, deletion of the Floor Space Ratio (FSR) control is no longer proposed. Concern was raised that without replacing that control with additional provisions to establish a 3D building envelope, deleting the maximum FSR requirement would be counter-productive to achieving good design outcomes. Further assessment also indicates that the current FSR limit of 1.3:1 is not a significant limiting factor for development in the town centre.

45 Further to the Design Excellence provisions, staff have now created a Policy and Procedure that outlines the process and initiates the application of the Design Excellence Panel. Further adjustments to the DCP are recommended to enhance and strengthen the design excellence provisions.

50 The recommended changes to car parking remain. It is noted, however, that work is currently being undertaken to deliver peripheral parking options around the town centre. It is suggested final implementation of the amended car parking controls should not occur until the peripheral 'sending areas' are established.

Given the changes to the proposal as previously exhibited, it is likely that the Gateway determination will need to be amended. It is recommended that, subject to the amended Gateway, the amended provisions be further exhibited.






5 NOTE TO COUNCILLORS:

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

RECOMMENDATION:

1. **That Council forward the Planning Proposal in Attachment 1 (E2020/71526)) to the Department of Planning Industry and Environment to request an amended gateway determination. That Council then exhibit the Planning Proposal as required by the Department.**
2. **That Council exhibit the amended DCP Chapter E10 in Attachment 2 (E2019/91843), and receive a further report on completion of the exhibition period.**
3. **That Council approve the Design Excellence Policy contained in Attachment 3 (E2020/21765) for exhibition in accordance with the Local Government Act 1993 and receive a further report at the close of submissions.**
4. **That Council approve the Design Excellence Panel Procedure contained in Attachment 4 (E2020/21922) for exhibition in accordance with the Local Government Act 1993 and receive a further report at the close of submissions.**

15 **Attachments:**

- 1 26.2017.6.1 Planning Proposal (Post Exhibition version), E2020/71526 
- 2 26.2017.6.1 DCP 2014 Chapter E10 Byron Bay Town Centre (Post exhibition version), E2019/91843 
- 20 3 26.2017.6.1 Draft Design Excellence Policy, E2020/21765 
- 4 26.2017.6.1 Draft Design Excellence Panel Procedure, E2020/21922 
- 5 Form of Special Disclosure of Pecuniary Interest, E2012/2815 

25

REPORT

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

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

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

- 15 • Change the zoning of the Town Centre from the current B2 Local Centre, to B3 Commercial Core, and apply that zoning to the entirety of the area currently zoned B2.
- Maintain the current maximum building height at 11.5m within the LEP and introduce new provisions within Byron DCP 2014 to clarify that the maximum height will be three (3) storeys.
- 20 • Amend the LEP to provide that, for flood prone land within the Town Centre, the 11.5m maximum building height is measured from the applicable Flood Planning Level rather than natural ground level.
- Amend the Building Heights Map to extend the area within which a maximum height of 11.5m applies to land bounded by Lawson Street to the south, Bay Lane to the north, Jonson Street to the west and Middleton Street to the east.
- 25 • Introduce new provisions within the DCP to set minimum floor to ceiling heights for mixed use buildings in the Town Centre.
- Amend the Floor Space Ratio Map to remove the control from within the Byron Bay Town Centre.
- 30 • Amend the LEP to introduce new clauses requiring that applications for new buildings demonstrate Design Excellence, and that streets and laneways are activated at ground level.
- Amend the car parking provisions within the DCP, in relation to the Town Centre, to specify a maximum rather than minimum number of spaces for residential and / or tourist accommodation proposed above ground floor level, with the option for developers to 'opt out' of providing any parking for those uses, in exchange for practical measures that will provide and promote sustainable transport alternatives. (Current parking rates will continue to be applied for ground floor commercial uses).
- 35

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

A positive Gateway was received from the Department on 18 June 2019, authorising formal public exhibition.

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

50 Following exhibition, Council resolved (**Res 20-151**) to note the submissions and put the planning proposal on hold to allow for further investigation of the application of SEPP 70.

Since this resolution, further work and research has been undertaken to review the proposed changes and assess the appropriateness of applying SEPP 70 to the Byron Bay Town Centre. It is now appropriate to re-exhibit the proposal, with the new changes included. It is likely Council will also need to seek an amended gateway determination in order to proceed with the proposal.

5

Application of SEPP 70 to Byron Town Centre

Under **Res 20-151** Council requested that staff consider whether the SEPP 70 Affordable Housing Contribution Policy would be appropriate for application in the Byron Town Centre. The Policy and Procedures, adopted by Council on 13/08/2020 (**Res 20-365**) suggest that the Town Centre has the capacity to contribute a potential 20 dwelling increase in affordable housing.

10

The policy is contingent, however, on this land being 'upzoned'; meaning a zoning change would need to result in an increase in housing density in this area.

15

The proposed change in zoning from B2 to B3 does not, in itself, provide for a greater density of capacity for development.

20

Given the recommendation to retain the existing FSR control, the amendments to the planning controls are no longer likely to result in an increase in residential density in the area at this time, and therefore, this issue can be parked for the interim. Future LEP amendments may affect the capacity for SEPP 70 to apply in this area.

25

Removal of changes to the Floor Space Ratio

In the exhibited Planning Proposal, it was proposed to remove the Floor Space Ratio from the Byron LEP 2014. It was argued that the Floor Space ratio was a crude form of measurement, and that better built form outcomes might be achieved through other means.

30

Many of the submissions received during the public exhibition period opposed the removal of the Floor Space ratio and argued that it is one of the few statutory tools at Council's disposal to achieve appropriate built form and scale.

35

After further reflection, and an analysis of a sample block in the Byron Town Centre, staff have determined that the Floor Space Ratio does not appear to be the only limiting factor on development in the town centre and may in fact play a role in reinforcing appropriate built form outcomes, especially when paired with design excellence controls and the introduction of the Design Excellence Panel.

40

To this end, the Floor Space Ratio of 1.3:1 is proposed to be retained. Improved built form outcomes can be achieved through the proposed DCP Chapter E10 provisions, the integration of Design Excellence Panel decisions and through the implementation of the Design Excellence Clause in the Byron Local Environmental Plan 2014.

45

Amendments to the proposed Height Allowance Map

The originally exhibited planning proposal proposed changes to way in maximum building height would be measured on flood prone land. Currently, building height is measured from existing ground level (GL) to the top of the building.

50

In the flood prone parts of the town centre, the ground floor of a new building must be set at the Flood Planning Level, which is the level of a 100 year flood, plus 0.5m. This will always be higher than existing ground level and in the town centre flood planning levels are around 1m above existing ground level.

55

Continuing to measure maximum building height from existing ground level, therefore, means that it becomes difficult to achieve optimum floor to ceiling heights without exceeding the 11.5m maximum.

- 5 The initial planning proposal suggested, therefore, that the LEP be amended to enable building height to be measure from the Flood Planning Level (FPL) rather than from existing ground level.

10 This has now been amended slightly around the northern fringe of the flood prone area, where the resultant slight increase in maximum building height could potentially be visible from the beachfront. The suggested changes now ensure that visual impacts associated with the 11.5m height limit along the northern side of Lawson Street are avoided.

15 **Further additions to the DCP 2014 Relating to Green Infrastructure, Heritage and Roof Form, Access and Use**

In response to the comments made in the public exhibition period, and further research and analysis by Council staff, further clauses have been added to the Draft DCP Chapter for Byron Town Centre.

- 20 Heritage considerations have been re-iterated, emphasising the importance of the built form integrating with Heritage Items in the area, including the curtilage and other features.

25 There has been clarification added about the role, description and importance of green infrastructure – meaning green walls, roofs and street trees. This infrastructure is not only considered an important design outcome, but comes with a host of other benefits including climate change mitigation and adaptation, positive psychological and social benefits and increased habitat in built up areas.

- 30 A new clause has also been adding clarifying Roof Form, Access and Use Guidelines. The intention of this clause is to clarify Council's position on roof form, access and use, given a proliferation of recent applications in the town centre with flat rooves, proposed for use as a bar/pool/recreation space.

35 The new clause specifies that roof form should generally compliment the aesthetics of the building design as well as creating visual interest and variety in order to enable a pleasing streetscape. In addition, the new clause states that the introduction of roof top bars and function centres will not be viewed favourably and any roof top leisure facilities should be low impact and intended for use by the residents of the building and not the general public.

40 **Key issues**

Floor Space Ratio (FSR)

The original premise for removing FSR was an assumption that it is a limiting factor in allowing for the efficient use of zoned land.

- 45 As a way to test this assumption, staff undertook a desktop analysis of FSR for a sample town centre block bordered by Carlyle, Jonson, Marvel and Middleton streets (see below). This block contains a variety of properties, including some original 'undeveloped' sites, some developed to 3 storeys in recent years and 1 site (No. 4 Marvell Street) recently approved (through L&E Court) but not yet constructed.
- 50

Data was sourced from development consents where possible, and where these were not available, an estimation of floor space was made based on desktop measurements.



The table below outlines the floor space and FSR results.

| Address | Land area (m²) | Floor area (m²) | FSR | Potential floor area 1.3:1 FSR | Potential floor area 1.5:1 FSR |
|--------------------|----------------------------------|-----------------------------------|------------|---------------------------------------|---------------------------------------|
| 3-7 Carlyle Street | 2,029.0 | 2,166.0 | 1.1:1 | 2,637.7 | 3,043.5 |
| 1 Carlyle St | 1,320.1 | 1,414.1 | 1.1:1 | 1,716.1 | 1,980.1 |
| 101 Jonson St | 546.9 | 164.0 | 0.3:1 | 711.0 | 820.3 |
| 1A Carlyle St | 515.5 | 125.0 | 0.2:1 | 670.1 | 773.2 |
| 97 Jonson St | 998.0 | 236.0 | 0.2:1 | 1,297.4 | 1,497.0 |
| 95 Jonson St | 1,026.0 | 582.1 | 0.6:1 | 1,333.8 | 1,539.0 |
| 93 Jonson St | 1,038.0 | 934.0 | 0.9:1 | 1,349.4 | 1,557.0 |
| 91 Jonson St | 498.0 | 391.0 | 0.8:1 | 647.4 | 747.0 |
| 89 Jonson St | 498.0 | 583.0 | 1.2:1 | 647.4 | 747.0 |
| 85 Jonson St | 649.0 | 482.0 | 0.7:1 | 843.7 | 973.5 |
| 2 Marvell St | 631.0 | 374.0 | 0.6:1 | 820.3 | 946.5 |
| 4 Marvell St | 1,012.0 | 1,434.0* | 1.4:1 | 1,315.6 | 1,518.0 |
| 6 Marvell St | 1,012.0 | 877.0 | 0.9:1 | 1,315.6 | 1,518.0 |
| 8 Marvell St | 958.0 | 322.0 | 0.3:1 | 1,245.4 | 1,437.0 |
| 10 Marvell St | 984.0 | 701.0 | 0.7:1 | 1,279.2 | 1,476.0 |
| | | 9,442.2 | | 17,830.1 | 20,573.2 |

5 * as approved

This analysis shows that, at the FSR of 1.3:1, there is a theoretical capacity within this block for more than 8,000m² additional floor space, indicating that FSR is not a significant limitation to development in the area.

10

A number of submissions raised the concern that removal of FSR would lead to buildings of a greater bulk and scale unless there were additional controls, such as setbacks to establish overall maximum building envelopes.

- 5 Given this, it is considered acceptable for the current FSR controls to remain at 1.3:1 as there is deemed to be capacity under the current controls.

Carparking

- 10 The amendment proposes to require a maximum number of car parking spaces for shop-top housing and/ or tourist and visitor accommodation, rather than the current requirement for a minimum number of spaces. It also proposes a reduction in the number of spaces required, and an 'opt-out' option, where developers could seek to provide no on-site spaces for those uses in exchange for alternate movement options such as car share, bike-share or the like.

- 15 The rationale is to reduce the number of spaces in the town centre as one way to assist in achieving "cars out people in". This was based on strategies to provide increase peripheral parking options which would allow people to park on the outskirts of the town centre and easily walk in.

- 20 While these strategies are continuing to be developed, the peripheral parking areas are not in place at this time, and concern was raised in submissions that, in the absence of the peripheral 'sending areas', reducing parking onsite parking requirements would add to congestion in the centre.

- 25 It is recommended therefore, that the suggested car parking changes be exhibited with the draft DCP with the caveat that they will not be enacted until such time as adequate peripheral parking opportunities have been established near the town centre. (It is anticipated that the first of these will be delivered in the next twelve months.)

- 30 Design Excellence Panel

During the public exhibition period for the proposed amendments there was strong support for the introduction of a Design Excellence Panel to accompany the Design Excellence Provisions in the LEP 2014.

- 35 Subsequent work by staff has led to the drafting of a Design Excellence Policy and Design Excellence Procedure (Attachment 2 and 3). These documents will need to be exhibited in accordance with the Local Government Act (1993).

- 40 A pool of seven sitting members will be established, with three members on the panel at any one time. Each member participating in a review will be paid a fee of \$500, which will be reimbursed through the fees and charges paid for by the developer (as previously adopted in the 2020/2021 fees and charges). The fee will be inclusive of all work required as a part of being a panel member, including preparation for and attendance of the meetings.

- 45 ***Height and Floor Space simulation workshops***

- 50 Councillors, Council Staff and members of the Place Planning Collective recently undertook exercises to better understand the role of Floor Space Ratio through a Lego Workshop. This allowed for a more nuanced understanding of the control and how it might apply in the Byron Town Centre and contributed to a better understanding of the potential impacts of changing the FSR. It is anticipated that information pertaining to this workshop will be available on Council's website soon.

Next steps

The next steps are to seek an amended gateway for the Planning Proposal, re-exhibit the proposal along with the DCP and report back to Council.

5 In addition Council will need to exhibit the Design Excellence Policy and Procedures and report back any submissions. It is suggested that an Expression of Interest process to seek applicants follow the adoption of these documents.

10 STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

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

Legal/Statutory/Policy Considerations

15 Relevant statutory considerations discussed above.

Financial Considerations

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

The Design Excellence fees of \$3000 per application would allow for payment of the Design Excellence Panel at a rate of \$500 per member per meeting plus any additional costs, including room hire etc.

25 Consultation and Engagement

Discussed in the body of the report.

Report No. 13.6 **PLANNING - Section 8.2 Review of Development Application**
10.2019.648.1 - Two (2) into Two (2) Lot subdivision at 39 Leslie Street,
Bangalow
Directorate: Sustainable Environment and Economy
Report Author: Jordan Vickers, Planner
File No: I2020/1803

10 **Proposal:**

| | |
|--|---|
| Review of Development Application No. | 10.2019.648.1 |
| Applicant: | Balanced Systems Planning Consultants |
| Development: | Subdivision Two (2) Lots into Two (2) Lots |
| Parcel No.: | 44350, 146450 |
| Location: | LOT: 10 SEC: 2 DP: 4358, LOT: 9 SEC: 2 DP: 4358, 39 Leslie Street BANGALOW |
| Date of Refusal: | 1 June 2020 |
| Original Assessing Officer: | Ivan Holland |

Summary:

15 The applicant has requested a S8.2 review of the determination of DA10.2019.648.1 which was refused by Council on 1 June 2020.

20 The original application sought approval to re-subdivide Lot 9 and Lot 10 in Deposited Plan 4358 at 39 Leslie Street, Bangalow which both have an area of 404.6 m² each. The two lots currently contain a dwelling house and several sheds with the house straddling the two parcels which run from Leslie Street to Campbell Street. The proposed subdivision would rearrange the lot boundaries so that the dwelling house is contained within a single lot (Lot A) facing Leslie Street with remaining land to the west to form a vacant lot (Lot B) facing Campbell Street. Lot A will have an area of 432.6 m² and Lot B an Area of 376.6 m².

The original application was publicly notified and no submissions were received.

25 The applicant was predominantly refused on car parking grounds with only one car parking space being proposed, whereby it was deemed necessary that two spaces were required based on a three bedroom dwelling.

30 Amended plans and engineering details provided with the S8.2 review make provision for one compliant on-site car parking space under the existing dwelling on proposed Lot A with access from Leslie Street. A further site inspection of the dwelling house indicates it has two substantial bedrooms. A smaller third room used as a study/office and oriented and opened up onto an existing bedroom and the kitchen/ living areas is not considered as a bedroom in this instance. Alternative car parking arrangements have been discussed with the applicant on the northern side of the dwelling; however this would remove an established garden area which adds character to this old Bangalow Cottage, whilst earthworks and retaining walls would also be required for the driveway crossover of the road reserve.

Based on two bedrooms, car parking is considered satisfactory in terms of the DCP provisions.

40 Recommended conditions of consent are proposed to retain the appearance of the dwelling in terms of its heritage character and to ensure the garage does not dominate the front facade of the building.

The S8.2 Application is considered to be substantially the same development as originally considered, and on review of the information provided to Council the application is recommended for approval subject to conditions of consent.



5 NOTE TO COUNCILLORS:

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

RECOMMENDATION:

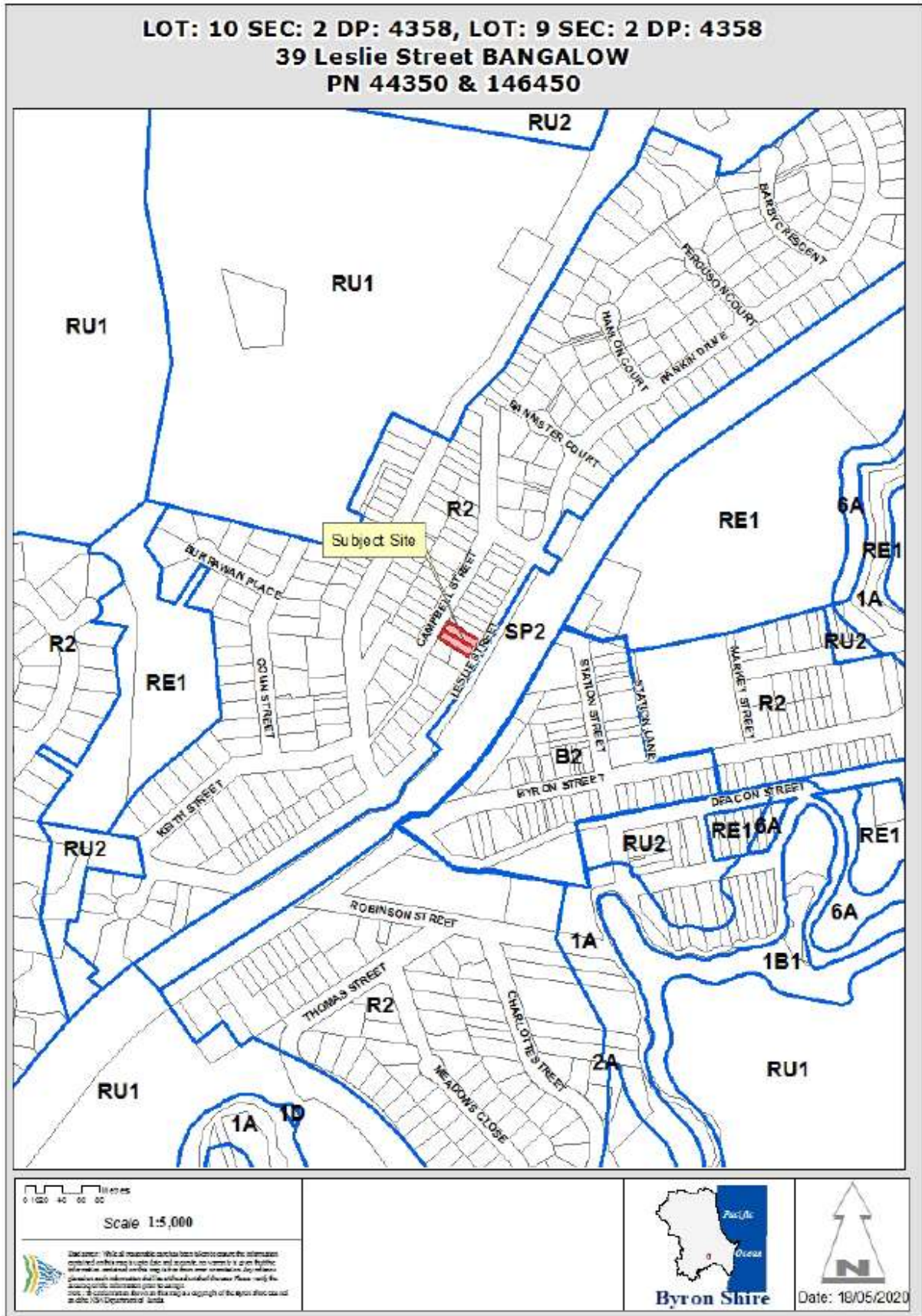
That pursuant to Section 8.2 of the Environmental Planning & Assessment Act 1979, Review of Development Application No. 10.2019.648.1 for Subdivision Two (2) into Two (2) Lots, be granted consent subject to the conditions of approval in Attachment 2 #E2020/94920.

15 **Attachments:**

- 1 10.2019.648.1 - Plans, E2020/94915 
- 2 10.2019.648.1 - Proposed Conditions of Consent, E2020/94920 

20

BYRON SHIRE COUNCIL



REPORT

Assessment:

DA10.2019.648.1 was refused by Council on the 1 June 2020 for the following reasons:

- 5 1. Pursuant to Section 4.15(1)(a)(i) of the EP&A Act 1979 the size of lots resulting from the proposed subdivision of land will be less than the minimum size specified for the subject land, contrary to the development standard in clause 4.1 of the Byron Local Environment Plan 2014.
- 10 2. The applicant's written request for development that contravenes a development standard has not adequately addressed the required matters and the proposed development is not considered to be in the public interest, contrary to clause 4.6(4)(a) of the Byron Local Environment Plan 2014.
- 15 3. Pursuant to Section 4.15(1)(a)(i) of the EP&A Act 1979 the application has not adequately demonstrated that the proposed subdivision will not result in an adverse impact on the conservation of the Bangalow heritage conservation area, contrary to the objectives of clause 5.10 of the Byron Local Environment Plan 2014.
- 20 4. Pursuant to Section 4.15(1)(a)(i) of the EP&A Act 1979 the application has not adequately demonstrated that adequate arrangements are capable of being made to provide suitable vehicular access to the lots to be created by the proposed subdivision, contrary to clause 6.6 of the Byron Local Environment Plan 2014.
- 25 5. Pursuant to Section 4.15(1)(a)(iii) of the EP&A Act 1979 the proposed development does not adequately satisfy the matters for consideration within Section B3 Services and B4 Traffic Planning, Vehicle Parking, Circulation and Access in relation to provision of car parking and suitable vehicular access for the proposed lots.
- 30 6. Pursuant to Section 4.15(1)(a)(iii) of the EP&A Act 1979 the proposed development does not adequately satisfy the matters for consideration within Section C1 Non-indigenous in relation to potential adverse impacts on heritage values associated with the provision of car parking for the subdivision.
- 35 7. Pursuant to Section 4.15(1)(a)(iii) of the EP&A Act 1979 the proposed development does not adequately satisfy the matters for consideration within Section D6 Subdivision in relation to lot size and shape, access design and infill subdivision with rear lane access.
- 40 8. Pursuant to Section 4.15(b) of the EPA Act 1979 the provision of the required car parking will have an adverse impact upon the built environment due to the development being located in a heritage conservation area.
- 35 9. Pursuant to Section 4.15(c) of the EPA Act 1979 the site is not considered suitable for the proposed development as provision of the required car parking and building envelopes for the proposed subdivision lots may adversely impact on heritage values.
- 40 10. Pursuant to Section 4.15(e) of the EPA Act 1979 the proposed development is not in the public interest as suitable car parking, access arrangements and building envelopes have not been provided and to do so would likely result in an adverse impact on heritage values.

Although there are a range of reasons for refusal listed, on review of the file, car parking was the dominant factor that led to the application being refused. The application which seeks consent to re-subdivide the land from two parcels that run from Leslie Street to Campbell Street to have creating Lot A facing Leslie Street and Lot B facing Campbell Street failed to provide two spaces for the existing dwelling which was considered as a three bedroom dwelling house.

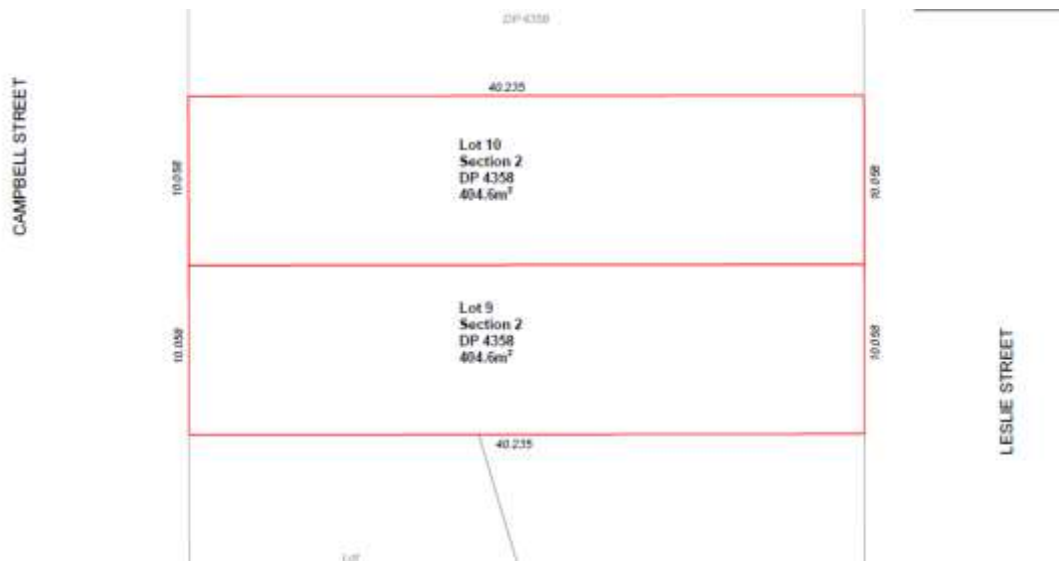
1.1. Proposed Development

The proposed development seeks to re-subdivide two lots both with equivalent areas of 404.6 m² each into:

- 5 Lot A - 432.6 m² (existing dwelling)
- Lot B – 376.6 m² – vacant lot

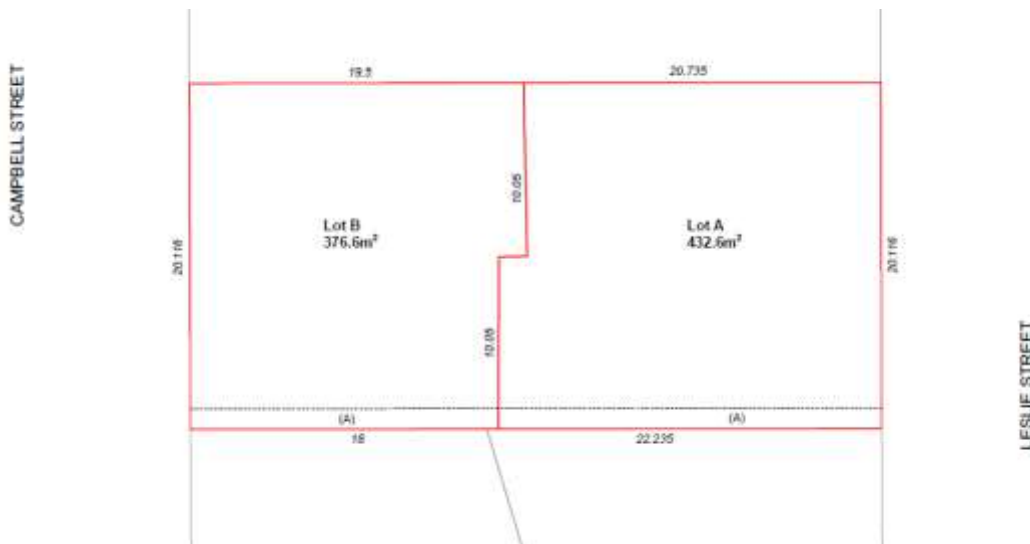
A weatherboard cottage currently straddles the two lots facing Leslie Street and the re-subdivision of the land will correct this encroachment across boundaries.

- 10 The proposal will require formalised car parking to be provided to the existing cottage



Existing Lot Layout

15



Proposed Lot layout

20

1.2. Description of the site

| | |
|------------------------------|---|
| Land is legally described as | LOT: 10 SEC: 2 DP: 4358, LOT: 9 SEC: 2 DP: 4358 |
| Property address is | 39 Leslie Street BANGALOW |

| | |
|---------------------|---|
| Land is zoned: | R2 Low Density Residential |
| Total Land area is: | 809.4m ² (Lot 9 - 404.6m ² , Lot 10 – 404.6m ²) |

5 The site has a legal description of Lot 9 and Lot 10, Section 2 in Deposited Plan 4358, and is commonly known as 39 Leslie Street, Bangalow. The property is located between Campbell and Leslie Street. Both lots are rectangular in shape with frontages of ~11m. The land slopes in an easterly direction from Campbell Street down to Leslie Street at a slope of approximately 25%.

10 A dwelling house and several sheds are situated on the property. The dwelling house is set back ~1.5m from Leslie Street. There is also grassed areas and establish vegetation on the property. Located on either side of the property are residential dwellings of similar scale and character. Directly opposite the dwelling is the Bangalow Railway Station, a locally listed heritage item.

The site is within the R2 Low Density Residential zone and the Bangalow Heritage Conservation area under LEP 2014.

15 **2.0 S.8.2 Review of Determination**

20 The applicant has requested a review of the determination to refuse DA10.2019.648.1 based on amended plans and engineering details. The amended detail makes provision for one (1) compliant on-site car parking space for the existing dwelling on proposed Lot A. Area is available in the driveway for overflow parking if required. The following supporting information was provided with the request for review of the determination:

- Revised Statement of Environmental Effects 2) and s8.2 review cover letter (E2020/83674);
- Letter & Drawing Details from Civil Engineers.

25 Further, the car parking space provided beneath the existing dwelling on proposed Lot A provides a minimum clearance height of 2.1m as opposed to the original clearance of only 1.8m.

Council can consider the application as the development remains substantially the same as originally submitted and the matter will be determined within the period as nominated under S8.10 of the EPA Act 1979.

Parking, Access and Servicing Matters

30 The following comments are provided addressing the reasons for refusal in terms of parking access and services clauses within Byron LEP 2014 and Byron DCP 2014

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

35 In accordance with Chapter B4 of the Byron DCP 2014, a dwelling house with three or more bedrooms is required to provide two (2) car parking spaces, whilst dwellings of 1-2 bedrooms are to provide a minimum of 1 space. Plans, images and an inspection of the existing dwelling confirm that the existing office/study is not utilised as a bedroom. Further, due to its size, area (2.4x2.7m), openings to bedroom 2 and the kitchen living area, the office study is not ideally suited as a third bedroom.

40 Amended plans have been submitted providing for single car parking space under the dwelling. The original plans as refused showed a non compliant clearance of only 1.8 m and limited space for any overflow parking in the driveway. The amended plans indicate the garage area will be excavated to provide clearance of 2.1 metres whilst the space has been pushed further under the dwelling and provides space for overflow parking in the driveway.

45



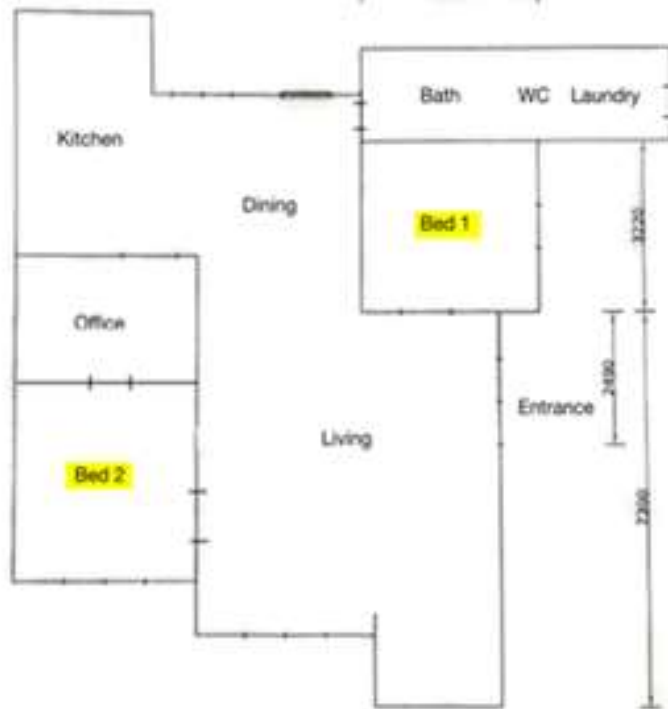
Proposed driveway and garage



5

Office/Study – looking from the kitchen living area through to the Bedroom 2

10 As the subject site is within close walking distance to the Bangalow commercial precinct (i.e. across the railway line and into Station Street) and the existing dwelling house assessed as a two bedroom domicile it is considered that car parking is satisfactory for the existing dwelling on proposed Lot A.



Floor Plan of Dwelling

5 Chapter B3 Services

In terms of access to the site, conditions of consent proposed to formalise the driveway from Leslie Street under the dwelling. Access is available from Campbell Street for the vacant parcel, with the applicant proposing to construct a driveway into the property to service a future dwelling. Having regards to the slope of the land, this is supported as the access and stormwater from the driveway will be resolved by the current landowners/ developers and not left to future a future land owner. Reasons for refusal under Chapter B3 have been adequately addressed.

Clause 6.6 Essential Services

With matters resolved in terms of carparking and access, the reasons for refusal under Cluse 6.6 fall away and this is on longer a valid contention. The site has access to all other necessary infrastructre including water, sewer, stormwater, power and telecommunications. Appropriate Condition of consent to apply.

Heritage Matters

Originally it was the proposed car parking arrangement on heritage character was also listed as a reason for refusal. However, having regards to the current undercroft which provides storage to the dwelling and its accessibility to the street from what is in effect a grassed driveway, the formalisation of this into a car parking space can be supported provided that the gate/ garage door is replicated in a similar slatted timber design.

As such it is considered that the heritage reasons for refusal under clause 5.10 of the Byron LEP 2014 and Chapter C1 Non Indigenous Heritage of DCP 2014 predominantly fall away. Conditions of consent are proposed requiring any door for the garage to be a slatted timber door and be positioned back under the balcony to enable overflow parking in the driveway and to ensure compliance with the setback provisions under Chapter C1.4.6

Subdivision matters**Clause 4.1 (Minimum lot size) & 4.6 (Variation to Development standards):**

The proposed development seeks to re-subdivide two lots both with equivalent areas of 404.6 m² each into:

- 5 Lot A - 432.6 m² (existing dwelling)
 Lot B – 376.6 m² – vacant lot

The application originally determined that a variation should not be granted to the 450m² minimum lots size provisions as:

- 10 1. The proposal did not provide or allow for the required car parking under DCP;
 2. The car parking proposed was anticipated to have unavoidable impact on the character of the dwelling and heritage values of the heritage character area; and
 3. The development footprint for proposed Lot B requires a variation to street front setback requirements under DCP2014, which may also result in adverse impacts on heritage values.

- 15 Of those matters listed above, points 1 and 2 have been addressed by the amended proposal submitted with this review as discussed above. In relation to point 3 the applicant surprisingly indicated a nominal building envelope setback only 1.8 m from Campbell Street. However the property is of sufficient dimensions to fit the nominal 12x15m envelope with a compliant 4.5 m
 20 building envelope, and any application for a dwelling on the site will be considered against the planning controls at that time and the merits of the proposal.

- 25 Having regards to Clause 4.6 the proposed development does not generate any additional residential allotments or dwelling entitlements, and theoretically consent could be sought to demolish the dwelling (or if it was destroyed by fire etc.) and construct two dwellings on the two existing lots. An alternative proposal could consolidate the land and construct a second dwelling facing Campbell Street to create a dual occupancy and then carry out a subsequent strata
 30 subdivision. As such strict compliance with the minimum lot size development standard is not warranted or necessary in this instance and a variation to the 600 m² minimum lot size provisions can be supported.

- In terms of Chapter D1 of DCP 2014, it is considered the proposed subdivision is acceptable and the vacant lot on Campbell Street is of a size and dimension that can accommodate a dwelling house. It is considered that Chapter D1 is no longer a valid reason for refusal.

35 3.0 Public interest

With parking and access matters resolved it is considered that the proposed development will not prejudice or compromise the public interest or create an undesirable precedent.

40 4.0 Conclusion

- 45 Similar applications have been approved in the older parts of Bangalow and elsewhere in the Shire (e.g. Mullumbimby) and the realignment of lots to create a vacant parcel represent a viable utilisation of scarce urban residential land. Having regards to the amended detail submitted with the application the proposed development is recommended for approval subject to conditions of consent.

Report No. 13.7 **PLANNING - s4.55 to modify the approved plans and delete conditions of consent - Development Application 10.2020.310.2 at 30 Kingsley Street, Byron Bay**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Jordan Vickers, Planner
File No: I2020/1806

10 **Proposal:**
Section 4.55
Application No: 10.2020.310.2
Proposed modification: S4.55 to Modify Approved Plans
Original Development: Alterations and Additions to Existing Dwelling House

Type of modification sought:

Property description: LOT: 1 DP: 958924
 30 Kingsley Street BYRON BAY

Parcel No/s: 39020

Applicant: Mr I M Pickles

Owner: Mr P T Byrnes & Ms M E Dickie

Zoning: R2 Low Density Residential

S4.55 Date received: 28 September 2020

Original DA determination date: 12/8/20

Public notification or exhibition: – Level 0 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
 – Exhibition period: N/A
 – Submissions received: N/A

Issues: • Heritage Conservation Area

Summary:

15 DA10.2020.310.1 applied for development consent to demolish the existing carport and re-establish another at the subject site flush to the dwelling wall line at the Tennyson Street frontage.

20 The development was approved with Condition 6 requiring the carport to be setback a further 1.5 metres from the front boundary providing a 4.5 metre setback to the street having regards to the heritage character of the area being within the Kingsley Street Conservation area and the provisions contained within DCP 2014 for setbacks and heritage protection.

A S4.55 application has been lodged to modify the consent for the carport to be located flush to the dwelling line at the Tennyson Street frontage, providing a minimal 3.0 metre setback.

25 Council’s Heritage Advisor has reviewed the subject s4.55 application and noted that
 “...positioning the carport flush with the frontage is in conflict with Councils general planning policies and the heritage chapter and there does not appear to be sound justification for an

exemption. Approval would set an undesirable precedent making it hard to refuse other applications of a similar nature.”

The above assessment was raised with the applicant. The applicant requested that the application be reported to Council if it couldn't be supported by staff.

- 5 Council has clear planning and heritage controls under Chapter C1 Non Indigenous Heritage and Chapter D1 Residential Accommodation and Ancillary Development in Urban, Village and Special Purpose Zones of Byron DCP 2014 that apply to this type of development. Specifically the provisions direct car parking to be setback behind the building line, not flush with the dwelling. It is considered there are no substantive reasons to amend the consent, or to provide a variation to the DCP provisions in this instance. It is recommended that the Section 4.55 application be refused.
- 10

NOTE TO COUNCILLORS:

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


20

RECOMMENDATION:

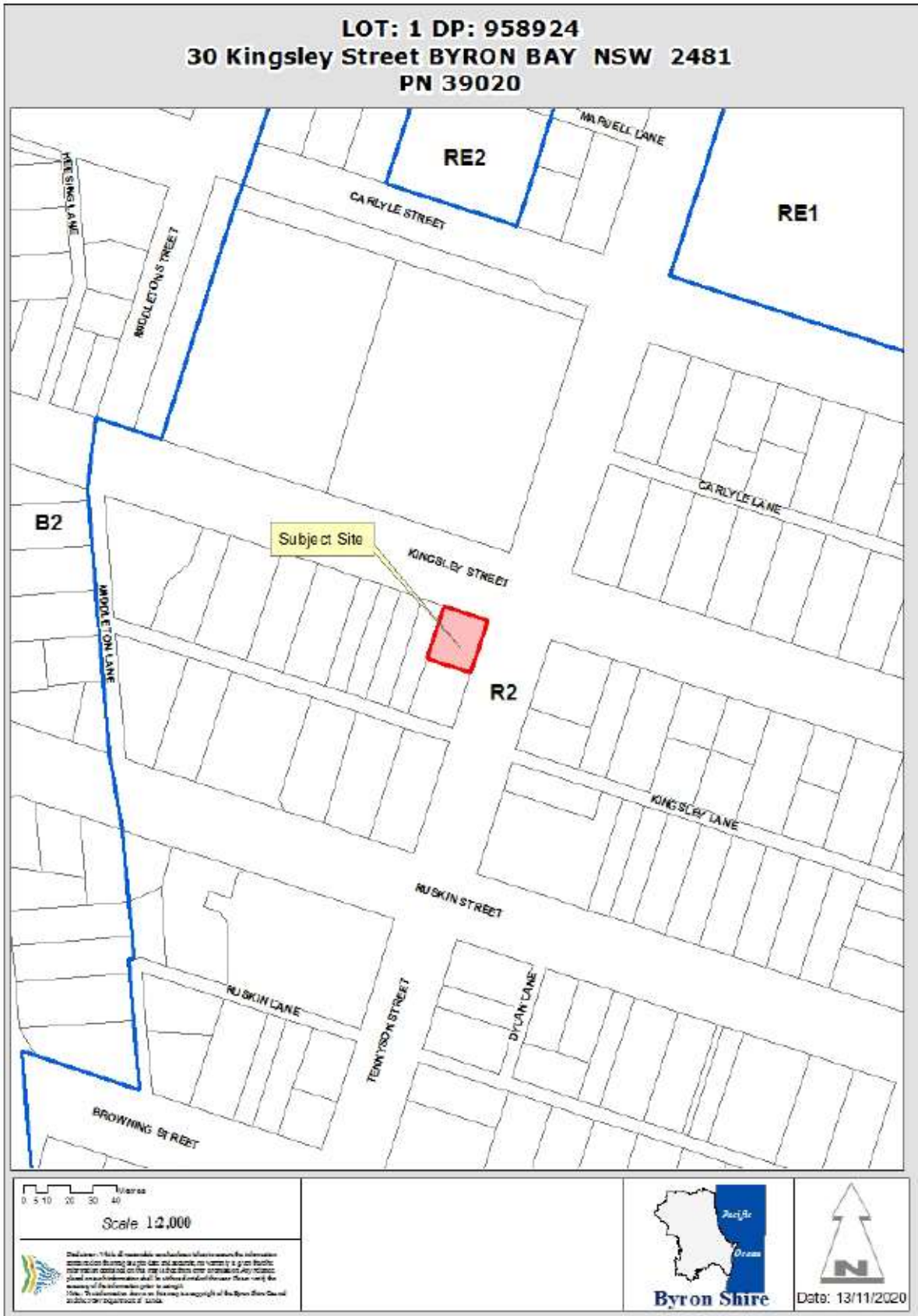
That the Section 4.55 of the Environmental Planning & Assessment Act 1979, that Application No. 10.2020.310.2 for S4.55 to Modify Approved Plans, be refused for the following reasons:

- 1. Pursuant to Section 4.15(1) (a)(i) the proposed development is inconsistent with Clause 5.10 Heritage Conservation of Byron LEP 2014.**
- 2. Pursuant to Section 4.15 (1) (a)(iii) the proposed development is inconsistent with the car parking provisions under Chapter C1 Non Indigenous Heritage.**
- 3. Pursuant to Section 4.15 (1) (a)(iii) the proposed development is inconsistent with car parking and setback provisions under and Chapter D1 Residential Accommodation and Ancillary Development in Urban, Village and Special Purpose Zones of Byron DCP 2014.**
- 4. Pursuant to Section 4.15(1) (b) the proposed development will have a detrimental impact upon the built environment.**
- 5. Pursuant to Section 4.15(1) (e) the proposed development is not in the public interest.**

Attachments:

- 1 Plans as Originally Approved under DA10.2020.310.1 - 30 Kingsley Street, Byron Bay, E2020/93724
- 25 

REPORT



Assessment:

1.1. History/Background

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

| DA No. | Description | Outcome | Date |
|---------------|-------------------------|-----------|------------|
| 6.1991.2473.1 | Alterations to Dwelling | Finalised | 25/09/1991 |
| 10.2020.310.1 | Alterations & Additions | Approved | 12/08/2020 |

1.2. Description of the proposed development

10 This application seeks approval for a S4.55 to Modify the approved plans for the carport to be located flush to the dwelling line at the Tennyson Street frontage. The modification requests an update to Condition 1 and deletion of Condition 6, which read as follows:

1. Development is to be in accordance with approved plans

The development is to be in accordance with plans listed below:

| Plan No. | Description | Prepared by | Dated: |
|----------|-----------------------|------------------------|-------------|
| 19.08.01 | Site Plan Revision A | Michael Spiteri Design | August 2020 |
| 19.08.04 | Floor Plan Revision A | Michael Spiteri Design | August 2020 |
| 19.08.05 | Elevations 1 | Michael Spiteri Design | March 2020 |
| 19.08.06 | Elevations 2 | Michael Spiteri Design | March 2020 |
| 19.08.06 | Sections & Notes | Michael Spiteri Design | March 2020 |

The development is also to be in accordance with any changes shown in red and blue ink on the approved plans or conditions of consent.

The approved plans and related documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

6. Front setback: Amendment to the plan required

The Byron Development Control Plan (DCP) 2014 prescribes a front boundary setback distance of 5.5m for garages, carports and car parking spaces.

The plans submitted for approval of the Construction Certificate must be amended in accordance with Plan No. 19.08.01, titled 'Site Plan, Revision A' and dated August 2020, stamped and returned with this Notice of Determination. The plans must demonstrate the minimum dimensions required for the tandem car parking spaces and a minimum front boundary setback of 4.5m from the outermost projection of the carport to the Kingsley Street property boundary.

Such plans are to be approved as part of the Construction Certificate.

15

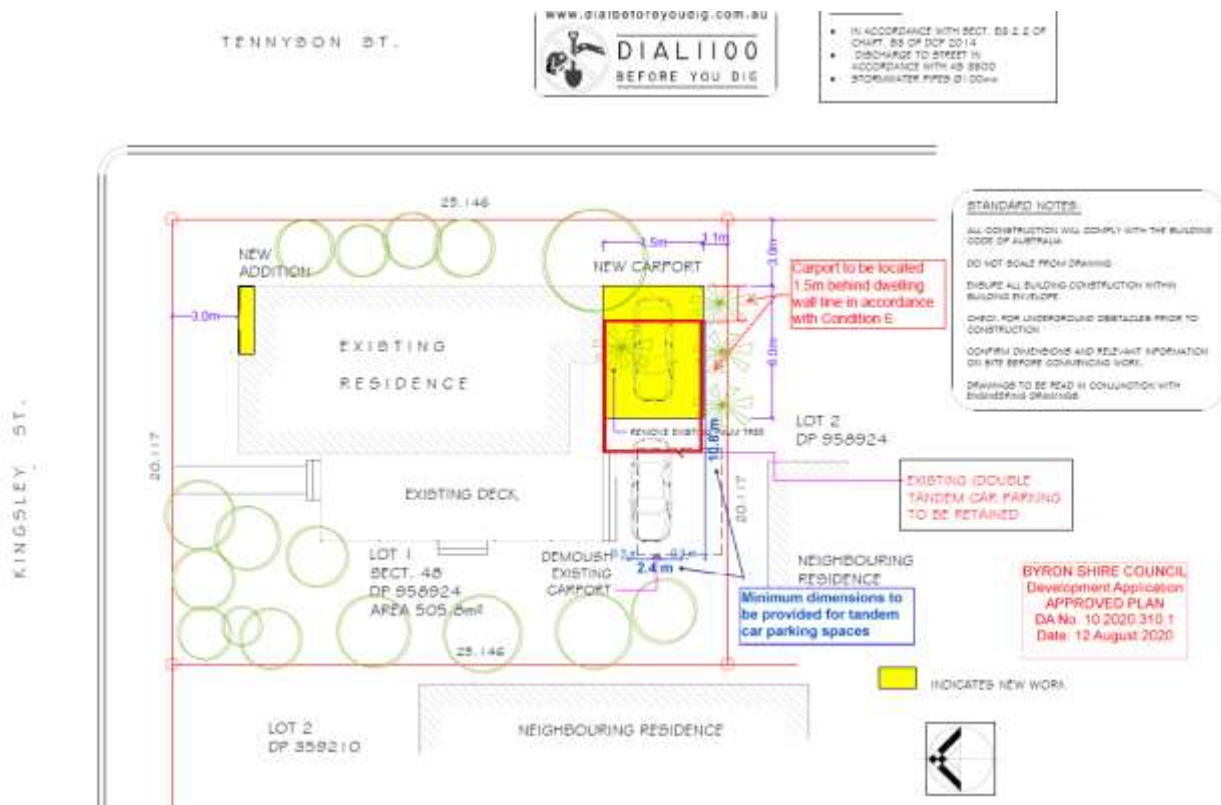
1.3. Description of the site

20 The subject site known as 30 Kingsley Street, Byron Bay and legally described as Lot 1 on DP958924 has a total area of 488m² and is located within the Low density residential zone of the Byron Local Environmental Plan 2014. The property is currently improved by a single dwelling house, ancillary Class 10 structures (patio roof, carport), landscaping vegetation, and is identified as Flood Liable Land and containing Acid sulfate soils (class 3).

A site inspection was carried out on 10 August 2020

| | |
|---------------------------|------------------------------|
| Land is legally described | LOT: 1 DP: 958924 |
| Property address | 30 Kingsley Street BYRON BAY |

| | | |
|-----------------------------|--|---|
| Land is zoned: | R2 Low Density Residential | |
| Land area is: | 488m 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 |



5 Extract from Approved Plans showing location of carport to be setback from the street

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.

10 **Carport location:**

DA10.2020.310.1 applied for development consent to demolish the existing carport and re-establish another at the subject site flush to the dwelling wall line at the Tennyson Street frontage. Council’s assessing officer assessed the proposal against the relevant provisions of the Byron DCP and LEP 2014 providing the following comments:

15 **“Chapter C1 – Non-Indigenous heritage, C1.4.6 Parking, Garages and Carports**
 DCP assigns performance criteria for garages and carports that are applicable to the proposal. While DCP Performance Criteria note that garages and carports are to use traditional pitched roofs, the proposed carport will accord with the design of the existing carport (see Figure 1) which is a low-set, simplistic skillion roof that maintains the existing
 20 **roofline.**

The applicant proposes to locate the carport flush to the front of the building to allow for improved solar access at the rear deck of the subject site and adjacent property. DCP notes that garages and carports should be located at the rear of allotments, however where not possible, must be set back at least 1m from the front of the house. Cognisant of this requirement and the assessment of boundary setbacks (see discussion below), a condition will be imposed on the consent requiring that amended plans are provided prior to the issue of a Construction Certificate demonstrating that the carport is set back an additional 1.5m from the front of the dwelling.

Chapter D1.2.2 – Building Setbacks

The proposal seeks to establish an open carport that is flush to the dwelling wall line at the frontage, presenting a setback of 3m from the front property boundary. DCP prescribes that car parking spaces are not to be within 5.5m of a front property boundary. The existing car parking on the site provides for two spaces in a tandem arrangement, and the proposal does not alter the location of these spaces. It is acknowledged that the site is a corner property, and the dwelling presents reduced boundary setbacks (3m) at each frontage, which is identified to contribute to the streetscape character of the locality.

As the location of car parking spaces is not altered by the proposal, it is considered reasonable that the car parking spaces remain. Similarly, it is considered reasonable that the open carport be granted a dispensation to the 5.5m front boundary setback to amalgamate with the reduced boundary setbacks afforded to the dwelling. Nevertheless, the carport should be set back an additional 1.5m from the front of the dwelling to align with Chapter C1 of DCP (discussed above) and provide a front boundary setback of 4.5m.”

As noted under the discussion of Chapter C1 above, a Condition of consent was applied to the development consent requiring that plans are amended prior to the issue of a Construction Certificate for the carport to provide an additional 1.5m setback from the front of the dwelling and allow for a boundary setback of 4.5m to the outermost projection of the carport (see snip from approved plan below) in order to preserve the intent of DCP prescriptive measures for setbacks and heritage protection.

The proposal was referred to Council’s Heritage Advisor for comment regarding Council’s original assessment of the proposal. Advice was received which confirmed Council’s original assessment of the proposal, with Council’s Heritage Advisor noting as follows:

“The primary facade of the house faces Tennyson Street with the projecting decorative gable, and the hipped end faces Kingsley St. It has been extended but retains a traditional single storey form and materials and is a contributory element along with the group of cottages on Kingsley Street.

It is agreed that a simple skillion open structure is acceptable and sits better than a free standing pitched roof structure in this instance.

The suggested 1.5m set back will make the carport a secondary element to the dwelling. It is noted that the part of the dwelling adjoining the car port is a non original later extension, however it still forms part of the primary streetscape facade. It is also noted that there is mature mango tree and landscaping which softens this entry point, but if it were more open, the addition would be more obvious. There is no formal crossover.

Positioning it flush with the frontage is in conflict with Councils general planning policies and the heritage chapter and there does not appear to be sound justification for an exemption due to insufficient space.

Approval would set an undesirable precedent making it hard to refuse other applications of a similar nature”

Accordingly, it is considered that the initial assessment of the proposal resulted in a development outcome that achieved the intent of the DCP, and that the consent not be modified.

Upon receipt of Council’s Heritage Advisor’s comments and the abovementioned conclusion, the applicant was informed that Council’s Heritage Advisor concurred with the original assessment of the proposal. The applicant requested a copy of the Heritage Assessment advice (through the GIPA process), and provided the following comments.

- 5 ➤ **Tennyson Street is the secondary frontage – therefore 3m setback is justified.**
 The applicant posits that it is their belief that the Tennyson Street frontage is a secondary frontage for the development site, and therefore the DCP prescribed 3m secondary frontage setback is applicable.

Comment:

10 The dwelling is predominantly oriented toward Tennyson Street, with the pitch of the gable roof presenting to this frontage (see image below). Additionally, both vehicle and pedestrian access are granted at this frontage, and the open carport is proposed at this frontage. Council’s Heritage Advisor considered the applicants position that Tennyson St. is the secondary frontage in their assessment, and conferred that “*the primary façade of the house faces Tennyson Street with the decorative gable, and the hipped end faces Kingsley St.*” Notwithstanding, DCP prescribed setback distances are not the only matter of consideration in this assessment, and Council’s DCP Heritage chapter must also inform the development outcome.



Tennyson Street frontage

Herein, Chapter C1 (Non-Indigenous Heritage) notes specifically that:

- 40 3) “Garages and carports should generally be kept separate from the house. Attachment of garages and carports to the buildings they service is generally not favoured unless the structure is located at the rear of the building and is not visible from the surrounding streets, or it is set well back from the front façade and unobtrusively attached. In those cases a simple carport under a continuation of the roofline may be appropriate.

- 4) Garages should be located generally towards the rear of allotments. Where this is not achievable they must be set back a minimum of 1 metre from the front of the house.

Regardless of whether Tennyson Street is a primary or secondary frontage, Council’s heritage controls seek to ensure that carports are not attached to buildings unless “located at the rear of the building” or “set well back from the front façade”. Additionally, DCP Chapter D1 which prescribes boundary setbacks explicitly requires that “car parking must not be provided within setbacks.”

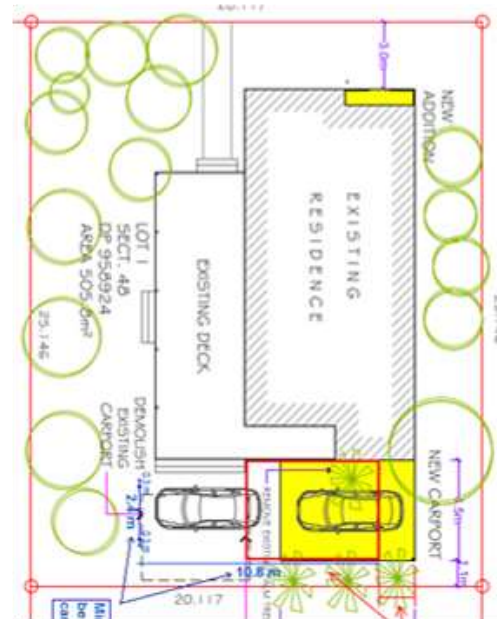
When read in conjunction, DCP controls require that car parking spaces do not align flush to the front façade of the building (Heritage chapter C1) and are not placed within boundary setbacks (D1). The condition applied to the development consent requiring a 4.5m setback endeavours to amalgamate a resolution which grants concession to the 5.5m prescribed boundary setback distance while cognisant of the requirement of the heritage chapter to ensure carports are set back from the dwelling façade.

➤ **Loss of solar access to bedroom 2 & openness of south-western corner**

The applicant asserts that the approved position of the open carport is likely to detrimentally affect the solar access of bedroom 2, and locating the structure flush to the dwelling line will provide additional space in the south-western corner of the allotment.

Comment:

The orientation of the subject site and location of the proposed open carport do not support the assertion of overshadowing. The open carport is located at the southern side of the dwelling house (see image below). Further, establishing the structure at the approved location will not detract from the open space provided at the south-west of the site as it aligns with the rear of the building.



➤ **No impact on heritage items nor conservation area**

The applicant asserts that the proposed open carport will not impact upon nearby heritage items or the character of the heritage conservation area. It is noted that the open carport is proposed to be located behind an existing mango tree and will not likely be visible. The applicant notes that the lightweight structure presenting a setback of 3m will not make such a significant difference to the character of the Kingsley Street part of the conservation area.

Comment:

The carport is proposed behind existing mango trees. However pursuant to Chapter B2 of the Byron DCP, trees within 3m of a building and trees grown for edible fruit are permitted to be removed without development consent.

5 Accordingly, these trees may be removed without consent from Council and are therefore not considered suitable justification for the reduced boundary setback distance which conflicts with DCP Chapters D1 (Residential accommodation) and C1 (Non-indigenous heritage). Further, advice provided by Council’s Heritage Advisor highlighted that while the existing mango tree softens the visual impact of the structure at the Tennyson Street frontage, removal of this tree and opening this space would render the structure “*more obvious*” at this location.

15 While it is acknowledged that the structure is lightweight and open in nature, the advice of Council’s Heritage advisor notes specifically that the recommended 1.5m recession of the structure from the dwelling façade establishes it as a secondary element to the dwelling, and that “*Positioning it flush with the [dwelling] frontage is in conflict with Councils general planning policies and the heritage chapter...*”

It is considered that positioning the structure flush to the dwelling wall line at the Tennyson Street frontage would influence the heritage character of the dwelling and heritage conservation area.

20 ➤ **Driveway and crossover will result in more visual impact than the carport**

The applicant submits that Condition 7, which requires the applicant to establish a formal driveway and crossover onto the site, will result in more visual impact on the Tennyson Street frontage than the carport.

Comment:

25 The subject site does not currently benefit from a legal point of access/egress (vehicle crossover and driveway). The subject application relates directly to vehicle access/egress at the allotment, and formalising this access/egress is reasonable to ensure the development outcome is compliant with Council and national standards. The requirement to establish a crossover and driveway is not considered suitable justification for the positioning of a structure that conflicts with DCP chapters D1 and C1.

It is recommended that the application be refused.

2.2. State/Regional Planning Policies, Instruments, EPA Regulations 2000

35 Proposed amendments raise no issues under the relevant SEPPS, Policies or clauses of the EPA Regulations 2000.

2.3. Byron Local Environmental Plan 2014

Clause 5.10 Heritage Conservation

40 The subject property is located within a heritage conservation area. The objectives of this clause state:

- (a) to conserve the environmental heritage of Byron,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- 45 (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

As discussed above, the proposal is inconsistent with the planning controls and guidelines applicable to the development.

50

It is considered the proposal will have an adverse impact on the heritage significance of the area and does not satisfy Objective b). The application is recommended or refusal.

2.4. Draft EPI that is or has been placed on public exhibition and details of which have been notified to the consent authority - Issues

No draft EPIs affect the proposal.

2.5. Development Control Plans

Chapter C1 Non Indigenous Heritage

The provisions under D4.1.6 require the following for garages and car ports

3. *Garages and carports should generally be kept separate from the house. Attachment of garages and carports to the buildings they service is generally not favoured unless the structure is located at the rear of the building and is not visible from the surrounding streets, or it is set well back from the front façade and unobtrusively attached. In those cases a simple carport under a continuation of the roofline may be appropriate.*
4. *Garages should be located generally towards the rear of allotments. Where this is not achievable they must be set back a minimum of 1 metre from the front of the house.*

As discussed above the proposal is not consistent with the provisions of the DCP and there are no substantive reasons why a variation should be granted in this instance. The application is recommended for refusal.

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

The setback provisions under D1.2.2 require garages and carports to be setback 5.5 metres from front street boundaries. These setback provisions have been established to ensure that the garage/carport do not dominate the frontage of the development site and to enable visitors to park within the driveway as overflow parking. The development was approved with a condition requiring the carport to be set back 4.5 metres from the street boundary. It is considered that there are no grounds to vary the setback any further in this instance and the application is recommended for refusal.

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

It is considered the proposed amendments to site the driveway flush with the dwelling will have an impact on the built environment and streetscape in terms of heritage as discussed above

2.7 The suitability of the site for the development

Proposed amendments do not affect the site suitability.

2.8 Submissions made in accordance with this Act or the regulations

No Submissions were received.

2.9 Public interest

The proposed amendment seeks consent for a development that conflicts with the intent of DCP development controls, and approval would advance an undesirable precedent within the Heritage Conservation Area. It is submitted the proposal is not in the public interest

2.10 DEVELOPER CONTRIBUTIONS/ WATER AND SEWER CHARGES

There is no nexus to levy additional contributions.

5 3. 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 |

4. CONCLUSION

10 Council has clear planning and heritage controls that apply to this type of development and there are no substantive reasons otherwise to deviate from these and amend the consent. The application is recommended or refusal.

Report No. 13.8 PLANNING - Review of Planning Controls for Rural Tourist Accommodation

Directorate: Sustainable Environment and Economy

Report Author: Ben Grant, Planner

5 **File No:** I2020/1810

Summary:

10 At the Planning Meeting of 20 June 2019, Council resolved to review and amend Byron Local Environmental Plan (LEP) 2014 and Development Control Plan (DCP) 2014 in relation to rural tourism/holiday cabins. The resolution was made in response to a staff report which noted that the current planning framework for rural tourist accommodation was resulting in development on rural land that is not entirely consistent with the RU1 and RU2 zone objectives.

A link to the staff report can be found here:

https://byron.infocouncil.biz/Open/2019/06/PLA_20062019_AGN_1054_WEB.htm

20 The Resolution is shown below:

Resolution 19-284

25 "...that Council endorse Option 2 contained in this report to review and amend Byron Local Environmental Plan 2014 and Byron Development Control Plan 2014 in relation to rural tourism/holiday cabins".

30 As per the resolution, an investigation has been carried out into the adequacy of the planning controls in LEP 2014 and DCP 2014 for holiday cabins and farm stay accommodation. This included a review of development applications received since 2014 and an analysis of the current planning framework.

35 The review found that the pattern of development under LEP 2014 has not always been closely aligned with the objectives for tourism in the Shire's rural zoned areas. In particular, there has been a prevalence of smaller sites being developed along with inconsistent outcomes in relation to environmental enhancement and conservation.

40 Primarily, this is occurring due to the current structure of the planning rules which are in need of simplification and consolidation. Chapter D3 of DCP 2014 contains a number of overlapping and conflicting planning controls and this is causing difficulty in the assessment process leading to somewhat inconsistent outcomes.

45 The review recommends that a number of amendments be made to LEP 2014 and DCP 2014 to address these issues. Proposed amendments include the introduction of a minimum lot size and reduction of the number of bedrooms, environmental enhancement, clustering and visual impact.

This review is the first step in the process of amending the planning controls for rural tourist accommodation. If the Council elects to proceed, the next steps will be the preparation of a planning proposal or draft DCP amendment to update Byron LEP 2014 and/or Byron DCP 2014.

50 Future LEP and DCP amendments will be subject to community consultation in accordance the Community Participation Plan and will be reported back to Council for endorsement.

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 Council:

1. **Requests staff to prepare a planning proposal to amend Byron Local Environmental Plan 2014 and a draft amendment to Byron Development Control Plan 2014, to accord with the recommendations of the Review of Planning Controls for Rural Tourist Accommodation in Attachment 1 (E2020/94209).**
2. **Authorises staff to submit the planning proposal to the Department of Industry and Environment for Gateway determination.**
3. **Pending gateway determination, undertakes public exhibition of the planning proposal and development control plan amendment and consult with government agencies as required by the gateway determination; and**
4. **Receives a report outlining the public exhibition outcomes.**

5

Attachments:

- 1 Review of Planning Controls for Rural Tourist Accommodation, E2020/94209 

10

REPORT**Purpose**

- 5 The purpose of this report is to provide a review of the planning controls for rural tourist accommodation in accordance with Council resolution **19-284** from Council Meeting date 20 June 2019. The review includes an audit of development applications for rural tourist accommodation since 2014 and provides findings and recommendations to amend the planning framework.

10 Background

15 The review originates from a Notice of Motion (NOM) that was included in the Ordinary Meeting Agenda of 18 April 2019, but withdrawn on the day. The NOM identified a significant increase in the number of development applications (DA's) for rural holiday cabins and raised concerns over the potential impacts of increased tourism in the Shire's rural areas. The NOM recommended that Council consider removing the provisions for rural holiday cabins entirely, along with a review of the farm stay provisions in both LEP's and DCP's.

20 In response, a staff report was tabled at the Planning Meeting of 20 June 2019 which noted an increase in the number of applications for rural tourist accommodation and concluded that the current planning framework was resulting in development on rural land that is not entirely consistent with the RU1 and RU2 zone objectives in the LEP.

25 The report suggested that the issue could be addressed by bringing the planning controls in LEP 2014 into closer alignment with those in LEP 1988.

Three options were offered to Council:

- 30
1. No change to the existing controls;
 2. Amend the LEP and DCP controls to limit the scale and density of rural tourism development;
 3. Remove provisions for holiday cabins entirely.

Council elected to adopt Option 2 and resolved as follows:

35 Resolution 19-284

"...that Council endorse Option 2 contained in this report to review and amend Byron Local Environmental Plan 2014 and Byron Development Control Plan 2014 in relation to rural tourism/holiday cabins".

40 The report can be found through the following link:

https://byron.infocouncil.biz/Open/2019/06/PLA_20062019_AGN_1054_WEB.htm

Review of planning controls

45 In accordance with the above resolution, an investigation was carried out into the adequacy of the planning controls in LEP 2014 and DCP 2014 for holiday cabins and farm stay accommodation.

The review has 4 main parts:

- 50
1. An overview of the LEP 2014 planning framework for rural tourist accommodation
This section illustrates the structure of LEP 2014 framework and highlights key development controls applying to rural tourist accommodation.

2. Review of development applications

Development applications received since 2014 were reviewed. This was done to help understand development trends and identify areas where the current planning rules are not achieving the intended outcomes.

5

3. Discussion of key findings

Key findings relating to the assessment process and development outcomes under the LEP 2014 planning framework are discussed. This section includes recommendations for improving or amending the planning rules.

10

4. Actions

A summary of the specific actions needed to amend the planning framework.

Summary of the findings and recommendations

15

The full review can be found in Attachment 1 to this report. The following is summary of the key findings and recommendations.

Analysis of the Planning Controls - Findings and Recommendations

20

On the basis of the DA review and analysis of the planning framework, the following findings were identified.

1. The planning framework has shifted applicants towards holiday cabins and away from farm stay accommodation and eco-tourist accommodation

25

Since 2016, there has been a noticeable shift in development applications towards holiday cabins and a corresponding drop in applications for all other types of rural tourist accommodation. Overall, the total volume of applications for rural tourist accommodation has only increased slightly over the past 4 years; averaging about 13 DA's per year. This indicates a change in the type of development being sought by applicants, rather than a change in the total number of development applications.

30

The growth in applications for holiday cabins not necessarily a negative outcome considering that this form of development is allowed under LEP 1988 and have been a permissible use in the Shire for several decades. The main issue requiring closer consideration is the differences in the planning rules between LEP 2014 and those in LEP 1988 which has resulted in different development outcomes being achieved.

35

Recommendation

40

- It is recommended that the parent definition of tourist and visitor accommodation be retained as a permissible use to provide flexibility for different types of rural tourist accommodation provided in the Shire.
- Other parts of the planning framework regulating density, lot size and design should be reviewed and amended where necessary to ensure the controls are aligned with those contained in LEP 1988.

45

2. There is a need for better site selection criteria, including a minimum lot size

50

In terms of development outcomes, the most significant finding of the review is the high take up rate of development on smaller sites since 2014. About 40% of sites approved for rural tourist accommodation were properties with an area of less than 20 hectares.

55

This pattern of development is considered to be problematic for a few reasons. Firstly, smaller sites are generally less viable for environmental enhancement and conservation projects due to a lack of land to accommodate new plantings. DCP 2014 specifies that applicants must provide 900 native trees per cabin which requires several hectares of land to be set aside for restoration. Secondly, it is often more difficult to site buildings on smaller lots while maintaining adequate buffers from adjoining agricultural uses and neighbouring dwellings. Reduced buffers can impact on amenity and result in land use conflict.

Finally, one of the key benefits of rural tourism is to generate an additional income stream for rural land owners to subsidise agricultural operations or fund larger scale environmental reparations. Allowing a proliferation of development on smaller sites does not help to achieve that objective since those properties usually have less potential for agriculture or environmental enhancement to begin with.

Recommendation

- To ensure development is occurring on sites with appropriate characteristics to support low scale development in accordance with zone objectives, it is recommended that rural tourist accommodation be subject to a 20 hectare minimum lot size, preferably under Clause 6.8 of LEP 2014.
- Further consideration should also be given to developing a map of appropriate sites for rural tourist accommodation that takes into consideration additional site selection criteria such as aspect, slope, hazards, environmental values and road access.

3. Environmental enhancement and conservation outcomes have been highly variable, although recent DCP amendments have improved consistency in the assessment process

The review highlighted that environmental enhancement and conservation efforts were usually an afterthought in applications received between the years 2014 and 2017. Thankfully, compliance rates have improved significantly since recent DCP amendments in 2019 and the majority of applications now include a vegetation management plan detailing an environmental enhancement concept as part of the development proposal.

Another issue was the wide variation in the way that environmental enhancement and conservation works are regulated through conditions of consent.

Given these findings, it is considered that the existing DCP controls for environmental enhancement and conservation do not need to be changed in any significant way. One potential improvement would be to include an objective for ecological enhancement in DCP Part D3.3.4 to bring the DCP into alignment with the zone objectives. Consideration should also be given to developing a set of standard conditions for environmental enhancement and conservation. This would not require an amendment to the LEP or DCP and would instead be a procedural matter for Council assessment staff when determining DA's.

Recommendation

- It is recommended that an additional objective for environmental enhancement be added to DCP Part D3.3.4 to bring it into alignment with the zone objectives.
- To improve consistency of outcomes, it is recommended that Council develop a set of standard conditions of consent for environmental enhancement and vegetation management plans. It is suggested that restoration works should be substantially commenced prior to the occupation stage, and that VMP's be subject to annual or

biannual reporting over a five year timeline. To support this approach, Council will also need to develop a process for recording and auditing applications subject to VMP's.

4. **Maximum density of development should be reduced. The planning controls should be simplified to reduce ambiguity over the maximum number of accommodation buildings.**

There is confusion over the maximum permissible number of accommodation buildings for both farm stay and holiday cabins. This is primarily due to the presence of conflicting or unclear planning controls in the LEP and DCP which regulate the density and scale of development.

The current planning framework limits the density of rural tourist accommodation through three separate controls:

- **Clause 5.4 of LEP 2014:**

Clause 5.4 limits the maximum density of farm stay accommodation to 12 guest bedrooms.

- **DCP 2014, Part D3.3.4, Prescriptive Measure 1:**

D3.3.4 applies to farm stay accommodation and holiday cabins. It provides a sliding density scale that allows up to 3 bedrooms on sites between 0-3 hectares, with 1 additional bedroom being permitted for every 1.5 ha, up to a maximum of 12 bedrooms.

- **DCP 2014, Part D3.2.3, Performance Criteria 3(c):**

D3.2.3 applies to farm stay accommodation, holiday cabins, camping grounds, caravan parks and eco-tourist facilities. It calls up the Best Practice Guidelines from Chapter 7 of the 1998 Strategy. Part 7.2 (2) of the Strategy states: "no more than 6 holiday cabins may be constructed in the site area".

Some applicants have argued that the above controls permit up to 12 one bedroom cabins, noting that both Clause 5.4 and D3.3.4 only stipulate bedroom numbers rather than cabin numbers, while D3.2.3 makes reference to the 1998 Strategy which has since been repealed.

Furthermore, Clause 5.4 is inconsistent with Part D3.3.4 because it allows up to 12 bedrooms unconditionally, whereas D3.3.4 restricts bedrooms to a figure between 3 and 12 depending on the size of the allotment. This is problematic in terms of the structure and hierarchy of the planning rules, given that a DCP control cannot impose a more onerous standard than a higher order planning instrument like an LEP.

In addition, current density limits are relatively generous and could be resulting in overdevelopment of some sites when considered cumulatively with other forms of development. Under the current planning framework it is possible to apply for rural tourist and visitor accommodation comprising up to 12 bedrooms, a dual occupancy with up to 6 expanded house habitable outbuildings, a studio, a rural workers dwelling, recreation facility and a restaurant/café all on the one parcel of rural land.

Reducing the maximum density to 8 bedrooms and 4 cabins would limit this cumulative effect and result in a form of development more closely aligned with the objective for rural tourism to be small scale and low impact.

Recommendation

5 Council should consider reducing the maximum density of development to 8 bedrooms within 4 accommodation buildings. This will involve amending clause 5.4 of LEP 2014 and the relevant sections of DCP 2014, Parts D3.2.3 and D3.3.4.

10 Furthermore, the controls should be simplified to remove any ambiguity over the maximum number of bedrooms and accommodation buildings. If the 20 hectare minimum lot size standard is implemented as per Finding 2, this will negate the need for the sliding density scale in D3.3.4.

5. Clustering and siting provisions are ambiguous and in need of clarification

15 One of key design criteria for rural tourist accommodation is the concept of 'clustering', which means that accommodation buildings should be grouped together on one part of the site. The intent of clustering is to minimise the developments physical footprint and reduce any associated impacts on amenity and the surrounding landscape.

20 The current planning controls provide that all accommodation buildings are to be arranged in a 'cluster' pattern and located on average no further than 80 metres apart.

25 Some applicants have interpreted the 80 metre 'average' separation distance as meaning that all development needs to be contained in a circle with a diameter of 80m while others have interpreted it as meaning that each building can be separated by up to 80m. The control needs to be clarified to remove doubt and improve the assessment process.

Recommendation

- 30 • It is recommended that clustering should be re-defined by using an unambiguous numerical standard instead of relying on 'average' separation distances. It is suggested that a 20m separation distance between each accommodation building should be permitted to allow for a reasonable level of privacy and amenity for users. The size of the 'cluster' will depend on the scale of the development. That is, a development comprising only a few cabins would be required to group the buildings in a smaller cluster than a development comprising 6 cabins.
- 35 • A degree of flexibility should be allowed to account for sites with unusual physical or environmental constraints, but only in circumstance where it can be demonstrated that a dispersed arrangement is a superior solution when taking into consideration environmental issues, land use conflict, loss of farmland and impacts on rural character.
- 40

6. Controls relating to design, aesthetics and rural character could be strengthened

45 The DA review highlighted that requirements for aesthetic design, siting, colour values and landscaping established in Chapter 8 of the 1998 Strategy have not been implemented effectively in the assessment process since 2014.

50 These design principles should be articulated more clearly in the DCP and given greater weight in the assessment process.

Recommendation

- 55 • Recommend that the aesthetic design guidelines in the 1998 Strategy be implemented directly into the Part D3.2.3 of the DCP to give greater emphasis to the importance of sympathetic design that harmonises with the landscape. Development on ridgelines and

visually prominent locations should be avoided in the first instance. In circumstances where there are no other suitable locations, the development should be fully justified by a visual impact assessment in accordance with Chapter C3.

5 **7. Traffic and road access is generally being dealt with effectively. Further consideration should be given to amenity impacts relating to noise, dust and light pollution**

10 Traffic generation, road access and pedestrian/vehicular safety were by far the most commonly cited complaint in submissions received on DA's for rural tourist accommodation.

15 However, in terms of outcomes, the existing DCP controls appear to have been fairly effective in addressing road access issues in most cases. Some applicants were required to provide substantial upgrades to public roads such as regrading or sealing the full length of an access road to the nearest intersection to account for increased traffic generation.

20 One issue that was dealt with less consistently however were associated amenity impacts such as increased noise, dust and light pollution which were a common source of objections on DA's. This is an area where further improvements to the planning controls could be considered.

Recommendation

- 25 • To improve consistency in the assessment process, it is recommended that where development comprises three or more cabins and the access road is not in accordance with the Council's minimum standards, a traffic impact statement should be provided to support the application. The DCP may also specify that road user impacts such as noise, dust and light pollution are to be covered by the TIS, supported with additional controls to guide the assessment of these matters.
- 30 • Better site selection criteria may also help by ensuring sites have access to sealed roads to begin with, or have adequate site features to allow access roads and driveways to be provided in a way that does not create adverse amenity or safety impacts for local residents.
- 35 • Clearer controls should also be developed which limit access to one driveway for each rural tourism development.

40 **8. Water and sustainability measures need improvement. OSMS provisions are working relatively well**

45 In terms of effluent disposal, the current set of planning controls appears to be working effectively in ensuring safe and environmentally sustainable outcomes. Water supply on the other hand is not dealt with as consistently, particularly in relation to the design and operation of rainwater storage systems servicing rural tourist accommodation.

Recommendation

- 50 • It is recommended that Council develop minimum water supply and design guidelines for rural tourism, similar to those developed for residential accommodation which stipulates 40kL capacity for rural dwellings and 20kL for secondary dwellings. It should also be clarified that drinking water supply should be separate to firefighting water supply and where swimming pools are proposed additional storage measures should be implemented.

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- For larger sceler developments comprising four or more cabins or development in visually prominent areas, details of the system capacity and tank locations should be identified in the application.

5 **9. The DCP controls in Chapter D3 should be simplified and consolidated. Areas of duplication or conflict should be removed.**

10 As discussed throughout the review, one the main issues affecting the assessment process is the presence of duplicated, redundant or conflicting planning controls within DCP 2014. This has arisen mostly due to continued references to the best practice guidelines and performance standards from Chapters 7 and 8 of the Byron Rural Settlement Strategy 1998.

15 In addition to the above mentioned issues, the Prescriptive Measures and Performance Criteria for DCP Part D3.3.4 are not well aligned which further contributes to inconsistency in the assessment process. Some design elements are dealt with only in the Performance Criteria, while other elements are only covered by the Prescriptive Measures.

20 The DCP controls in Chapter D3 need to be simplified and consolidated. Areas of duplication or conflict should be removed.

Recommendation

- 25 • It is recommended that the relevant planning controls from the 1998 Strategy’s best practice guidelines be placed directly into DCP 2014 and any conflicting measures in other areas of the DCP be rectified. References to the 1998 Strategy in Part D3.2.3 of the DCP should be consequentially removed.
- 30 • Further, the Prescriptive Measures and Performance Criteria in Part D3.3.4 should be redrafted and brought into closer alignment with one another.

Proposed actions

35 In order to address the findings and recommendations of this review, the following actions are proposed:

1. Proposed amendments to Byron LEP 2014

- 40 a. Retain the definition of tourist and visitor accommodation as permitted with consent in the RU1 and RU2 zones.
- b. Introduce a 20 hectare minimum lot size for rural tourist accommodation as an LEP standard.
- c. Reduce the number of farm stay accommodation bedrooms to 8.

45 **2. Proposed amendments to Byron DCP 2014:**

- a. Add an additional objective for environmental enhancement into DCP Part D3.3.4.
- 50 b. Scale and density of development to be limited to 4 accommodation buildings and 8 bedrooms in total. Existing DCP controls to be consolidated and amended where necessary.

- c. Include a clear numeric standard to guide the clustering of rural tourist accommodation buildings. The size of the cluster is to scale-up depending on the number of accommodation buildings.
- d. Implement the aesthetic design guidelines from Chapter 8 of the 1998 into DCP 2014 Part D3.2.3.
- e. Include a new Prescriptive Measure into DCP Part D3.3.4 limiting the number of driveways to one per development.
- f. Develop rainwater harvesting requirements for rural tourist accommodation. Update DCP Chapter B3 accordingly.
- g. Additional control to be added to D3.3.4 specifying that development for three cabins or more on a road that does not meet Council's standards to be accompanied by a Traffic Impact Statement detailing road user impacts such as dust, noise and light pollution.
- h. Redraft various provisions in D3.3.4 to ensure the Prescriptive Measures and Performance Criteria are more closely aligned.

3. Other matters:

- a. Develop a set of standard conditions of consent for environmental enhancement and vegetation management plans.
- b. Investigate mechanisms for reviewing and auditing vegetation management plans post consent to ensure compliance with conditions.
- c. Consider developing a map of suitable sites for tourist and visitor accommodation based on site selection criteria.

Conclusion

This review is the first step in the process of amending the planning controls for rural tourist accommodation. If the Council elects to proceed, the next steps will be the preparation of a planning proposal to amend Byron LEP 2014 and/or amendment to Byron DCP 2014.

Future LEP and DCP amendments will be subject to community consultation in accordance the Community Participation Plan and will be reported back to Council for endorsement.

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 | 4: Support tourism and events that reflect our culture and lifestyle | 4.1.1 | 4: We manage growth and change responsibly | 4.1.1.1 | Progress draft Planning Proposal and DCP amendments to improve the planning controls for rural tourist accommodation. |

Legal/Statutory/Policy Considerations

The review of the planning controls will be used to inform future changes to the Byron Local Environmental Plan 2014 and the Byron Development Control Plan 2014.

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Financial Considerations

Not applicable.

10 ***Consultation and Engagement***

Consultation and engagement for any future LEP and/or DCP amendments will be undertaken in accordance with the Community Participation Plan and will be reported back to Council for endorsement.

Report No. 13.9 **PLANNING - Report of the 12 November 2020 Planning Review Committee**

Directorate: Sustainable Environment and Economy

Report Author: Chris Larkin, Manager Sustainable Development

5 **File No:** I2020/1807

Summary:

10 This report provides the outcome of the Planning Review Committee (PRC) held on 12 November 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 12 November 2020.

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REPORT

The Planning Review Committee meeting was held on 12 November 2020. The Meeting commenced at 4:45pm and concluded at 5.05pm.

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Councillors: Crs Hunter, Lyon, Ndiaye

Apologies: Cr Coorey

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 |
|---------------|---|--------------------------------------|---|---|--|
| 10.2020.513.1 | Planners North | 84 Harbour Way BRUNSWICK HEADS | Alterations and Additions to Existing Motel including Five (5) Additional Guest Rooms, Restaurant/Bar, Swimming Pool and Car Parking Spaces | 20/10/20 to 2/11/20 Level 2 6 submissions | The perceived public significance of the application. Council |
| 10.2020.460.1 | Byron Bay Planning and Property Consultants | 90 Byron Street BANGALOW | Use of Alterations and Additions to Existing Dwelling House Comprising of Front Fence and Verandah | 20/10/20 to 2/11/20 Level 2 6 submissions | Delegated Authority |

15 Council determined the following original development application. The Section 96 application to modify this development consent is referred to the Planning Review Committee to decide if the modification application can be determined under delegated authority.

| DA No. | Applicant | Property Address | Proposal | Exhibition Submissions | Reason/s Outcome |
|---------------|--|---------------------------|---|---|--|
| 10.2014.417.2 | Northpoint Advisory 43 Lawson St Byron Bay | 43 Lawson St Byron Bay | S4.55 to Modify Staging. Stage 1: Conversion of Existing Garage to Temporary Sales and Display Office for on-site Marketing of Approved Residential Flat Building, Temporary Car Parking Space, Pedestrian Access and Landscaping. Stage 2: Completion of all Works and Demolition of Existing Building | 30/9/20 to 13/10/20 Level 1 No submissions received | The perceived public significance of the application. Council |